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COURT OF ERRORS AND APPEALS.

In the Matter of the Probate of the Will of CAROLINE PEMBERTON, deceased, late of the County of Monmouth.

On Appeal from the Decree of the Ordinary admitting said Will to Probate.

Brief of Cortlandt Parker.

The testatrix died November 20th, 1882. Page 164.

She was seventy-three years old. Page 190, line 13.

She was the widow of John U. Pemberton, who kept a store at Oceanport, and died in 1875.

She left three children. Dr. Henry H. Pemberton, one of the caveators, Dr. John P. Pemberton, another, and Caroline H. Pemberton, the proponent of the will, and the executrix and sole executrix, therein named.

Her estate consisted, at her death, of the following:

The Lane property at Long Branch, worth Page 187, line 25. This includes the Stoke stores.	$12,000 00
Stock in the Long Branch Bank,	500 00

Furniture &c., (page 189, line 15,)	$6500 00
Cash on hand when she died, (page 189, line 32,)	1500 00
A note of the proponent, (page 189, line 26,)	600 00
A mortgage given by one Rogers for (page 187, line 4,)	800 00
A mortgage given by one Tabor for (page 187, line 8,)	500 00
A mortgage given by one Sagarton for (page 187, line 8,)	350 00
A mortgage given by one Jeffrey for (page 187, line 8,)	600 00
A mortgage given by one Genning for (page 187, line 8,)	512 00
Two lots at Oceanport, worth (page 187, line 37,)	800 00
A lot in the woods near Eatontown (187–8),	100 00
Property called the Garfield property, Asbury Park,	10,000 00
Property called the Lloyd property, at Long Branch,	800 00
In all, about	$35,562 00

She had had some mortgages at the date of the will, of which she had disposed, viz., one by one Keogh, for $200; one by one Rogers, $200; one by one Herbert, $650.

See pages 186, 187.

She died in England just after arriving there.

Before she sailed she collected these three mortages, and also pledged in bank (page 187, lines 7 to 14) the five mortgages above listed as security for $2500 which she borrowed.

The propounded will, dated August 16th, 1880, devises to her son, Dr. John P. Pemberton, the Keogh mortgage,	$200 00

Rogers mortgage,	$200 00
" "	800 00
In all,	$1,200 00
But the first-mentioned two were paid,	400 00
So if the estate pays the $2500 note and redeems it, all he gets is	$800 00

The will gives her son, Dr. Henry H. Pemberton—

The Tabor mortgage,	$500 00
Sagarton mortgage,	350 00
Jeffry mortgage,	600 00
Genung mortgage,	512 00
In all,	$1,962 00

All these mortgages were pledged at her death for the $2500 loan. If the estate pays it, this amount is Dr. H. H. Pemberton's share.

To the daughter, the proponent, the will gives—

The Lane property, worth, as already stated,	$12,000 00
The Long Branch Bank stock,	500 00
The Herbert mortgage,	650 00
Long Branch Building Loan stock, "and also all the rest, residue and remainder of my *personal* property whatever and wherever it may be, except that which is herein particularly disposed of."	

This bequest gives her—

Household chattels, (say),	6,500 00
Cash on hand,	1,500 00
Proponent's note,	600 00
	$21,750 00

Her son Charles gets by the will the two lots at Oceanport, worth, (say),	$800 00
	$22,550 00
Or subtracting debts, (say),	2,500 00
	$20,000 00
And a daughter of Dr. John Pemberton, Miss May, gets the Eatontown lot, worth	$100 00

That this lady should have passed away, making such a difference between her three children, might well excite surprise. This will not be abated when it is known that she lived on the most intimate and affectionate terms with them all—that her son, Dr. Henry H. Pemberton, accompanied her abroad, at her request and expense, and literally closed her eyes; while Dr. John P. Pemberton was ever a dutiful and much-loved son, his daughter a pet, and his situation, financially, such as to commend him justly to her bounty. On the other hand, the daughter was the successful keeper of a large boarding-house, (page 108, lines 3 to 10,) a self-dependent, energetic woman, capable of getting her own living, and doing it well; while her son, made the recipient of her property to an amount equal with his Uncle John, was, to say the least, a returned prodigal, who had gone off with considerable of her money entrusted to him to deposit; who had been for a long time in parts unknown to any one but his mother, and who was certainly less deserving than any of her issue, of her affection and regard.

The will and the circumstances attending its execution deserve attentive notice. It was drawn by Mr. R. Ten Broeck Stout, of Asbury Park, N. J., who is a third subscribing witness to it. Inspection shows that he could not have been a subscribing witness at the time, as required by the statute, unless there were two inkstands there with different ink therein. It likewise shows that the same ink

which he used in his signature he likewise used to write *over* the signature of the first subscribing witness a notation to the following effect: "The words 'both being' written before signing, the word Catharine erased six times, and the word Caroline written six times before signing." Inspection further shows this alteration to have been made in the hand of this witness, as noted with ink identical with that used in drafting the will, and evidently to have been prompted by a desire to prevent the failure of the bequest to the proponent.

No one would complain of this desire. It was right and laudable to make the will effectual, according to instructions, if received. But why the witness himself should make such a statement as he has done on the witness stand, certainly sets one wondering. He declares (page 29, line 30,) that he wrote those interlineations the evening the will was executed at the testatrix's house before any witness signed, (see also, page 58, line 8,) although the erasure by the red lines (page 57, line 10,) was done in his office some days before. He declares this, with the will before him, and its palpable contradiction of every word he utters. It is a case of strange infatuation. His being a witness at all, why?

There is but one explanation probable: that will was executed without any erasure. Therefore the bequest was to Catherine, not Caroline Pendleton. He dared not seek the execution of a new will. There was some reason why he did not wish that—some reason of which he was conscious. He almost tells that reason when he makes the memorandum on the envelope, "Mrs. Pendleton, this 16th day of August, 1880, had dealings at the store of Steinbeck Bros. & Gillis." He feared an attack upon her mental capacity as existing *that day*. He was getting ready for battle. He admits this. He expected it from the sons—not the daughter. He knew there was something wrong.

Nor had he imbibed his fears that day only. His selection of witnesses is most peculiar. And the time also,

taking into consideration his statements. The witnesses were physicians, Drs. Mitchell and Kinmouth, selected as such, (page 19, lines 10–30,) ten days before the signature (page 42, line 8 : page 140, line 25,) under the expectation of a fee of $10 for the work, as medical and professional. Page 47, lines 10–30.

It was absolutely discussed at the time. Yet the draughtsman says that in his office, when the testatrix came to give the outlines of the will in the morning of its execution, in the evening, or of the day before (pages 20, 21, and page 28, line 28,) she gave him the reason for procuring the attendance of two physicians as witnesses. Page 19, lines 20–30. It was the first time she was ever in his office, and she was there but the once about it. Page 32, line 13. He did not know her before except by reputation. In the morning of executing the will he went to her cottage for particulars of deeds and mortgages. Page 34, line 20.

If these two stories are both true—and they may be—then some one, not Mrs. Pemberton, the testatrix, engaged the draughtsman to draw the will before he actually knew the testatrix, and told him, moreover, that there was to be a contest, and that he should supply himself with good evidence as to capacity.

Who was this some one?

The account given of the transaction of signing the will by this principal witness and the doctors who were witnesses, severally agree.

He (the lawyer witness) says (page 18) that he read the testation clause to the testatrix, and that he asked her did she declare it as her will, receiving her assent; that it was about eight or nine P. M., at the lady's cottage; that the persons present were only she and the witnesses (page 18, line 5); that the transaction took half an hour; that the daughter was in the house and came through the room once or twice; was present, perhaps, a minute; came up to the door; might have come inside; his recollection is she did not (page 22, line 40, &c.); he read the will aloud to testatrix before the witnesses (page 35, lines 25 to 40);

he does not think he knew the daughter at the time (page 36, line 10,) nor that he spoke to her; he gave the will to the testatrix immediately after execution; he had been counsel, before this trial, for the daughter in getting her son's name changed from Isaacson to Pemberton (page 36, lines 20 to 40); it is not clear whether or not this was before the drawing of the will. But certain it is that as soon as the testatrix died the daughter wrote from England about like this (page 26, line 5; page 28, line 10): "My poor, dear mother is dead, and, as you remember, I am executrix of her will, and I wish you retained as counsel in the case."

Dr. Mitchell, one of the witnesses, declares (page 41, line 22,) that when the will was signed there were present the testatrix, the draughtsman, and the other witness *and* the daughter; that he and Dr. Kinmouth were called for and taken there in a carriage, (page 43, line 29,) on an engagement made previously for that special evening. The will was not read to them or in their presence, (page 45, lines 30 to 40, also page 53, line 15.) The daughter was standing by the witness at the signature: was in the room nearly all the time, (page 47, line 10,) which was thirty or forty minutes, (page 48, line 20,) and when the witness talked of it as a professional service, it was the daughter who listened to his demand, suggested that $10 was too much, and insisted that $5 was enough. Mr. Stout remained talking with mother and daughter some fifteen minutes. Page 49, lines 10 to 20.

The testatrix said nothing, except that when asked was this her will, she said "yes." Page 54, line 20. Dr. Kinmouth does not recollect whether the daughter was or was not in the room when the will was signed. He remembers, however, that that lady ordered lights, (page 142, line 1,) and he recollects the conversation with a lady, which, he cannot say, about fees, he thinking, like his associate, that they were there professionally, fortifying

against a charge of incapacity. Page 144, line 30, and page 145, line 10.

The tenderness on the part of Mr. Stout as to his knowing the daughter, as to her being present when the will was executed, and as to subsequent intercourse or acquaintance with her, combined with his expectation of a contest, his supplying himself with evidence, confesses weakness. It is impossible not to believe that something is concealed.

The review of the testimony thus far exhibits this to be a case of a particularly unequal will—unnatural in practically disinheriting sons with whom the testatrix was on the best of terms, in favor of a daughter with whom she lived, by a woman about seventy years old, drawn with an expectation of contest, imputed to the testatrix by the draughtsman, but under circumstances which made a belief of that on her part incredible; the fact of the will's being made, concealed from every beneficiary save the one most largely benefited; she present when the will was executed, but her presence denied; and the engaging counsel by message from abroad, before even a threat of opposition, nay, before knowledge of its existence; and the evidence as to the execution (and its state when executed,) given by the draughtsman, who becomes an unnecessary because a third witness, in such a way as to increase the suspicion that something was wrong.

That the testatrix signed and published the will, we make no doubt. That she was *compos mentis* is not deniable. But starting as we do, with a feeling that something here was wrong, we are prepared to believe the possibility, at least, of undue influence and fraud. And it is upon this ground that the caveators oppose this will, and ask for the reversal of the Ordinary's decree.

The suggestion of this ground of objection to the will at once prompts closer inquiry into the character and history of the two persons involved—the testatrix and her daughter.

Mrs. Caroline Pemberton, the testatrix, was an English

lady. At any rate she had relatives in England, and had annuities which came from there. They amounted to about $3300 yearly. (Page 189, lines 30 to 40.) She was in London when she died, having arrived there shortly before, accompanied by her daughter and her son, Dr. Harry Pemberton, on a visit to their relatives. After her husband's death, which was March 17th, 1875, she lived at Oceanport till the fall of 1876 or 1877, when her daughter had her up to New York to board at Mrs. Seer's, in 16th street. She came back in the spring and then came with her daughter to her son Harry's house at Long Branch. The three resided together till 1879, then the daughter established a boarding-house in New York, and took the mother there, and there they lived together till April, 1880, when the daughter took her to Asbury Park. She was then just recovered of pneumonia. They first took board. Then the daughter got the mother to go security for her and rented the Lookout cottages, and took boarders, and moved her mother there. The summer and fall of 1880, and the winter following, the testatrix lived at her Lane cottage, more or less sick.

In the spring of 1881, the daughter again took her to the Lookout cottages—during the summer—in the fall to Florida. Thence testatrix went with her to Philadelphia. She was sick there. Thence in the summer she went to Asbury Park again. She was living there with her daughter when they started for Europe. This was October 27th, 1882. This history is mainly given on pages 164 to 168.

The mother had depended on her daughter for many years. They slept together ever since the father's death, and sometimes before. Page 12.

The daughter is evidently a woman of strong character, and has had a history. She gives it on pages 11 and 12. "My correct name is Caroline H. Pemberton; I am not at present a married woman; I am a widow; at least I am not married; I was divorced about ten or fifteen years ago; my husband deserted me; he went to Europe; my husband's name was Henry Isaacson; I was married in Jersey

City; I do not know by whom; it was an alderman; I cannot remember exactly when the marriage took place, it is so many years since, about twenty-five years." On a call for a marriage certificate it is objected to and overruled.

Twenty-five years before dates her marriage in 1858. In the beginning of 1869 the husband left her (page 257), and took with him to Germany their only child, Charles, called in the case Dr. Charles *Pemberton.* The boy came back in ten years, landed in Philadelphia, searched for his mother six months, and, in the fall of 1879, found and came back to her. He lived with her and his grandmother till the end of July, 1880, two or three weeks before this will.

People often unconsciously photograph themselves in correspondence. Exhibit C, in exhibit-book, page, 31, seems to me valuable as a photograph. It was written to her sister-in-law. The caveat was filed February 5th, 1883. It reads thus:

"ASBURY PARK, N. J., Jan. 6th, 1883.

"MRS. C. M. PEMBERTON.

"MADAM—I command you to send me by express at the latest, June 8th, 1883, *my* small yellow trunk, containing *my* silver, *my* jewelry, *my* papers, my everything in that trunk. (I warn before I strike.) I will immediately begin a suit for $1000 against you if I have to duplicate my silver for the Pemberton as well as the loss of my papers.

"When Mrs. Pemberton, of Salem, N. J., and Baltimore, Md., Mrs. Prince, Mrs. James Brown, the 'trinity,' appears on the *stage* in the fresh light of taking my things, I think neither her *daughter* or self will *dare* to show their faces on the streets of Long Branch. When one (myself) who knows all the history, will bring it all out on cross-examination, I think you will regret being so unprinci-

pled. Yours with the utmost respect, most honored madame,

"CAROLINE H. PEMBERTON."

Energy, imperiousness, vindictiveness, capacity for almost any wrong, stand out, we submit, from every line of this document.

Her evidence in the case is another exhibit and exhibition of her peculiarities and disposition. We refer especially to her rebuttal testimony contained from pages 238 to 255. It will be seen by close examination that she there, and when called at other times, directly contradicts no less than some sixteen witnesses—Dr. Mitchell, Mary Williams, Samuel A. Cook, Harry H. Pemberton, John P. Pemberton, Caroline M. Pemberton, Daniel U. Webster, Emma Cooper, Mary Williams, Victoria Bruff, Jane Schreve, Georgiana Lucas, Thomas H. Redway, Catharine Johns, Dr. Kinmouth, or evades, W. D. Campbell.

But we are now simply showing from her own mouth what manner of woman this lady is.

She knows her interest and its direction. Note her answer, (page 238, line 15): "I never dared say that to my mother, for she would immediately never do anything you told her to; she was very obstinate."

She is asked if she said she would get square with her brothers; she replies: "I never make use of such language; I am too much of a lady; I was born and bred a lady, and I never use that kind of language; it would be impossible for me to have spoken in such a way as that."

Asked of a witness called against her, "What was her business?" "She kept a boarding-house, * * * and he never paid her bills there, either."

Asked as to something alleged to have been told a servant, she says: "I never make a confidant of servants."

All her evidence is instructive as to her reckless, vindictive, proud, energetic character, and the combination with it of a keen sense of her own personal interest.

The whole of her testimony should be carefully read

and weighed. Of course, she swears directly against the caveators. But she shows herself, and no one can doubt either her capacity or her readiness to exercise undue influence and produce this will.

She is a woman in her maternal instincts, and her letter to her son, November 30th, 1880, (pages 29–31,) somewhat dignifies her. This whole drama is closely connected with the history and conduct of this young man, who came twenty-one years old, so she writes him, December 16th, 1880. As already said, he had been taken away from her by her husband when only ten years old When nearly or quite twenty, in the fall of 1879, having spent six months finding her, he returned, was recognized, as was the Tichborne claimant, and took up his abode with her and her mother.

In the last of July, 1880, he received money and negotiable paper from his mother and grandmother, intrusted to him in order to make a deposit and pay some debts, and thereupon disappeared. His mother thought, or said she thought he was murdered, and the good old grandmother seems, through sympathy, to have thought so, too. The testatrix asked her sons. They thought, what turned out to be the truth, that he had gone off with the money. This enraged the daughter. Much evidence is given illustrative of the wildness and vindictiveness of her rage. But as there is always question as to oral evidence, let reference be had to her letter to him dated November 30th, 1880, after the proof was in her hands that the suspicions and belief of her brothers were not uncharitable. Her own handwriting cannot be denied. Exhibit-book, page 30. "Had you waited only four short weeks I would have cheerfully *given* you the money you took. * * * * * * * * Enclose the checks in your next letter. Grandmother requests it. Do not write to your Uncle Harry. I do not wish him to know that I am in communication with you. In the midst of my anguish, when you left, both of my brothers rejoiced at my misery. Since then I have never

forgiven the whole of them, or spoken to May, John or Tilly. I may, before I *die*, forgive their cruelty and injustice, but will never *forget it*. *I* and *they* henceforward will *never* be FRIENDS."

This violence in her written language is little to that of her proved words.

She told Mrs. John Pemberton (Tilly) that she did not wish her brothers to come there any more. Pages 226, 227.

She swore she would have revenge. Page 100.

To H. H. Pemberton. Pages 170, 172.

To John P. Pemberton. Page 208.

To Mrs. C. M. Pemberton.

To Thomas Redway. Pages 67, 68, 73.

To Webster. Pages 80, 81. She would get square with her brothers. This before her mother.

To Mary Williams, the same thing. Page 120.

To John E. Shroeder, in August, 1880. She denounced her brothers to the old lady, (pages 147 to 149,) said she would have revenge; that they had cheated her, and three or four days later repeated it. Page 148.

To Georgiana Lucas (see page 161) she said she would get even with them.

On this subject, note, farther, pages 172, 173.

Here, then, we have a woman with opportunity unduly to influence—with capacity of mind and heart to do it—just the woman to accomplish it—with the motive of covetousness—and added to it, the motive of revenge, wild for revenge; wild to get square—get even with her brothers. How could she do it? What way was then open to her? This, of processing a will which would disappoint and insult them. What other way?

And what a triumph the will is! A pittance to John; as much to the boy he had justly thought a thief, as to whose right to the name of Pemberton there was doubt—as much to this boy as to her eldest son; little more to Harry, the mother's favorite, than to John. To May,

whose only fault was being John's daughter, $100; to her boy, and he then away with his plunder, $800.

To herself—everything else—except that by a slip, as it would seem, the Garfield cottage and Lloyd land do not pass.

Without a will, all would share equally—therefore there must be a will—and a will unequal, and which would insult her brothers as well as impoverish them—a will, too, that would endorse her erring son.

It was a magnificent revenge—and it was her only revenge.

With this proof of motive—of opportunity and with this apparent result—this will exactly what was wanted for her specific revenge, is there not proof enough that she exerted undue influence? Is it to be expected that she refrained from it?

Nor does she, in fact, deny it.

She is asked (page 244, line 8,) by her own counsel "Did you ever say anything to your mother about making this will in question or any other will?" *A.* "*My mother very often said things to me.*"

Mr. Vredenburgh—"She said 'about it' at the end of her answer."

The court—"What did you say?"

The witness—"I think I did say that, but they were both talking just then."

Q. "Did you ever do anything that would, to your knowledge, influence your mother in making this will in question?"

Objected to. Question withdrawn for the present.

The question was afterwards substantially repeated. Page 252, line 8.

Q. "Did you ever do or say anything for the purpose of influencing your mother in making this will?"

A. "I have no recollection of doing so; she always said she was going to try and protect me."

Does she in this deny the impeachment? She knew,

she must have known; and yet she evades at first, and then utters a *non mi ricordo*, the stereotyped style of interested witnesses.

But let us see what the evidence tells us, first, as to the fact of her interference, and then as to the amount of her power.

The will is dated August 16th, 1880.

Charles disappeared July 27th, 1880.

Dr. Henry H. Pemberton's letter is dated July 29th, 1880. It was sent July 30th, 1880, so says the postmaster. Pages 167, 168.

The next day there was an interview full of threats of revenge. Page 170. She had the letter and showed it.

From that time till the making of the will these threats continued.

The contemporaneous existence of the dates and the circumstances is very forcible proof of undue influence and fraud.

And this effect is increased by remembering that Stout was busy with the getting up a will ten days before its date.

But her declarations show her at work in this matter.

Mary Williams, a domestic, was employed in the family of Mrs. P., between June 20th and August 20th, 1880. She says that about a week after Charles had gone she heard the daughter urge her to make a will. See pages 123–133. This proof should not be overlooked.

Georgiana Lucas, another domestic, states something of the same character. See pages 161, 162.

Daniel H. Webster, another servant, corroborates. See page 80, line 30; page 81.

And his statement of the old lady's own mind and intent, contrasting greatly with what she actually did, is of consequence. See page 83.

Thomas H. Redway, the testatrix's agent, relates an interview between mother and daughter, immediately after Charles' flight, which exhibits her plan of action. Pages 66–68.

Mrs. Caroline Matilda Pemberton, (page 228,) wife of Dr. John, relates first an interview with proponent, then one with the mother, exhibiting the mind of each, and proving the influence and the method in which it was used. "Tillie, Carrie says I must make a will to protect her from her brothers." Dr. John P. Pemberton (pages 207, 208) relates interviews during this period between Charles' departure and the date of the will, showing the testatrix's mind, how it was affected and who did it.

This testimony should be carefully considered.

Jane Shreve, a visitor, page 154, gives evidence from the testatrix's mouth of how her daughter worried her about and because of Charley, and desired her to make a will, and that she made it very much against her will, very much against her wishes, but to have peace.

This testimony deserves careful consideration.

Protection for the lone widow—protection against her brothers—the suggestion of possible suicide—importunities leading the old lady to long for peace—exasperation of her own mind, sympathizing with her daughter's not unnatural distress, and weakly leaning to the hope, if not the conviction, that her son could not be the miscreant he really was, and which the practical sense of the brothers saw he was. These were the arguments which she evidently plied in order to the production, not only of *a* will, but of such a will as this.

The evidence of Mrs. Catherine Johns, (prges 99 to 104) seems almost to let us look on at the exertion of the undue influence producing this will. She fixes the date August 10th, 1880, and swears that the mother no sooner made the will than she wished to destroy it, but having given it to the daughter, could not get it back.

Such a will as this was contrary to the views and resolution of the testatrix.

She wished her children to share her property equally. Read on this point the evidence of Webster. Page 82. Mrs. Johns. Pages 102 to 111.

Jane Shreve. Page 154.

Samuel A. Cook, (pages 130, 131, 132,) who was instructed to draw an equal will at a time when she thought that which she had made was destroyed.

Harry H. Pemberton, to the same effect. Pages 181, 184.

Sarah Woolley. Pages 151, 152.

That this daughter had the greatest influence over her mother is abundantly proved by the evidence.

Take some instances supplied by the testimony.

1. The *Redway notes.*

See the testimony of Mrs. Johns. Page 105.

Then that of Mr. Redway. Pages 64, 65.

"Well, ma, you must" endorse them.

See, also, Harry H. Pemberton. Pages 165–178.

The money which young Charles Pemberton carried away was intended to pay one or both of these notes, and was an injury to Harry Pemberton, which naturally embittered him against the boy, for whose body his mother wished to search; while she believed, according to the proof then, that he had run away.

2. The Garfield cottage matter.

This was a considerable outlay, made by the mother, under the influence of her daughter. See the evidence of Thomas H. Redway. Pages 68, 69.

H. H. Pemberton. Page 190.

At this time she was over seventy years old, with means to support herself. It was built that her daughter might have a house in which to keep boarders. It involved her in a heavy law-suit.

3. The McElvaine case of property in New York, for a boarding-house; she went security for $1800 rent for her daughter. Harry dissuaded his mother two or three days. The sister came from New York, stayed over night with her mother, and returned with her signature. Page 178.

4. So, too, as to the lease of the King cottage at Long Branch, a like case. Page 178.

5. The raising money with which to go to England, another illustration of her tact, fertility of resource, and power over her mother, and her carrying out her own will as to who should go, and all about it.

6. The history of the daughter's removing her mother from place to place, illustra:es her influence.

The mother lives at Oceanport, where her husband died. Page 164.

But in the fall of 1876 her daughtcr takes her to board in New York, where her trunks were lost, securities stolen, and duplicates had to be obtained.

She brings her back to Oceanport, staying till the spring of 1877; then they go to Dr. Harry's, at Long Branch, until 1879; then to the boarding-house, No. 68 West Thirty-eighth street, New York, to April, 1880; then to Asbury Park to board—contrary to the advice of physicians; then got her into the Lookout cottage business at Asbury Park in 1880; then, in the fall, to the Lane cottage at Long Branch; then, in the spring of 1881, to the Lookout cottages; in the fall of 1881 to Florida. She was then seventy-two, and ill, besides. Then she is taken to Philadelphia till the summer of 1882. Here she was sick again. Then she goes to Asbury Park for awhile, and then she gets her over to London, where she dies.

Was not this old lady the property of her strong-minded, strong-willed daughter?

Almost all these changes and removals were against the wishes and protests of the testatrix—against those of her sons.

The poor old lady said to W. D. Campbell (page 224): "Why, Mr. Campbell, you don't know what it is—Carrie kicks me around like a foot-ball. Winter before last, she had me over in Philadelphia all winter, and last winter she made me go down to Florida. And now she says I've

got to go to Europe, and I presume I've got to go. If I don't, I'll never have any peace." She further stated that she was getting too old for such trips—would a great deal rather stay at home with her children. If she did have to go to Europe with Carrie, she wanted one of her boys (who were physicians) to go along with her, to take care of her, and she dare not take Harry until she had asked Carrie; if she did, she would have no peace while she was gone.

The daughter prevented her mother from taking May Pemberton, her youthful granddaughter, with her to Europe. Testatrix was willing, (page 206); Dr. Harry willing; clothes made for her, (page 202); the money raised, (pages 175, 177, 212.) But proponent set down her foot—Charles, her son, must go if any one, (page 175,) "May shall not trample on Charles," (page 175,) "May might get drowned or run away." "Running away was in the blood."

She opposed Harry's going. He had to, by her consent. See pages 175, 224.

Nor would she renew her endorsement for Harry, on two notes which were to fall due while she was away, till "Carrie," her daughter, consented. Pages 177, 224.

Can any one doubt that this will came, not from the mother, but the daughter?

Not only was this will procured, we insist, by the undue influence of the principal beneficiary, its proponent for probate, but its existence is a fraud. The testatrix thought she had destroyed it—died in that belief. She was deceived into it. And the proponent cannot therefore be allowed to prove this will.

Jane Shreve, already mentioned, gives testimony. See pages 154, 155, 156.

Mrs. Johns was told this by her. Page 104.

An old acquaintance—next-door neighbors in New York city—and friends afterwards. Pages 97, 98.

A paper had been palmed off upon the mother by the

daughter, with the signatures torn off—a possible copy—with a red seal, and which she could easily mistake.

The daughter admits—

That her mother after the paper was signed let her have it long enough to read it. Page 252, line 25.

It is admitted that it was kept in a tin box in the daughter's room, where the mother also roomed. Pages 271, 272.

That the mother gave it for safe custody to this grandson, who had proved so unworthy of her confidence, as he says she did, is plenary proof of her insane infatuation and weakness of mind, if it be true. But it is incredible.

He never does anything to keep it till Nov. 23d, 1882. Page 279. The testatrix died Nov. 20th.

When his uncle, Dr. Harry, asked to see it, he would not show it till he had asked his mother. Page 278.

Stout says that the proponent wrote him from England immediately on the death of her mother, and told him in her letter where the will was, (page 40, line 25,) viz., in the Safe Deposit Company.

We charge that the grandmother never gave this young man the paper. His mother had it, unknown to *her*, and kept it till they sailed. The grandmother evidently had no idea of its existence. The daughter gave it to her son, probably on the deck of the steamer.

She told her brother Harry, over the dead body of her mother, that there was a will; that she had deceived him, and that her son had it, and said she gave it to him on board the steamship Egypt the night they sailed from New York. Page 182; see, also, pp. 201, 291.

She likewise said that she got the will from her mother, after Charles ran away—she was in such a rage at the way her brothers acted towards her.

Charles told a different story from that he relates on the stand. He said he got the will from his mother. Three witnesses swear to it. See pages 290, 291, 292.

That the testatrix thought she had destroyed the will is already shown. But her effort, without any apparent resistance by her daughter, either, to have a will drawn—the lawyer staying all night to do it—she told her son Harry she had none, on the cars going to take the steamer (page 179, lines 30–40), and on the steamer. And he and his sister sat discussing the propriety of a will when she lay sick—they did not think, either of them, dying. But being old and sick, the conversation was natural.

Believe Dr. John Pemberton, and why not, his sister told him two or three days before they sailed, that the mother had no will. Page 209. He spoke of this to his mother uncontradicted, in presence of his sister and others. Page 210. *She* said, the mother, that there was none, that they must all share alike. He asked her the day she started to make a will. Page 210. She again reiterated they should all share alike. Mrs. Matilda Pemberton says the same thing. Pages 230, 231.

The proponent and her son both conceal the existence of the paper. The brother who goes to Europe with his mother and sister, never hears of any such paper existing. And Charles falsifies to his uncle. Page 290. His mother so tells her brother John. Page 209; see, also, page 291.

The death-scene in London, and all the circumstances attending it, very graphically told by all the witnesses, heighten the interest of this drama.

One circumstance startled me in reading the testimony of the proponent. It is found on page 15, lines 15–30. Did she mean to accuse her brother? What did she mean?

No sooner is she dead than the silence is broken. The fact of a will is divulged. She is penitent, and apparently just, if not generous. She shows then her knowledge of the contents of the will. Pages 182, 183, line 30. But she will do right. Three days after, however, the will goes into the Safe Deposit custody, put there by Charles. And a month afterwards, December 20th, 1882, the three interested parties go, on the arrival of the steamer, take the

will and study it. Page 185. Four or five days afterwards she proposes to Harry to join her against John, and she would give him the Monmouth avenue property. Page 191. Her fair and just intentions fade into air, when she returns and sees her son.

There are cases bearing upon that in hand to which the caveators ask attention.

Dale *v.* Dale, 11 Stew. 274, decided by this court at March Term, 1884, declares that where a mother, mentally enfeebled by reason of disease, and in a position where one of her two sons could exercise 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 ruling applies to any case where there was clear proof of opportunity for the exercise of undue influence. Certainly where there was proof of the existence of superior influence, and where the facts and circumstances generate reasonable suspicion of its exercise and of fraud.

Incidental rulings in the case likewise assimilate the cases.

What undue influence is, Chanceller Green, sitting as Ordinary, forcibly states in Turner *v.* Cheeseman, 2 McCart. 265. "The influence must be such as to destroy the free agency of the man over whom it is exerted, whether threats of bodily harm or unceasing importunities to a man on his death-bed, or by acts of unkindness, when the subject of it is in the power and at the mercy of another. If the individual occupies a position towards another, dependent upon him for those little attentions and conveniences which alone make life supportable, so that he cannot say 'No' to a mere request that is made of him, no matter how little the influence, if the free agency is destroyed, it vitiates the act which is the result of it."

Could Mrs. Pemberton, the testatrix, ever say "No" to a request made by this daughter, with whom she lived, moved and had her being?

See, also, the opinion of Vice-Chancellor Dodd in Lynch *v.* Clements, 9 C. E. Gr. 435; 1 Redfield on Wills 510, 514.

If the court believes that the decedent thought she had destroyed this will, and was so led to believe by the practice of the daughter, she cannot be allowed to prove it, though the testatrix's effort to destroy it was ineffectual.

Moore *v.* Blauvelt, 2 McCart. 367.

Upon the whole case, we respectfully insist upon a reversal of the decrees below, and a rejection of this disputed will.

CORTLANDT PARKER.

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Monmouth Orphans' Court.

In the matter of admitting to probate a paper purporting to be the last Will and Testament of Caroline Pemberton, deceased. } *On Caveat.*

NOTICE OF APPEAL OF JOHN P. PEMBERTON.

Filed July 26, 1884.

John P. Pemberton, the son of the said Caroline Pemberton, deceased, and one of the legatees and devisees named in the paper purporting to be the last will of the said Caroline Pemberton, deceased, hereby appeals to the Prerogative Court from the decree entered in the Orphans' Court of the county of Monmouth, on the seventeenth day of July, eighteen hundred and eighty-four, and from each and every part thereof, except that which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat, to be paid out of the estate of the said Caroline Pemberton, deceased. 10

Dated July 26, 1884.

VREDENBURGH & PARKER,
Proctors and of Counsel with the Appellant.

I conceive there is good cause for appeal in the above stated cause.

W. H. VREDENBURGH,
Of Counsel with the Appellant. 20

NOTICE OF APPEAL OF HENRY H. PEMBERTON.

Filed July 26, 1884.

Henry H. Pemberton, the son of the said Caroline Pemberton, deceased, and one of the legatees and devisees named in the paper purporting to be the last will of the said Caroline Pemberton, deceased, hereby appeals to the Prerogative Court, from the decree entered herein on the seventeenth day of July, eighteen hundred and eighty-
10 four, and from each and every part thereof, except that which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat, to be paid out of the estate of the said Caroline Pemberton, deceased.

Dated July twenty-sixth, eighteen hundred and eighty-four.

ROBBINS & HARTSHORNE,
Proctors and of Counsel with the Appellant.

20

I conceive there is good cause for appeal in the above stated cause.

C. ROBBINS,
Of Counsel with the Appellant.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF ADMITTING TO PROBATE A PAPER PURPORTING TO BE THE LAST WILL AND TESTAMENT OF CAROLINE PEMBERTON, DECEASED.	*On Appeal from a Decree of the Monmouth Orphans' Court.*

30

PETITION OF APPEAL OF JOHN P. PEMBERTON.

Filed July 31, 1884.

To the Ordinary of the State of New Jersey:

The petition of appeal of John P. Pemberton shows that he is a son of Caroline Pemberton, late of the township of
40 Ocean, in the county of Monmouth and State of New Jer-

sey, deceased, and one of the legatees and devisees mentioned in a paper purporting to be the last will and testament of the said Caroline Pemberton, deceased, hereinafter mentioned; that the said Caroline Pemberton died at London, England, on the twentieth day of November, eighteen hundred and eighty-two, seized and possessed of considerable real and personal estate, located principally in the said county of Monmouth; that on or about the third day of January, eighteen hundred and eighty-three, Caroline H. Pemberton, the person named in the paper writing, hereinafter mentioned, as executrix, produced before the Surrogate of the county ot Monmouth for probate, as a will of real and personal estate, a certain instrument in writing, purporting to be the last will and testament of the said Caroline Pemberton, deceased, dated the sixteenth day of August, eighteen hundred and eighty; that on the fifth day of February, eighteen hundred and eighty-three, your petitioner filed with the Surrogate of the said county of Monmouth a caveat against the probate of the said paper writing, purporting to be the will of the said Caroline Pemberton, deceased. That such proceedings were thereupon had, that afterwards, on the seventeenth day of July, eighteen hundred and eighty-four, the Orphans' Court of the said county of Monmouth made a decree, admitting the said instrument to probate as the last will and testament of the said Caroline Pemberton, deceased, and granting letters testamentary to the said Caroline H. Pemberton thereon; your petitioner is informed and believes, however, that such letters have not been granted to her.

And your petitioner complains and alleges that the whole and every part of the said decree, except that which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat, to be paid out of the estate of the said Caroline Pemberton, deceased, is erroneous, improper and illegal, and that your petitioner is aggrieved thereby.

Your petitioner therefore prays that the said decree of the said Orphans' Court, except as above excepted, may be reversed and set aside and for nothing holden, and that

your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

VREDENBURGH & PARKER,

Proctors and of Counsel with the Appellant, John P. Pemberton.

PETITION OF APPEAL OF HENRY H. PEMBERTON.

10 Filed July 31, 1884.

To the Ordinary of the State of New Jersey:

The petition on appeal of Henry H. Pemberton, shows that he is a son of Caroline Pemberton, late of the township of Ocean, in the county of Monmouth and State of New Jersey, deceased, and one of the legatees and devisees mentioned in a paper purporting to be the last will and testament of the said Caroline Pemberton, deceased, hereinafter mentioned.

20 That the said Caroline Pemberton died at London, England, on the twentieth day of November, eighteen hundred and eighty-two, seized and possessed of considerable real and personal estate, located principally in the said county of Monmouth.

That on or about the third day of January, eighteen hundred and eighty-three, Caroline H. Pemberton, the person named in the paper writing hereinafter mentioned, as executrix, produced before the Surrogate of the county of Monmouth for probate, as a will of real and personal 30 estate, a certain instrument in writing, purporting to be the last will and testament of the said Caroline Pemberton, deceased, dated the sixteenth day of August, eighteen hundred and eighty.

That on the fifth day of January, eighteen hundred and eighty-three, your petitioner filed with the Surrogate of the said county of Monmouth, a caveat against the probate of the said paper writing, purporting to be the will of the said Caroline Pemberton, deceased.

That such proceedings were thereupon had, that afterwards, on the seventeenth day of July, eighteen hundred 40

and eighty-four, the Orphans' Court of the said county of Monmouth made a decree, admitting the said instrument to probate, as the last will and testament of the said Caroline Pemberton, deceased, and granting letters testamentary to the said Caroline H. Pemberton thereon; your petitioner is informed aed believes, however, that such letters have not been granted to her.

And your petitioner complains and alleges that the whole and every part of the said decree, except that which directs a counsel fee of two hundred dollars each, to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat, to be paid out of the estate of the said Caroline Pemberton, deceased, is erroneous, improper and illegal, and that your petitioner is aggrieved thereby.

Your petitioner therefore prays that the said decree of the said Orphans' Court, except as above excepted, may be reversed and set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

ROBBINS & HARTSHORNE,

Proctors and of Counsel with Appellant, Henry H. Pemberton.

ORDER TO ANSWER JOHN P. PEMBERTON'S APPEAL.

Filed August 12, 1884.

The petition of appeal of John P. Pemberton, from the decree of the Orphans' Court of the county of Monmouth, and the transcript of the proceedings in said Orphans' Court in above matter, having been filed with the Register of this court, by the Proctors of said John P. Pemberton, appellant,

It is, on this eleventh day of August, A. D. eighteen hundred and eighty-four, on motion of Vredenburgh & Parker, Proctors and of counsel with said appellant, ordered that Caroline H. Pemberton, the respondent in said petition of appeal, answer the same within twenty days after service of a copy of said petition of appeal and notice

of this order, or on failure thereof that the above named appellant be heard *ex parte.*

THEODORE RUNYON, *O.*

To R. TEN BROECK STOUT, Esq.,
Proctor for Caroline H. Pemberton, Respondent.

ORDER TO ANSWER HENRY HENRY H. PEMBERTON'S APPEAL.

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Filed August 13, 1884.

The petition of appeal of Henry H. Pemberton, from the decree of the Orphans' Court of the county of Monmouth, and the transcript of the proceedings in said Orphans' Court in above matter, having been filed with the Register of this Court, by the Proctors of said Henry H. Pemberton, appellant,

It is, on this twelfth day of August, A. D. eighteen hundred and eighty-four, on motion of Robbins & Hartshorne, Proctors and of counsel with said appellant, ordered, that Caroline H. Pemberton, the respondent in said petition of appeal, answer the same within twenty days after the service of a copy of said petition of appeal and notice of this order, or on failure thereof, that the above named appellant be heard *ex parte.*

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THEODORE RUNYON, *O.*

ANSWER OF RESPONDENT TO APPEAL OF JOHN P. PEMBERTON, APPELLANT.

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Filed August 20, 1884.

The answer of Caroline H. Pemberton, respondent in the above cause, to the petition of John P. Pemberton, appellant.

This respondent not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto says and admits that a decree was made and entered in the Orphans Court of the

40

county of Monmouth, on the date, and of the purport mentioned in said petition, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced, and she is advised and believes that the said decree is just and equitable, and prays that that the same may be affirmed with costs, to be adjudged to this respondent.

R. TEN BROECK STOUT,

Proctor of Caroline H. Pemberton, Respondent.

10

ANSWER OF RESPONDENT TO APPEAL OF HENRY H. PEMBERTON, APPELLANT.

Filed August 20, 1884.

The answer of Caroline H. Pemberton, respondent in the above cause, to the petition of Henry H. Pemberton, appellant.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereunto says and admits that a decree was made and entered in the Orphans' Court of the county of Monmouth, on the date, and of the purport mentioned in said petition, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And she is advised and believes that the said decree is just and equitable, and prays that the same may be affirmed with costs, to be adjudged to this respondent.

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R. TEN BROECK STOUT,

30

Proctor of Caroline H. Pemberton, Respondent.

PREROGATIVE COURT,

OCTOBER TERM, 1885.

IN THE MATTER OF THE PROPOUNDING FOR PROBATE OF A PAPER PURPORTING TO BE THE WILL OF CAROLINE PEMBERTON, DECEASED, LATE OF THE COUNTY OF MONMOUTH.

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10 OPINION.

Filed October 26, 1885.

Appeals from the decree of the Orphan's Court of the county of Monmouth admitting the will to probate, and an appeal from an order directing the administrator pendente lite to pay the counsel fees, &c.

Mr. W. H. Vredenburgh and Mr. A. C. Hartshorne for Caveators.

Mr. G. C. Beekman for Proponent.

20 THE ORDINARY:

Two of these appeals are by John P. Pemberton and Henry H. Pemberton, respectively, from the decree of the Orphans' Court, admitting to probate a paper purporting to be the will of their mother, Caroline Pemberton, deceased; and the other is by Caroline H. Pemberton, their sister, the proponent, from an order made, according to its recital, on consent of her proctor and counsel, directing that the administrator *pendente lite* pay the counsel fees and costs and expenses of the litigation, 30 which the court had decreed should be paid out of the estate. Motion is made to dismiss that appeal.

That the testatrix was competent to make a will when the instrument in question, which is propounded as her last will and testament, was executed, there can be no doubt. Indeed, her capacity is not questioned; but the caveators, her two sons, insist that the proponent (who is her only daughter), procured the will by the exercise of undue influence over her. The will was made on the 16th of August, 1880, at Asbury Park, where the testa- 40 trix was then living with her daughter, who was keeping

a boarding-house there. The testatrix died in London, England, November 20th, 1882, over two years afterwards. She went from New York on a visit of pleasure to Europe, October 28th, 1882, and died ten or twelve days after her arrival in London. She was accompanied on the visit by the proponent and Henry, one of her sons. Both of the sons were and are physicians. Up to the time of her death they were not aware that she had made this will. According to their testimony, both of them were desirous that she should make a will before she sailed, 10 and spoke to her on the subject; and it appears by Henry's testimony that he was desirous that she should do so up to the time of her death. By the will she gave to John mortgages to the amount of $1,200 (of principal); to Henry mortgages to the amount of $1,962, (of principal), and to Caroline two lots of land in Long Branch, adjoining each other, and a mortgage of the amount of $650, (of principal), and also her building loan shares and bank stock, together with all the residue of her personal estate. To Caroline's son she gave two lots of land in 20 Ocean township, Monmouth county, and to John's daughter a lot in Eatontown township in that county, and she appointed Caroline her executrix. The will was executed with all due legal formalities. The attempt made to discredit it by endeavoring to show that the name of one of the three witnesses was added after the execution, and that alterations were made in the instrument after it was signed, by correcting sundry mistakes in the christian name of the proponent and adding a note that those alterations and another were made before execution, was un- 30 successful. The testatrix herself gave the instructions for the will to the lawyer by whom it was drawn, either on the same day on which it was executed, or the day before, at his office, to which she went alone for the purpose; and she also brought to him at his request, her deeds and mortgages, the former in order that from them he might describe the real estate to be devised, and the latter that he might describe them in the will. She told him that she wanted him to be very particular about the will, because her sons, both of them, had threatened that if she 40

ever made a will they would contest it; that she did not know on what grounds they intended to contest it, except that one of them had told her that she was not capable of making a will, and that he would "fight it" on that ground. She was, therefore, desirous that the witnesses should be persons competent to testify to her competency, and, at her suggestion, two physicians were got. One was Dr. Mitchell, of Asbury Park, whom she herself suggested because he was the physician employed at her
10 daughter's boarding house, where she lived. The lawyer proposed to get as another, Dr. Johnson, also of Asbury Park, but she objected to him on the ground that she thought that he and her sons were intimate friends, and she did not want to cause hard feeling between him and them. The lawyer then selected Dr. Kinmouth, of Asbury Park, and Drs. Mitchell and Kinmouth and Mr. Stout, the lawyer, witnessed her execution of the will. It was signed at the house in which she lived, and in the evening. There appears to have been no attempt or dis-
20 position to keep either the fact of the execution of the will or its contents secret. Mr. Stout testifies that it was read by him to her in the presence of Drs. Mitchell and Kinmouth before it was signed. He says he asked her whether she objected to its being read in their presence, and she replied no; that it had better be read in their presence; and he says that he read it to her while they, Drs. Kinmouth and Mitchell, sat talking to each other. It was delivered to her by Mr. Stout immediately after its execution. The proponent's son says that she delivered
30 it to him (her grandson) for safe keeping, at his mother's house in Asbury Park, on the first day of October, 1882, telling him to keep it safe; that she had protected his mother in it, and that she, the testatrix, was going to Europe. He went to the city of New York the next day to reside there, and kept the will in his possession in his trunk, until about the twenty-third of November, following, when it appears that, having heard from his uncle, John P. Pemberton, of the death of the testatrix, he rented a box in the vault of a safe deposit company in that
40 city and deposited it there, where it was kept until it was taken out for the purpose of propounding it for probate.

As before stated, the caveators insist that the will was the result of undue influence exerted over the testatrix by the proponent with whom she lived for the last years of her life. The testatrix was a widow (her husband died in 1875) and when the will was made she was about 70 years old. Her son Henry was a bachelor and her other son was married and had a family. It was quite natural that she should live with her daughter, who, though she had been married had married unfortunately, and had been divorced from her husband. By him she had had one 10 child, the son before mentioned. It is not surprising that, in disposing of her property by will, the testatrix should give the greater part of it to her daughter, who was dependent for her support on her own labor, and kept a boarding house as a means of gaining a livelihood.

Between the mother and the daughter the most affectionate relations appear to have existed, and the daughter gave to the mother the kindest attention. It is urged by the caveators that the proponent influenced her mother to make the will in her favor because of her desire to ag- 20 grandize herself and because of her hatred to her brothers whom, because of that hatred, she desired to deprive of their shares of the property of their mother. In the latter part of July, 1880, (the will was made on the sixteenth of August, following) Caroline's son, (Charles) who then lived with her at Asbury Park, was sent by her and the testatrix from that place to Long Branch, to pay some money for the former and to make a deposit in the bank for the latter, and to that end was intrusted with money belonging to his mother, and bank checks belonging to 30 the testatrix. He absconded, taking the money and checks with him. His mother at first thought that he had been robbed and murdered. Her brothers were of opinion that he had run away. They disliked him and expressed opinions and made remarks very derogatory to him upon that occasion. She was very indignant at this, and complained bitterly of them and inveighed strongly against what she seemed to regard as their injustice towards him and their want of sympathy with her, and threatened that she would be revenged upon them; that 40

she would "get square" or "get even with them," for their conduct towards him and her. She indeed denies that she made those threats, but they are sworn to by several disinterested witnesses.

There is evidence that she urged her mother to make a will. The witnesses who testify on this point are Mary Williams, Georgianna Lucas, John P. Pemberton and Caroline M. Pemberton, his wife, Jane Schreeve and Catharine Johns, all witnesses produced by the caveators. The first named, Mary Williams, who was a servant of the proponent in the summer of 1880, testifies that at the time Charles went away, the proponent said in her presence, in the kitchen of the proponent's house, that she had "been after her mother to make a will and she would not do it," and she added that "she did not know what might happen; that now she would be there a lone woman, left alone if anything should happen." She further says, that about a week, or perhaps longer, after Charles went away, she heard the proponent talking to her mother about a will; that she said "Mamma, you ought to make a will; indeed, mamma, you ought to make a will." She says the testatrix replied, "Carrie, don't bother me so about it; don't worry so much about the will." And again, she says she heard the proponent say to one of her boarders that she "had been at her mother to make a will, and that mamma did not seem to want to do it." It will be seen that in all this there is no evidence of any effort on the part of the proponent to induce her mother to make her will in any particular way, but only to make a will; and it would appear that her mother was quite able to determine for herself what she ought to do in the matter and resisted her importunities. Georgianna Lucas, who also was a servant of the proponent in the summer of 1880, says that she heard the proponent say that she had often been at her mother to make a will, for she did not know what might happen. She also says that she heard the testatrix say that the proponent was always worrying her about the will, but she adds that the testatrix said nothing more. John P. Pemberton, (one of the caveators), and his wife, testify that the testatrix said that

the proponent wanted her to make a will to protect her against her brothers. Catharine Johns says that the testatrix told her on the 10th of August, 1880, that the proponent was in a dreadful state of mind; that she threatened to drown herself in the ocean if the testatrix did not make a will in her favor. She also says that the testatrix said that in order to have peace she would have to make a will in favor of the proponent until the matter (in regard to Charles' departure) had blown over, and then she could or would destroy it. She says that afterwards she talked 10 to the testatrix again on the subject, and that the testatrix, in reply to a question from her, told her that she had made a will, but very much against her will or wishes. The witness says that she, the witness, then remarked that she, the testatrix, could destroy it as she liked; to which the testatrix replied no; that Carrie would never be satisfied unless she carried it herself, and gave as a reason that Carrie thought that her brothers would get it away if the testatrix kept it. She says that in that conversation the testatrix said she did not see why Carrie 20 should want all the property; that she, the testatrix, did not intend to have a will; that she never intended to make one; that she intended that her children should share alike; that the property should be equally divided. She further says, that in 1881 the testatrix told her she had got the will from Carrie, but with a great deal of difficulty, and had destroyed it, and asked the witness if she did not think she was fortunate in getting it from Carrie. Jane Schreeve testifies that the testatrix told her that Carrie desired and worried her to make a will, for she did 30 not know what might happen; and she says the testatrix also said that she had made the will very much against her wishes, but in order that she might have peace. She also says that in the latter part of the season of 1880 the testatrix told her she was sorry she had made a will, and in 1881 she told her "that she had made it, but intended to get it and destroy it; for she had lost her brother recently, and they were 'well enough fixed;' that one child was just as near as the other, and she wanted it to be her will." She says the testatrix added "let it be much or 40

little, but let it be divided equally between them." She also says that in 1881 the testatrix told her that she had succeeded in getting the will and had partly destroyed it, and was going to destroy it. She says the testatrix got the will; that it was torn; that it looked like several leaves of paper; that there were two or three; two certainly, if not more; large leaves; that it had a red stamp (seal) upon it, apparently about the size of a half dollar; that she (the testatrix), said, "Ain't it a blessing that I
10 got it;" that the witness said "why don't you burn it up," and the testatrix replied that that was what she would do. She further says, that just at that time the proponent was coming in, and the testatrix twisted up the paper and put it into her pocket, and nothing more was said about it; that the testatrix opened the paper and showed it to her, the witness, and said, that will be the end of it; that one child was as near to her as the other and she wanted it equally divided. She testifies that the paper was torn; that it looked as though it had been
20 twisted up, and she (the testatrix) straightened it out. She says, also, that the paper propounded for probate is not the paper, because the paper which she saw was all wrinkled and was somewhat torn near the place where the red seal was; that part of the seal was torn off, and that the testatrix said she had partly destroyed the paper. The reason which this witness says the tessatrix gave for destroying the will, was not that the will had been obtained by undue pressure, or was unjust when made, but that the fortunes of her children had been improved by
30 the death of her brother, and that through his death they had become rich enough. In point of fact, nothing had been left to the children by their uncle, or had come to them from him or through his death.

Again, she says that the testatrix showed her the will she had made and that it was partly destroyed. But the will which the testatrix made on the 16th of August, 1880, is produced in court, and has no mark of cancellation, nor is it torn or wrinkled. Moreover, the witness says that that is not the paper which the testatrix showed
40 her and it cannot be the paper to which she referred in

her conversation with this witness and Mrs. Johns. There is evidence in the testimony of Daniel H. Webster, another witness on the part of the caveators, that the testatrix deliberately designed in making what she considered a just disposition among her three children, to give to the proponent the real property devised to her by the will, the giving of which to her makes the greater part of the inequality complained of by the caveators. He says that the testatrix said, about two weeks after Charles' flight, in the presence of Mrs. Schreeve and himself, that 10 she expected to divide equally among her three children what little she had accumulated; that she expected to see them all righted; that the property on the corner of Chelsea and Third Avenues would be enough for Carrie, so long as she lived, and that her, the testatrix's, son John had been wronged in the property (this is said to refer to the disposition of his father's estate) and she wanted to see him righted. It does not appear how her purpose to do justice to John as between him and his brother and sister would be effected by an equal division of her property 20 among them. Nor, it may be remarked, does it appear by the evidence whether John and Henry had not received money from her which they still owed her, and which she took into account in making her will. But however that may be, it is clear from the testimony of Webster, and it is not contradicted on this point, although, as before stated, Mrs. Schreeve was a witness for the caveators, that the testatrix deemed it but just, in her disposition of her property by will, to give that real estate to the proponent. Nor does it appear that the proponent, 30 by her violent denunciations of her brothers for their conduct towards her in respect to her son, influenced her mother against them. Mrs. Johns says that she heard a letter from Henry to his mother, dated July 29th, 1880, read by the proponent to the latter. It contained violent denunciations against both the proponent and her son. Mrs. Johns says that when the letter had been read, the proponent said: "You see, mother, what they do, and how they act;" and the testatrix replied that the proponent was always finding fault with her brothers; that she, 40

the testatrix, did not know but what they were right. Again it appears, by the will itself, that the testatrix, when the will was made, believed as her sons did, that Charles had not been murdered but had absconded; for she makes a devise to him by the will, and gives no intimation that she entertained a doubt that he was alive. The declarations of the testatrix, whether made before or after the execution of the will, respecting the conduct of the proponent towards her are not competent evidence of
10 undue influence. *Rusling v. Rusling*, 9 *Stew.*, *Eq.*, 603. Nor would the declarations which she is said to have made, that she had no will and intended to divide her property among her children equally, be competent to show that she did not make the will in question. *Boylan ads. Meeker*, 4 *Dutch.*, 274. It is not denied, however, that she did make the will. Her declarations as to the disposition which she intended to make of her property, to leave it among her children, in equal shares, are not evidence of undue influence. *Boylan ads. Meeker*, *ut supra.*
20 There is no evidence, apart from the declarations of the testatrix, that the proponent exerted any influence over her to induce her to make a will to favor her more than her brothers. And the witnesses, Catharine Johns and Jane Schreeve, who testify to those declarations while they say that the testatrix told them that she had made a will to satisfy the proponent, say also that she said she had destroyed it; and the latter says she showed her the paper and that it was then partially destroyed. This evidence, if competent, would be entitled to no weight, for there is
30 no evidence that the testatrix ever made any other will than the one under consideration, and there can be no doubt that she was of sound mind at the time when these witnesses say she made those statements. In the Fall of 1881 she made a contract for the building of a cottage in Asbury Park, which was built for her accordingly, and in her transactions with the builder she showed full business capacity. Henry H. Pemberton says she generally attended to her own money matters, and it appears from his testimony that when she was about to leave for Eu-
40 rope he wanted her to endorse two notes as renewals of

one she had endorsed for his accommodation and which would mature during her absence. John also got a note of $600 from her at the same time, for which he obtained the money to pay the expenses of his daughter's then contemplated trip to Europe with her. Henry and his brother regarded her as having testamentary capacity up to the time when she left for Europe, and the former seems to have considered her competent to make a will up to the very hour of her death. Apart from what is testified to by the witnesses, Schreeve and Johns, (and that testimony 10 which consists of her declarations is, as before stated, not competent) there is no evidence of undue influence, and according to their testimony the testatrix was quite able to resist any influence which the proponent attempted to bring to bear upon her. Not only does it not appear that the proponent in fact influenced the testatrix against her sons, but it appears that the feelings of the testatrix were kindly towards them up to the last. She paid Henry's expenses of the trip to Europe and lent her note to John to raise money to pay his daughter's expenses of that trip. 20 The daughter, however, was prevented from going by the proponent's unwillingness to have the care of her. There is no evidence that the proponent took any part in the making of the will in question. The instructions were, as before stated, given by the testatrix herself, in her lawyer's office, to which she went alone for the purpose, and she herself brought her deeds and mortgages to the lawyer, at his request, (again going alone) to enable him to draw the will. She instructed and consulted with him as to the witnesses and gave her reason for her desire to have 30 physicians as witnesses, and in this connection it is noteworthy that in her conversation with Mr. Stout on the subject she gave as her reason for exercising care in the execution of the will, her apprehension that her sons would contest it and that apprehension was induced not by what others had told her, but what they themselves had said to her. She herself attended to the paying of the lawyer for his services for drawing the will and superintending its execution. She objected to the amount of his charge and induced him to accept less for his services. 40

After the will was made she built at a cost of about $10,000 the house in Asbury Park. She died intestate of that and another property at Long Branch, called the Lloyd property. It does not appear when or how she acquired the latter. She received the money for some of the mortgages bequeathed by the will, and pledged the others together with the building loan and bank stock as security for her note for $2,500, given to raise money to pay the expenses of the trip to Europe. She appears to
10 have had full control over her property and to have dealt with it accordingly.

The decree admitting the will to probate should be affirmed. There will be an allowance of $100 to the counsel of each of the caveators and of a like fee to the counsel of the proponent for their services in this court, payable out of the estate, and the costs of this appeal on both sides will also be paid out of the estate.

The appeal of the proponent from the order directing the administrator pendente lite to pay the counsel fees
20 and costs and expenses in the Orphans' Court will be dismissed with costs. It appears by the petition of appeal as well as by the transcript, that that order was made by consent of the proponent's proctor.

An appeal will not lie from an order made by consent of the party appealing from it.

DECREE.

Filed October 26, 1885.

30 This cause having been brought to a hearing on appeal from the decree of the Orphans' Court of the County of Monmouth, admitting a paper purporting to be the will of Caroline Pemberton, deceased, to probate, and Mr. W. H. Vredenburgh and Mr. A. C. Hartshorne, of counsel for the appellants, and Mr. George C. Beekman, of counsel for the respondent, having been heard, and the questions brought up by said appeal having been duly considered, it is on the twenty-sixth day of October, eighteen hundred and eighty-five, ordered, adjudged and decreed,
40 that the said decree of the said Orphans' Court of the county of Monmouth, appealed from by the said appel-

lants, be and the same is hereby in all things affirmed. And it is further ordered and decreed, that there be allowed to the counsel of the respondent a counsel fee of one hundred dollars, and to the counsel of each of the appellants a counsel fee of one hundred dollars for their services in this court, payable out of the estate of the said Caroline Pemberton, deceased. And it is further ordered and decreed, that the costs of said appeal on both sides be also paid out of the said estate.

And it is further ordered and decreed, that the record be remitted to the Orphans' Court of the county of Monmouth, to proceed further thereon, according to law and the practice of said court. 10

THEODORE RUNYON, *O.*

NOTICE OF APPEAL OF JOHN P. PEMBERTON.

Filed November 4, 1885.

John P. Pemberton, one of the above named appellants, hereby appeals to the Court of Errors and Appeals, in the last resort in all causes, from the decree of the Prerogative Court of the State of New Jersey, in the above matter, dated October 26, 1885, affirming that part of the decree of the Orphans' Court of the county of Monmouth embraced within the appeal from said Orphans' Court, admitting to probate a paper purporting to be the last will and testament of Caroline Pemberton, deceased, and from all and every part thereof, except that part thereof which directs a counsel fee of one hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the appeal from said Orphans' Court, to be paid out of the estate of Caroline Pemberton, deceased. 20 30

Dated November 3, 1885.

VREDENBURGH & PARKER,
Proctors and of Counsel with the Appellant, John P. Pemberton.

We conceive there is good cause for appeal in the above stated cause.

VREDENBURGH & PARKER,
Of Counsel with the Appellant, John P. Pemberton. 40

NOTICE OF APPEAL OF HENRY H. PEMBERTON.

Filed November 4, 1885.

Henry H. Pemberton, one of the appellants in the above stated cause, hereby appeals to the Court of Errors and Appeals of the State of New Jersey, the court of last resort in all cases, from the decree entered therein on the twenty-sixth day of October, A. D. eighteen hundred and eighty-five, and from each and every part thereof, except
10 that part thereof which allows a counsel fee of one hundred dollars to the proctor or counsel of the appellant, Henry H. Pemberton, and a counsel fee of one hundred dollars to the proctors or counsel of the appellant, John P. Pemberton, and the costs of both of the said appellants, all to be paid out of the estate of Caroline Pemberton, deceased.

Dated November 4, 1885.

A. C. HARTSHORNE,

Proctor for Henry H. Pemberton, Appellant.

20

I conceive that there is good cause tor appeal in the above stated cause.

A. C. HARTSHORNE,

Of Counsel with the Appellant, Henry H. Pemberton.

New Jersey Court of Errors and Appeals.

Between *John P. Pemberton,* *Appellant,* *and* *Caroline H. Pemberton,* *Respondent.*	*On* *Appeal.*

10

PETITION OF APPEAL OF JOHN P. PEMBERTON.

Filed November 17, 1885.

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:

The humble petition of John P. Pemberton, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by part of the decree of the Prerogative Court of the State of New Jersey, bearing date the twenty-sixth day of October, eighteen hundred and eighty-five, in an appeal therein from the Orphans' Court of the county of Monmouth, wherein John P. Pemberton and the said Henry H. Pemberton were appellants, and Caroline H. Pemberton was respondent, in this respect, to wit: That the said decree adjudges that the decree of the Orphans' Court of the county of Monmouth, admitting to probate a paper purporting to be the last will and testament of Caroline Pemberton, deceased, be and the same is thereby in all things affirmed, and that there be allowed to the counsel of the respondent a counsel fee of one hundred dollars for his services in said Prerogative Court, payable out of the estate of Caroline Pemberton, deceased.

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30

And your petitioner humbly appeals from that part of said decree of said Prerogative Court which decrees as aforesaid, (except so far as the said decree affirms that part of said decree of the Orphans' Court of the county of Monmouth which directs a counsel fee of two hundred

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dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat in said Orphans' Court, to be paid out of the estate of Caroline Pemberton, deceased) upon the ground that the same (except as above accepted) is erroneous, for that the said paper purporting to be the last will and testament of Caroline Pemberton, deceased, should not be admitted to probate, and a counsel fee of two hundred dollars to the counsel of the respondent for his services in said Orphans' Court, and a counsel fee of one hundred dollars to the counsel of the respondent for his services in said Prerogative Court, should not be allowed and paid out of the estate of Caroline Pemberton, deceased.

Your petitioner therefore prays that the said decree of said Prerogative Court may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

VREDENBURGH & PARKER,

Proctors for and of Counsel with Appellant.

PETITION OF APPEAL OF HENRY H. PEMBERTON.

Filed November 17, 1885.

To the Honorable the Court of Errors and Appeals, in the last resort in all causes:

The humble petition of Henry H. Pemberton, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved, by part of the decree of the Prerogative Court of the State of New Jersey, bearing date the twenty-sixth day of October, eighteen hundred and eighty-five, in an appeal therein from the Orphans' Court of the county of Monmouth, wherein John P. Pemberton and the said Henry H. Pemberton were appellants, and Caroline H. Pemberton was respondent, in this respect, to-wit: that the said decree adjudges, that the decree of the Orphans' Court of the county of

Monmouth, admitting to probate a paper purporting to be the last will and testament of Caroline Pemberton, deceased, be and the same is hereby in all things affirmed, and that there be allowed to the counsel of the respondent a counsel fee of one hundred dollars for his services in said Prerogative Court, payable out of the estate of Caroline Pemberton, deceased.

And your petitioner humbly appeals from that part of said decree of said Prerogative Court, which decrees as aforesaid, (except so far as the said decree affirms that 10 part of said decree of the Orphans Court of the county of Monmouth, which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the cost of the proceedings upon the caveat in said Orphans' Court, to be paid out of the estate of Caroline Pemberton, deceased,) upon the ground that the same (excepting as above ~~ac~~ex cepted) is erroneous, for that the said paper purporting to be the last will and testament of Caroline Pemberton, deceased, should not be admitted to probate, and 20 a counsel fee of two hundred dollars to the counsel of the respondent for his services in said Orphans' Court, and a counsel fee of one hundred dollars to the counsel of the respondent for his services in said Prerogative Court, should not be allowed and paid out of the estate of Caroline Pemberton, deceased.

Your petitioner therefore prays that the said decree of said Prerogative Court, may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to 30 this honorable court shall seem meet.

A. C. HARTSHORNE,
Proctor of Appellant.
A. C. HARTSHORNE,
Of Counsel with Appellant.

ANSWER OF RESPONDENT TO PETITION OF APPEAL OF JOHN P. PEMBERTON, APPELLANT.

Filed December 19, 1885.

The answer of the above named respondent to the petition of appeal of the above named appellant. This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be
10 true, for answer thereto nevertheless says and admits that a decree was on the twenty-sixth day of October last past, made and entered in the Prerogative Court of New Jersey, in the cause for the purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, the respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

20 GEO. C. BEEKMAN,

Solicitor for and of Counsel with Respondent.

ANSWER OF RESPONDENT TO PETITION OF APPEAL OF HENRY H. PEMBERTON, APPELLANT.

Filed December 19, 1885.

30 The answer of the above named respondent to the petition of appeal of the above named appellant. This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the twenty-sixth day of October last past, made and entered in the Prerogative Court of New Jersey, in the cause for the purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, the respondent prays to refer thereto when
40 the same shall be produced; and this respondent is ad-

vised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs, to be adjudged to this respondent.

GEO. C. BEEKMAN,

Solicitor for and of Counsel with Respondent.

Exhibits.

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Caveators No. 1 for Id.

ENVELOPE.

Mrs. Caroline H. Pemberton,
East Long Branch,
N. J.

Caveators No. 2, for Id.

LETTER. 20

ST. LOUIS, Nov. 25th, 1880.

DEAR MOTHER:

I am overjoyed to hear that you are now well & that Grandmother is enjoying good health. I did not know what might have happened. I was waiting for every letter carrier ever since Monday morning, but every day I was disappointed. I thought about telegraphing the day before yesterday and yesterday. So I wrote you a letter yesterday. When I came home from breakfast this morning I board in the cheapest place in the city $2.50 for 30 three meals a day, a week, the woman where I have my room, I pay her $2 a week, informed me that there was a letter for me, I imagined before I saw it that it was from you and when I saw the handwriting I was quite certain of it, because I was afraid that you were going to treat me with the quiet contempt I deserve I say so myself I deserve to be lynched. The question concerning the Jesuites I answer in the negative, I am not going to try to justify that action in this letter because there is no justifation for it. 40

Now I come to write something that will grieve you very much, I did not write it in my first letter because I feared you had lost all interest in me and that I was now alone in this world without anybody having any interest or sympathy whatever for me. You are partial right in your fears and partial putynear right. Now I shall give an account of myself ever since I left, when I left the cars that afternoon my heart or soul or whatever you call it, was divided, one-half said „ go West," the devil; the
10 other said „ Long Branch, you know the result. The Rubicon was trespassed. I went directly to St. Louis, having ideas in my mind of studying that fatal fiend „ singing." So I did I commenced to take lessons from Mr. Wilson of this place Aug. 1st I believe, I do not remember the exact date; I told him I could sing but that I could not keep time at all, he told me he would give me lessons for 0.50c, 40 minute lessons, that is if I was willing to prepare Masses with him for St. Malachi's Catholic Church of this city from Sept. 7th. His price
20 for anybody else was $1.00 a lesson. So I commenced with him Aug. 1st taking two lessons a week, the Mass was Hayden's 16th Imperial Mass. The first place I got into in this city was a terrible hot place in the middle of the city, There was a young, who roomed there, whose name James Walter, a carriage trimmer (bye the bye the only acquaintance I have made since I have been in this place), he told me I could a very nice room, where there was a piano a little distance outside of the city for $2.00 a week I took that room and the people of that house, a
30 private family, allowed me to practice as much as I liked, I made good use of the privilege. But I took another thing up I thought it would be beneficial to the purpose I was pursuing if I could play my own accompaniments, so I went to a guitar teacher Mr. Clinton D. Price, best guitarist of this place, he selected a guitar for me and so I was going to commence lessons the first Monday in August. But the Sunday before it was fearful hot, the young man I was telling you of took me out to Lafayette Park, a place something like Central Park in New York,
40 going home it was a very long walk from there home, I

found it necessary for me to urinate I told this young fellow to wait a moment outside while I went in a Lagerbeer Saloon, it was a dark night, I thought the Lagerbeer Saloon was constituted like those in New York, so I opened a door, there was a dark space before me, but impulsive as I am I took a quick step and the next moment I was stunned for about a quarter of a minute, I had fallen into a deep cellar. My right hand hand torn open a deep wound all the way across from the little finger to the plum, the palm of my hand, and my left hand was cut pretty deeply by a glass wound because I fell upon bottles, its a wonder I did not break my arm because I fell upon it. I was laid upon six weeks with that hand that is I could not use the right hand at all. Immediately after I got hurt I went into a drug store this young fellow assisting me to get there, where I bought some Tc. of Arnica, Court plaster for the glass cut and some Sp. Camphor for my nervousness because I mostly fainted because the right hand wound bled pretty freely. This young man then took me home, slept with me that night and bathed my hand for me several times during the night. That much for that. I will be brief now. I have so much to write I do not know how to put it into words. I sang Haydns 16th Mass the 7th and 14th of Sept. I do not know whether the dates are exactly right, but they were Sundays, Sept. 21st and Sept. 28th I sang Haydn's Second Mass, Oct. 5th & Oct. 7th Weber's Mass in D; Oct. 14th & 21st, Mozart's Mass, called the Twelfth Mass, Oct, 28th & Nov. 4th, Millard's Mass in G. From that time Prof Wilson gave me 4 lessons a week for nothing. I can read music very nicely at sight now, my voice is Basso Profundo, the deepest kind of Basso, I can sing very nicely from [here follows staff reading E*b* below the line and E*b* above the line] as long notes all of which I can commence swelling on very softly cresc. to fff and then descres. ppp. I can sing up to the high bass E*b*, that is on short notes but these notes do not belong to the range of the Basso Profundo. My voice is the same kind of basso as Marcellus is in Huguenots or Zoroaster in Magic Flute. Besides taking lessons from this Mr. Wil-

son who only prepared me for Church Music I took lessons from a pianist I have been doing that since the last two months. That is he only plays accompaniments for me and I sing. I select anything I want to sing and he plays the accompaniment, (I can keep strict orchestral time now). He plays an hour and a half for me for 0.50c. I have sung so far with him 25 Exercises of Concone, besides swelling the long notes in all the different keys. And then 20 Songs of Mendelssohn's Songs for Bass or Alto and then about half the roll of Marcellus from the Hugenots that is all the connected songs that he sings as "Finita e pei frati." Besides about 10 other bass songs as "The old Sexton," "Friend of the Brave," "The Exile," "A warrior bold transposed into the Key of D etc etc.

But now I've got to tell you something that you will be in a fearful rage at me for, I am preparing myself to be a comedian, I have been taking lessons from Mr. Grierson of this place, who is an old actor, since the last two months in elocution as well as acting. I have prepared with him the characters of "Mark Meddle" in London Assurance, of "Spanker" in the same play, of Toby Twinkle in "All that glitters is not gold," and I commenced to prepare yesterday the character of "Major Wellington de Boots," in "Everybody's Friend." I selected comedy because there is in almost all comedy companies some singing, and then I can play a very nice accompaniment on the guitar and the middle range of my voice is very sweet which is very rare in basses. But I shall have to go into business next week because I do not want my money to run down too low because I shall have to furnish myself with an outfit when I get an engagement, but though I shall go into business I shall continue to study on for the stage business. I have to pay my teacher $10.00 a month, that is for 16 lessons. I do not wish you to send me my clothes, because I do not believe I shall be any longer here in St. Louis than a month, because I think I shall have an engagement by that time. I shall try my very best to atone what I have committed and I say again that I hope to make myself worthy of you

and grandmother or else you shall never see me again, I shall try to overcome all difficulties. You write a mother forgives much but what I have done cannot be forgiven, till I have made myself worthy of your mercy. I shall not despair because I have a firm determination I shall make myself worthy of you and grandmother, and shall be able to look you in the face again. The vices and temptations of a large city have not tempted me so far and I hope to God shall never because I have a bull-dog determination to overcome all hindrances in my way. I have the Building Loan Book and Uriah White's Checks. I memorize every day 5 hours, sing now only half an hour, and act one the pieces I know about half an hour. I just act my own part. I have bought 2 pair of drawers, two undershirts and a heavy second hand overcoat which cost me $7.00, and then a silk handkerchief to keep my throat warm for a dollar. My room is warm I make my own fires. Hoping to hear from you again as soon as possible, and daring to send love to Doctor Harry for all the kindness he has shown me, and telling you to kiss grandmother for you, I conclude

Your unworthy son
now but who in the future I hope, as true as there is a Superior Being to make myself worthy of you

Charles.

Charles Meddle,
1109 Pine St.,
St. Louis.

LETTER.

COR. CHELSAE & 3D AVENUES,
E. LONG BRANCH,
N. J.
Novbr. 30th 1880.

MY DEAR SON CHARLES—

I received your letter dated Novr. 25th, yesterday—I am not astonished that you are studying for the stage, neither am I in a *rage*, only fear you have committed an error of judgment, " All that glitters is not gold " is true

of the *Stage*, as well as in the ordinary vocations of Life. In the profession you have chosen you must expect to meet with many disappointments, much of the stern realities, and less of the romance of life, than you in your youth & enthusiasm can depict. You in your vivid imagination think you have but like Cæsar "To Come, To See, To Conquer." Do you not think in calmer moments that you have made a mistake? to rush away from the beaten paths of Science, an honorable profession, the es-
10 teem & respect of your fellow-man, with moderate fortune perhaps before reaching the Prime of life riches, & who knows *eminances*, for the paltry glare & triumph of an hour if successful, with perhaps some money & certainly not the respect you would have met as a successful Physician?

Had you waited only 4 short weeks I would have cheerfully *given* you the money you took. intended you to go to N. Y. on the first of September for the preliminary Course, then in 4 short months from now you would have been enrolled among the members of an honorable pro-
20 fession, with the right to place M. D. after your name. I write to you now, as to a *Man* no longer a *boy*, reflect well on what I have said, it is not *yet* too *late* to resume the Study of Medicine You will only be 21 on the 16th of this next month Young enough to retrieve your error; remember to look your future steadily in the face You have the best friends *yet living* you ever will have. Your Grandmother's health is very precarious, before the shadows pass over her life who will be a friend to you for your own as well as for my *sake*. She has some pity for
30 the motherless boy, & judges not too harshly the waywardness of your temptation. "By that sin fell the angels." Let me implore of you not to drink. The brightest intelects yield to that fell destroyer. With the words of Dante, "He who enters here leaves Hope behind" Your Music I do not condemn you may always make a little money with it and not interfere with other pursuits. Enclose the checks in your next letter. Grandmother requests it. Do not write to your Uncle Harry. I do not wish him to know I am in communication with you. In
40 the midst of my anguish when you left, both of my broth-

ers rejoised at my misery Since then I have never forgiven the whole of them or spoken to May, John or Tilly. I may before I *die* forgive their cruelty & injustice but will never *forget it*, *I* and *they* henceforward will will *never* be FRIENDS. Grandmother sends her best wishes for your welfare & hopes you will make *a Man* of yourself & a Comfort to *me*. I wish you to write me a letter once a week if only a few *lines* & never go away without telling where you are going & under what name. Keep up your heart "The darkest hour is always before dawn. I grieved 10 to learn of your accident am rejoiced to hear of your recovery. You must have thought it a Judgment on you so soon to fall almost into the bottomless Pit.

With Affection
I am Still your
Mother.

P. S. You say you intended to Telegraph, & instead you wrote the day before yesterday which was the 24th did you? I have only received 3 letters one written with pencil the other 2 in ink. Direct your letters to E. L. B. 20 Cor. Chelsae & 3d Avenues because I do not wish Harry to get them. Take care of your health, avoid exposure, late hours, Bachus & Venus, don't study too hard all work & no play makes Jack a dull Boy.

Ex. B. Caveators.

ENVELOPE.

Mrs Caroline M. Pemberton
Long Branch 30
New Jersey

Ex. C. Caveators.

LETTER.

ASBURY PARK, N. J., June 6th, 1883.

Mrs. C. M. PEMBERTON.

Madam.

I command you to send me by Express, at the latest June 8th 1883 *My* Small Yellow trunk Containing *My* 40

Silver, *My* Jewelry, *My* papers My *Everthing* in that trunk.

(I warn before I strike). I will immediately begin a Suit for $1000 against you—if I have to duplicate my Silver for The Pemberton as well as the loss of my papers.

When Mrs. Dr. Pemberton of Salem N J. & Baltimore Md. Mrs. Prince, Mrs. James Brown, the "Trinity" appears on the *Stage* in the fresh light of taking my things I think, neither her *Daughter* or self will *dare* to show their
10 faces on the streets of Long Branch. When One (myself) who knows all the history, will bring it all out on Cross examination. I think you will regret being so unprincipled. Yours with the utmost respect, most honored madam.

Caroline H. Pemberton.

Ex. D. Caveators.

NOTE.

20

$2500. Long Branch, N. J., Oct. 24, 1882.

Four months after date, I promise to pay to the order of myself at the office of the Long Branch Banking Co. Twenty five Hundred Dollars value received, with Collateral as named on back of this note.

Due Febry 27. Caroline Pemberton.

ENDORSED.

5596

10 shares L. B. Banking Co

30 Bond & M. C Rogers 800.

" Genung about 500.

5 share Building Loan

Caroline Pemberton

Paid on this note of out assets held as collateral security Thirteen Hundred & seventy five Dollars.

H. W. Johnson, Cash.

Balance paid July 23, 1883, by M. Woolley, Admr.

Index.

EXHIBITS.

JAMES S. YARD, Printer, Freehold, N. J.

New Jersey Prerogative Court.

IN THE MATTER OF ADMITTING TO PROBATE A PAPER PURPORTING TO BE THE LAST WILL AND TESTAMENT OF CAROLINE PEMBERTON, DECEASED.	*On Appeals of John P. Pemberton and Henry H. Pemberton from a Decree of the Monmouth Orphans Court.*

Transcript of Proceedings in Orphans Court.

[Filed August 8, 1884.]

To David S. Crater, surrogate of the county of Monmouth:

I, Henry H. Pemberton, son and one of the heirs of Caroline Pemberton, late of the township of Ocean, county aforesaid, deceased, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said Caroline Pemberton until examination and decree thereon by the Or- 10
phans Court of the said county of Monmouth.

Witness my hand, this third day of January, A. D. eighteen hundred and eighty-three.

H. H. PEMBERTON.

Filed January 5th, 1883.

DAVID S. CRATER,
Surrogate.

To D. S. Crater, Esq.,
Surrogate of the county of Monmouth :

I, John P. Pemberton, one of the children and heirs of Caroline Pemberton, deceased, late of Asbury Park, New Jersey, do hereby caveat and protest against admitting to probate any paper purporting to be the last will and testament of the said Caroline Pemberton until examintion and decree thereon by the Orphans Court of said county of Monmouth.

10 Witness my hand, this fifth day of February, A. D. eighteen hundred and eighty-three.

JOHN P. PEMBERTON.

Filed February 5, 1883.

DAVID S. CRATER,
Surrogate.

In the name of God, Amen.

I, Caroline Pemberton, of Asbury Park, in the county of Monmouth, New Jersey, being of sound mind, memory and understanding, do make and publish this my last
20 will and testament in manner following, that is to say:

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

Item. I do give and bequeath unto my son, John Prince Pemberton, a certain indenture of mortgage, bearing date the eighteenth day of December, A. D. eighteen hundred and seventy-five, and recorded the sixteenth day of February, A. D. eighteen hundred and seventy-six, in the Monmouth county clerk's office, in
30 Book S3 of Mortgages, page 296, &c., together with accompanying bond, bearing even date therewith, given by John Keaugh and Hannah, his wife, to Michael Whalm and Ann, his wife, conditioned for the payment of two hundred dollars in two years from date thereof, which said mortgage, together with said bond, was, by Michael Whalm, conveyed to me, by deed of assignment,

dated the fifth day of April, A. D. eighteen hundred and seventy-six, and recorded the nineteenth day of May, A. D. eighteen hundred and seventy-six, in Monmouth county clerk's office, in Book L of Assignment of Mortgages, page 130.

Item. I do also give and bequeath unto my son, John Prince Pemberton, a certain indenture of mortgage, bearing date the third day of December, A. D. eighteen hundred and seventy-eight, and recorded the six day of December, A. D. eighteen hundred and seventy-eight, 10 in Monmouth county clerk's office, in Book F4 of Mortgages, page 113, &c., together with the accompanying bond, bearing even date therewith, given by Caroline Rogers to me, conditioned for the payment of two hundred dollars in one year from the date thereof.

Item. I do also give and bequeath unto my son, John Prince Pemberton, a certain indenture of mortgage, bearing date the twenty-seventh day of June, A. D. eighteen hundred and seventy-eight, and recorded the first day of July, A. D. eighteen hundred and seventy-eight, in Mon- 20 mouth county clerk's office, in Book C4, page 315, &c., together with the accompanying bond, bearing even date therewith, given by Caroline Rogers, conditioned for the payment of eight hundred dollars, in one year from the date thereof.

Item. I do give and bequeath unto my son, Henry Hannam Pemberton, a certain indenture of mortgage, bearing date the thirtieth day of May, A. D. eighteen hundred and seventy-eight, and recorded the first day of June, A. D. eighteen hundred and seventy-eight, in 30 Monmouth county clerk's office, in Book D4 of Mortgages, page 260, &c., together with a certain accompanying bond, bearing even date therewith, given by Asbury Tabor and Maria L., his wife, to me, conditioned for the payment of five hundred dollars in two years from date thereof.

Item. I do also give and bequeath unto my son, Henry Hannam Pemberton, a certain indenture of mortgage, bearing date the second day of January, A. D. eighteen hundred and seventy-eight, together with the accom- 40

panying bond, bearing even date therewith, given by Catharine Sagurton and Michael Sagurton, her husband, to Isaac Beale, conditioned for the payment of three hundred and fifty dollars, in five years from date thereof, which said mortgage, together with said bond, was conveyed by Isaac Beale to me, by deed of assignment, bearing date the thirteenth day of March, A. D. eighteen hundred and seventy-eight, and recorded the twentieth day of March, A. D. eighteen hundred and seventy-eight, in Monmouth county clerk's office, in Book M of Assignments of Mortgages, page 332, &c.

Item. I do also give and bequeath to my son, Henry Hannam Pemberton, a certain indenture of mortgage, bearing date the eleventh day of April, A. D. eighteen hundred and seventy-eight, and recorded April twelfth, A. D. eighteen hundred and seventy-eight, in Monmouth county clerk's office, in Book C4 of Mortgages, page 154, &c., together with the accompanying bond, bearing even date therewith, given by William Jeffrey and Caroline E., his wife, to me, conditioned for the payment of six hundred dollars, in two years from the date thereof.

Item. I do also give and bequeath unto my son, Henry Hannam Pemberton, a certain indenture of mortgage, bearing date the twenty-six day of January, A. D. eighteen hundred and seventy-four, and recorded February the fourth, A. D. eighteen hundred and seventy-four, in Monmouth county clerk's office, in Book I 3, page 255, &c., together with the accompanying bond, bearing even date therewith, given by Mary Jane Gennug and Joseph Gennug, her husband, to Catharine H. Treat, wife of George W. Treat, conditioned for the payment of five hundred and twelve dollars, in one year from date thereof, which said mortgage, together with said bond, was, by Catharine H. Treat and George W. Treat, her husband, conveyed to me, by deed of assignment, dated November fifteenth, A. D. eighteen hundred and seventy-five, and recorded in Monmouth county clerk's office, the nineteenth day of November, A. D. eighteen hundred and seventy-five, in Book K of Assignment of Mortgages, page 410, &c.

Item. I do give and bequeath unto my daughter, Caroline Hannam Pemberton, all that lot or parcel of land and premises, together with all the buildings and improvements thereon, situate in the town of Long Branch, county of Monmouth, and state of New Jersey, being the same premises conveyed by Charles Allen, sheriff, to me, by deed dated May the second, A. D. eighteen hundred and seventy-nine, and recorded May six, A. D. eighteen hundred and seventy-nine, in Monmouth county clerk's office, in Book 315 of Deeds, page 96, &c., to have and hold the said premises above described, unto the said Caroline Hannam Pemberton, her heirs and assigns forever.

Item. I do also give and bequeath unto my daughter, Caroline Hannam Pemberton, a certain lot or parcel of land, together with all the buildings and improvements thereon, adjoining the above mentioned lot or parcel of land, which premises was conveyed by ——— Stokes to me, the deed for which is now being (Aug. 14, A. D. 1880,) recorded in Monmouth county clerk's office, to have and to hold the said premises unto the said Caroline Hannam Pemberton, her heirs and assigns forever.

Item. I do also give and bequeath unto my daughter, Caroline Hannam Pemberton, a certain indenture of mortgage, bearing date the seventeenth day of May, A. D. eighteen hundred and seventy-eight, and recorded May twentieth, A. D. eighteen hundred and seventy-eight, in Monmouth county clerk's office, in Book D4 of Mortgages, page 190, &c., together with the accompanying bond, bearing even date therewith, given by Catharine Herbert and John L. Herbert to me, conditioned for the payment of six hundred and fifty dollars, in one year from date thereof.

Item. I do also give and bequeath unto my said daughter, Caroline Hannam Pemberton, all my shares or stock in the East Long Branch Building Loan Association, of Long Branch, in the county of Monmouth, and state of New Jersey; and also, all my shares or stock in the Long Branch Banking Company, of Long Branch aforesaid; and also, the rest, residue and re-

mainder of my personal property whatever and wherever it may be, except that which is herein particularly disposed of.

Item. I do give and bequeath unto Charles G. Pemberton, son of my daughter, Caroline Hannam Pemberton, two lots or parcels of land and premises, containing about one-quarter of an acre each, one of which is situate on the corner of Long Branch avenue and the public road, leading to Wolf Hill, and the other being situate
10 on the said Long Branch avenue, both being in the town of Oceanport, in the township of Ocean, county of Monmouth, and state of New Jersey, being lots owned by my brother, William Venables, deceased, from whom I derive title as heir-at-law, the said lots unto the said Charles G. Pemberton, his heirs and assigns forever.

Item. I do give and bequeath unto May Pemberton, daughter of my son, John Prince Pemberton, all that lot or certain parcel of land and premises, together with the buildings and improvements thereon, situate in the
20 township of Eatontown, in the county of Monmouth, and state of New Jersey, being the premises conveyed by Emma D. West to me, by deed dated the seventh day of March, A. D. eighteen hundred and seventy-seven, and recorded the ninth day of May, eighteen hundred and seventy-seven, in Monmouth county clerk's office, in Book 291 of Deeds, page 203, &c., to have and to hold the same unto the said May Pemberton, her, her heirs and assigns forever.

Lastly. I do hereby appoint my daughter, Caroline
30 Hannam Pemberton, executrix of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this sixteenth day of August, A. D. eighteen hundred and eighty.

CAROLINE PEMBERTON. [L. S.]

Signed, sealed, published and declared, by the said Caroline Pemberton, the testator, to be her last will and testament, in our presence, who, in our presence, and at

her request, and in the presence of each other, have hereunto subscribed our names as witnesses.

The words "both being" written before signing, the word Catharine erased six times, and the word Caroline written six times before signing.

H. S. KINMOUTH, Asbury Park, N. J.
HENRY MITCHELL, Asbury Pary, N. J.
R. TENBROECK STOUT, Asbury Park, N. J.

At an Orphans Court, held at Freehold, in and for the county of Monmouth, on the seventeenth day of July, in the Term of May, A. D. eighteen hundred and eighty-four.

In the Matter of admitting to Probate a certain paper purporting to be the last Will and Testament of Caroline Pemberton, deceased, on caveat filed thereto. } Decree.

Depositions having been taken in this matter before the Orphans Court, and the court having considered the proofs, and counsel having been heard on behalf of proponent and of caveators, it is, on this seventeenth day of July, A. D. eighteen hundred and eighty-four, on motion of Richard Tenbroeck Stout, counsel for proponent, ordered, adjudged and decreed, that the instrument in writing, purporting to be the last will and testament of Caroline Pemberton, deceased, and offered for probate by the proponent, was properly executed, and is genuine and valid; that the said Caroline Pemberton, at the time of executing said instrument, was in all respects, competent to execute the same, and was not under restraint or undue influence; and that the said instrument be and the same hereby is admitted to probate.

And it is further ordered and decreed, that letters testamentary be issued to Caroline H. Pemberton, the sole executrix named in said will.

And it is further ordered, that an allowance of two hundred dollars be made to counsel for proponent, and that an allowance of two hundred dollars be made to counsel for John P. Pemberton, one of the caveators, and that an allowance of two hundred dollars be made to counsel for Henry H. Pemberton, one of the caveators.

And that said counsel fees and the costs and expenses of litigation be paid out of the estate of said Caroline Pemberton, deceased.

10 By the court.

A. WALLING, Jr.,
C. A. BENNETT,
S. G. HENDRICKSON,
Judges.

Filed July 17, 1884.

D. S. CRATER,
Surrogate.

MONMOUTH ORPHANS COURT.

In the Matter of Admitting to Probate a
20 paper purporting to be the last Will
and Testament of Caroline Pemberton,
deceased. } On Caveat.

John P. Pemberton, the son of the said Caroline Pemberton, deceased, and one of the legatees and devisees named in the paper purporting to be the last will of the said Caroline Pemberton, deceased, hereby appeals to the Prerogative Court from the decree entered in the Orphans Court of the county of Monmouth, on the seventeenth day of July, eighteen hundred and eighty-four,
30 and from each and every part thereof, except that which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceed-

ings upon the caveat to be paid out of the estate of the said Caroline Pemberton, deceased.

Dated July 26, 1884.

VREDENBURGH & PARKER,
Proctors and of Counsel with the Appellant.

I conceive there is good cause for appeal in the above stated cause.

W. H. VREDENBURGH,
Of Counsel with the Appellant.

Filed July 26, 1884. 10

DAVID S. CRATER,
Surrogate.

MONMOUTH ORPHANS' COURT.

In the Matter of Admitting to Probate a paper purporting to be the last Will and Testament of Caroline Pemberton, deceased. } On Caveat.

Henry H. Pemberton, the son of the said Caroline Pemberton, deceased, and one of the legatees and devisees named in the paper purporting to be the last will 20 of the said Caroline Pemberton, deceased, hereby appeals to the Prerogative Court, from the decree entered herein, on the seventeenth day of July, eighteen hundred and eighty-four, and from each and every part thereof, except that which directs a counsel fee of two hundred dollars each to be paid to the respective counsel of Henry H. Pemberton and John P. Pemberton, and the costs of the proceedings upon the caveat to be paid out of the estate of the said Caroline Pemberton, deceased.

Dated July twenty-sixth, eighteen hundred and eighty-30 four.

ROBBINS & HARTSHORNE,
Proctors and of Counsel with the Appellant.

I conceive there is good cause for appeal in the above cause.

C. ROBBINS,
Of Counsel with the Appellant.

Filed July 26, 1884.
DAVID S. CRATER,
Surrogate.

State of New Jersey, Monmouth County, ss.—I, David S. Crater, surrogate and clerk of the Orphans Court of
10 the county of Monmouth aforesaid, do certify the foregoing to be a true transcript of the caveats, last will and testament, decree of the court, and appeals "In the matter of admitting to probate a certain paper purporting to be the last will and testament of Caroline Pemberton, deceased, on caveat filed thereto," and truly copied from the originals on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at Freehold, the seventh day of August, A. D. eighteen hundred and eighty-four.

[L. S.]

20 DAVID S. CRATER,
Surrogate.

Testimony.

MONMOUTH ORPHANS COURT.
Freehold, April 26th, 1883.

In the matter of the Probate of the Will of Caroline Pemberton, deceased.

Hearing before Hons. Walling, Bennett, Hendrickson,
30 Judges.

Appearences—R. T. Stout, for Proponent, C. Robbins and W. H. Vredenburgh, for

Caroline H. Pemberton, called on behalf of proponent, being duly sworn, testified as follows—

By Mr. Stout—

I am the daughter of Caroline Pemberton; my mother is not living, she died the twentieth of November 1882, in London, England, and was buried in Essex, England; she sometimes resided in Asbury Park, and sometimes at Long Branch in this county; Asbury Park 10 was her residence at the time of her death.

By Mr. Robbins, cross-examination—

My correct name is Caroline H. Pemberton; I am not at present a married woman; I am a widow, at least I am not married; I was divorced about ten or fifteen years ago, my husband deserted me; he went to Europe; my husband's name was Henry Isaacson.

A. My divorce was obtained in the State of New Jersey; my name then really is Caroline H. Pemberton; my name was changed from Isaacson back to Pember- 20 ton by order of the court.

[The last above answer objected to.]

I had and think I now have a decree of the court, unless it be among my mother's papers; I was married in Jersey City; I do not know by whom; it was an alderman; I cannot remember exactly where the marriage took place, it is so many years since, about twenty-five years; I cannot remember exactly where it was.

Q. You may have a marriage certificate which will make the matter plain; please stat. whether you have 30 or not?

[Objected to as irrelevant and not a cross-examination.]

[Objection sustained by the court.]

[Exception allowed by the court.]

A. My mother's age at the time of her death was seventy-two; she was a native of England; at the time

of her death she had been in England a very short time; I think ten or twelve days; I don't remember exactly—a very short time; she left the United States for England from the city of New York, on the twenty-eighth day of October; myself and my youngest brother went with her to England; his name is Dr. Harry H. Pemberton; I think we arrived in England either the eighth or ninth of November; I think we were about ten days on the passage; my son was at the vessel when we sailed; my son's name is Charles Pemberton; his full name is Charles Pemberton, no middle name; his name is Dr. Charles Pemberton; my son did not go to England with me; my mother died at 24 Guildford street, E. C. London at a private house; we had a suite of rooms with a private table; my brother Harry, myself and mother comprised the company who had this suite of rooms; we had a drawing-room and two bed-rooms; first we used the drawing-room as a parlor, it having a piano in it, and then afterward for fear my mother might get sick and die—which she afterward did—I moved the bed into the parlor next to the fireplace to be warmer and more comfortable; I did it as a preventive to her possibly taking cold; I occupied the same room with my mother as a sleeping room in London; we always slept together; when I say always slept together, I mean always since my father's death for many years, and before sometimes; of these three rooms my brother Harry occupied the next room, the other bed-room; my brother Harry and a London physician whom he called in, whose name I do not know; I do not know whether his name was Robinson or not; from my own knowledge I do not know the nature of my mother's sickness; at her last sickness I think she was sick or did not feel well about a week; she was sick in bed about one day; she died at three o'clock in the morning of the twentieth of November; Dr. H. H. Pemberton and myself were present at the time of her death; Mr. Cook an American lawyer who came over with us on the Egypt was called in a few minutes after; he was not present at the moment of her death; he was called in a moment afterward; he

was remaining all night; my told him to go to bed in his room (my brothers,) and remain until 9 or 10 o'clock the next morning, because Dr. Pemberton (my brother) had some service for him if my mother had lived; I don't know where in America this Mr. Cook lives; in Jersey somewhere; in Camden I think; Mr. Cook came to the house at ten o'clock on the morning of Sunday before my mother died, on the morning of Monday following at three o'clock; he remained all day until my brother asked him to go and get a death 10 certificate and telegraph to America.

Q. What service was it which you have mentioned that Mr. Cook was there to perform?

[Objected to.]

[Answer allowed and exception allowed.]

A. My brother wished him to make a new will; that was the business for which he was there during all the time; I have said he was there, and I knew it during the whole of the time he was there.

Q. And the proposition was that the will should be 20 made at nine or ten o'clock the next morning was it?

[Objected to]

[Question overruled.]

[Exception allowed.]

A. Her death was quite sudden; it was very unexpected to me in the condition she was then in; I thought she would get well; it was a great shock; immediately preceding her death her disease seemed to take a quite sudden and unfavorable turn; the London doctor was there about ten or eleven o'clock of the evening be- 30 fore her death; I won't be positive; before midnight; I think beef tea and milk punch was being given her as nourishment during her last hours; milk punch was the last kind of nourishment given her; there seemed to be a goblet full of milk punch, the ordinary sized goblet, an ordinary table goblet; my brother mixed and gave it to her.

Q. When I asked you nothing of the kind, nor anything to call for the answer, what made you say two or

three times that your brother Harry mixed and gave your mother the milk punch?

A. Because he gave her all the milk punches she drank.

Q. You have no other reason to state except this, have you?

A. No, except that he attended her case and mixed and gave her all her medicines, and bought them; I was told the last milk punch was given to my mother
10 fifteen minutes before her death; I should judge that by my ideas of time; Dr. Harry Pemberton first discovered that my mother had passed away; I was in the room at the time it was first known she was dead; I was in the room when the last milk punch was administered to her; at the time the milk punch was given her, I was sitting or standing pretty near her, she was sitting up at the time the last milk punch was administered; I saw the punch administered; I was in the room at the moment it was discovered that she was dead; I was informed
20 of her death at the moment of its discovery.

Q. Then by your own showing you had full information upon which to base a judgment as to the length of time between the administration of the last milk punch to the time of your mother's death, did you not?

A. I could guess the time; I did not know it positively; I cannot tell how long after her decease it was that she was buried; I think it was on the Thursday following the Monday morning when she died, that the funeral took place; I can't tell how long we remained
30 in England after the funeral; we arrived in New York on the twentieth day of December, I think; I cannot tell, I was so sorrow stricken; I think we were fourteen days out, and arrived before Christmas.

Q. Did your mother have the will or the paper purporting to be a will in her custody at the time of her decease?

[Question objected to.]

[Objection sustained and exception allowed.]

A. The milk punch last administered was mixed on
40 the table right at the elbow of my brother and myself;

this was administered by drinking; have no doubt about it; I saw her drink it; cannot tell the proportions in which the milk punch was made; I do not know whether it was brandy or whisky in the milk, Harry bought it, and I don't know; the milk was obtained from the table in the room; the liquor from a bottle on the table, and the sugar altogether.

Q. Where were the things that went to make up the milk punch obtained from originally?

[Objected to and objection overruled.] 10

A. The milk was furnished by the boarding house keeper who always furnished it, the brandy or whiskey by Dr. H. Pemberton, the sugar bought in Lamb Condit street by Dr. H. Pemberton, my brother.

Q. Did you mix any of the nourishment for your mother at any time during her sickness?

A. I do not think I did; I still have the bottles containing the medicines which were ordered, purchased and paid for by my brother; if the court wishes an analysis made they can have the bottles; I brought back 20 two bottles with me, I have them at home; I brought them to keep me in memory of my mother as long as I live.

Q. Do you remember, and if so, please state to us what Dr. Robinson said about your mother's condition, and the prospect of her recovery at the time of his last visit, which you say, was the evening preceding her death—state it fully?

A. He said the case was fatal, that there was not the shadow of a hope of her recovery; that her heart was 30 much diseased; I asked him if there was any hope; only give me one in a hundred; not one; he agreed with the diagnosis of my brother that it was fatal, she had capillary bronchitis, which in that climate and with her disease action of the heart was positively fatal; do not know that my mother ever had heart trouble before; all our family had died of it; she never had it before to my knowledge; I am not a medical man, and I do not know; I think, and I am almost positive, that Dr. Robinson stated what I have said in the presence of my 40

brother Harry; my mother was conscious up to the time of her decease; she conversed with myself and my brother immediately preceding her decease; she talked up to just after the milk punch was administered; that was the last that she talked; she asked for the milk punch and then afterward said, I want to be comfortable now, and wished the pillows removed from her head; she was in a sitting position and wished to lie down to be comfortable, at a sitting position in bed with pillows
10 behind her; she wanted to turn herself in bed, and Dr. Harry said, do not strain yourself I will turn you; that was the last that she said; after the milk punch was administered I sat by the doctor; we both sat in the same room about a yard from the bed; we sat near together and whispered; we both sat by the grate talking to each other—whispering.

Q. What was the subject of that conversation between you and your brother, Harry?

[Objected to.]

20 [Objection overruled.]

A. It was grief and sorrow for the death of my mother that was imminent, and the sad termination of what should have been a lovely pleasure trip; nothing else that I remember; all bearing on whether she could live or not, and in case of her death whether we should bury her there or take her to America; this conversation lasted about five minutes; I said, peace, quiet, perhaps if she sleeps now she may recover; this may be the crisis; this is what terminated the conversation; noth-
30 ing was done at that time; I stepped about a foot or two and said to him, "How quietly she sleeps, come and see;" doctor said, "Poor mother, she's gone."

By Mr. Stout, re-examination—

My brother wanted the lawyer, that was in the room at the time of my mother's death, to draw out another will for my mother; my brother, Harry, wanted this.

Freehold, N. J., June 18, 1883.

Hugh S. Kinmouth, called on behalf of the proponents, being duly sworn, testified as follows:

By Mr. Stout—
Q. Where do you reside?
A. Asbury Park.
Q. Did you in 1880 reside there?
A. Yes, sir.
Q. Did you know Caroline Pemberton?
A. Yes, sir. 10
Q. Is that your signature to that will?
A. Yes, sir.
Q. That is your signature there?
A. Yes, sir.
Q. You are the subscribing witness?
A. Yes, sir.
Q. And that is Caroline Pemberton's signature?
[Objected to as leading.]
Q. Whose signature is that to the will?
A. I suppose it is Caroline Pemberton's signature; I 20 never saw her sign before; I have every reason to believe it is her signature.
Q. Were you or were you not present, as this clause says, at the time?
A. I think I was.
Q. Do you remember where it was?
A. Yes, sir.
Q Where was it?
A. I don't know what the cottage is called; I know where it is located on the beach, at Asbury Park. 30
Q. Is it the Pemberton House?
A. It is one of the cottages on the beach.
Q. Who else was there?
A. Yourself and Dr. Mitchell.
Q. And who else?
A. Mrs. Pemberton.

Cross-examination waived.

R. T. Stout, called on behalf of the proponents, being duly sworn, testified as follows—

I am one of the subscribing witnesses to this will of Caroline Pemberton's, and saw her sign the will, at one of the lookout cottages in Asbury Park, on the sixteenth day of August, 1880; there was present Caroline Pemberton, Dr. H. S. Kinmouth and Dr. Henry Mitchell; the will was drawn by me and copied from my rough draft by my clerk, and in so doing he made a mistake
10 or two in the writing, or either I wrote the word "Catharine" instead of "Caroline;" "Caroline Hannam Pemberton," the daughter's name, I wrote perhaps "Catharine," or he made the mistake, one or the other, and when I read the will over to the old lady she said, that is not "Catharine" but "Caroline;" I then made the erasure at her house, by drawing a pen through as it shows in the will, and wrote the word "Caroline" over it, at her request, before she signed it, and noted it at the bottom.

20 By the Court—

Q. Who was present at the time she signed her name?

A. Dr. H. S. Kinmouth, Dr. Henry Mitchell and myself.

Q. All present at that time?

A. Yes, sir; and I read this clause over, "Signed, sealed, published and declared by the said Caroline Pemberton, the testator, to be her last will and testament, who in our presence, and at her request, and in the
30 presence of each other, have hereunto subscribed our names as witnesses."

Q. Did she declare it in your presence?

A. I was particular to ask her if she declared that to be her last will and testament.

Q. Did those other persons sign in her presence and in your presence?

A. All at one table, and in almost elbow room of each other; I was very particular in the matter because she requested me to be.

Q. Tell what you did, and we will tell how particular you were?

A. I asked her if she requested us to sign our name as witnesses, and she said yes.

Cross-examination by Mr. Robbins—

Q. Where did you say this will was executed?

A. At one of the lookout cottages in Asbury Park, right on Ocean avenue.

Q. What time in the day or night was it done?

A. I should judge it was about eight or nine o'clock 10 —it was in the evening.

Q. Who procured Dr. Mitchell and Dr. Kinmouth as witnesses to the will?

A. I did.

Q. Had they any previous acquaintance with Mrs. Pemberton that you know of—I mean an acquaintance previous to the execution of the will?

A. I know Dr. Mitchell had; Dr. Mitchell was the physician of the lookout cottages at that time, and that was the reason she suggested him, and I suggested Dr. 20 Kinmouth.

Q. Had you any reason for procuring the attendance of two physicians as witnesses?

A. Yes, sir.

Q. What?

A. The old lady when she asked me to draw the will said, "I want you to be very particular about this will, because my sons, both of them, have threatened that if I ever make a will they will fight it," and I asked her on what grounds, and she said she didn't know, only 30 one told her she was not capable of making a will, and he would fight it on that ground.

Q. Did she say which one?

A. I don't remember that she did.

Q. Did she say when it was said?

A. I think not.

Q. Who was present when she said that?

A. No one but Mrs. Pemberton and myself.

Q. Where was it said?

A. In my office.

Q. How long prior to the making of the will?

A. It was when she came to give me the outlines of the will.

Q. How long was that prior to the execution of the will?

A. I am not sure whether she came to me in the morning, and I drew the will and went down there that evening, or whether I went down the next evening.

10 Q. Do you know whether Dr. Kinmouth had any acquaintance with her prior to the time he saw her when the wlll was executed?

A. I don't know.

Q. You know he did not, don't you.

A. I don't know; no, sir.

Q. Was there any fee paid to the witnesses?

A. No, sir; not that I ever knew of.

Q. Neither Dr. Kinmouth or Dr. Mitchell?

A. Not that I am aware of, and I am quite sure there

20 was not.

Q. Do you remember meeting Dr. Kinmouth on the street after the death of Mrs. Pemberton, and saying anything in reference to the payment?

A. Yes, sir.

Q. What was that?

A. He said he thought he ought to have pay for going there that night.

Q. Didn't you say to him his fee had not been paid, but that it would be, and it would be all right?

30 A. Oh, no; I told him if he had a bill against Mrs. Pemberton, and swear to it, I would see that it was handed in to the executor.

Q. Was any bill presented by Dr. Mitchell for attendance, at that time?

A. Not that I ever knew of; but I know the doctor told the old lady that he ought to have $10 for going there, because he might have to be called to Freehold as a witness, and it would take his time, and it was worth that much.

40 Q. Do you know whether it was paid or not?

A. I don't think it was; he told me it was not.

Q. When were they seen, prior to the execution of the will, in reference to going there—the two doctors?

A. I am not quite sure about the time they were seen; it was only a short time before they went.

Q. As near as you can recollect?

A. I went down there the evening of the day I drew the will; it was in the afternoon of that day; if I went down the next day, it was in the afternoon of the next day. 10

Q. Do you know whether Mrs. Pemberton had been away, I mean Mrs. Caroline Pemberton, on the day the will was executed?

A. I don't know about that.

Q. You don't know whether she had been or not?

A. I know one day about that time, she was in my office, when she had been to Long Branch, she said she had been down to settle up some affairs with the bank, there was some difficulty about the bank account, either she was wrong, or the bank, and she went down to have 20 it settled.

Q. Was her daughter, Caroline Pemberton, present at the time of the execution of the will?

A. She was in the house.

Q. In the room?

A. I think she went through once only, either once or twice, or came in the room for something, she seemed to be very busy around the house; it was in boarding season, and she was running a boarding house.

A. Was she present? 30

A. She was present for perhaps a minute.

Q. How long were you there?

A. I suppose about half an hour.

Q. You and the two doctors came together?

A. Yes, sir; went down in a carriage.

Q. And came away with them at the same time?

A. Yes, sir; went in a carriage and came away in a carriage.

Q. Who took you there in a carriage?

A. We started afoot, they said they would rather walk 40

down, it was a pleasant evening and we walked aways, and we met a man by the name of Shafto, and the doctor said, "You had better take us to the lookout cottage, you have nothing to do.

Q. I don't care about all that, but Shafto took you there?

A. Yes, sir.

Q. And brought you back?

A. Yes, sir.

10 Q. Was anything said Mrs. Caroline Pemberton at the time as to the price to be paid to the physicians for coming there as witnesses?

A. She told me afterwards she thought it was an outrageous price, or something like that.

Q. When you say "after" do you—

A. I mean a day or two after the execution, or a week; I don't know the exact day I saw her.

Q. She referred to both doctors' charges?

A. Yes, sir.

20 Q. But you said that Dr. Kinmouth had not charged anything until long afterwards?

A. No, I did not say so.

Q. When was it that the price was fixed by the doctor?

A. That evening.

Q. Then there was a price charged that evening?

A. Yes, sir.

Q. Who to?

A. To the old lady.

30 Q. Did you hear it?

A. Yes, sir; let me state that.

Q. No, answer my questions; who was present when that was talked about?

A. The old lady, Dr. Kinmouth, Dr. Mitchell and myself, and I think the daughter came in the door towards the last of it.

Q. That is Carrie?

A. Yes, sir; came up to the door, she might have come inside, but I would not say sure she did.

40 Q. Your recollection is, that she was inside?

A. My recollection is, she was not inside.

Q. Your recollection is, she had nothing to say about the price?

A. I don't remember her saying anything about it.

Q. Don't you recollect an occurance like this, about a week after Mrs. Pemberton's death, of your meeting Dr. Kinmouth on the street at Asbury Park?

A. I remember meeting him; I don't remember the exact time.

Q. When was it, and where was it, that you had a talk with Dr. Kinmouth about the fee? 10

A. I think he was going from his house to his office, or his office to his house.

Q. Don't you remember a conversation at his store, when you went to send a telegram, along in the middle of January of 1883?

A. I might have had a conversation there, but I don't remember it; what was it in reference to?

Q After the death of Mrs. Pemberton, along in the middle of January, and didn't you at that time say to him, "I believe Mrs. Pemberton owes you a bill for witnessing her signature to a will;" don't you remember anything of that kind? 20

A. Just those words?

Q. About that, substantially; and didn't he answer you, "Yes, it has never been paid;" and didn't you reply, "Well, it will be all right, I will see it paid; Mrs. Pemberton is dead;" or words to that effect?

A. I can't remember just that; I remember a conversation on the street. when he asked me if he could not get his fees for witnessing that will. 30

Q. When did you sign this will in the place of a subscribing witness here?

A. At the time the others did; immediately after they did.

Q. And at the cottage there?

A. Yes, sir; that evening.

Q. And on the evening that the will bears date?

A. Yes, sir.

Q. The sixteenth of August, 1880? 40

A. Yes, sir.
Q You are entirely clear about that?
A. I am very clear; no question about that at all.
Q. Who signed first?
A. Dr. Kinmouth.
Q. Who second?
A. Dr. Mitchell.
Q. And you third?
A. Yes, sir.
10 Q. At that time?
A. Yes, sir; at that time.
Q. Do you know what was done with the will then?
A. Yes, sir.
Q. What?
A. I handed it to the old lady, Mrs. Pemberton.
Q. What did she do with it, if you know?
A. I don't know.
Q. Don't you know what she did with it?
A. No, sir.
20 Q. How long did you remain there after you signed the will?
A. I don't think over five or ten minutes, a very short time.
Q. And then you went away, all of you?
A. Yes, sir.
Q. When did you next see the paper which is called a will?
A. After her death; I received the will from some trust company in New York.
30 Q. What trust company, if you recollect?
A. I think it was a trust company; I am not sure about the name, the American Safe Deposit Company, I think.
Q. Wasn't it the Central Safe Deposit Company?
A. It may be—I don't remember the name.
Q. Do you know what street it was on?
A. Somewhere in New York, that is all I know.
Q. Who brought it to you?
A. I think Mrs. Pemberton's son, or her, one or the
40 other at my request.

Q. You mean Isaacson?

A. His name was Isaacson once.

Q. What I want to get at is, what is his name now?

A. Charles Pemberton.

Q. By statute, isn't it?

A. Yes, sir.

Q. What was his name before that?

A. Charles G. Isaacson, I think; I don't know whether "G." was in it or not, but it was Charles Isaacson.

Q. Where did he deliver the will to? 10

A. At my office in Asbury Park.

Q. How long after Mrs. Pemberton's death?

A. I can't tell you.

Q. How long after the return of Dr. Pemberton and his sister from Europe?

A. Very shortly.

Q. Did you send for it?

A. I don't think I sent for it; I am not sure about that; she wrote me from England that her mother was dead, and asked me to consider myself employed for her 20 in the matter of this will.

Q. Employed in what capacity?

A. As counsel.

Q. There was not any litigation?

A. She was executrix, and I suppose she wanted some assistance.

Q. Have you got the letter?

A. I have home, I think, I am quite sure.

Q. Will you produce that?

A. I will if I can. 30

Q. Can you tell about when that letter was received by you?

A. No, sir; but it was written very shortly after her death, and mailed to me from London.

Q. Can you remember the date of that letter?

A. No, sir.

Q. Do you think it was written about the same day of her death?

A. I don't know about that.

Q. Could you give me the expression which she used in reference to your retention as counsel?

A. I think the letter was about like this: "My poor, dear mother is dead, and, as you remember, I am executrix of her will, or to her will, and I wish you retained as counsel in the case."

Q. Counsel in the case?

A. No, not in the case I don't mean, but as counsel, or something to that effect.

10 Q. What made you go back on the word "case" so promptly, when I called your attention to it?

A. I didn't think when I said it.

Q. What trouble is there about your using the word "case"?

A. I have no objection particularly, but I don't think she used the word "case;" I don't give you the exact wording of the letter.

Q. You gave the will to old Mrs. Pemberton when it was executed?

20 A. Yes, sir.

Q. Do you know who deposited it in the Safe Deposit Company in New York after it was drawn and executed?

A. Only from what I have heard.

Q. What did you hear about it?

A. I heard that the old lady and her daughter deposited all their private matters, that they didn't care to take to England with this company, and the receipt for those was given to the young man, that is the old lady's grandson.

30 Q. Who did you hear that from?

A. I got that from Caroline Pemberton I think, and also from her son, and he asked me about—

Q. No matter about that; did Mrs. Caroline H. Pemberton see the will that you know of?

A. When?

Q. After it was drawn prior to the death of her mother?

A. I don't know about that—you mean to read it?

Q. Yes.

A. I don't know about that.

40 Q. Did she see it at all?

A. She might have seen it that evening as it was laying on the table, or might have seen it when she came in the room or went through, she may have seen it.

Q. How did you leave the will with Mrs. Pemberton, in what shape—sealed up or open—I mean with the old lady?

A. It was open; I had it in another wrapper or envelope, and just closed that without being sealed; I think that is the wrapper you have there.

Q. Is that the wrapper that you had it in? 10

A. Yes, sir; I put that around it to keep it from getting dirty.

Q. When did you put that wrapper on?

A. At my office, before I took it down that night.

Q. And then that wrapper went with the will to Mrs. Pemberton the night that you say it was executed?

A. Yes, sir.

[Wrapper marked No. 1 for identification, June 18th, 1883.]

The Witness— 20

I have a memorandum on here the day that I drew the will; I recognize that.

Q. When did you write that memorandum on the bottom of the brown paper wrapper which is marked No. 1.

A. I wrote that before I went down to Mrs. Pemberton's that evening.

Q. Whereabouts?

A. In my office.

Q. What was your purpose in writing that before you 30 went there?

A. For the same reason that she said her sons, one of them or both—she mentioned both sometimes and sometimes one—were going to fight her will, and I knew she had had transactions with these parties at that time, and I made a memorandum on that at that time; I thought it would be a good idea.

Q. Read it?

A. "Mrs. Pemberton, this 16th day of August, 1880,

had dealings at the store of Steinbergh Bros. and Githings."

Q. Didn't you write that in the surrogate's office of this county?

A. No, sir; I did not.

Q. Then you did this as a precautionary measure, as it were?

A. I expected there was going to be a fight from what she told me.

10 Q. So as soon as her mother was dead she wrote you from England retaining you as counsel?

A. Yes, sir.

Q. Mrs. Caroline H. Pemberton?

A. Yes, sir.

Q. And you, on the very day you drew the will wrote this on the wrapper?

A. I did, yes, sir; I don't say the very day I drew the will; I say I did before she signed the will at my office.

Q. And the very day it was executed?

20 A. I won't say that.

Q. When?

A. Between the time she came to me, after giving me the memorandum to draw the will from, and the time she signed it.

A. How long before it was actually signed, if it was signed, was it that she gave you the data upon which to draw the paper?

A. I say she either gave it to me the morning of the 16th, and I went there that evening, or she gave it to me 30 the morning of the 15th, and I went there on the 16th.

Q. Then you either wrote this on the 15th or 16th of August, 1880?

A. Yes, sir.

Q. Where was it that she gave you the data?

A. In my back office at Asbury Park.

Q. Who was with her?

A. I don't think anyone.

Q. Are you clear about that?

A. I am very clear.

40 Q. Entirely so, do you say that?

A. I think it is almost impossible for me to be mistaken about that, I have thought of it several times.

Q. Wasn't her daughter with her at that time?

A. I didn't know her daughter until some time after that.

Q. Wasn't there a lady with her answered the description of her daughter?

A. I don't think she was.

Q. You won't say it positively?

A. I am almost as positive as of anything I can be. 10

Q. You are not as sure as you are that Dr. Kinmouth and Dr. Mitchell were present?

A. I know that.

Q. Why are you not as certain of this?

A. This happened in the morning.

Q. Your head is not as clear then?

A. Yes, it is as clear.

Q. What is the matter then?

A. The other fact was more impressive.

Q. That is the best reason you can give? 20

A. Yes, sir.

Q. It was you also who procured two doctors as witnesses to the will?

A. I don't know whether I procured Dr. Mitchell or not, I spoke to them both at any rate.

Q. In point of fact—don't you know that Dr. Kinmouth had no acquaintance whatever with Mrs. Pemberton prior to the time the paper was signed?

A. I don't know that.

Q. Where did you write the interlineations in the will, or on the paper which is called the will? 30

A. At her house.

Q. In the presence of these witnesses?

A. It must have been—it was that evening.

Q. Where did you write the interlineations?

A. At her house; I have two reasons for believing it was at her house that evening.

Q. Then you have to reason it out before you come to the conclusion?

A. No, sir; I mean that my memory is that I did it 40

at that time at her house, and another reason is that the ink of the annotation and the ink of the signatures is different and of the same kind—that it is the same kind as the signatures, and the interlineations and the annotation, and the will is of a different colored ink.

Q. You do reason it out then pretty well—you do get at it by reasoning?

A. That is one way of getting at it.

Q. Where did you write the note of the interlinea-
10 tions?

A. At her house.

Q. At the same time?

A. At the same time.

Q. And after the witnesses had signed?

A. No, sir; before.

Q. Before any had signed?

A. Yes.

Q. You have no doubt about that?

A. I would not have done it afterwards in that case.

20 Q. Then your recollection of this is that Dr. Kinmouth signed first?

A. Yes, sir.

Q. No, your recollection is that first you noted the interlineations under the attesting clause?

A. Yes, sir.

Q. Then Dr. Kinmouth signed?

A. Yes, sir.

Q. Then Dr. Mitchell?

A. Yes, sir.

30 Q. And then yourself?

A. Yes, sir.

Q. As subscribing witnesses?

A. You are a little wrong there; Mrs. Pemberton signed first.

Q. I am referring to the witnesses?

A. Yes, sir.

Q. You are entirely clear about that?

A. Yes, sir.

Q. I want you to explain to me what seems to be—

A. I made a memorandum of that; I was going to do that of my own accord.

Q. Why is it that the appearance of that note there and Dr. Kinmouth's name is as it is?

A. I knew that he signed a flourishing name, and I said, "Doctor, give the rest of us room to sign," and he signed up quite high.

Q. I want to ask you another question upon this point, and distinctly: Wasn't your name written in the place of a subscribing witness to this paper which is 10 called the will of Mrs. Pemberton, after it was obtained from the Safe Deposit Company in New York city?

A. No, sir.

Q. Was it not written after the departure of these witnesses from the house of Mrs. Pemberton?

A. No, sir, it was not.

Q. And was not this note of the interlineations written after that time?

A. No, sir.

Q. Do you mean to say that Mrs. Caroline Pemberton 20 was alone when she came to your office to give you the points for this paper?

A. I am very sure of it.

Q. Alone?

A. I am very sure of it.

Q. You speak in doubt; have you any doubt in your mind when you speak in doubt, as to who might have been with her?

A. I can't recollect of seeing anybody with her; she was at my office two or three times from that time on, 30 and she was always alone, as I remember it, even after that.

Q. Why is it that you have made it a matter of study and thought, as to whether she was alone on this occasion?

A. Because I knew I had to be a witness in this case.

Q. Why did you deem this important?

A. Because I knew your grounds of contesting the will, or part of them, and I thought it was important to

know whether she was alone or not, as I think it is, whether she came to my office alone.

Q. Have you a distinct recollection of all those occurrances when she was there?

A. I have of two of them besides this one.

Q. The will is dated August 16th, 1880; was she there more than once prior to that date in reference to this paper?

A. I don't think she was ever in my office before she
10 came to me to write the will; I didn't know the lady only by reputation.

Q. How often was she there altogether about this paper?

A. I don't think she was there but once.

Q. You said afterwards?

A. She came afterwards, I think the next day or the day after she executed the will.

Q. What was that about?

A. She came to settle with me for the will and some
20 other matters.

Q. What did she pay you—I don't want to be offensive if you object—I won't press it, but it is only in reference to another matter in connection with it—was it under $10 or over?

A. For the will alone?

Q. For the will alone?

A. I think perhaps the will alone might have been a little bit under, by charging at the regular rates for other things.

30 Q. Was it $8?

A. It was not under $8.

Q. Wasn't it $8; I ask in reference to a point in connection with that matter which we have?

A. I think she asked me to take off some from what I did charge her; it rather seems to me that I charged her $20 or $30, and she wanted me to take it off down to a certain amount, there was some other transactions.

Q. Wasn't it $8?

A. Even $8.

40 Q. Yes?

A. I won't say that it was or was not.

Q. Did she pay you for it prior to the time the paper was signed?

A. No, sir.

Q. Did she pay you any money prior to the time the paper was signed?

A. No, sir.

Q. You are entirely clear about that?

A. I looked over the next day when she brought the papers up, the mortgages and deeds and some matters of that kind for me to examine, and especially in relation to drawing the will; I told her I wanted them. 10

Q. Did she pay you any money on the day the will is dated, the 16th day of August, 1880, either at your office or at her house?

A. I don't think she did; I think it was a day after, or a day or two after.

Q. Where did you see Dr. Kinmouth about going there to be a witness?

A. I think I saw him at his drug store. 20

Q. Did you see any other person about going except Dr. Mitchell and Dr. Kinmouth?

A. No, sir.

Q. You didn't see any other individual?

A. Not that I remember of; I was going to see Dr. Johnson.

Q. You had your mind then on another doctor also as a possible witness?

A. Yes, sir.

Q. You didn't go to see him? 30

A. I spoke to her of Dr. Johnson and she objected, for the reason she thought the doctor and her sons were very intimate and friendly, and she didn't want to have any hard feelings between them, something to that effect.

Q. She didn't say anything of that kind as to Dr. Kinmouth?

A. I don't know that she did.

Q. Is he a special friend?

A. Of whom?

Q. Of Dr. Pemberton? 40

A. I didn't know that he is; only by seeing them talking here to-day I thought so.

Q. Isn't Dr. Mitchell a friend of theirs equally as Dr. Johnson?

A. I don't know anything about Dr. Mitchell's connections with the doctors.

Q. Did you have anybody else in your mind in the way of witnesses?

A. I think not.

10 Q. Any other doctor?

A. No, sir; I think not.

Q. Where was Mrs. Pemberton when the will was read over to her?

A. At the Look Out Cottages.

Q. What room in the cottage was it read over?

A. It was a room on the first floor.

Q. Can you remember it or designate it?

A. All I know about the room is, it was a small room with a curtain partition through it, or something of that 20 kind; it was a room quite cluttered up; it seemed to be a room for bringing baggage in, or a sort of an office; I had been there in the morning after some papers that she did not bring me.

Q. Were you at the house of Mrs. Pemberton at any time prior to this 16th day of August?

A. I think I went there in the morning of the 16th to get some mortgages and deeds, to get the date and the record of them to put in the will.

Q. That was after she had been to your office?

30 A. Yes, sir.

Q. What day of the week did the 16th come on?

A. I can't tell you that.

Q. Monday?

A. I can't tell you.

Q. Had you been to the Look Out Cottage prior to that?

A. I was there once before.

Q. When was that?

A. I can't tell you; I went down with Dr. Pemberton 40 to take the old lady's acknowledgment.

Q. When Dr. Pemberton was not present?

A. No, sir.

Q. Were you there at one time at dinner, prior to the execution of that paper?

A. I never had anything to eat in that house, or drink, either.

Q. Were you not there on a Sunday soon before that?

A. No, sir.

Q. At no time?

A. No, sir, never. 10

Q. Did anybody else come in the room that night except those you have already named—I mean the time when this paper was signed?

A. I don't think there were; if they were, they were concealed, for I didn't see anyone.

Q. Was this on the first or second floor where the paper was signed?

A. On the first floor; there may be a basement under the house.

Q. I don't understand you to say others might not 20 have been there, or been through the room while you were there?

A. It is possible, but I don't think there were.

Q. Did you read the will over to Mrs. Pemberton in the presence of all the parties you have named?

A. Yes, sir.

Q. Read it right out, all the terms?

A. Yes, sir.

Q. Before Dr. Kinmouth?

A. Yes, sir. 30

Q. And Dr. Mitchell?

A. Yes, sir, for I asked her the question if she objected to its being read in their presence, and she said no, it had better be read in their presence; and they sat talking to each other, and I sat at one side of the room and read the will to her.

Q. Did you see her alone at any time while you were there that evening?

A. I don't remember that I did.

Q. Didn't you see her alone previous to the time that the paper was signed?

A. I might have done it; I don't say that I did not.

Q. What is your best recollection about it?

A. I can't remember about that; I might have called her out one side to see her about something private.

Q. Did you see her daughter that evening to speak to her?

A. I don't think I spoke to her, for I don't think I was
10 acquainted with her at that time; I remember seeing her.

Q. When was this young man's name changed by the legislature?

A. It was not changed by the legislature.

Q. Done by the court?

A. Yes, sir.

Q. Under the statute?

A. Yes, sir; it was a year ago this spring, or two years, I forget which—a year ago I think; I am not
20 sure about it.

Q. Who saw you about that—having that done?

A. The daughter.

Q. That is the mother of the young man?

A. Yes, sir.

Q. At your office at Asbury Park?

A. Yes, sir.

Q. And she is the one who made the arrangement with you?

A. Yes, sir.

30 Q. Of course you knew who she was then?

A. Yes, sir.

Q. And knew she was the daughter of Mrs. Pemberton who you say made the will?

A. Yes, sir.

Q. Who instructed you to change his name to the name to which it was changed?

A. She I think did the most of the talking about it, he was there also, he talked about it, he paid me, she had nothing to do with that.

Q. How did you come to write the name of the young man "Pemberton" in the will?

A. The old lady gave me that.

Q. Mrs. Pemberton?

A. Yes, sir; the old lady.

Q. Was his name changed prior to the date of the will, or after?

A. It must have been after.

Q. You are not clear about that are you?

A. Yes, sir; I am clear about it, the records will show anyhow. 10

Q. If the date of the change of name preceedings is after the date of the will, then you are mistaken as to not knowing the daughter?

A. I said I did know her afterward.

Q. You must be mistaken as to not knowing her prior to the date of the paper?

A. No, sir.

Q. My point is this, that if this change of name in her son was made before the date of the will, then you must have known her, the mother of this young man and the daughter of Mrs. Pemberton, who, you say, made the will, you must have known her before the date of the will? 20

A. If that was the fact.

By Mr. Vredenburgh—

Q. You say that the young man brought this will to you—was his mother with him?

A. I said either he or she, one or the other; they came together. 30

Q. When was that?

A. I can't remember the date.

Q. Did you offer it for probate very shortly after that?

A. I think we came to Freehold the next day or a day or two afterwards, a very short time afterwards.

Q. Did they give it into your custody then?

A. No, sir; I told them I would rather they would keep the will and bring it to Freehold.

Q. Then you gave it back to them?

A. Yes, sir.

Q. When they brought it to you had it been opened or not?

A. I can't say as to that.

Q. Was this wrapper around it?

A. Yes, sir.

Q. What are those holes there for?

A. They are holes that was in the paper when I got it; it is an old envelope torn open, and they are cut in
10 that way in order to put eyelets through.

Q. When you gave it to the deceased, Mrs. Pemberton, in what shape was it?

A. Folded and inclosed in this way, and then a string tied aronnd it and tied in a bow knot.

Q. You gave it in that shape to the deceased?

A. Yes, sir.

Q. When you received it, in what shape was it?

A. To all appearance it looked as if it was the same; it was in the same wrapper and tied.

20 Q. Do you know how Mrs. Caroline Pemberton knew she was executrix, for you say she wrote you a letter saying she was executrix?

A. I don't know about that.

Q. Did you tell her?

A. I don't know whether I did or not.

Q. Try and recollect whether you ever told her, prior to the receipt of that letter to you, whether she was executrix?

A. I can't remember about that.

30 Q. You can't remember that you did?

A. I don't remember that I did or that I did not.

Q. Do you remember that you ever saw Mrs. Caroline H. Pemberton, after you delivered this will to the old lady, upon this subject, and talked to her upon this subject, before she handed you, together with her son, this will?

A. I don't remember that; I saw her several times afterwards; she came to me on business matters after that.

40 Q. About this matter?

A. No, sir; never about this matter; if there was ever anything said, it came out in general conversation.

Q. Do you say she did not talk to you about this matter?

A. I don't say she did not.

Q. You don't know how she knew she was executrix?

A. No, sir.

Q. Was she in the room at the time you gave this to her mother?

A. I think not; I think at the last part when they had a conversation there, I think she came to the door; I think she came to the door, but she may have come inside, but I don't think so. 10

Q. Did her mother give her the will?

A. Not in my presence; I don't know where the will was after I gave it to her, until I received word it was in New York.

By Mr. Robbins—

Q. Was not the will put in the Safe Deposit in New York by your direction? 20

A. I don't think it was.

Q. Had you any knowledge that it was there before the time it was sent for by you?

A. I don't think so; Mrs. Pemberton—I had a case against her, and she had not been up to see me for some time before she went to Europe; I had the Howland case against her—against the old lady.

Q. Was not that will put in there to your knowledge after the death of Mrs. Pemberton, and before the arrival of doctor and his sister from Europe? 30

A. I don't think it was.

Q. Why don't you think so; you say you don't think; tell me why you don't think that is so?

A. I got it from some one that it was in the Safe Deposit Company.

Q. Who did you get it from?

A. Either from the daughter or the young man, or both.

Q. Did you get it from any officer of the Deposit Company?

A. No, sir.

Q. Do you know who the officers are?

A. No, sir; I never saw one or knew them, and was never at the institution.

Q. Do you know when that safe in which this was deposited was taken there by anybody?

A. I don't understand you.

10 Q. I mean the box, the place of deposit?

A. I don't know, I don't know how it was put in.

Q. Or didn't know when it was taken out?

A. No, sir.

Q. Do you know whether the will was kept in that place from the time they went to Europe until it was delivered to you or not?

A. I don't know it, only from hearsay.

Q. Didn't you tell Dr. John Pemberton just before Dr. Harry Pemberton and his sister returned from Europe,

20 where that will was, and that it was in that deposit company?

A. I think very likely I did.

Q. When did you first learn that it was there?

A. I think I told you awhile ago that she told me in her letter where the will was; if I did not, I meant to.

Q. Did she tell you that it was there, or would be put there?

A. Oh, was there.

Q. If you would bring us that letter I would like it.

30 A. I will try and do so.

Mr. Vredenburgh—I also notify you on the part of my client to bring the letter.

Recess.

Henry Mitchell, called on behalf of the proponents, being duly sworn, testified as follows—

By Mr. Stout—

Q. What is your profession?

A. Medicine.
Q. You have been practising for how long, about?
A. Between 16 and 17 years.
Q. Where are you a resident of now?
A. Asbury Park.
Q. Were you in 1880?
A. Yes, sir.
Q. Did you ever see that paper before?
A. Yes, sir.
Q. Whose name is this? 10
A. That is my name.
Q. As what?
A. As witness to this signature.
Q. What signature?
A. Caroline Pemberton.
Q. Did you see her write that?
A. I did.
Q. Did she or not acknowledge that to be her last will and testament?
[Objected to.] 20
Q. Who else was there beside you?
A. Mr. Stout, Dr. Kinmouth, this lady who signed the will, and another lady whom I did not know at that time.
Q. Do you know since who it was?
A. Yes, sir; I have seen her here, she sits there.
Q. The daughter?
A. Yes, sir.
Q. Did the old lady say anything before or after she signed that will, or anyone to her about the will? 30
A. She was asked if she acknowledged this document to be her last will, or something to that effect, and she replied that she did, she acknowledged it to be her will.
Q. At the time of her signature, was Dr. Kinmouth and myself present with you?
A. Yes, sir.
Q. Which of the names, or all, were signed in the presence of each other there?
A. I saw this signature here, that is the signature of Mrs. Pemberton; I saw Dr. Kinmouth sign his name; 40

I signed my own; I can't say positively, that I observed whether Mr. Stout signed it or not.

Q. You don't remember about that?

A. No, sir.

Cross-examination by Mr. Robbins—

Q. When were you first seen about being a witness to this paper which purports to be a will?

A. About ten days previous to the signature.

Q. By whom?

10 A. Mr. Stout.

Q. Were you ever seen by Mrs. Pemberton about it?

A. No, sir.

Q. When did Mr. Stout see you about it?

A. I think it was in the street; it might have been my office.

Q. You think it was as much as ten days prior?

A. I should judge so.

Q. Had you any acquaintance with Mrs. Pemberton before you signed that paper?

20 A. No, sir; no acquaintance.

Q. Did you know her when you saw her?

A. I knew her by sight in this way, I called at her house, at the house which Mrs. Pemberton kept as a boarding house, professionally, to see a patient, and was told by a servant that Mrs. Pemberton would inform me as to the whereabouts of the person I was inquiring for, and this lady, Mrs. Pemberton, who I saw afterwards sign this will, gave me that information.

Q. That is the first and only knowledge you had of

30 her until you went to sign this paper?

A. That is the only personal knowledge.

Q. You didn't know her before that?

A. I knew Mrs. Pemberton kept the Look Out Cottages.

Q. When you saw her, you didn't know her until she was pointed out by the servant?

A. No, sir.

Q. Were you the physician of that house?

A. No, sir.

Q. You had merely attended a single patient there?
A. Oh; more than that; a number.
Q. A number of patients?
A. Yes, sir.
Q. At that time?
A. During that season.
Q. There was no regular physician at the house, that you know of?
A. There was a gentleman boarding there who had his name outside of the door as a physician. 10
Q. Can you tell me that name?
A. VanAnken.
Q. He had his name out as house physician?
A. Well, as physician.
Q. And lived in the house?
A. Boarded there.
Q. Where were you the night the will or the paper, which is called the will, was executed before you started to go to Mrs. Pemberton's—I mean immediately before you started? 20
A. I think I was in my office on Cookman avenue.
Q. Who called for you?
A. Mr. Stout.
Q. Anyone with him?
A. Dr. Kinmouth.
Q. Dr. Kinmouth was with Mr. Stout?
A. I believe he was in the carriage.
Q. Did you start from your office in the carriage?
A. They called for me.
Q. Do you remember who was driving? 30
A. No, sir; I don't remember the driver.
Q. How far is your office from Dr. Kinmouth's?
A. Two blocks and a half, I think.
Q. The same driver took you to Mrs. Pemberton's that brought you back?
A. I guess so; I didn't notice the driver; I think it was the same carriage.
Q. Had you seen Dr. Kinmouth about going to the Lookout Cottage before you started?

A. I don't remember; I don't think so; perhaps I did; I can't tell.

Q. Was there any understanding or arrangement between you and Dr. Kinmouth about your going there?

A. No, sir; merely in reference to time; if you will let me explain, Mr. Stout called upon me and asked me to witness a will. I thoughtlessly consented; I put it good naturedly; I give myself credit for it; he said Dr. Kinmouth would also be a witness; I did not object; 10 he said to me the name of the person who was to sign the will, and a time was agreed upon which would least inconvenience us, as that was a busy season in our business, and it was fixed for an evening; I believe that a previous time was fixed which something or other interfered with, and finally this evening was named, and I was ready and went; that is the way I came to go there.

Q. This interview which you have just detailed was the one ten days prior to the date of the paper?

A. The first request from Mr. Stout was perhaps ten 20 days, or about that, a week or ten days, previous to the signing.

Q. When was the time when he fixed the time, or when you and he fixed the time to go?

A. I don't remember; it was a matter of little consequence to me; it was a certain day and a certain hour.

Q. How many days prior to the time the paper was signed?

A. I should judge two or three or four.

Q. Do you know whether Mr. Stout had the paper 30 from the time that he came to you about it?

A. I don't know anything about that; I had no conversation with Mr. Stout in reference to the matter, more than I have given you.

Q. What day in the week was it that you went there to see the paper signed?

A. I don't know.

Q. You can't give me that?

A. Not without an almanac; no, I could not.

Q. What time in the day was it?

40 A. In the evening.

Q. What hour in the evening?

A. I should judge eight or nine; eight o'clock, perhaps.

Q. Would you think it was any later than that?

A. I am not very positive about the hour, but it was when business was over, and I judge it might have been eight or nine o'clock.

Q. Were there lights in the room at the time the business was done?

A. Yes, sir; there was a light there. 10

Q. You all went to the house in the same carriage?

A. Yes, sir.

Q. You and Dr. Kinmouth and Mr. Stout?

A. Yes, sir.

Q. Any one else?

A. The driver.

Q. When you went in the house, where did you go?

A. We went into a hall, went through the hall and at the rear end of the hall we turned to the right and went into a small room in the rear of the building—turned to 20 the left rather, instead of the right.

Q. Did you all go in this room together?

A. Yes, I think so.

Q. And remained there together during all the time?

A. I think so.

Q. Did you hear any paper read there?

A. Not that I remember; I don't think so.

Q. You don't think any paper was read?

A. I don't think so.

Q. Did you hear the paper which is called the will 30 read there?

A. No, sir, I did not.

Q. Would you say it was read there in your presence or not? Give your best recollection, look at the paper and see the length of it.

A. No, sir, I should think not; I can't say it was not.

Q. Are you pretty clear on that point?

A. Moderately clear; I am reasonably clear in saying it was not read in my presence.

Q. Was Mr. Stout and Mrs. Pemberton, the old lady, 40

in conference at any time outside of the room, or were they outside of the room when you and Dr. Kinmouth were there?

A. They might have been, I can't say.

Q. Have you any recollection upon that point?

A. There was some little buzzing and conversation going on that I didn't pay much attention to; I know I went there for one purpose; I attended to that; I am sure of the facts in regard to that point, but the other I
10 am not.

Q. The point I want is whether they were out of the room while you and Dr. Kinmouth were there?

A. They might have been, I can't say.

Q. How long were you there before the paper which purports to be the will was produced?

A. I should say it was produced very soon after we entered the little room—probably not more than two or three minutes.

Q. How long after the paper was produced was it that
20 it was signed by Mrs. Pemberton?

A. I think there was some little stir about a lamp or a candle, and some little time passed on that account, and probably there may have been a delay of fifteen minutes before we reached the signatures after I first saw the paper.

Q. Was the signature made by her immediately upon the bringing in of the lamp or candle?

A. Very soon after; I think she was asked—I remember distinctly that she admitted that this was her will,
30 and the signatures followed at once.

Q. Did she sign in your presence, or did she merely acknowledge in your presence?

A. Oh, she signed, I saw the signature made.

Q. Where was the other lady at that time, her daughter?

A. She was standing to my left.

Q. How near to her mother?

A. Well. I think her position varied a little at times.

Q. I mean at the moment of signing?

40 A. Two or three feet, I should judge.

Q. Was she in the room when you went in there with Dr. Kinmouth and Mr. Stout?

A. I don't know that I can say positively she was at that moment; she was in and out.

Q. As to the part of the time she was there while you were there, was it pretty nearly all the time?

A. Yes, sir.

Q. She was in the room pretty nearly all the time?

A. Yes, sir.

Q. I mean the daughter? 10

A. Yes, sir, she was there nearly all the time.

Q. Did she have anything to say in connection with the affairs that were going on?

A. Not within my hearing, except on one subject, subsequent to the signing of the will, which is proving of the will, came up to me as a matter that would detain me and embarrass me professionally, and I said that I realized that a fee should be paid; that I regarded it as a professional service, that I went there as a physician, and I demanded a fee, and I think this lady was the one 20 who listened to my demand; that is the only conversation that I remember.

Q. What did she have to say about that?

A. I believe she didn't say much.

Q. She contended that your charge was too high?

A. I think she did.

Q. You wanted $10?

A. Yes, sir.

Q. And she insisted that $5 was enough?

A. I believe that is about it. 30

Q. Mr. Stout present during that time?

A. I think he was.

Q. Did Dr. Kinmouth make the same charge?

A. I believe he did.

Q. At that time?

A. Yes, sir; I can't say positively that he expressed himsetf in words, or what his words were, but my understanding and recollection is that he made the same charge.

Q. Was that ever adjusted with you? 40

A. Never, no, sir.

Q. Has it been mentioned to you since the death of Mrs. Pemberton?

A. Mentioned, yes, not by any one of the persons to whom I look for payment.

Q. By Mr. Stout?

A. I don't think so; I guess not.

Q. Mention who it has been spoken to you by?

A. I was spoken to on the subject of these two gen-
10 tlemen here.

Q. The two doctors?

A. Yes, sir; or I stated the matter to them I believe.

Q. That was stating what had taken place?

A. Yes, sir.

Q. But I mean in reference to the payment of it?

A. It has never been stated to me, which looked towards the payment of it.

Q. How long do you think you were there that evening?

20 A. I should judge we were there from thirty to forty minutes.

Q. In the same room all the time?

A. No, sir; I waited outside on the doorstep for Mr. Stout, it seemed to me fully half an hour, it may have been less.

Q. Dr. Kinmouth go out too?

A. He was out part of the time.

Q. After you and Dr. Kinmouth had signed the paper?

30 A. Yes, sir.

Q. Who went out first—out of the room?

A. I did.

Q. And didn't see any more of the parties?

A. No, sir.

Q. When did Dr. Kinmouth come out?

A. Soon after I did.

Q. And you both remained outside?

A. Waited a little while for Mr. Stout.

Q. How long would you think it was before Mr. Stout
40 came out?

A. It was some time.

Q. Fifteen or twenty minutes ?

A. I should judge it was fifteen minutes.

Q. You were outside of the house then ?

A. We were on the doorstep—sat on the doorstep.

Q. And Mr. Stout inside with Mrs. Permbeton, so far as you know ?

A. Yes, sir; it might not have been so long as I said, but it was some little time.

Q. He remained with Mrs. Pemberton when you came out ? 10

A. He remained in the building.

Q. You left him with Mrs. Pemberton when you came out ?

A. Yes, sir.

Q. And also with Mrs. Pemberton the daughter ?

A. They both remained in the room ; when I left the room, Mrs. Pemberton who is here, the daughter, was in conversation with Dr. Kinmouth in the hallway, in a little hallway between the main hall which runs from 20 east to west, and the small hallway leading into the room, and Mr. Stout was still in the room where the will was signed ; I left the people in that position, and presently Dr. Kinmouth came out, and a little later Mr. Stout came out.

Q. Do you know whether or not Dr. Kinmouth talked about the fee which was charged with the daughter ?

A. That subject was being discussed between he and the daughter at the time I left ; I thought I could hear a word or two which led me to think so. 30

Q. Who signed the paper, which is called the will, first ?

A. Mrs. Pemberton.

Q. First let me ask you was anything done in the way of writing prior to the time—I mean at the place—prior to the time the paper was signed by Mrs. Pemberton ?

A. I don't know.

Q. Did you see anything of the kind ?

A. I can't say that I did.

Q. I would like to know where the ink came from with 40

which the paper was signed by Mrs. Pemberton and by you gentlemen?

A. I don't know that I observed; I know a pen was given to me; I can't say but that it was supplied with ink; I don't remember the ink-stand.

Q. Was it an ordinary pen like I show you here, or was it one of these fountain pens, what we call the McKinnan pen?

A. I cannot recollect that.

10 Q. I wish you would think a minute; perhaps by looking at the signature you can tell?

A. I can't say that this shows anything more than merely informs me in regard to what I say now; it does not refresh my recollections; I don't suppose you want my opinion in reference to penmanship.

Q. If it refreshes your memory or leads you to believe in any way what kind of an instrument you signed that paper with, you may give it?

A. It does that; it leads me to believe that this was 20 written with a McKinnon pen or a pocket pen; but I cannot say that I signed that with such a pen; it looks like the writing.

Q. Didn't Mr. Stout furnish you with the pen with which you wrote your name?

A. I don't know.

Q. You used no pen of your own?

A. I always carried a pen.

Q. What is your recollection?

A. I was carrying a pen at that time.

30 Q. Have you any recollection as to whether you used your own?

A. No, sir; it looks like the writing of my pen.

Q. Did you furnish your pen to either Mr. Stout or Dr. Kinmouth for any purpose, or to Mrs. Pemberton?

A. This whole matter I don't recollect at all; I don't remember it.

Q. Who signed next after Mrs. Pemberton, if you can recollect, without looking at the paper?

A. I don't remember the order of the signatures; 40 whether Dr. Kinmouth signed it before I did or not;

my impression at this minute is, that I signed before he did, but I don't remember.

Q. You are wrong about that; that is your recollection?

A. The order there on the paper would seem to contra—indicate that, but that is my impression.

Q. Your recollection is, notwithstanding having seen the paper, that you did sign before Dr. Kinmouth?

A. Yes, sir; that is my recollection, but it is not very clear; I am not ready to speak very decided upon that point. 10

Q. I call your attention to the note of the interlineation, which is written at the foot of the attesting clause—can you tell me whether or not that was written there before you signed your name to that paper as a witness?

A. I don't remember that any such writing appeared there.

Q. Is it not your recollection that it did not appear there, when you signed your name to that paper, over your name as that is? 20

A. I am not prepared to say that my recollection is distinct in regard to two or three points; I saw this signature made by Mrs. Pemberton; I wrote my own name and I saw Dr. Kinmouth write his, and my recollection is, that I wrote before Dr. Kinmouth, but I am not positive about that.

Q. Your best recollection is, that the note at the foot of the attesting clause was not there, or at least you have no recollection of its being there?

[Objected to.] 30

A. I will try and speak distinctly about it; on observation this paper has refreshed considerably my recollection about it, and I don't remember of such; I have difficulty in reading this, and I don't remember that I had any difficulty in knowing what I signed at the time; I read what I signed, and I don't remember that I had any difficulty in reading what I signed, and I find difficulty in reading this now; that is what I base my judgment upon.

Q. You refer to the note in writing at the foot of the attesting clause?

A. Yes, sir.

Q. I ask you this, I refer now to this flourish under the name of H. S. Kinmouth, which begins after the dot at the letter "S," and goes to the right, and which ends over the letter "C," in your name; did you make that?

A. No, sir.

10 Q. That don't belong to your signature in any way, shape, or fashion?

A. No, sir.

Q. You have a distinct recollection of three things in this immediate connection, which you have stated already?

A. Yes, sir.

Q. Does your recollection carry with it the name or the making of the signature of R. T. Stout, the third name?

20 A. I don't remember it.

Q. Have you any recollection whatever of his having signed that paper?

A. No; I cannot say he did not.

Q. You have no such recollection?

A. No, sir.

Q. Where were you at the time the name was written by Mrs. Pemberton?

A. I was looking over her right shoulder.

Q. Where was Dr. Kinmouth?

30 A. He was on my right hand.

Q. Did Mr. Stout have anything to say in reference to the will at that time?

A. Yes, sir; he was the only one that said anything so far as I remember.

Q. What did he say?

A. He had a conversation with Mrs. Pemberton across the table.

Q. What did he say?

A. He asked her if she acknowledged that that was 40 her will and testament, her last will, that is what I was

concerned in, and she both bowed her head and audibly said that it was.

Q. Was anything else said about a will by Mrs. Pemberton except that?

A. I don't remember that I heard her voice in reference to a will in any other words.

Q. Was any other will mentioned?

A. No, sir.

Q. Nothing said about the contents of the will?

A. No, sir; not a word. 10

Q. You don't know the contents of it?

A. No, sir; nothing of it.

Q. Was not informed in any way?

A. No, sir; not in the least.

Q. Did you hear Mrs. Pemberton say anything about having the will read to you and Dr. Kinmouth?

A. No, sir.

Q. She didn't say anything of the kind?

A. No, sir.

Q. She said nothing about having it read in your 20 presence?

A. Not that I have any recollection of whatever.

Q. Did you see Mr. Stout write anything there that night that you remember?

A. I think Mr. Stout was occupied in some way, I can't say how, he had a pen and sat on the other side of the table from Mrs. Pemberton.

Q. Did you see him write anything on this paper which is called a will?

A. I could not say what he was doing. 30

Q. Did you hear anything said about a mistake in the name of Mrs. Pemberton's daughter?

A. No, sir.

Q. Nothing that you recollect?

A. No, sir.

Q. Are you pretty distinct about that?

A. Yes, sir; nothing said in my presence.

Q. Did you see any changes made in the will in reference to the name of Mrs. Pemberton the daughter?

A. No, sir. 40

Q. You went in there at the same time with Mr. Stout and remained there up to the time you signed the paper, and left Mr. Stout in there, as you have stated already, when you went out?

A. Yes, sir.

Q. You have stated now all that you recollect that was said by Mrs. Pemberton on that occasion—the old lady?

A. Yes, sir, I think I have; I don't remember that Mrs. Pemberton made any remark whatever; I don't re-
10 member that I heard her voice except when she acknowledged this to be her will.

Q. And then she used the word "yes," or what?

A. An affirmative expression, I can't say what.

Q. Then the question was asked by Mr. Stout, and Mrs. Pemberton—the old lady—used but a single affirmative expression?

A. Very brief; she sat with her back toward me, and made an expression which I recognized as an affirmative expression.

20 Q. Do you remember whether it was by word, or a nod of the head, or motion of some kind?

A. It was both.

Q. Give me your best recollection as to what she said?

A. I think she said "yes;" that is my recollection.

Q. Your recollection is, then, that all you heard her say upon that occasion was the word "yes"?

A. I don't remember that I heard her say another word while I was present.

Q. You had never had any conversation with her be-
30 fore, and never had since?

A. The only conversation I ever had was when she directed me to the room of a patient I was visiting in one of her cottages.

Q. And then she had no conversation with you?

A. No, sir, except to tell me there was the room I wanted.

By Mr. Stout—

Q. You say that you said you should be paid a fee of

$10, considering it a professional call. Did the old lady object to that as being high priced?

A. I don't remember that she said anything about it; I didn't hear her voice.

Q. Do you remember meeting her the next day, or a day or two after, and she offered to pay you $8 or $5, I forget which?

A. I do not.

Q. And you said you would not accept it; if it was not worth that, it was not worth anything. 10

[Objected to as leading.]

A. I have no recollection of it whatever that I have ever had a word of conversation with her on any subject since that evening; I would like to say one word in reference to this matter here; I am liable to have done injustice to somebody in regard to my recollection in reference to this matter, this writing here; I don't remember it; I don't want to leave the impression that I can say positively it was not there; I would like, in justice to myself, to say that I went to this place, finally, 20 very much against my will, sick of having got into a thing of this kind, signing anybody's will as a witness, and I went there, finally, determined to see what was done, and see it properly done and leave, and I did not observe what was going on, and I went there with an aversion to the whole business, and I make this statement merely that I shall not be understood as being too definite in my statements.

Q. You don't say that that was not written under there or above the signatures? 30

A. It is just as I would like to have it now.

Q. You don't know what I was doing at the other side of the table by the old lady, Mrs. Pemberton?

A. No; I don't remember.

Q. You remember the fact of seeing her and myself, sitting by the table?

A. I think I recollect the position; Mrs. Pemberton sat here, and Mr. Stout sat at the opposite side of the table, Mrs. Pemberton, this lady here, sat here, with a door there and another here; Dr. Kinmouth sat by my 40

side; I was near the old lady when she wrote her name, and saw her do it, and I saw her nod her head and to the best of my recollection say "yes," when she acknowledged the will.

Q. Just before that you don't recollect whether I wrote anything or not?

A. No, sir; you were occupying yourself in some way.

Q. It could have been done?

[Objected to.]

10 Q. Was it or not possible for me to write something there and you not remember it?

[Objected to. Question withdrawn.]

By Mr. Robbins—

Q. Were not the circumstances such as to impress you with what took place on that occasion—whatever you saw impressed itself upon your memory?

A. Yes, sir; certain circumstances were very distinctly impressed on my memory.

Q. What were those circumstances; any others than

20 those you have stated?

A. One subject that has not been opened up here, was impressed on my mind very strongly; it was a selfish one, and which does not concern anyone here, perhaps; in order that I shall not be mysterious, I will state it plainly; I was impressed with the fact that I was there as a physician; I think Mr. Stout told me so plainly, but it didn't make much of an impression on my mind until finally I realized that I was signing a will as a physician, and it was likely to bring me into court as a

30 witness, and I would not like to get into such a position to take me from my business.

Q. You speak of being brought as a witness, and the disagreeableness of it—a witness in what shape, in what capacity?

A. I can only state impressions again; my suspicion was, that there must be a question as to this lady's sanity; I didn't know what else to make of it, that a physician should be called as a witness.

Q. Have you been seen by anybody in behalf of the

proponents in this case, since the night when the paper was signed.

A. Who are the proponents?

Q. That is Mrs. Pemberton, the daughter, who is represented by Mr. Stout.

A. No, sir; I have had no conversation in reference to this will with these people.

R. T. Stout recalled—

I would say, after thinking the matter over after giving my testimony, I recollect that Mrs. Pemberton, the 10 old lady, was in my office, I won't say when, but some time before we went down, after the will had been completed or almost completed; that at that time, instead of down there that night, she told me of her daughter being called "Caroline," instead of "Catharine," and at that time the erasure of the word "Catharine" was made and made by me; but there was no interlineation made, nor the words "town of Oceanport" or "Ocean," none of those words written in there until I got there that evening, and then those words were written there when I sat 20 at the table by Mrs. Pemberton, made before she signed her name; and we had no blotter, and I had some difficulty in keeping her hand off to keep it from blotting, and even after they had all signed I held it over the candle to dry it.

By Mr. Robbins—

Q. I am going to give you a chance to correct something else. You said in your testimony this morning, when you told me why you knew that that note at the foot of the attesting clause was made before it was signed 30 by Dr. Kinmouth, one reason was your memory, the other reason you said because you noticed the interlineations of "Caroline" and the note at the foot was written with the same pen and ink. If that was written before that in your office, days before or a day before, what becomes of your explanation upon that point?

A. I said the erasure of the "Catharine" was made in

my office in red ink, but the interlineations were not written in there until I got there that night.

Q. That is as good an explanation as you will give us?

A. The word "Catharine" was erased at my office, and "Caroline" was interlined at her house immediately before the signature, and that annotation clause was written at that time, and it was left green, so I was afraid she would blot it.

Q. Did she tell you the name of her daughter at the
10 time she told you you had it wrong?

A. Yes, sir.

Q. Why was it you made the erasure at your office instead of there?

A. Because I told my brother to do it, and he failed to do it, and I noticed it after I got down there that evening.

Q. I wish you would look at that flourish under Dr. Kinmouth's name, and tell me who made that?

A. I can't tell you, I see there is another one attached
20 to the "H." in Dr. Kinmouth's name.

Q. I mean the one under Dr. Kinmouth's name?

A. I don't know.

Q. He made a mistake in writing high up, and then put all that under his name?

A. I don't say that he did do it.

Q. If he did do it, didn't he entirely upset your plan of saving room?

A. I don't know; I say Dr. Kinmouth is always in the habit of signing his name with a flourish. He has
30 signed it for me before, and I told him to sign high, so as to give the rest room; you look at his signature on deeds.

Q. You are pretty well satisfied that that was one of his flourishes there?

A. I don't know about that.

Q. It looks like it?

A. I don't say that.

By Mr. Vredenburgh—

Q. You didn't make it?

A. No, sir.

Q. Dr. Mitchell says he did not; evidently Dr. Kinmouth did it?

A. Perhaps he did.

Q. Are you satisfied, upon examination, that you are correct in the statement that Dr. Kinmouth's signature was written right over that clause there?

A. Yes, sir; and written when that ink was green; the whole matter didn't dry; I don't know what kind of ink it was. 10

By Mr. Robbins—

Q. What did you write your name with there, with what kind of pen?

A. It looks to me like a poor pen.

Q. Where did the pen come from?

A, I don't remember about that.

Q. Did you use one of these McKinnon pens or fountain pens?

A. No, sir; I had one about a year ago and gave it away. 20

Q. Did you have one at the time the will was executed?

A. I don't think I had one at that time; I am quite sure I did not.

Q. Do you know where that pen came from that was used there in writing these signatures?

A. I don't know where it came from; I can say what I think.

Q. I want to know what you know?

A. I don't know. 30

Q. Do you know whether Dr. Mitchell furnished that pen?

A. I don't know that.

Q. You have no recollection of his having furnished any?

A. I can't say where the pen came from.

By Mr. Vredenburgh—

Q. You see that mark there?

A. Yes, sir.

Q. Running from here to there?

A. Yes.

Q. Do you say that Dr. Kinmouth wrote that?

A. I believe he did; it looks to me like one of his flourishes.

Q. Flourished right over the other writing?

10 A. Yes, sir.

Q. Are you not shaken in that belief in looking at that?

A. No, sir; I should say that he has drawn his signature in very much to what he usually writes.

Q. Do you recollect being in the Surrogate's office when the Surrogate was there, and making a memorandum on the back of this wrapper?

A. I don't remember—with a pen?

Q. Yes.

20 A. No, sir; I did not.

Q. You did not in the Surrogate's office at all?

A. No, sir.

Q. In the presense of Dr. Pemberton and Mr. Crater?

A. No, sir; I remember being there when young Dr. Pemberton was there, and he was very much excited.

Q. Were you excited too; I simply asked you about that matter—you remember the occasion; do you remember whether on that occasion, when Dr. Pemberton was there and the Surrogate, that you made a memoran-

30 dum on the back of this cover with your pen?

A. I don't think I did; I will tell you what I did do.

Q. What did you do in that way?

A. On the paper that I had, where it contained memoranda of facts, I wrote on the back of that the date when we were to meet here again for the probate of this will, or something of that kind; I wrote the date of that down.

Q. On what?

A. On the back of my paper.

40 Q. Not on this at all?

A. No, sir; not unless it may have been in my hand that way, and I laid the other on the top; I made a memorandum of the date.

Q. Do you recollect distinctly of making a memorandum on any paper there?

A. I think I do.

Q. Have you that paper now?

A. I think I have, home; perhaps I have it here, let me look; no, I have not.

Q. What occasion was this, that you were at the Surrogate's office when Dr. Pemberton was there? 10

A. I met Mrs. Pemberton by appointment; she came from New York, and we were to go and have the will probated, and the young doctor came up very hurriedly about the time we were to have it probated, and asked for a postponement, and I asked him if he wanted to file a caveat, and he said he did not, and I asked Mrs. Pemberton what to do, and she said, "Go on and have it probated;" and he commenced to cry there, and one thing and another; he felt very much excited. 20

Dr. Harry Pemberton—It is all untrue what you are stating; it is false.

The witness—I don't mean you cried from weakness, but from excitement.

Q. On the occasion when you came here—was there more than one occasion when you were in the Surrogate's office making memoranda when Dr. Pemberton was there?

A. Mrs. Pemberton and I met there twice.

Q. Was Dr. Pemberton there twice? 30

A. I am not sure whether he was there once or twice.

Q. Was that the occasion that you refer to when you may have made a memorandum—was that the first time the will was brought here?

A. I think it was the second time we came.

Q. Do you remember whether the Corey trial was being tried then?

A. I don't remember about that.

Q. Do you say there were two occasions when Dr. 40

Pemberton and you and the Surrogate were together in the office?

A. I do not; I say there were two times when Mrs. Pemberton and the Surrogate and I was there.

Q. But one occasion when the doctor was there?

A. That is all.

Q. Did you make any memorandum at that time on the back of this paper?

A. I am satisfied I did not; at least I didn't write
10 that down there, because I remember this; I called the Surrogate's attention to that, that I put it on there.

Q. You remember calling the Surrogate's attention to this memorandum here?

A. Yes sir, and he smiled.

Q. You say you called the Surrogate's attention to this memorandum, and told him you made it at the time the will was executed?

A. I don't know that I told him I made it then; I told him I made it there for my own benefit.

20 Q. Did you tell him when you made it?

A. No, sir; I don't think I did.

[Proponent's counsel offers the will in evidence and rests.]

Adjourned to June 29th.

FREEHOLD, N. J., June 29th, 1883.

Thomas H. Redway, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. Your business is what?

30 A. Real estate.

Q. How long have you been in that business, and where? A. About five years, at Asbury Park.

Q. You were formerly in partnership?

A. Yes, sir; Redway & was the firm.

Q. Since what time have you been alone? A. 1883.

Q. In 1880 you were in partnership in the real estate business?

A. Yes, sir.

Q. Had you the renting of what are known as the "Look Out" cottages?

A. I had.

Q. As the agent for the owner?

A. Yes, sir.

Q. Your firm had?

A. Yes, sir, Redway &

Q. In 1880? A. Yes, sir.

Q. There are two, are there not? A. Yes, sir. 10

Q. How far apart are they? A. There are three belonging to the same owner, but the "Look Out" cottages were two, connected by a platform; I suppose ten or fifteen feet apart.

Q. They are called the "North" and the "South"? A. Yes, sir.

Q. Do you remember Mrs. Caroline Pemberton, deceased, the old lady?

A. I do, very well.

Q. Do you recollect the daughter of her's, Caroline H. 20 Pemberton?

A. I do.

Q. Did you see them in Asbury Park in 1880? A. I did.

Q. Did you rent these cottages to either of them, and if so, whom?

A. I rented to the daughter, Caroline H.

Q. What year? A. 1880.

Q. Where were you when you rented them? A. I think I closed the transaction in New York city. 30

Q. In what month of the year 1880, as near as you can recollect? A. I could not tell without referring to the papers, but I think April, 1880.

Q. But you are not certain about the month? A. No, sir.

Q. But it was in the early part of the season? A. Yes, sir.

Q. Did you go to the house where they were? A. Yes, sir.

Q. Where was that? A. In Thirty-eighth street, New York city.

Q. Did you find the mother and daughter living together there? A. Yes, sir.

Q. Were they keeping a boarding house there? A. The daughter was keeping a boarding house.

Q. And the mother was with her? A. She was.

Q. Were there any notes connected with the leasing there? A. There was.

10 Q. What did you do in the matter of procuring, if you did procure, the signature or indorsement of any notes that you had for rent? A. It was necessary for a certain amount of money to be raised towards the payment of that rent, our terms being of a peculiar character, which money the daughter had not in her possession, but suggested that she give two notes.

[Objected to.]

[Objection overruled.]

The witness—The suggestion was made that the notes 20 be given and she raise the money upon the notes, and I suggested to her that her brothers could raise that money for her.

[Objected to.]

[Objection overruled.]

The Witness—The notes were given finally with her mother's indorsement, which she obtained there at that house; after some objection on the part of the mother, in the endorsement of these notes, but the remark made to me was that that was the only way the money could 30 be raised on the notes, by her mother endorsing it, and after some importunity the mother was induced to sign the notes.

[Objected to.]

By the Court—

Q. Let us know what was said?

A. The mother said she objected to endorsing those notes.

Q. Then what did the daughter say? A. The daughter said to her, you must endorse those notes.

By Mr. Vredenburgh—

Q. Where was that conversation?

A. Up stairs on the second floor front room.

Q. Was the endorsement put on by the mother up-stairs, or where?

A. It was not.

Q. She did not endorse them up-stairs? A. No, sir.

Q. Did you all go down-stairs?

A. Yes, sir.

Q. And the daughter too? 10

A. Yes, sir.

Q. What was done there?

A. The son was called upon to bring the inkstand and pen.

Q. What son? A. This Charles as represented, and the mother there endorsed the notes.

Q. Did you also request her to get one of her brothers as endorser on the paper? A. I did not.

Q. You don't recollect of your applying afterwards to Dr. Harry, to endorse one of the notes? 20

A. Not to endorse, but to discount them for her.

Q. How long were those notes to run? A. Two and three months; they were in two notes; I think they were two and three months.

Q. Of how much each? A. I think it was $286 each.

Q. Before they became due, in pursuance of your way of transacting business, did you go to see how they would be paid? A. I did not.

Q. They came down after that to Asbury Park?

A. Yes, sir. 30

Q. And young Mrs. Pemberton took possession of the "Look Out" cottages, that you had rented to her?

A. Yes, sir.

Q. About the time the notes became due, do you remember going to see about them?

A. Three days before the notes fell due; I called upon her to remind her that the note fell due upon such a date, and she must provide for it; she then provided for it, and she wanted me to take the money and go to the bank and take it up, which I declined to do, and I 40

suggested that she send somebody else, Charlie, for instance, and she did the next day, send him down with the money.

Q. Do you know what he did? A. Ran away.

Q. Did you see an account of it in the papers the next day?

A. I did; she sent for me herself and told me he had ran away.

Q. Who did? A. Mrs. Pemberton—the young Mrs.
10 Pemberton.

Q. When was that? A. The next morning.

Q. What provision did she make about paying the notes?

A. She raised the money in the house, I presume; so that on the final day, or the last day of grace, I took the money and went to Long Branch to see the cashier of the Long Branch Banking Co., and was at his house until he returned from the Ocean Hotel, where I paid the note and took it up.

20 Q. Were both of those notes indorsed by the mother, the old lady?

A. Yes, sir.

Q. On the occasion when you went to get the money, you said you saw her, and she told you that her son Charles had run away with the money?

A. Ran away or was missing, or waylaid, or destroyed, or drowned, something that way.

Q. Had you any conversation with her on that occasion, as to the conduct of her brothers about that?

30 A. Not that first morning; for she had not been to Long Branch to see them.

Q. When was it after that you had a conversation with her? A. My impression is, it was the third day or the last day of grace.

Q. How long after the young man ran away that this other conversation took place, in which she referred to her brothers?

A. It was the third day after he had gone away.

Q. Do you know the date that he went away? A. The
40 twenty-seventh of July, 1880, I think.

Q. And you think it was about the thirtieth that you had this conversation? A. Yes, sir.

Q. Where did you have the conversation?

A. At Lookout Cottages.

Q. How did you happen to go there?

A. I got the money to go to Long Branch; I had promised to take it up if she would get the money.

Q. Then that was the occasion you had that conversation? A. Yes, sir.

Q. Tell us what that conversation was, as near as you can reproduce it, by Mrs. Caroline H. Pemberton? 10

A. The conversation turned, of course, upon the fact of the disappearance of her son, and her solicitations with her brothers to become interested in his discovery.

[Proponents' counsel objects to anything in relation to this young man, and anything said by the proponent to this witness.]

Q. Had she been to Long Branch then?

A. She had been to Long Branch then.

Q. You had not gone with her? 20

A. I had not.

Q. Do you know whether her mother went with her to Long Branch?

A. I don't know.

Q. When you had this conversation, was the mother present?

A. She was.

Q. What did she say about her brothers?

A. That her brothers had treated her very unkindly —that they were unsympathetic; they had always op- 30 posed her in everything she had undertaken; that they showed a disposition to discard this son of hers; that she could get no help from them, and that she never could forgive them, and sought, really as I judged by her conversation——

[Objected to]

Q. What did she say, if anything, what her brothers had called her son, or had they spoken of him? did she say anything in her mother's presence—was this in her mother's presence? A. Not at that conversation. 40

By the Court—

Q. This conversation you have just related? A. Yes, sir, on this third day.

By Mr. Vredenburgh—

Q. Did you see her after that? A. Yes, sir.

Q. What was the next time you saw her after that? A. It would be impossible to tell just about the dates, but I suppose after that I saw her during the season maybe three or four times.

10 Q. Do you recollect an occasion when she did speak to you in reference to her brothers, and what they had said about her son, and what she would do in reference to them? A. She made a remark on one of those occasions.

Q. Who did? A. Mrs. Caroline H. Pemberton.

Q. In the presence of her mother, or in her absence? A. In the the presence of her mother; she made this remark in addition to it, or with it, or in connection with it, that she would get square with her brothers; I want

20 to give her exact words.

Q. In what connection was that remark made? A. It was in connection with the remark that she had made, that her brothers had treated her unkindly and were unsympathetic.

Q. Did she on that occasion say anything to you about what they had charged Charley, her son, with being? A. She said that her brothers had charged that this Charles was a thief and a renegade, and not her child, and then she remarked that she would have her revenge

30 —that she would get square with them.

Q. Do you remember seeing the old lady on any occasion when anything was said about her building the Garfield cottage? A. I do.

Q. When was that? A. I called upon her at the Look Out cottage at their solicitation, to advise with them as to the proper builder; she sent for me to ask my advice as the best builder.

Q. Is that the old lady? A. Yes, sir, and the conversation in the parlor of the north one of the two cottages

occurred with the old lady, and in the absence of the daughter at the time.

Q. What did she say as to why she came to build the Garfield Cottage?

[Proponent's counsel objects to any declaration of the testatrix that might bear at all on undue influence.]

[The court admits the testimony, subject to subsequent ruling.]

[Exception.]

A. That she had been induced to buy the lot by her 10 daughter Carrie.

Q. Did she say as to how she came to build the cottage? A. She was then making her arrangements to build the house, and she wanted to know the best builder in the place to apply to, and as a further question, she asked me what I knew of the capacity as a builder, of Mr. Cook Howland; that was about all, and that was the substance of that conversation.

Q. Do you know whether afterwards Mr. Cook Howland brought a suit against Mrs. Pemberton? 20

A. I do, by reading it in the paper, nothing more than that.

Q. Arising out of this building?

A. Yes, sir.

Q. What effect had these conversations that you have detailed with Mrs. Caroline H. Pemberton, upon your conduct towards Dr. Harry Pemberton?

[Objected to.]

[Objection sustained.]

Q. Did the charges that she made to you against 30 her brothers at that time, have any effect upon your conduct towards Dr. Harry Pemberton?

[Objected to. Objection sustained. Exception by caveators.]

Cross-examination by Mr. Stout—

Q. When did you first become acquainted with the old lady, Mrs. Pemberton? A. Personally, I think it was in February, 1880.

Q. That was the first acquaintance you ever had with the old lady? A. Yes, sir.

Q. And with the young lady also? A. What you might call an acquaintance; I had been introduced to her at her house at Long Branch before that.

Q. About the first occasion upon which you met her, was upon the signing of these notes? A. It was not.

Q. How many times had you met her before she signed these notes? A. Quite a number of times.

10 Q. How did you come to fall in with her—with the young lady—to rent this house? A. She came to my office in search of cottages.

Q. Was the old lady with her? A. She was not.

Q. She was entirely alone? A. Yes.

Q. Did you make the bargain then? A. No.

Q. Where did you next meet her?

A. Do you mean for me to answer after the frequent visits that she made to the Park, where I met her?

Q. Yes. A. Met her in New York.

20 Q. How many notes do you say there were? A. There were two in this transaction.

Q. Before that time was there any talk about how much money was to be paid down upon those houses? A. There was no arriving at an understanding as to how the payments were to be made.

Q. Had she agreed before that day to give you notes?

A. She had not.

Q. What was the first thing the daughter said to the old lady in reference to her indorsing those notes?

30 A. "Mother, I want you to indorse these notes for Mr. Redway."

Q. Asked in an ordinary business way, I suppose?

A. Yes, sir.

Q. Did you see anything unusual about that?

A. Not particularly in that remark.

Q. Who did you first tell that to, speaking of the other side—who did you first tell that you knew all this?

A. How do you mean? I don't understand you?

Q. How did the caveators in this case find out that

40 you knew that?

A. That we had those notes?

Q. That you knew of the conversation at New York, about the signing of these notes?

A. I presume upon the application of one of them to have these notes discounted.

Q. Did you tell them of the conversation?

A. I told him.

Q. Who did you tell?

A. Dr. Henry.

Q. How long ago? 10

A. 1880.

Q. How long after your meeting her in New York did you have this conversation that you speak of in Asbury Park, where Carrie said she would get square with them?

A. About three or four months after.

Q. Who did you first tell that Carrie said in the presence of you and her mother, that she would get square with the brothers?

A. It is a hard matter for me to tell who was the first; 20 I don't know that I ever told more than two in my life.

Q. Who were they?

A. Dr. Henry was one.

Q. Who was the other?

A. Dr. John, I believe, was one; I don't think of anyone else.

Q. Do you remember anybody asking you somewhere about two or three months ago, or a little longer, whether you knew anything in relation to the Pembertons, in relation to this will? 30

A. In relation to the will?

Q. Yes, or any conversation?

A. I remember of a gentleman asking me if I knew anything about a will.

Q. Or about any conversation or action of the daughter with the mother?

A. I don't remember any such question.

Q. Don't you remember telling someone you didn't know anything about the matter?

A. No, sir. 40

Q. Didn't you tell me that?

A. No, sir.

Q. Didn't I ask you if you had had their acquaintance and new anything?

A. You asked me if I knew anything about the will of the Pembertons, and I told you I did not.

Q. Were you subpœnaed?

A. Yes, sir.

Q. Have you your subpœna?

10 A. I have not.

Q. Did they serve a written subpœna on you?

A. They did.

Q. Were you paid your fees?

A. I was paid to come down here; my fare, of course.

Q. You were not paid any fee with the subpœna?

A. No.

Q. And were not subpœnaed, were you?

A. I was subpœnaed.

Q. Did you have an actual written subpœna?

20 A. I did.

Q. Were you not asked by Dr. Harry a short time ago to attend here?

A. I had a written subpœna served on me.

Q. By whom?

A. A person.

Q. Who was that person?

A. Dr. Pemberton.

Q. Before that time didn't you say you didn't know anything about this transaction at all?

30 A. No, sir.

Q. The old lady did build this house at Asbury Park?

A. I presume she did.

Q. You know it was built?

A. I knew that it was built, but I don't know who built it.

Q. You know the house now?

A. Yes, sir.

Q. You don't know who built it?

A. I could not of my own knowledge say that Mrs.

Carrie, or Carrie H., or Dr. Harry or Dr. John had built it; I only know it was built.

Q. Didn't you rent that house?

A. I did not.

Q. You had it for rent?

A. No, we did not; it was rented by herself.

Q. Where was this conversation where Carrie said she would get square with her brothers?

A. It was in a little room in one of the Look Out cottages. 10

Q. In the morning or afternoon?

A. My impression is in the afternoon; I would not say positively.

Q. What other conversation was there that day in that little back room, besides Carrie saying she would get square with the brothers?

A. It would require me to think that up to give you a correct answer.

Q. Why can't you tell me that as well as the other?

A. Because that was a pointed question, and you have 20 reference now to a general conversation.

Q. You cannot tell anything else?

A. Yes, sir; I could tell you some things.

Q. Can you give any one word that was uttered there, from your memory, except those words?

A. That she had always been opposed by her brothers.

Q. You have stated that, but outside of that you can't tell anything else that was said there that day; your memory is pretty good as to those?

A. Pretty good as to the remarks I have testified to. 30

Q. Did you ever hear her say that more than once?

A. Yes, sir; I think I have heard her say it twice; I think I heard her say it once on the street.

Q. She met you on the street, and said that?

A. I think she was right in front of my house.

Q. You met her in the front of your house, and she said she was going to get square with her brothers, and she went on—do you say that?

A. Yes, sir.

Q. And that is all the conversation? 40

A. No, we had other conversation.

Q. What other times did she tell you she was going to get square with her brothers?

A. I have said, twice; I don't remember of ever hearing her say it the third time, but she might have had conversation with me in which she used other language that meant the same thing.

Q. Was she in the habit of telling you her troubles?

A. She was.

10 Q. Were you her confidant?

A. No, I didn't solicit it.

Q. Were you frequently in her company?

A. No, only as an agent and a friend.

Q. Did you call frequently at her house?

A. When I went on business, and sometimes called by her.

Q. Was that frequently?

A. Three or four times during that season.

Q. What business did you have there after the 27th 20 or 30th of July?

A. The same business that I have as the agent when I have houses rented.

Q. What did you do when you called?

A. I don't remember whether I had a roof to look after or what it was.

Q. You don't remember anything else she said, except that she said she would get square with her brothers?

A. Except to listen frequently to the conversation about family matters.

30 Q. Were you in the habit of calling there as a business agent to hear the troubles of the family?

A. Not of my own free will and accord.

Q. But you did stay there afterwards to hear?

A. By force.

Q. Who forced you?

A. By the importunity of the daughter, to force upon me what I was not willing to hear—but as a gentleman, I didn't leave abruptly.

Q. Did you ever go there to look after that house for 40 the owner?

A. I did.

Q. How many times during that summer?

A. I could not tell you.

Q. A good many times?

A. I suppose I did.

Q. You say you went only three or four times?

A. I may have gone there frequently when I did not see her; we rented the corner house as well, and I think the annex.

Q. Who rented that house? 10

A. That year Mrs. Broadhead and Mrs. Mulford.

Q. Did you have any conversation with them that season?

A. I did.

Q. Can you relate any conversation you had with those two?

A. I can—do you want me to.

Q. I would like to hear just a little you heard there?

A. "We are having a very backward season. We have no guests yet. Here is Mrs. Carrie Pemberton has 20 got a number of guests, and we have none. What is the cause of it? Is there no way in the world that you can send me guests to fill this house?"

Q. Then you went in there to see the house and heard this conversation.

A. Went in where?

Q. Well that is all.

By Mr. Vredenburgh—

Q. You used the expression in your examination in chief, which the court ordered to be stricken out, that 30 young Mrs. Pemberton endeavored to poison your mind against the brothers. State what she said, if you can recollect the expression used by Mrs. Pemberton in that connection. I would like to have them upon the record. You have already said that was in the presence of Mrs. Caroline Pemberton, the old lady?

[Objected to.]

A. I was saying when this remark was made the daughter would turn to the mother and appeal to her to

confirm what she had said, and in such a theatrical way that would lead me to believe that it was altogether from a disposition or spirit on her part to confirm this.

[Proponent's counsel moves to strike out the answer.]

Q. What I want to get—and it is proper it should be on the record—you have spoken of her attempting to poison your mind in the presence of her mother; what did she say, and what did she do—her manner?

[Objected to, and objection overruled.]

10 A. The specific language that I have already given in my testimony; unless I should sit down and think over it so as to gather my thoughts, being in a general conversation of that character, being loth to hear it, I would naturally allow many things to pass in one ear and out the other; so except this specific language as used by her, I think I would have to sit down and think over it in order to give it correctly and positively as the language was used by her; I can recollect what I have given, and that was its effect—to poison my mind, pro-
20 vided there was truth in it.

[Proponent's counsel moves to strike out the last part of the answer.]

The Court—Your thoughts you cannot give, but any further specific language that you can remember you can give.

Q. You use the word "poison;" what do you mean by that expression?

A. I mean the words used in my testimony as influencing me against them.

30 Q. How?

A. By the remark she made.

[Proponent's counsel objects to the witness stating how it influenced him.]

[Objection sustained.]

Q. You have stated the impression that was produced on your mind—that is not legal—but from something that was said by her you conceived a dislike against the brothers; I want to know what that was?

A. The first was the loss of the son, and their lack of
40 sympathy; that they did not assist in his recovery.

Q. Was anything said by her as to whether they had abused him—what they said about him?

A. They had accused him of being a renegade, and not her child.

Q. In what way did she act—what was her manner?

A. A sort of a positive, theatrical manner.

Q. What do you mean by that—did she use gestures?

A. Yes, sir; she would walk up and down on the floor in front of her mother.

Q. Was her manner excited or not? 10

A. She was excited

[Proponents' counsel moves to strike out all the testimony relating to the influence upon the witness.]

The court—All the evidence which tends to show the effect upon the witness, or the feeling created in his mind towards the caveators, will be stricken out.

Daniel H. Webster, called on behalf of the caveators, being duly sworn, testified as follows:

By Mr. Robbins—

Q. Where do you reside? 20

A. I reside now at Brielle.

Q. In this county?

A. Monmouth county.

Q. How long have you lived there?

A. Since the 24th day of May.

Q. Of this year?

A. Yes, sir.

Q. Did you know Caroline Pemberton while she was alive?

A. Yes, sir. 30

Q. And her daughter, Caroline H. Pemberton?

A. Yes, sir.

Q. You know her?

A. Yes, sir.

Q. Did you ever work for Mrs. Caroline H. Pemberton?

A. Yes, sir.

Q. Where?

GMR

A. Asbury Park.

Q. At what cottage?

A. The Look Out Cottages.

Q. What did Mrs. Caroline H. Pemberton do at those houses?

A. She kept a boading house.

Q. What was your business there with her?

A. I was in her employment as head waiter.

Q. When did you go there to live with her in that
10 capacity?

A. On the 13th day of July.

Q. What year?

A. 1880.

Q. How long did you stay?

A. I stayed there until the 28th day of August, the same year.

Q. And during all that time you were the head waiter?

A. Yes.

Q. Did old Mrs. Pemberton live there with her daugh-
20 ter at that time?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. Did they eat at the same table in the dining room —the mother and the daughter?

A. Yes, sir.

Q. Do you know whether they roomed together?

A. Yes, sir.

Q. Slept in the same bed?

30 A. Yes, sir.

Q. During all that time?

A. Yes, sir.

Q. Who waited on them at the table?

A. I did.

Q. Always?

A. Yes, sir.

Q. Who had charge of the groceries and provisions and supply department of that house?

A. I did.

Q. Were you there when Charles, said to be the son of Caroline H. Pemberton, went away?

A. Yes, sir.

Q. Do you remember when that was?

A. That was on the twenty-seventh day, or between the twenty seventh and the twenty-eighth, I am not certain about the dates, of July.

Q. What do you know about his going away?

A. His mother gave him some money to take to Long Branch—some money and some checks to be paid, and 10 he went to Long Branch, and he did not come back on the train that they expected him on, and they anticipated that he was stopping with his uncle at Long Branch; so the next day Mrs. Pemberton, the old lady, went up to Long Branch to see what had become with him, and she found that he had not been up there at all; she returned; then the next day Mrs. Caroline H. Pemberton went to Asbury Park, down town somewhere, to find out or to put men on search for him, and she returned; I don't know whether she went to Long Branch 20 or not at that time.

Q. Did his going away cause any excitement in the Look Out Cottages, with his mother and grandmother?

A. Apparently it did.

Q. Did you hear Mrs. Caroline H. Pemberton say where she thought he had gone?

A. Mrs. Caroline H. Pemberton said she believed he had run away, or else he had been killed; I suggested he had been killed, but she said she believed he had gone to Europe. 30

Q. When was that—after he went away?

A. This was the next day, or the third day after he had run away.

Q. Did Mrs. Caroline H. Pemberton tell you how much money her son had taken?

A. I don't exactly know the exact figures, but she said somewhere about $200 in money and the rest; she had altogether about $900, I understood her to say, but I won't be positive.

Q. Do you know whether Caroline H. Pemberton went to Long Branch to see her brothers?

A. She went the following Sunday after he ran away.

Q. Did old Mrs. Pemberton go too?

A. Yes, sir.

Q. How did they go?

A. They hired a rig at the livery stable at Asbury Park.

Q. Did you see the mother and daughter after they
10 returned from Long Branch, or either of them?

A. Yes, sir; I saw them both.

Q. Did you hear any talk there by the daughter, as to what satisfaction she had got from her brothers, or anything of that kind?

A. She said she had not got any satisfaction.

Q. When was it; after she came back—this was the Sunday she went with her mother?

A. Yes.

Q. Did you hear her say anything about the conduct
20 of her brothers before she went there that Sunday with her mother?

A. I think not.

Q. But after that Sunday you did?

A. Yes, sir.

Q. When after that Sunday did you hear her say anything about her brothers?

A. During that week.

Q. Whereabouts?

A. In the dining-room.

30 Q. At the table?

A. Yes, sir.

Q. To her mother was she talking?

A. Yes, sir.

Q. What did she say to her mother?

A. She said that her brothers Harry and John acted very indiscorded towards her son.

Q. What else did she say that you recollect?

A. She said she would get square with them.

Q. What was her manner?

A. She seemed to be very angry at the time on account of their disposition.

Q. Did she say anything which they had said at that time?

A. She said that her brothers would not look for Charles, and inasmuch as they would not look for him she would get square at some day.

Q. Did you ever hear the daughter say anything to her mother about a letter which Dr. Harry had written to the mother, and what the mother said to the daughter? 10

[Proponents' counsel objects to what the mother said.]

[Evidence admitted subject to objection.]

A. The old lady says to her daughter that she had received a letter from her son Harry in regard to Charles being a thief and had run away, and what was the use of keeping him there when be was nothing but an impostor and a thief; a little thief, stealing the money and going away to squander it, or words to that effect.

Q. What did the daughter have to say to that? 20

A. Her reply was that John and Harry was always opposing her, and was always trying to bar Charles out.

Q. That is what the daughter said?

A. Yes, sir.

Q. Do you recollect anything further?

A. Not on that subject.

Q. This was at the table, too?

A. Yes, sir.

Q. And during one of the meals?

A. Yes, sir. 30

Q. How long was that after they had been to Long Branch?

A. This was either the second week after Charles had run away; I didn't take any memorandum of this thing.

Q. Did you hear any conversation after Charles had gone away, at the breakfast table, between the mother and the daughter?

A. At the breakfast table the next day after they had found out Charles had gone.

Q. How many days was it after Charles had gone that they concluded that he had run away?

A. It was the second day.

Q. Then after that you say this conversation was at the breakfast table?

A. This conversation at the breakfast table, in regard to what I am about to remark, was the second day after Charles had run away; Mrs. Carrie H. Pemberton said to her mother that Charles was very foolish, for he
10 was the only child that she had, and that he would fall heir to her—of her property; that the property on the corner of Chelsea and Third avenue would be given to her, "isn't that so ma?" and the mother said yes.

Q. She said, "Isn't that so ma?"

A. Yes, sir.

Q. Did she speak to her mother more than once?

A. That was her habit.

Q. Did she say anything about Charles being the heir when she died?

20 A. Yes, sir; she said Charles would fall heir to all her property when she died.

Q. That is when she—his mother died?

A. No, his grandmother.

Q. Did you hear her say anything about how she proposed to divide her property among her children?

A. I heard the old lady say in conversation—

Q. This same conversation?

A. No, sir; in regard to the division of her property—she said in her bed room—

30 Q. In whose presence?

A. In the presence of Mrs. Schreves and myself, and Mrs. Carrie H. Pemberton, and Mrs. Pemberton, senior—they were all in the room.

Q. What did she say?

A. She said—how the conversation came up was about Mrs. Schreve working so hard; she said she did not see how Mrs. Schreve could work so hard with one child; she worked harder than she did with three; she says I have three children and "I expect to divide equally
40 between the three, what little I have accumulated; I

expect to see them all righted," and she says, "the property on the corner of Chelsea and Third avenue would be enough for Carrie as long as she lived, that her son John had been wronged in the property at Oceanport, and she wanted to see him righted;" this is what the old lady said.

Q. When was that?

A. This was after the flight of Charles.

Q. How long after he went away?

A. As near as I can judge, it was about two weeks. 10

Q. Do you recognize the counsel here, Mr. Stout?

A. Yes, sir.

Q. Have you ever seen him before?

A. I saw him in the dining room of Look Out Cottage.

Q. Have you any doubt upon that point whatever?

A. Not any.

Q. When was it you saw Mr. Stout at the table in the dining room of the Look Out Cottage?

A. It was in August, along about the first part of August, I should think, on the Sabbath he took dinner 20 there.

Q. Do you know when Mrs. Pemberton's will was drawn—did you hear of it at the time?

A. I don't know anything about when it was drawn, but I remember seeing parties come in the room, but what they were there for, I don't know anything about.

Q. Did you understand about the time it occurred that she had made her will, so that you heard about it?

A. I didn't hear it talked among any of the servants about any will being made. 30

Q. But you did see parties there?

A. Yes, sir.

Q. How many?

A. I saw two gentlemen at one time drive in front of the Look Out Cottages.

Q. Two or three?

A. Two gentlemen that I saw, and they went in the room where they resided.

Q. Do you know who they were?

A. I think that gentleman *there* is one of them. 40

Q. Mr. Stout?

A. Yes, sir.

Q. Did you know the other?

A. I don't think I did.

Q. When was it that you saw them there—what day in the week?

A. That I could not recollect.

Q. Was it before or after you saw Mr. Stout at the table in the dining room?

10 A. This was afterwards.

Q. What meal was he there at?

A. Dinner.

Q. And on Sunday?

A. Yes, sir.

Q. Do you remember whether or not it was the next day that you saw the gentlemen come there in the carriage?

A. He was there the Sunday before they came in the hack.

20 Q. Did you ever see him there more than once at a meal?

A. No, sir; he only took one meal in the house to my knowledge.

Q. This time when you saw him there at the dinner on Sunday, was it before or after this conversation which you had heard between the mother and the daughter at the table in the dining room, that you have told about?

A. I heard this conversation after he was there.

Q. After or before?

30 A. I think it was before.

Q. Are you pretty clear about it?

A. I think he was there after I heard this conversation.

Q. Are you pretty clear about that?

A. Yes, sir.

Q. I would like you to think about it, and be sure whether it was before or after?

A. I think it was before.

Q. Did you hear any conversation between Mr. Stout

40 and the mother and the daughter?

A. No, sir; the conversation that they had was rather compound; it was not on any particular subject.

Q. You don't recollect any of that?

A. No, sir; I think there was a reference made to the fast of Dr. Tanner, that is all.

Q. You remember that came in?

A. Yes, sir.

Q. Mr. Stout was not trying to starve himself to death, was he?

A. No, sir, not from the way he ate. 10

Q. What influence or control, if you observed, did the daughter appear to have over the mother?

[Objected to.]

Q. What did you observe in that way?

A. I observed a good many things as far as the control of the daughter over the mother.

Q. What did you see?

A. There was a great many instances in regard to the son.

Q. Charles, you mean? 20

A. Yes, sir, that Charles would want; he was very fond of music for one thing, and he wanted to study music, and the grandmother wanted him to go and study music, and the daughter was opposed to that idea, and wanted him to go to the medical school and study medicine, and the grandmother said she would send him off—she would pay his way as long as learning music was concerned—but the daughter said no, that it is no use throwing away his time studying music; she wanted him to go to the medical school and study medi- 30 cine; and there were other things there that helped the son to run away; it was on account of his mother being kind of abrupt to him; he wanted a little change once in a while to get shaved, and his mother would not give him any; I heard him ask her for twenty-five cents once to get shaved, and she would not give it to him, and the grandmother offered to give that amount, and she would not let his grandmother do it.

Q. When the old lady, Mrs. Pemberton, would offer to do those things, or would propose anything and it was 40

opposed by the daughter, what would be the manner of the mother, Mrs. Pemberton—whether she would submit or not?

[Objected to.]

Q. How was it in reference to that—do you recollect any case in the management of the servants or of the house where the old lady would propose anything and the daughter would oppose her?

A. The one I have named is one example, and when
10 the old lady would suggest a different arrangement of furniture in the room the daughter would oppose it.

Q. How was it as to the dining-room or bed-room?

A. There was an alteration she wanted made in the dining room, and it was opposed by the daughter; the tables were crowded and it was almost impossible for the waiters to get around, and the daughter opposed the proposition.

Q. Was there any other proposition of that kind which was made?

20 A. There was a reference made by the old lady about the furniture in the room on the complaint of the guests.

Q. In which rooms?

A. Up-stairs in the bed room, and the daughter opposed that, and said if the guests were not satisfied they could go away.

Q. You have mentioned a number of instances, were there other things that occurred along, without going into them specifically?

A. Yes, sir; other smaller things would come under
30 my observation that I saw.

Q. When the daughter would oppose the mother in those various matters, what was the mother's manner?

A. She would submit; she would say, "well, you can have your own way."

Q. State from your observation the influence which the daughter had over the mother, in anything which you saw, in which she attempted to exert an influence over her?

[Objected to. Objection sustained. Exception.]

Cross-examination by Mr. Stout—
Q. Where were you born?
A. In the state of South Carolina.
Q. A slave?
A. Yes, sir.
Q. You came north at what time?
A. I came north in 1864.
Q. Where did you first go?
A. After I came north.
Q. Yes? 10
A. I went to Connecticut.
Q. Whereabouts there?
A. Stratford.
Q. What did you do there?
A. I worked there in a private family.
Q. Whose?
A. George W. Thompson's.
Q. What is his address?
A. I don't know.
Q. What was it then—George W. Thompson, Stratford, 20 Ct.
A. Yes, sir; that is the only address I know.
Q. How long did you work for him?
A. Three years and a half.
Q. Where did you go then?
A. Do you want me to give a history of my life?
Q. I want you to answer my questions?
A. I went from there to Brooklyn.
Q. Who did you work for there?
A. For the same man. 30
Q. He moved there?
A. Yes, sir.
Q. How long did you stay there?
A. One year and a half.
Q. Do you know where that man is now?
A. No, sir; he may be dead for all I know.
Q. You don't know where he is?
A. No, sir.
Q. How long did you stay in Brooklyn?
A. One year and a half. 40

Q. Where did you go then?
A. Orange county, New York.
Q. Who did you work for there?
A. Charles W. Hulse.
Q. What is his address?
A. Washingtonville, Orange county, N. Y.
Q. What did you do for him?
A. Work on a farm.
Q. How long did you stay with him?
10 A. Thirteen months.
Q. When did you commence to work—what time in the year?
A. In May.
Q. And you left about July or August?
A. No, sir; I left in June.
Q. Why did you leave?
A. Because I wanted to change my position.
Q. Didn't he discharge you?
A. No, sir; never was discharged in my life.
20 Q. Didn't Mr. Hulse discharge you for stealing?
A. No, sir; nor no other man.
Q. Didn't Hulse discharge you for stealing?
A. He did not.
Q. You sold milk for him?
A. I did not.
Q. Didn't you peddle milk for him?
A. I never peddled milk in my life; you are mistaken in the individual.
Q. Didn't you sell milk for him?
30 A. I did not; he didn't sell milk.
Q. And didn't you keep the money and he discharge you?
A. No, he did not.
[Objected to.]
Q. Where did you go to from there?
A. I went from there to Port Jervis.
Q. Who did you work for there?
A. For Mr. Slosson.
Q. How long did you work for him?
40 A. Two years and six months.

Q. Where did you go then?
A. Long Branch.
Q. Who did you first work for there?
A. At Mr. Presbury's hotel, six seasons.
Q. Did you leave Mr. Presbury at the end of the season?
A. I left at the end of every season.
Q. Did you leave him at the end of the season?
A. Certainly; all the rest of the waiters did.
Q. What capacity did you occupy there? 10
A. As a waiter.
Q. You were not head waiter?
A. No, sir.
Q. Where did you go to from there?
A. I went from there to school.
Q. Whereabouts?
A. Hudson River School.
Q. How long did you stay there?
A. Three years.
Q. Then where did you go? 20
A. I object to the question.
Q. I want to know where you went to from there?
A. Well, sir, I went to school at Calverat, three years, but I did not spend three following years at college; I went there in 1871, the fall of 1871.
Q. I asked you where you went to when you went from school?
A. I came back to Long Branch.
Q. Who did you work for?
A. I worked for Mr. Presbury. 30
Q. Where did you go after you worked for Presbury?
A. I went to school.
Q. Then where did you go?
A. I came back to work for Mr. Presbury.
Q. After you left Presbury, and after you left school, where did you go?
A. I went to work.
Q. Who for?
A. For Mr. Presbury; after I left school I went back to work.

Q. After you were through school and Presbury both, after you got through the sixth season, where did you go?

A. Then I went to the Howland House, right next to the West End.

Q. What year was that?

A. 1877.

Q. I want to know where you went to from there?

A. I went back to school.

10 Q. After you got entirely through with school, who did you work for?

A. I have not got entirely through yet.

Q. How long have you known Dr. Harry Pemberton?

A. A number of years.

Q. How long have you known him personally?

A. This winter.

Q. Had you ever seen him before last winter?

A. Yes, sir; a number of times.

Q. Not to talk to him?

20 A. No, sir.

Q. When was the first time he spoke to you in regard to being a witness in this case?

A. The first time, as near as I can get at it, was in February.

Q. Last February?

A. Yes, sir.

Q. Where were you then?

A. Long Branch.

Q. Whereabouts?

30 A. Working for Mr. Stokes.

Q. Did he come to your house to see you?

A. No, sir.

Q. Did you go to his house?

A. No, sir.

Q. Where did he meet you?

A. I met him in a lawyer's office.

Q. Whose office?

A. Mr. Schroeder's.

Q. How did you come to be there?

40 A. I was called there.

Q. By whom?

A. By the lawyer.

Q. Did you know what you were going there for?

A. I had had a conversation with Mr. Schroeder; Mr. Schroeder called to Mr. Stokes' to see me.

Q. In regard to this case?

A. I suppose so; it was the subject he talked on.

Q. Did you tell him what you knew at that time?

A. I did, and no more.

Q. Did you tell him what you have told to-day? 10

A I did.

Q. Then you went up to the office?

A. I called over there another evening, and went to see him at the office, and I went with him; I didn't exactly go with him; he came there and I was ready.

Q. Is your memory very good as to what happened in 1880?

A. As far as my observation is concerned, my memory is all right.

Q. You said you saw me there at dinner one Sunday? 20

A. Yes, sir.

Q. Do you remember very distinctly about that?

A. Yes, sir.

Q. What time of the day did I get there?

A. That I am unable to say.

Q. I want you to be particular about that, for I expect to prove I was not there—do you remember distinctly what time I got there?

A. No, sir; I do not.

Q. You don't know what time? 30

A. I don't know the hour, but I know you were there.

Q. You remember me distinctly, do you?

A. Yes, sir.

Q. You are sure it was me?

A. It was somebody that looked like you.

Q. What kind of clothes did I have on, light or dark?

A. I could not describe that.

Q. You don't remember about that?

A. I suppose you remember that.

Q. I had whiskers all around my face the same as I have now?

A. Yes, sir.

Q. You are sure about that, are you?

A. I know it when I know a thing; I am positive.

Q. But you don't know what kind of clothes I had on?

A. No, sir.

Q. But you are sure I had whiskers all around my face?

10 A. Yes, sir.

Q. Remember, that was in 1880—what time of day did I go away?

A. In the afternoon.

Q, Who was with me?

A. When you were at the table, Mrs. Pemberton and Mrs. Pemberton, junior.

Q. Anyone else at the table?

A. No, sir.

Q. Was any lady with me?

20 A. Not as I know of; I didn't see any.

Q. There was nobody else at the table but us three?

A. No, sir; there could not be any other lady, or you would have brought her in to dinner.

Q. We did not talk on any subject except Dr. Tanner?

A. I remember that.

Q They did not make any will that day?

A. No, sir.

Q. You say that Mrs. Pemberton and her mother 30 slept together?

A. Yes, sir.

Q. How do you know?

A. There was only one bed in the room, so they must have slept together.

Q. Where was the bed-room?

A. In the south Look Out cottage, in the back room down stairs; they had a curtain in between the room where Charles slept—right in the room with them on a cot at the foot of the bed.

40 Q. Was there a table in that room?

A. They had a little table to write on; there is where they transacted all their business.

Q. You say the young man, Charlie, ran away and took some money?

A. Yes, sir.

Q. Do you know he returned that money?

A. I know he did not, because they told me so.

Q. Don't you know that he sent that back?

A. No, sir.

Q. Didn't he bring the notes back? 10

A. He brought them back that he could not use.

Q. Don't you know that he sent them back?

A. No, sir.

Q. Didn't he bring the money back?

A. No, sir, he did not; his mother told me so.

Q. That is all the way you know it?

A. That is good evidence.

Q. You say that the daughter used the words that she would get square with the boys?

A. Yes, sir. 20

Q. You are sure she used the words "get square"?

A. I know she did; perhaps she didn't say "square," but she would get even with them—words equivalent.

Q. I want her exact words?

A. That is about the words; that is the words she used.

Q. That she would get square with them?

A. Yes, sir.

Q. When was the date of this?

A. I don't know; if I had taken an interest in it I might have taken notes. 30

Q. Was it the 1st of August or in July?

A. It was not in July.

Q. When was it?

A. It was after he ran away.

Q. When did he run away?

A. Between the 27th and 28th of July.

Q. How soon after that was this conversation?

A. What conversation?

Q. About getting square with the boys? 40

A. That was after they returned from Long Branch.

Q. Was it over a week?

A. No, sir; it was about a week.

Q. It was before the 15th of August, wasn't it?

A. Yes, sir.

Q. And the daughter said to the old lady at that time that the son was very foolish to run away, because he would be heir to all the grandmother's property?

A. Yes, sir; she said it at the breakfast table.

10 Q. And the old lady said at that same time that she was going to let her property go between her three children?

A. Not at that time.

Q. Just before that?

A. No, it was after that.

Q. How soon after?

A. I don't know; about a week, I should judge.

Q. About the second week in July the old lady said she was going to let her property go among her three

20 children?

A. Yes, sir.

Q. And she also said at that time she was going to give the property on Chelsea avenue to the daughter?

A. Yes, sir.

Q. You say you saw me come there one evening with some gentlemen in a carriage, you are sure about that, are you?

A. Yes, sir.

Q. What time in the evening was it?

30 A. I should judge it was in the morning along about ten or eleven o'clock.

Q. Then we went in and had a will signed?

A. I don't know anything about that.

Q. Went in and did some writing?

A. I don't know; you went in there.

Q. In the back room of the south cottage?

A. Yes, sir.

Q. And the daughter went in?

A. Yes, sir; all went in together; she met you.

40 Q. We did some writing in there?

A. I suppose so; I don't know.
Q. Wasn't that the day the will was signed?
A. I don't know.
Q. That is the only time you ever saw me there?
A. No, sir.
Q. What other time?
A. In the dining room.
Q. I mean those two times?
A. Yes, sir; so far as I know; but you may have been there. 10
Q. So far as you know, those are the only two times?
A. That is all.
Q. Do you know who was with me?
A. No, sir.
Q. State what kind of a carriage it was?
A. It was what they called a double phaeton.
Q. With a standing top?
A. The top was down at that time.
Q. Did you notice the horses?
A. No, sir. 20
Q. You noticed the driver, didn't you?
A. No; I could not recognize the driver now.
Q. He was a colored man, wasn't he?
A. I don't know.
Q. Don't you think he was?
A. No, sir.
Q. Do you think he was a white man?
A. I expect so, because most all the stables are run by white men.
Q. What do you think about that? 30
A. I could not pass any opinion on that at all.
Q. What kind of a gentleman was this with me?
A. I told you I didn't remember the other gentleman; I don't remember him at all; the only reason why I remember you was, because it was after you had dined there.
Q. That is the reason you remember me?
A. Yes, sir; I generally recognize a man if I see him again.
Q. You had never seen this other man?

A. Not that I know of.

Q. He had never been to the house to your knowledge?

A. Only that time to my knowledge.

Q. Do you remember how that carriage was painted?

A. It was a black carriage.

Q. All black?

A. No.

Q. Red running gears?

10 A. It was striped.

Q. You are quite sure about that?

A. I think so.

Q. How much are you paid for coming here?

A. I am not paid at all.

Q. You have not been paid anything?

A. My fare was paid here, that is all, and my subpœna.

Q. You have not been promised anything else?

A. No, sir.

Q. You were sick some time ago?

20 A. No; never sick in my life at all.

By Mr. Robbins—

Q. Are you working for Mr. Stokes now?

A. Yes, sir.

Q. At the hotel at Brielle?

A. Yes, sir; the same man I worked for ever since I left Mrs. Pemberton.

Q. This talk between Mrs. Pemberton and her mother and Mrs. Schreve, how long was that after Charley went away?

30 A. I should judge it was about two weeks, as near as I can come to it; it may have been a shorter time.

Q. You have spoken about the time Mr. Stout and another man came to the Look Out Cottage in a carriage?

A. Yes, sir.

Q. You don't know whether that was the time the will was drawn or not?

A. No, sir; I do not.

Q. In point of fact, you don't know when the will was drawn?

A. No, sir, I do not; I don't know that there was such a thing as that transacted.

Catherine Johns, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. Where do you reside? 10

A. New York City.

Q. You are a resident of New York City?

A. I am.

Q. Have you made the acquaintance of Mrs. Pemberton, the old lady, and her daughter?

A. Yes, sir.

Q. Where did you make their acquaintance?

A. New York City.

Q. Were you keeping a boarding house in New York City at the time? 20

A. I was.

Q. And what were they doing?

A. Keeping a boarding house.

Q. Which one of them?

A. I don't know.

Q. But they were keeping a boarding house in New York City?

A. Yes, sir.

Q. How near to yours?

A. Next door to one house and opposite another. 30

Q. What year did you make their acquaintance?

A. The latter part of the year 1879.

Q. After that did you go to Asbury Park to live?

A. I did.

Q. What year did you go to Asbury Park to live?

A. 1880.

Q. What time in the year about?

A. About the first of the season.

Q. And you went there for the purpose of keeping a boarding house? 40

A. Yes, sir.
Q. And you kept one there?
A. I had three cottages there.
Q. How near to Mrs. Pemberton's boarding house?
A. Within four blocks.
Q. Did you keep up your acquaintance with them?
A. I did.
Q. Visit them?
A. Yes, sir.
10 Q. How often about?
A. Oh, quite often.
Q. What times in the day?
A. In the evening, usually.
Q. Do you remember the daughter's son, Charles?
A. I do.
Q. Do you remember the occurrence of which mention has been made here—of his going away suddenly?
A. Yes, sir.
Q. Did you understand from Mrs. Pemberton how he
20 came to go away, or what he went with, the circumstances?
A. I did.
Q. What did you understand from her?
A. I understood that he ran away with this money.
Q. Did you hear it from her?
A. Yes, sir; from her.
Q. Did you hear also from her, and if so, state what you heard what part her brothers took in that, or what they said about it—do you remember hearing her speak
30 of that?
[Objected to unless in the presence of the testatrix.]
A. It was in the presence of the old lady.
Q. Do you know of her going to Long Branch?
A. I do.
Q. To her brother's?
A. Yes, sir.
Q. For what purpose did you understand she went?
A. To get them to interest themselves in Charles; to look him up.

Q. How soon after he ran away was it, you understood they went to Long Branch?

A. The mother went down on Thursday, and the daughter went down on Friday.

Q. Next after he went away?

A. Yes, sir.

Q. Did you understand from them, or either of them, that a letter had been written from Dr. Harry Pemberton to his mother?

A. I did; and heard it read. 10

Q. Did you see it?

A. I saw it as I see it now.

Q. Is that the letter?

A. I should judge it was; I could not tell.

Q. You say you heard this letter read; see if this is the letter:

"July 29th, 1880.

"DEAR MOTHER:—

"Just got your note, about my taking up note. I can't do it. I owe the money, perhaps, but it is pledged as 20 collateral on stocks, and it is impossible to use it now, and I haven't it, and shall certainly not feel obligated to do it just now. The snake that you warmed has stung you as I have said, and I believe it is a providential retribution to those who ostracize their own blood for him, and a just God's deserts to a sister who I was always good to, and if fortune had been liberal I might have been generous. This is sincere and heartfelt, for I feel that she has played for a large stake on the prejudice and eccentricities of an old mother to the detriment of 30 a brother, and has biased that mother's love in favor of an impostor and fraud. These lines, though hard, are and may he who is enthroned on high paralyze me if what I write my conscience does not feel.

"Your affectionate son,

"HARRY."

Q. Did you hear that read?

A. I heard that read.

Q. By whom, and in whose presence?

A. By the daughter, in the mother's presence. 40

Q. What was said at that time by the daughter to the mother about this brother?

A. The daughter simply said, "You see, mother, what they do and how they act."

Q. What did the mother say?

A. The mother said she was always finding fault with her brothers; she didn't know but what they were right.

Q. What was the manner of the daughter?

A. Oh, she was very angry, very angry.

10 Q. On this occasion—

A. She swore she would have her revenge on the brothers; she would show them what she could do.

Q. Were you there after this occasion?

A. I was.

Q. Do you remember any occasion when you were present with Mrs. Pemberton, senior, alone, and had a talk with her alone?

A. I do.

Q. Upon the subject of this will or a will; do you re-
20 member when that was—I mean after this letter was produced and read?

A. It was about the 10th of August.

Q. What makes you think it was the 10th of August?

A. Because it was following this other matter that I have referred to.

Q. Of the excitement about the letter?

A. Yes, sir.

Q. State what you heard on that occasion, and what occurred?

30 A. On the 10th of August I called there in the evening and saw the mother; the daughter was absent attending to her duties; the mother seemed to be in an unhappy state of mind; I asked her about Charley and their affairs generally; she said Carrie was in a dreadful state of mind; that she threatened to destroy herself if she did not make a will in her favor.

[Proponents' counsel objects to all the evidence in relation to what the testatrix said.]

[Admitted, subject to exception.]

Q. Did she say how she threatened to destroy herself —in what manner?

A. She would drown herself in the ocean.

Q. What was the manner of the mother—cool and collected, or excited?

A. No, she was troubled.

Q. Did you say anything to her at that time?

A. I said she was not likely to do anything of that sort.

Q. What did she say to that? 10

A. She said I didn't know her as well as she did; I think she alluded to her having tried to destroy herself once before.

Q. And that you didn't know her as well as she did?

A. Yes, sir.

Q. Anything else that occurs to you in that conversation?

A. She spoke of what a dreadful disgrace it would be to the family; she would have to do it for peace sake.

Q. What would be a dreadful disgrace? 20

A. Her destroying herself.

Q. And that she would have to do what for peace sake?

A. Make a will in her favor until this difficulty had blown over, and then she could destroy it or would destroy it afterwards.

Q. Do you recollect in that conversation whether she said anything that her daughter Carrie had said to her about her brothers being able to support themselves?

A. She said Carrie was so angry at the brothers for 30 their conduct towards her son Charles.

Q. Did she say anything more?

A. I think she did, but I cannot call it to mind at this point.

Q. Have you ever been a witness before?

A. I have.

Q. Not here?

A. Not here.

Q. Did you see her on any occasion after that, and if so, when?

40

A. The following week.

Q. Where and under what circumstances?

A. I had been there a number of times in the meantime, after the tenth of August.

Q. Had you any conversation on the subject of the will?

A. I never alluded to it.

Q. I want to call you attention to that which relates to the will; you say you were there a week after?

10 A. Yes, sir.

Q. Did you have any conversation on the subject of the will, and if so, what was it?

A. I saw the old lady alone, the daughter went out of the room for something, and I asked her if she had made a will, and she said yes, she had.

Q. Did she say why she did it?

A. I didn't ask her, she simply said she had, and very much against her will or wishes.

Q. Did you say anything then, as to whether she could

20 destroy it or not?

A. Yes, sir; I made the general remark that she could destroy it as she liked afterwards, she said no, Carrie would never be satisfied, without she carried it herself—the will.

Q. Did she say that Carrie gave any reason why she wanted to carry it?

A. That the brothers would get it away from her.

Q. She said that Carrie said the brothers would get it away if the mother kept it?

30 A. Yes, sir; if the mother kept it.

Q. Anything else at that conversation that you recollect?

A. She did not see why Carrie should want all the property, that she did not intend to leave a will; she never intended to make one.

Q. Anything else?

A. She said she intended that her children should share alike, that the property should be equally divided.

Q. Anything else?

40 A. No, sir.

Q. Do you recollect any other conversation after that, on that subject, with the old lady?

A. Nothing particular.

Q. Where were you the next season, the year of 1881?

A. Asbury Park.

Q. Where was the old lady and Mrs. Pemberton?

A. At the same place.

Q. They rented the same cottage?

A. Yes, sir.

Q. You don't know who they rented it from? 10

A. No, sir.

Q. But you know they had the same cottages the next year?

A. Yes, sir.

Q. Did you see, and if so, about what time, the old lady upon this subject of the will?

A. When I went down the following season I called there as I usually did; I saw them a number of times; but the daughter never said anything about the son, and I never mentioned it to her; but I asked the mother 20 about it—how he had come to return.

Q. Then the son had returned?

A. Yes, sir; he had returned by 1881.

Q. And you asked the old lady how he came to return?

A. Yes, sir; she said that he had returned in the fall of 1880, and that they had received property from England as well.

Q. Did she tell you about her daughter getting an annuity from England? 30

A. Yes, sir; the whole family.

Q. The annuity didn't go to the son, did it, from England?

A. I understood it so; in fact, I am positive she said so.

Q. And she herself had property from England?

A. Yes, sir.

Q. What did she say about the will?

A. I simply made the remark that her daughter must be pleased with the son having returned and coming 40

into this property, and so on, at this time; I asked her if Carrie had the will as well, and she said, "Oh, no! I got it from her."

Q. That was in 1881?

A. 1881.

Q. Anything else?

A. She said she had destroyed it, that is all.

Q. Do you remember on what occasion that was?

A. The same one I speak of.

10 Q. She said she had destroyed the will?

A. Yes, sir.

Q. The old lady?

A. Yes, sir.

Q. Did she say anything about her being fortunate in getting it?

A. Not at this time.

Q. You may state on what occasion she said that?

A. It was some time later she made the remark to me —this was when she came to make a call upon me; she 20 asked if I did not think she was fortunate in getting the will from Carrie, her daughter; that is all.

Q. Did she say whether she had trouble in getting it?

A. I did not ask her—oh, yes, by the way, she did; she said she had a great deal of difficulty in getting it.

Q. What did you understand her to mean—getting it from whom?

[Objected to.]

Q. What did she say on that occasion, as to how she had trouble in getting it?

30 A. From Carrie, her daughter.

Q. Did she describe to you that trouble?

A. No, sir; I asked her no questions.

Q. Do you know whether the daughter exerted a great influence over the mother?

[Objected to.]

By the court—

Q. Did you observe anything which would enable you to form any opinion upon that question?

A. In 1880, when Mr. Redway mailed the notes to

Mrs. Carrie Pemberton, I was there and heard her ask her mother to sign them; she said no, she did not care to; and after some remarks Mrs. Carrie H. Pemberton said they had to be returned at once, indorsed; that Mr. Redway would not hold the cottages, and she said she did not care to be drawn into another boarding house; "Well, mother," she says, "you must, I have got to mail them;" I didn't see them signed, I don't know whether she did or not; I was there when they received them, at 68 West Thirty-eighth street. 10

By Mr. Vredenburgh—

Q. That was in New York?

A. Yes, sir.

Q. Did you hear Mr. Redway sworn this afternoon?

A. I did.

Q. Were you there when he was there?

A. No, sir; I was there when the letter was received with the inclosed notes, at Mrs. Pemberton's.

Q. They were not then signed?

A. They were not. 20

Q. You did not see Mr. Redway there afterwards?

A. He was not there then.

Q. Do you remember seeing Mr. Redway there afterwards or not?

A. No, sir; the first time I ever saw Mr. Redway was at his office in Asbury Park; I went there with Mrs. Pemberton.

Q. Did you see any instance of the influence exerted by the daughter upon the mother at Asbury Park; try and recall anything you observed? 30

A. Oh, yes; whatever she asked the mother to do, it had to be done.

Q. Did you see that occur on more than one occasion?

A. I know of different instances where Carrie Pemberton spoke of small matters.

Q. Do you know who influenced the mother to embark in the building of the Garfield House?

A. I know nothing about it.

Q. Did you ever see the mother's will successfully opposed to the will of the daughter?

A. No, I never did.

Q. The mother yielded to the daughter, I understand you to say?

A. Yes, sir.

Q. If you can recollect any other instance, I would like to have them?

A. I can recollect one, where the daughter told the
10 mother that she believed one reason why Charles ran away, was because he never had a cent in his pocket, and she didn't know that she could blame him.

Q. What did the mother say to that?

A. She said she didn't know why she should say that, because she always had, or always made out to get whatever she set out for.

Q. What made you think from that, that the daughter exerted an influence over the mother?

A. It was her general tenor, that was all; I called
20 upon them as a friend; I was not a formal caller.

Q. I do not get your idea in that instance, where do you say the influence was exerted?

A. I did not understand you asked that point particularly; I understood you to ask if I knew of any other instance that I could mention.

Cross examination by Mr. Stout—

Q. In 1880 you kept a boarding house in Asbury Park?

A. Yes, sir.

30 Q. Did you in 1881?

A. Yes, sir.

Q. And 1882?

A. Yes, sir.

Q. And do you now?

A. I am not in business now.

Q. Where do you reside now?

A. 52 East Forty-ninth street, New York.

Q. When was the first time you were approached in relation to this matter?

A. By whom?
Q. By anyone.
A. This case?
Q. Yes.
A. Last winter.
Q. By whom?
A. Dr. Harry Pemberton.
Q. Do you know how he knew of your knowing anything about the case?
A. Because he was introduced to me. 10
Q. Where?
A. 68 West Thirty-eighth street.
Q. That was before the mother and daughter lived at Asbury Park?
A. Yes, sir.
Q. He didn't know you lived at Asbury Park?
A. Yes, sir, I dare say he did.
Q. You never met him there or saw him there, did you?
A. Yes, sir, I think I did. 20
Q. To speak to him?
A. Yes, sir.
Q. You and Carrie Pemberton are not on very good terms, are you?
A. Not on bad terms.
Q. But you are not on good terms?
A. I am here as an unwilling witness.
Q. You and Carrie Pemberton don't speak?
A. Yes, sir.
Q. When did you last speak to her? 30
A. Last summer.
Q. It was merely a bow of the head?
A. Oh, no, sir, not at all.
Q. You have not spoken to her since last summer?
A. I have not seen her.
Q. You would not speak to her if you met her?
A. I don't know why I should not.
Q. You kept a boarding house not very far from Carrie Pemberton?
A. Not far. 40

Q. What was the name of your boarding house?

A. John's Cottages.

Q. Carrie Pemberton succeeded very well in keeping a boarding house?

A. I think likely she did.

Q. Much better than other people?

A. Undoubtedly she did.

Q. And much better than you did?

A. Some one to back her, perhaps.

10 Q. Is that a fact, much better than you?

A. I don't think she did.

Q. You say on those occasions when you visited them they were friendly calls?

A. Yes, sir.

Q. You did not call to see Carrie Pemberton?

A. I did call to see Carrie Pemberton.

Q. But it was very seldom that you saw Carrie, only just for a moment or two?

A. No, I always saw her.

20 Q. You and the old lady were the ones that sat and talked?

A. Only when she was absent.

Q. Wasn't it almost always that she was absent?

A. No, sir.

Q. Do you know of any instances where she sat during the whole of the time you were there, or the principal part of the time?

A. To recollect day and date.

Q. No, any particular time without the date?

30 A. I think I can.

Q. When?

A. When I came down there I stopped there.

Q. You are quite sure there was but one time, when you were in conversation with the daughter and the old lady together?

A. No, sir; I know there was more.

Q. How many was there?

A. I could not tell you; there were three seasons that I called.

Q. Every time you saw the old lady you had a conversation about the will?

A. No, sir.

Q. Half the time?

A. No, sir.

Q. The majority, wasn't it?

A. No, sir.

Q. How many times out of the number that you did call?

A. You have them there; three or four times. 10

Q. She talked about the will and told you about her private matters?

A. No, sir; nothing beyond that.

Q. Did she talk to you about anything else, besides the will, while you were there?

A. Yes, sir; about different things; different plans of Carrie's.

Q. She was very much interested in Carrie's success?

A. Naturally.

Q. She was, wasn't she? 20

A. Certainly.

Q. Didn't she say to you upon one occasion that her sons did not act to her as sons?

A. Never; quite the contrary.

Q. Did she ever say she would like to live with them?

A. I don't know that she did.

Q. Never expressed a desire to live with the sons to you?

A. I could not say that she did.

Q. Do you know of any time that she did live with her sons? 30

A. I know of two or three times when she stopped there.

Q. Just when she was at Long Branch on business?

A. Or, in other words, as a matter of convenience.

Q. When were the most of those times that you called upon the old lady?

A. I didn't make a personal matter of calling on the old lady.

Q. In what year? 40

A. 1880, 1881 and 1882.

Q. Did you ever see the old lady around Asbury Park?

A. No, sir; except when she called upon me.

Q. She did come and call on you?

A. Yes, sir.

Q. Did you ever know of her being down town attending to matters?

A. Yes, sir.

10 Q. You know she did go down quite frequently?

A. Not often, except in extreme emergency.

Q. You know she did go?

A. Very seldom.

Q. You know of her going to Long Branch on the cars alone?

A. Yes, sir; I know of her going once.

Q. Don't you know of her going more than once?

A. No, sir.

Q. Did she tell you what she did with the will after

20 she had made it?

A. I didn't ask her.

Q. You are quite sure she didn't tell you that?

A. I didn't ask her and she did not tell me.

Q. You told her she could destroy her will?

A. She said she was very unhappy.

Q. I did not ask you that?

A. What did you ask me.

Q. You told her she could destroy the will?

A. Yes, sir.

30 Q. And she said what—that she could or could not—which did she say?

A. I want to understand the question that you wish me to answer.

Q. What did she say; that she could destroy it, or could not?

A. That she could.

Q. Do you know when that was that she said she could?

A. On the tenth of August.

Q. On the tenth of August she said she could destroy it, or would destroy it?

A. She would destroy it when this had passed over.

Q. Did she tell you what dispositions she had made of her property?

A. I did not ask her.

Q. Did she tell you that she had once before made a will?

A. No, sir.

Q. Did she tell you that Carrie once had made a will before that? 10

A. No, sir.

Q. Didn't she tell you in the presence of Carrie that she and Carrie once made their wills and destroyed them?

A. Never.

By Mr. Vredenburgh—

Q. You have just said that she made a remark to you that she felt unhappy; what was that; give the whole of what she said about that; unhappy for what reason? 20

A. She never intended to make a will; she intended that her children should share her property equally, share and share alike; she did not see why Carrie should want it all.

Q. And in that connection did she say she felt unhappy?

A. It was at this time when I had the conversation with her.

Q. You were asked whether she spoke disparagingly of the boys, and you said quite the contrary; how did she speak of her sons? 30

A. In the kindest terms, and of Dr. Harry being her favorite son.

Q. Did you, in fact, not only visit there, but sleep at the Look Out cottage?

A. Yes, sir.

Q. On more than one occasion?

A. Yes, sir.

[Caveator's counsel offers in evidence the letter dated July 29th, 1880. Marked No. 1 for identification.]

Henry H. Pemberton, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—
Q. Do you know the handwriting of that letter?
A. Yes, sir.
Q. Whose is it?
A. My sister's.
10 Q. Have you seen her write?
A. Often; that is her handwriting.
[Caveator's counsel offers letter in evidence, dated November 30th, 1880. Marked No. 2 for identification.]

[The examination of the following witnesses was continued by consent in the absence of the court.]

Emma Hooper, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—
Q. Where do you live?
20 A. Eatontown.
Q. Did you known Caroline Pemberton?
A. I did.
Q. When she was living?
A. Yes, sir.
Q. And you know her daughter, Caroline H. Pemberton?
A. I do.
Q. Did you ever work for either of them?
A. Mrs. Caroline H. Pemberton I worked for.
30 Q. Whereabouts?
A. Asbury Park.
Q. At what cottage?
A. Look Out cottage.
Q. How long did you work there?

A. From the first week in June until the second day of September.

Q. Of what year?

A. 1880.

Q. What did you do there?

A. Done laundry work.

Q. Did you know Mary Williams?

A. I did.

Q She worked there the same time you did?

A. She did. 10

Q. You stayed longer than she did?

A. Yes, sir.

Q. Do you know anything about the time that Mrs. Pemberton made a will, the old lady?

A. From what she said; I asked her, and she told me —Carrie H. Pemberton.

Q. Carrie H. told you?

A. Yes, sir.

Q. What did you know about it—what made you think there was anything going on in the house? 20

A. Because she looked worried.

Q. Did you see any men there, or hear any talking?

A. I heard talking in her room.

Q. In the evening?

A. Yes, sir.

Q. What time?

A. About eight o'clock—between seven and eight.

Q. Did you see the men in the room?

A. I didn't see them.

Q. Where were you when you heard the talking? 30

A. In between the two houses—the board walk between the two houses.

Q. Where was it you saw Mrs. Carrie H. Pemberton?

A. Near the step going in her mother's room.

Q. Whether or not she went into her mother's room?

A. She went in.

Q. Where were the men talking?

A. In her mother's room.

Q. And she went in there while they were talking?

A. Yes, sir. 40

Q. Where they were talking?
A. Yes, sir.
Q. Did you see her come out?
A. I did not see her come out.
Q. You don't know when she came out?
A. No, sir.
Q. Did you see the men go away?
A. No, sir.
Q. Were you there when Charles left?
10 A. Yes, sir.
Q. Do you know anything about his taking any money?
A. What she said.
Q. Who said so?
A. Mrs. Carrie H. Pemberton.
Q. What did she say?
A. She said he took two important books and about $400 in money.
Q. Say anything about notes?
20 A. Yes, sir; a lot of notes.
Q. You were not there when he came back?
A. No, sir.
Q. Do you know anything of her going to Long Branch to see her brothers?
A. Yes, sir; she went there to see them.
Q. Did you hear her say anything about the way her brothers talked about her son?
A. I did not.
Q. Anything about any letter which Dr. Harry had
30 written?
A. I did not.
Q. Did you hear her say anything about herself, and about her being a lone woman, or anything of that kind, after Charles went away?
A. I did
Q. What did she say?
A. She said she would be left a lone poor girl.
Q. Say anything about her support being gone?
[Objected to as leading.]

Q. When was it you heard her say she was a poor lone woman?

A. It was after Charles went away.

Q. How did she come to say to you that her mother had made a will?

A. Because I asked her what was the matter with her.

Q. Was that at the time you saw her going in the room?

A. Yes.

Q. Where had you been? 10

A. I was coming out of the kitchen.

Q. And there you saw Mrs. Carrie H. Pemberton?

A. I spoke to her and asked her what was the matter, as she was going in, and she said ma was making a will.

Q. From what you observed, what made you think she was worried?

A. Because she was distressed.

Q. And then you asked her this question, and then went on?

A. Yes, sir. 20

Cross-examination by Mr. Stout—

Q. The old lady looked very bad?

A. Yes, sir.

Q. Very much down hearted?

A. Yes, sir; at times.

Q. But at this time when she made her will?

A. I didn't see her.

Q. Why did you ask what ailed her?

A. That was Carrie H. Pemberton.

Q. Then the daughter looked bad? 30

A. Yes, sir.

Q. She felt so bad because her mother was making a will?

A. I don't know whether that made her feel bad or not.

Q. She felt bad, because her mother made her will?

A. I said she looked distressed.

Q. That is, the daughter looked bad?

A. Yes, sir.

Q. And you asked her what was the matter?

A. Yes, sir.

Q. And she said her mother was making her will?

A. Yes, sir.

Q. And that was the reason she looked bad?

A. I could not say; she might have had other troubles too.

Q. She looked distressed?

A. She looked bad and worried.

10 Q. The old lady didn't look bad?

A. I didn't see her any more that evening.

Q. But the daughter looked bad a good deal of the time?

A. Of course, the son ran away with the money; enough to make anyone look bad.

Q. Who came to you to get you to be a witness?

A. The doctors.

Q. Which one?

A. Both of them.

20 Q. Both came down?

A. Yes, sir; in a carriage.

Q. How long ago?

A. About a week ago.

Q. How did they know you knew anything about it?

A. I don't know.

Q. How did you come to work for Carrie Pemberton?

A. Because she came to the Branch and hired me.

Q. She got you through the agency at Long Branch?

A. Yes, sir.

30 Q. And that is the way the doctor knew you were a servant there?

A. I don't know how he knew it.

Q. When was this you saw two gentlemen come there, when the old lady made the will?

A. I didn't say I saw two gentlemen come there; I saw they were in the room; I didn't say that I saw any one.

Q. When was this?

A. It was through the week.

40 Q. Was it in the morning or afternoon?

A. About eight o'clock.

Q. In the morning?

A. No, at night; after tea.

Q. What time in the season, the forepart of the season?

A. No; I don't call August the forepart of the season.

Q It was the last of August?

A. It was the sixteenth of August that the will was made.

Q. How do you know it was? 10

A. Because I know it was.

Q. Who told you?

A. Because I know the date they were in there.

Q. How do you know the date?

A. Because I do.

Q. How do you know the date?

A. Don't you think anyone is liable to know the days and dates?

Q. How do you know the date of that?

A. Because I said it was on the 16th. 20

Q. Don't you know this was dated the 17th; look at that will and see if it was on the 16th?

A. It was on the 16th when I was in there, because I saw papers that would show it was on the 16th.

Q How do you know it was on the 16th?

A. It might not have been the 16th, but I took it for the 16th.

Q. You don't pretend to say it was the 16th?

A. I think it was the 16th.

Q. Did the doctor tell you it was the 16th? 30

A. No.

Q. What did he tell you?

A. He didn't tell me anything what it was.

Q. What date did you go to work for Mrs. Pemberton?

A. The second week of June.

Q. What day?

A. I don't know.

Q. What day of the month did the young man run away?

A. On the 27th of July. 40

Q. When did you hear of that first—here in court?
A. No; for I was there when he went away.
Q. When did you leave Carrie Pemberton?
A. The second of September.
Q. You wanted to work for her this year?
A. No.
Q. You wanted to last year?
A. No; not particularly.
Q. You went and asked her to let you work?
10 A. No; I didn't.
Q. And she told you she didn't want you?
A. Indeed she did not.
Q. You are sure about that?
A. I am sure.

By Mr. Robbins—

Q. You spoke about Mrs. Carrie H. Pemberton looking worried; didn't she look worried because she was trying to get her mother to make a will and get her property away from her brothers?
20 A. I would not like to say that.
Q. It was enough to make her look worried?
A. Yes, sir; it was enough to make her; I was very much worried myself.

By Mr. Stout—

Q. You looked distressed?
A. I don't know how I looked.
Q. You felt distressed because the old lady was making a will?
A. I don't know anything about it; it didn't concern
30 me.
Q. You say you felt distressed over it?
A. I didn't say I felt distressed at all.
Q. You said you felt bad?
A. I felt bad about the boy going away with the money and making his mother look so bad.
Q. Didn't you feel bad because the old lady was making a will?
A. No, sir; I didn't feel sorry; of course I didn't.

Mary Williams, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—

Q. Where do you live?

A. I live at Long Branch.

Q. Did you ever work for Mrs. Carrie H. Pemberton?

A. I did.

Q. Where?

A. Look Out Cottages.

Q. When? 10

A. In the year 1880.

Q. When did you go there?

A. I went there about the twentieth of August.

Q. The twentieth of August?

A. The twentieth of June, I mean; I made a mistake, for I left there in August.

Q. When did you leave there?

A. I left there about the eighteenth of August.

Q. Of 1880?

A. Yes, sir. 20

Q. The same year you went there?

A. Yes, sir; I was taken sick the reason I left.

Q. What was your business there during the time you were working for Mrs. Pemberton?

A. Waitress and chambermaid.

Q. Did you know both Mrs. Carrie H. Pemberton and her mother?

A. Yes, sir; I took care of their room.

Q. Did they both occupy the same room?

A. Both the same room and the same bed; there was 30 but one bed in the room.

Q. Do you remember when Charles left there?

A. I remember when he ran off with the money.

Q. Was that when you were working there?

A. Yes, sir.

Q. Do you remember the date that he went away—what month?

A. Yes, sir; it was in July.

Q. Can you tell about what part of the month?

A. I think it was about the twenty-seventh.

Q. Do you know anything about his having taken any money away with him, or any checks or bank books?

A. I heard he had some notes, and I heard he had a certificate for gold or silver to the amount of $50.

Q. Who did you hear that from?

A. From his mother and his grandmother; I heard his mother speak of it to some of the boarders, and the
10 amount of money she said would make about $400, and he had two bank books; she told it in the kitchen before us all.

Q. Did his going away make any excitement at the house there?

A. Yes, sir; they were very much worried.

Q. Do you know anything of his mother going to Long Branch to see her brothers about it?

A. His grandmother went first, went down about the second day after he went—on Thursday.

20 Q. And then when did his grandmother and mother go together?

A. They both didn't go together until about Sunday.

Q. They did both go together?

A. Yes, sir, and got his picture somewhere at Long Branch, and brought it up.

Q. Did you hear Carrie H. Pemberton say anything about the way her brothers had spoken of Charles, or whether they would help search for him?

A. She said they did not interest themselves any, and
30 that she would get square with her brother; I didn't know that she had but one brother.

Q. Did she mention which one?

A. I only know she had one; she said "brother;" she didn't say "brothers," she said "brother;" I didn't know she had but one, and that was Dr. John; I don't know nothing about Dr. Harry.

Q. Did you hear her say anything of that kind more than once?

A. No, sir, I didn't hear her say so more than once,
40 and she spoke it as though she was mad.

Q. Do you know this woman that she spoke to?

A. Mrs. Zookman, a Jew lady that boarded there.

Q. What was her manner—how did she act at the time she said this?

A. She acted as if she was very angry with her brother; I should suppose she was from the way she spoke.

Q. Did you see Mrs. Carrie H. Pemberton meet anybody coming to the house there, any gentlemen coming to the house before you left?

A. Yes, sir, three gentlemen, and one she spoke to right on the board walk, and took them in her room. 10

Q. Do you remember what day of the week it was?

A. I think it was on Tuesday, if I am not mistaken.

Q. Was it on Monday or Tuesday?

A. It was Tuesday, I think.

Q. Do you know who the gentlemen were?

A. I didn't know either one of them.

Q. Do you know Mr. Stout?

A. I don't know him.

Q. Do you know this gentleman who sits here, the lawyer? 20

A. The gentleman looks like I have seen him on the street, but I don't remember of seeing him at Mrs. Pemberton's.

Q. What time were they there?

A. Half past seven or eight.

Q. Come in a carriage?

A. I didn't see a carriage; I saw the gentlemen coming down the walk and she shook hands with one of them, and they went in the room; I was lying on the bed in my room and I looked right through. 30

Q. Did you see what they were doing?

A. No, sir; but I went through the room and she said to me—

Q. Who said to you?

A. Mrs. Caroline H. Pemberton, she said something about a book, and I didn't pay any attention, and she said "never mind," and I came out and shut the door; there were three gentlemen in there, but I did not know who they were.

 40

Q. What ladies?

A. Mrs. Pemberton and her mother.

Q. Do you know how long Mrs. Carrie H. Pemberton remained in the room?

A. The balance of the evening, I guess; I didn't see her or here her no more.

Q. You left her there?

A. Yes, sir; and she had no where else to go, except in the boarders part, and she didn't often go in there.

10 Q. Where did Mrs. Pemberton, the mother sit, when you went there?

A. Either at the foot of the bed or on the other side, I don't know.

Q. Sat on the bed?

A. No, on a chair by the side of the bed.

Q. Do you know Mrs. Johns who was sworn in the case to day?

A. Yes, sir; I made a cot down for Mrs. Johns one night there.

20 Q. And she slept there?

A. Yes, sir; it was raining hard and she could not go home.

Q. As to her coming there frequently?

A. Yes, sir; very frequently, and always after tea.

Q. Did you see her there in conversation with Mrs. Pemberton and her daughter?

A. Yes, sir; she was all the company that came to see Mrs. Pemberton at all.

Q. Was she there much after Charles left?

30 A. Yes, sir; right smart.

Q. Do you remember any time when the daughter and the mother were together in the bed room, when the daughter said anything about her mother making a will?

A. Yes, sir; I remember one time.

Q. Was that after Charles had gone?

A. Yes, sir.

Q. How long after Charles had gone?

A. Maybe a week or maybe more.

40 Q. It was no less time?

A. I think it was about a week.

Q. What occurred there?

A. I was pumping water to go through the house with it, and Mrs. Pemberton and her mother were lying on the bed, and she was talking to her about a will, Mrs. Pemberton was talking to her mother, and she said, "Carrie don't bother me so about it;" I didn't pay much attention for I knew it was not my business, she said, don't worry so much about the will.

Q. The mother said that to the daughter? 10

A. The mother said to the daughter, "Carrie don't worry me so about it."

Q. How do you know they were talking about a will?

A. Because I heard her say, "mama you ought to make a will," and she said, "indeed mama, you ought to make a will;" the pump was in her room and I was pumping water at the time.

Q. What were you pumping a bucket of water?

A. A pail of water, to carry it up through the house.

Q. How long were you there? 20

A. Long enough to pump a bucket of water.

Q. What was the old lady's manner?

A. She seemed to be laying perfectly calm on the bed, but she didn't want to be worried, Mrs. Carrie Pemberton's face was away from me, but her mother seemed to be lying there as if she lay down to rest herself.

Q. Did you ever hear Mrs. Carrie Pemberton say anything about her mother making a will at any other time?

A. At the time Charley went off, she came in the kitchen, and she said she had been after her mother to 30 make a will, and she would not do it, and she didn't know what might happen, and now she would be there a lone woman left alone, if anything should happen.

Q. Did you hear her say anything of that kind more than once?

A. Yes, I heard her say to one of the boarders on the front stoop—somewhere outdoors—that she had been at her mother to make a will, and mamma did not seem to want to do it.

Q. Did you ever hear it on any other occasion besides those?

A. No, sir, only those three; first in the kitchen, once on the stoop, and once when she was on the bed.

Q. All of those conversations which you have mentioned, were they before the time you saw a will there—when the will was made?

A. Yes, sir, the conversation was before I saw any will, for it was directly after Charley went away.

10 Q. After Charley went away and before the men were there that night?

A. Yes, sir.

Q. You left a day or two after you saw the men there?

A. Yes, sir; from the time I left, the will must have been made about the 16th, for I left on the 18th, so it must have been made on the 16th.

Q. How do you know when the will was made—how did you know they were making a will?

A. Because they were in there so long, and afterwards

20 I heard the will was made, and they were there no more.

Q. Who did you hear say anything about it being made?

A. I heard the girls, and I think I heard Mrs. Pemberton, and I heard the girls speak of it in the kitchen that Mrs. Pemberton had made a will?

Q. Did you ever notice what control Mrs. Carrie had over her mother—anything which went to show she had control over her?

[Objected to.]

30 A. In this way, she never would allow her to say anything about the house affairs; she was the first old lady that I ever saw that did not take part in the house.

Q. Did you ever hear Mrs. Carrie say anything against her taking a part?

A. Yes, sir; when she spoke of things and suggested things she would say "No, I won't have it that way."

Q. What was her mother's conduct?

A. She kept perfectly quiet, because I think Mrs. Pemberton was influenced altogether by her daughter; that

40 is my opinion of it.

Q. Would she insist on her own way or give up, the mother?

A. No, sir; she never insisted, she never said anything, she just let it go her way.

Cross-examination by Mr. Stout—

Q. The daughter had complete control over the old lady?

A. Yes, sir; I believe she had.

Q. The old lady could not do anything at all unless the daughter would let her? 10

A. I didn't say she could not do anything; that was not what I said; I said she controlled her.

Q. The old lady was a woman of very weak mind?

A. I didn't say nothing about her mind.

Q. Wasn't she?

A. I would not dare to say; that is not my business to say anything about that.

Q. She was easily controlled?

A. I think so; for I saw she gave up to her daughter in every respect. 20

Q. The daughter kept the house?

A. Of course she did; I don't know who run the house; she was the superintendent.

Q. You got your instructions from the daughter?

A. Yes, sir; we all got it from the daughter.

Q. You did not go to the old lady to get instructions?

A. Of course not.

Q. She didn't have anything to do with the house?

A. I don't know anything about her through the house; but she did not control it; I don't know what 30 she ought to have done about it; the old lady may have had more right to control than her daughter, but I don't know.

Q. You have been sick, haven't you?

A. No, sir.

Q. Didn't Dr. Harry attend you?

A. No, sir.

Q. You didn't tell that to a lady in Asbury Park—

that you had been sick and Dr. Harry had attended you?

A. I didn't have any right to.

Q. Did you tell it?

A. Never; I had no right to.

Q. Didn't you tell that to a lady in Asbury Park?

A. I had no right to tell any lady anything.

Q. Didn't you?

A. No; I had no right.

10 Q. Didn't you tell a lady in Asbury Park that Dr. Harry came to you and said he would cure you if you would come here and swear?

A. I had no right to tell that.

Q. You did not?

A. No, sir, he did not; my doctor in New York attended me.

By Mr. Robbins—

Q. Did you ever tell anybody that Dr. Harry Pemberton said if you would come here and swear in this case 20 against the truth, or any way, that he would attend you for any sickness?

A. He never said anything to me in his life; neither one of them.

Q. You never told anyone anything of that kind?

A. No, sir, I never did; I am not one to tell untruth, and if I had, it would be untrue.

[Caveators' counsel notifies proponents' counsel that if he expects to base a contradiction on that, he must be more specific.]

30 By Mr. Stout—

Q. You say neither Harry or John Pemberton ever spoke to you in relation to this case?

A. I told you neither one of them promised to attend me.

Q. Did they ever talk to you about the matter?

A. Of course, I talked to them.

Q. About this case?

A. Yes, sir.

Q. Did you tell them what you were going to swear to?
A. No, of course not.
Q. You didn't tell what you would swear to?
A. I told them what I have said.
Q. You did tell them what you were going to swear to?
A. No, sir.
Q. They didn't know that you knew anything about it?
A. Of course they must know I knew something.
Q. How do you know that?
A. Because I told them that. 10

By Mr. Robbins—
Q. You told them what you knew about the case?
A. I told them what I knew.
Q. But not what you were going to swear to?
A. I didn't tell them what I would swear to; I didn't know what I would be asked.

Adjourned.

FREEHOLD, N. J., September 10, 1883.

Samuel A. Cook, called on behalf of the caveators, being duly sworn, testified as follows: 20

By Mr. Robbins—
Q. Where do you reside? A. 940 Broadway, Camden.
Q. What is your profession? A. I am engaged as agent and attorney for the Jennings' case in England, and several other heavy cases.
Q. Have you been in England recently? A. I left England on the eighth day of August last.
Q. And arrived in this country in due course of passage? A. Eleven days and a few hours.
Q. When did you go there on your last visit? A. 30 The twenty-eighth of November, 1882.
Q. November or October? A. October, I should have said.
Q. On what steamship did you go? A. The steamship Egypt, National line.

Q. From New York city? A. From New York to Liverpool.

Q. Among the passengers on that steamer did you become acquainted with Mrs. Pemberton and her daughter, Carrie H. Pemberton and Dr. H. H. Pemberton, her children? A. I did.

Q. How long after you left port at New York was it that you became acquainted with Mrs. Pemberton and her daughter, Carrie H. Pemberton? A. I would sup-
10 pose about the fourth day, to the best of my recollection; the doctor and I roomed together.

Q. Dr. Harry Pemberton? A. Yes, sir.

Q. After you became acquainted with her, and during your voyage, did you have any conversation with Mrs. Carrie H. Pemberton in reference to her mother's affairs? A. I think after that period we did; after the four days.

Q. Did you have more than one conversation with her on that point? A. Yes, sir, we had repeated conversations, but only once that I recollect of on business affairs
20 of her mother's.

Q. Will you be good enough to state what she said to you upon the point of her mother's business, and her mother's will or alleged will, if anything?

[Objected to.]

[Objection sustained.]

Mr. Robbins—I offer to show by this witness that Mrs. Carrie H. Pemberton, the daughter, informed the witness upon the steamer as to the custody of that will, and that it was left in the custody of her son at the time
30 they left New York city, in contradiction of her testimony when she was upon the witness stand.

[Offer excluded.]

[Exception by caveators.]

Mr. Robbins—I make the further offer to show the conversation between Mrs. Carrie H. Pemberton and Mr. Cook on the same occasion, on board the steamship Egypt, in which she made statements in reference to the quantity, and kind and location of her mother's property, and also as to the existence and contents of an al-

leged will, for the purpose of showing her conduct and interest as bearing upon the case of the caveators.

[Offer excluded.]

[Exception by caveators.]

Q. After you arrived in London did you at any time visit the Pembertons where they were staying in London? A. I think I did, four times.

Q. Did you on any of those occasions see Mrs. Caroline Pemberton, the mother? A. The old lady?

Q. Yes. A. Every time. 10

Q. Did you on any of those occasions have any talk with her in reference to her property or any will which she proposed to make? A. Only the last time.

Q. With reference to the time of her death, when was the last time you called to see the Pembertons in London? A. I think on Sunday, the 22d of—

Q. No, in reference to her death? A. That is what I am trying to recollect; I am sorry I did not bring my memorandum.

Q. I don't care about the dates, I only want in reference to the time of her death? A. I think her death took place on the 23d of November, at three o'clock in the morning. 20

Q. How long before her decease were you there on this last call? A. I went upon Sunday afternoon.

Q. What time? A. I think in the neighborhood of five o'clock.

Q. She died when, in reference to your coming? A. At three o'clock on the morning following.

Q. That is on Monday morning? A. Yes, sir. 30

Q. You called Sunday afternoon and she died Monday morning about three? A. Yes, sir; that is right.

Q. Who did you see on the occasion of that visit? A. I was let in by the landlady of the premises first, and went up-stairs and saw Dr Pemberton and his mother, and Mrs. Carrie Pemberton and the hired girl; I believe those were the persons and all the persons I saw on that occasion.

Q. Was anything said on that occasion as to the making of a will by Mrs. Pemberton, the mother? 40

[Objected to. Objection withdrawn.]

Q. Was anything said by Mrs. Pemberton, the mother, to you about a will? A. There was a proposition made right away after I went there to have—

[Objected to.]

Q. There was something said? A. Yes, sir.

Q. By the mother? A. Yes, sir.

Q. In whose presence? A. I think Mrs. Carrie Pemberton was very close to her mother and myself when
10 the suggestion was made.

Q. Was Dr. Pemberton also present? A. I do not remember of the doctor being in the room at that time, but he was either there or in the adjoining room.

Q. What did Mrs. Pemberton say on that occasion, and in the presence of Mrs. Carrie H. Pemberton, to you, upon the point of the preparation of a will, if anything?

[Objected to. Objection overruled. Exception.]

A. She expressed a desire to have a will made, and
20 her intention was to make her children equal; that is all that was said.

By the Court—

Q. What did she say? A. She expressed a desire—

By Mr. Robbins—

Q. Give her language as near as possible? A. I am endeavoring to give it to you as near as I can; she expressed a desire to—

Q. You say she expressed a desire; tell me, if you can, in her own words, what she said? A. She expressed
30 a desire to have a will made; that it was her desire to make her children equal.

By the court—

Q. You have stated the conclusion of what she said; she certainly didn't say to you, "She expressed a desire to have a will made;" she must have used other language; what was the language she used? A. That is what I am endeavoring to give you.

By Mr. Robbins—

Q. In giving expression to this desire, what did she say?

By the Court—

Q. Who was she talking to? A. She was talking to me.

Q. Give her words? A. Those were pretty near the words.

Q. She certainly would not use that person and tense; she spoke in the first person: 'I want such and such a thing?" A. Exactly. 10

Q. Then give us her language? A. As I said before, she expressed a desire to have a will made, and in that will that her children should be equal.

By Mr. Robbins—

Q. Did she use the words: "I want so and so?" A. Yes, sir; as I have stated.

Q. Can't you begin and give us the very words which she used, to the best of your recollection? A. Well, I have told you. 20

By the Court—

Q. She spoke in the present; you are speaking in the past; what did she say? She spoke in the present tense; "I want so and so done, and I want to leave so and so equal;" she must have said something like that? A. Yes, sir; that is right.

Q. Give those words? A. She expressed a desire to have a will made.

By Mr. Robbins—

Q. Did she say, I want you to make a will? A. Of course she wanted me to draw a will. 30

Q. Did she say so? A. Yes, sir.

Q. What did she say when she asked you to do it? A. She asked me to write her will.

Q. What did she say as to the terms in which the will was to be written?

Mr. Stout—My objection runs to all these questions and answers.

The Court—Your objection and exception goes to the whole conversation.

Q. Did she or not say to you that she wanted her children all left equal? A. Yes, sir; that was her expression.

Q That is what she said? A. Yes, sir.

Q. Before you went in the room where she was lying
10 —was she lying sick? A. Yes, sir.

Q. Before you went in the room where she was lying, did you have any conversation with anyone else in the presence of Mrs. Carrie H. Pemberton, in reference to the preparation of a will by Mrs. Caroline Pemberton? A. The landlady or the lady who kept the house, let me in at the door and she told me—

[Objected to.]

Q. Not what she told you, but in the presence of Mrs. Carrie H. Pemberton? A. No, Carrie Pemberton was
20 not present then; this was down-stairs.

Q. Did you have any talk with Dr. Pemberton in the presence of Carrie, before you went into the room? A. No, sir.

Q. What caused you to go there that afternoon? A. I had been to see the doctor and his mother, as she had been unwell ever since she had been there, four times; twice out of that four times, I did not find the doctor and his sister there, but found Mrs. Pemberton there; I selected Sunday afternoon to go, thinking I would find
30 the doctor and his sister, knowing that the old lady was sick, went for a double purpose, to see her too.

Q. Were you asked to go there by anyone? A. No, sir.

Q. After you went there this conversation which you have spoken about took place? A. Yes, sir; the doctor I guess was not aware, or none of the family, that I was going to be there that afternoon; it was a voluntary matter of my own.

Q. Was the will prepared at the time which Mrs. Pemberton spoke about? A. No, sir.

Q. Let me ask you how she appeared at the time she said this to you, in reference to being rational and in a proper frame of mind—whether she was sensible?

[Objected to. Objection overruled.]

A. I should say that if a will had been made and signed by Mrs. Pemberton, at that present time, she was in her rational mind and perfectly understood what she was doing.

10

Q. Why was not the will prepared at that moment? A. I objected to drawing it then on account of its being Sunday, in the first place; then, in the next place, the landlady had told me down stairs, before I came up in the room, that Dr. Pemberton—

[Objected to. Objection overruled.]

—the landlady told me the doctor had just been there and said she might last from six to seven days; I thought if that was the case there would be no necessity in commencing the will then; that we should have plenty of time to do it on Monday morning.

20

Q. Where did you remain that Sunday night, as she died that Monday morning? A. I had contemplated going back to my hotel that same evening, but the doctor—the mother being low—the doctor insisted on my remaining until Monday morning; I objected to it, and told him I would be back early Monday morning, but he insisted on my remaining and not going away, and I finally yielded to his request and stayed all night.

30

Q. Where did you sleep? A. I did not sleep at all.

Q. Where did you remain? A. There was a room adjoining Mrs. Pemberton's room, in which there was a fire, and I remained in that room; laid down on the bed and remained there until it was announced that Mrs. Pemberton was dying or was dead.

Q. Did you go in the room when this announcement came? A. Yes, sir.

Q. Who told you about it? A. I think the doctor told me.

40

Q. Dr. Pemberton? A. I think he was in the room and came out and told me that his mother was dying or was dead.

Q. Did you go in the room where she was? A Yes, sir.

Q. And what he had told you, I suppose you found to be the fact? A. Yes, sir.

Q. Then how long did you remain, and when did you leave the house? A. I didn't leave the house until day-
10 break the next morning.

Q. Did Mrs. Pemberton at the time she spoke to you about drawing her will, say anything about whether she had a will or not at that time? A. I never heard any expression of that kind.

Q. What did Mrs. Carrie H. Pemberton say or do at the time her mother said to you in her presence that she wanted you to prepare her will, in which the children should be left share and share alike? A. I don't remember that she made any objection to it whatever.

20 Q. Do you remember any expression that she used whatever? A. None at all.

Q. Did she say anything about any other will being in existence, or anything of that kind? A. No, sir, nothing of the kind; she seemed to be satisfied with the arrangement.

Q. What was your purpose in remaining there at the house where the Pembertons were that night? A. For the purpose of commencing the will the next morning, Monday morning.

30 Q. Did Mrs. Carrie H. Pemberton know your purpose in remaining? A. I don't know why she should not know, because it was not a private matter; she knew the conversation that took place between her mother and me in the room.

Q. And did she know of your remaining that night? A. Yes, sir; she was every once in a while in the room where I was lying; she knew I was there, of course.

Q. Do you know whether Mrs. Pemberton, the mother, knew that you were going to remain to prepare the will

in the morning? A. I could not say about that positively.

Cross examination by Mr. Stout—

Q. Who first mentioned about your staying there that evening A. Dr. Pemberton mentioned about my remaining over night.

Q. In order to make the will early in the morning? A. Yes, sir.

Q. It was after you had gone out of the room in which the old lady was? A. Yes, sir. 10

Q. Then you and the doctor were alone at that time? A. Yes, sir, in his room.

Q. Carrie didn't know for what purpose you were going to stay at that time? A. I don't know why she should not know.

Q. You say she was in the other room? A. Yes, sir, but she was back and forth in the room.

Q. You don't know that she heard your conversation? A. No, I don't know that.

Q. She was backward and forward waiting on her 20 mother? A. Yes, sir.

Q. The old lady was pretty sick? A. She was pretty low.

Q. You talked in a low tone of voice? A. Yes, sir.

Q. Lower than the ordinary tone of voice? A. Yes, sir.

Q. You and the doctor sat where—in the opposite end of the room? A. No, sir; after this conversation took place I went out of her room and went into the doctor's room, where there was a fire. 30

Q. You and the doctor was in the room where the fire was, and Carrie was in the room with her mother, at the time you were talking about staying over night A. Yes, sir.

Q. Carrie was some distance from you then? A. She was back and forwards; sometimes in that room, and sometimes in her mother's room.

Q. She did not stop in any one room very long? A. No, sir.

Q. You say her directions were to make the will so as to give to each of the three children equally? A. Yes, sir; that is the way I understood it.

Q. What is your business? A. I am an attorney and agent.

Q. Are you an attorney-at-law? A. Yes, sir.

Q. Regularly licensed? A. Yes, sir.

Q. A practicing attorney of this state? A. No; I don't practice in this State; I have in Pennsylvania.

10 Q. Are you a practicing attorney in Pennsylvania? A. No, sir.

Q. What I want to know is, whether you are a regularly licensed lawyer or a business agent? A. Business agent and attorney both.

Q. What kind of an attorney? A. A licensed attorney.

Q. To practice in the Courts of New Jersey, or in any court. A, I have in Pennsylvania years ago.

Q. Have you done quite a good deal of business in 20 the drawing of wills? A. Yes, sir; some pretty extensive business.

Q. You are pretty well acquainted with our statute relating to wills? A. Yes, sir; some little acquainted with the statute of New Jersey.

Q. Are you pretty well acquainted with our statute in reference to descent of property, or the disposition of property of persons dying without a will? A. Yes, sir; I understood that clearly.

Q. You understand that by our statute property of a 30 person dying intestate, goes equally among their children? A. I understood that clearly.

Q. Then why did you want to draw Mrs. Caroline Pemberton's will to direct her property to go in the exact way the law would dispose of it? A. I cannot answer for Mrs. Pemberton's wishes.

Q. Wouldn't it have gone in the same way anyhow? A. Yes, sir; if she had died without a will.

Q. And she did not say she had any will? A. No, sir; not a word.

40 Q. You were going to draw a will directing the prop-

erty to go in the exact way the law directed it to go? A. Yes, sir.

Q. Then your will would be good for nothing? A. I am not aware of that.

Q. Don't you understand that a will would be good for nothing if it is the way the law makes it? A. I don't know about that.

Q. And Mrs. Pemberton—didn't you go there at the solicitation of Dr. Harry Pemberton to draw a will for his mother in his favor? A. No, sir; I came precisely as I have told you, at my own instigation; Dr. Pemberton had no more idea of my coming there then than I had of going to New York, not a bit. 10

Q. Your business is rather that of an agent of anybody who may employ you to go anywhere. A. Yes, sir.

Q. And when you were in courts that *that* allowed persons outside of an attorney to practice, you were a sort of a pettifogger? A. I don't know; I never have pettifogged any. 20

Q. You are not allowed in courts of record, are you? A. I don't know that I would be now, for my business is all foreign business.

Q. Were you once admitted in courts? A. No, sir; but I have practiced in courts of Pennsylvania.

Q. What kind of courts, justices courts? A. No, sir.

Q. What then? A. Regular courts, and heavy cases, too.

Q. Then have you been expelled from the courts—disbarred? A. No, sir. 30

Q. But you can't practice now? A. No, sir; because I have not practiced there for many years; I was attorney in one of the heaviest ejectment cases in that state.

Q. How old are you? A. Seventy-four years of age the second day of next March.

Q. You say you were there four times? A. Yes, sir.

Q. Was that four times on four different days or four times in one day? A. Four times on four different days.

Q. Were not you there four different times on that last Sunday you went there? A. Only once. 40

Q. Do you remember of having a conversation with Carrie Pemberton and Dr. Harry Pemberton just before the old lady died—with them together? A. There was a conversation there, and they were both in the room.

Q. Do you remember, then, that Dr. Harry asked his sister, Carrie, if she thought the old lady could be induced to make a will, and to make it in their favor, to the exclusion of Dr. John Pemberton? A. I never heard tell of such a thing, for—

10 Q. You are positive—

Mr. Robbins—You were going to add something further.

The Witness—If there had been any conversation of that kind, it could have been heard by all.

Q. Are you positive there was no such conversation? A. I feel very positive there was nothing of the kind.

Q. This conversation that you relate between yourself and Mrs. Carrie Pemberton as being on the Egypt, are you not mistaken about that, wasn't that the same Sun-
20 day in the back room? A. No, sir.

By Mr. Robbins—

Q. You were asked, substantially at least, why you would draw a will which would dispose of Mrs. Pemberton's property, the same as the laws of this state would do, without a will? A. Yes, sir.

Q. Were any of the specific terms of the will mentioned to you by Mrs. Pemberton, at the time she stated what you have said, except as you have stated? A. Nothing further than what I have stated, that she had
30 a desire to make the children equal.

Q. Did you have any further conversation with her at that time, about what the value and particular terms of the will were to be? A. I think not, no, sir.

Q. When were they to be settled and finally fixed upon and put down in writing? A. As I have told you before, we had no idea that her dissolution was so near, and we thought by putting the thing off until Monday morning, there would be no impropriety at all.

Q. Was it Monday morning that the business was to be finally and fully done? A. Yes, sir.

Q Then the real details of the will had not been fixed yet? A. No, sir; not at all;

Q. She had merely used the expression which you have stated, in a general way? A. Yes, sir; just as I have expressed it.

By Mr. Stout—

Q. Who arranged this business to be done on Monday morning, Dr. Harry, didn't he? A. I think that was my own suggestion. 10

Q. To Dr. Harry? A. Yes, sir.

Q. The old lady didn't know that? A. No, sir; I didn't express myself to her.

Q. And Carrie didn't know about it? A. I don't know that she did know it absolutely?

Q. Didn't you think the old lady was too weak to make a will? A. No, sir; I did not.

Q. Didn't Dr. Harry? A. I was utterly shocked when I found her dissolution so near. 20

Q. Didn't Dr. Harry say to you she could be stimulated up to a condition in which she could make a will? A. I could not say any such thing.

Q. You would not like to say that he did not? A. I I believe I can say that he did not.

Q. You would not say that positively? A. I believe I can say that positively, that no such word was put to me at all.

By Mr. Robbins—

Q. You were asked whether Mrs. Carrie H. Pemberton knew why you remained there? A. Yes, sir. 30

Q. You said she was in your room, back and forth several times? A. Yes, sir.

Q. And she was present when her mother told you that she wanted you to prepare a will, and heard that? A. Yes, sir.

Adjourned to September 17th, 1883.

FREEHOLD, N. J., December 24, 1883.

Hugh Kinmouth, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—

Q. Where do you reside? A. Asbury Park, N. J.

Q. What is your profession? A. Physician.

Q. Practicing at Asbury Park? A. Yes.

Q. How long have you lived and practiced medicine there? A. Since 1872.

10 Q. Do you know Mr. Stout, the attorney for the proponent of the will in this case? A. Yes, sir.

Q. Have you any recollection of attending at the alleged execution of a paper purporting to be a will of Mrs. Caroline Pemberton, deceased? A. I have.

Q. What was the first you knew of that occurrence, or that you would be needed in any way in connection with it? A. I think Mr. Stout came over to my office and asked me if I would be a witness to a will.

Q. You mean Mr. Stout, the attorney for the propo-
20 nent? A. Yes, sir.

Q. How long was that prior to the alleged execution of that paper? A. Well; I think it must have been in the neighborhood of a week, I am not positive; I think it was several days prior to the execution of the will.

Q. Where did Mr. Stout see you? A. I think it was over at my drug store.

Q. Can you give the conversation which took place between you and Mr. Stout? A. No, sir; not the exact words.

30 Q. Substantially? A. That he wished me to be a witness to a will; I think I asked him whose will, and he said Mrs. Pemberton's, and there was an evening appointed, I think, to go down, and for some reason or other it was deferred for a few days more.

Q. How were you notified of the postponement of the matter? A. I think Mr. Stout came in or I might have met him on the street, I am not positive which.

Q. Did he state to you why it was postponed? A.

No; I think it was some business engagement that he had to attend to, or Dr. Mitchell could not attend, I am not certain now which.

Q. Where was it that the paper was dealt with? A. It was down on the shore where Mrs. Pemberton lived at the time.

Q. Was it at the Look Out cottage? A. I think that is the name of the cottage; it was a cottage on the beach.

Q. Who did you go down there with that evening from your place? A. I am not positive, but I think we 10 went down in a hack or stage.

Q. Who went? A. Mr. Stout and myself and Dr. Mitchell, I think; I am not certain whether Dr. Mitchell went with us, or whether he came in a conveyance of his own.

Q. When you arrived at the Look Out cottage, who met you at the door, if any one? A. I think this lady here in front of me.

Q. Mrs. Caroline H. Pemberton? A. Yes, sir, I think so. 20

Q. Did you know her prior to that time? A. No, sir.

Q. Did you know Mrs. Caroline Pemberton, the deceased, prior to that time? A. No, sir.

Q. Had you ever known her or seen her to your knowledge before that evening? A. No, sir, not to my knowledge; I may have seen her, but I didn't know her as Mrs. Pemberton.

Q. You had no acquaintance with her at least of any kind? A. No.

Q. How were you introduced and made known to her 30 that evening? A. I think I was introduced by Mr. Stout.

Q. Where was the business done, the business in connection with this alleged will, that evening at the Look Out cottage? A. I think it was in a west room of the house, on the first floor; I think we passed through the hall and dining or sitting-room into a smaller room.

Q. What time in the day was this? A. It was just after dusk, just dark, just growing dark.

Q. You had to have lights, I suppose? A. No, I don't 40

think the house was lighted when we went in, but it was too dark to do any business or see well; I think this lady directed the servants to get some lights.

Q. You mean Mrs. Caroline H. Pemberton? A. Yes, sir; I think so.

Q. Do you remember whether there was any curtains in the room in which the business was done? A. I think there were curtains separating it from the dining or sitting room that we passed through.

10 Q. Who were present at the doing of this business, in connection with this alleged will? A. Mr. Stout, Dr. Mitchell and Mrs. Pemberton, deceased.

Q, How about the other lady, Mrs. Caroline H. Pemberton? A. I have no recollection of Mrs. Caroline H. Pemberton being present in the room at the time we were doing the business.

Q. Do you recollect whether she was or not? A. I do not; I could not say whether she was or not.

Q. So upon that point, I understand you not to speak?

20 A. She might have been, and may not; I am not certain at all; I have no recollection of her presence in the room.

Q. I show you the paper which is said to be the will of Mrs. Caroline Pemberton, deceased, and call your attention to the attesting clause and signatures; state whether or not you saw that paper on the evening you are referring to, at the Look Out Cottage? A. Yes, sir.

Q. Does your name appear there anywhere? A. Yes, sir.

30 Q. In what position or capacity does it appear? A. As a witness to the will, to the execution of the will.

Q. Do you remember in what order the witnesses signed that will, or paper which is called the will?. A. I am not distinct about it; I suppose of course they signed it just as it appears there; I think Mrs. Pemberton first, and I signed it, and Dr. Mitchell.

Q. I call your attention to the length and appearance of the paper, and ask you to state whether or not that will was read through that night in your presence by

you or by anybody else? A. I could not say whether it was or was not.

Q. Have you any recollection upon that point? A. No, sir; I recollect of that seal and of this red tape being on the paper; I recollect that it was something a little different from what I had seen heretofore.

Q. Do you recollect anything which was said by Mrs. Caroline Pemberton, the mother, that night? A. No, sir; I don't recollect any of the words that were spoken.

Q. Can you recollect her saying anything at all? A. 10 No, sir; I cannot recall any words which she spoke; I have no doubt she said something; she talked some, but I don't recollect what words she used in my presence.

Q. I call your attention to a note in writing, at the foot of the attesting clause, which reads in this way, "the words "both by," written before signing, the word "Catharine" erased six times, and the word "Caroline" written six times before signing;" was that note written there at the time you wrote your signature there as a witness? A. I don't know; I could not say. 20

Q. Have you any recollection of anything of the kind being there at the time you signed? A. No, sir; I could not say whether it was or was not.

Q. Has it been your habit to write your name in other writing as that is done, when you have plenty of room below? A. No, sir; it has not been my habit.

Q. Can you recall any reason or purpose which would have induced you to write your name in that way, in connection with that note? A. No, sir.

Q. Whose work is the flourish under your name which 30 begins just at the left of the second member of the "H," in the first name of Dr. Mitchell, and ends over the second member of the "H" in the last name of Dr. Mitchell? A. I think that is in my hand.

Q. Have you any doubt about that? A. No, sir; I think it was done by me.

Q. Have you any recollection of Mr. Stout signing his name as subscribing witness that night? A. I am not clear on that point.

Q. Have you any recollection upon it? A. No, sir; but I do not say that he did not do it at the time.

Q. But you don't remember it? A. No, sir; I don't remember of seeing him put his signature to the will.

Q. I call your attention to the erasure of the name "Catharine" in this will six times, and the interlineation of the name "Caroline" six times in this paper which is called a will; state whether or not you saw those changes made that evening, by anyone? A. I
10 have no recollection of seeing it done.

Q. Did you have any talk that night with either the mother or the daughter about any compensation to be paid to you and Dr. Mitchell for your attendance there? A. Yes, sir; with either the mother or daughter; I am not positive which.

Q. Have you any recollection upon that point, as to which it was? A. No, I am not positive which it was, whether the daughter or the mother.

Q. What was that talk? A. The question arose
20 between Dr. Mitchell and myself as to whether we would charge any fee for our services, and I suggested to the doctor that we had better not do it, out of courtesy to Mrs. Pemberton's sons, who were physicians, and the doctor said he thought we were entitled to a fee, as this would likely result in a law suit, and we would be taken to Freehold and put to a great deal of trouble, and he thought it would be no more than just that we should charge a fee for our services.

Q. Then did you have a talk with the lady, whoever
30 it was? A. I think so.

Q. What was it that led you to have the conversation you did have about the fee? A. It occurred to us that they having called two physicians to witness the will, perhaps they were fortifying themselves against any contingency that might arise as to the sanity or legal execution of the will; I know there was a conversation of that kind passed between Dr. Mitchell and myself.

Q. How long were you there that evening? A. I suppose about an hour.

Q. Do you remember who left first, as between you and Dr. Mitchell? A. Dr. Mitchell left first, I think.

Q. And you remained a while? A. I remained to go with Mr. Stout; Mr. Stout was going up my way, and the carriage was waiting for Mr. Stout and myself; Mr. Mitchell lived in another part of the town.

Q. Did any of this conversation about the fee take place before he left or after? A. I think it was before he left; I know some one, whoever it was, offered us $5 apiece, and we would not accept it. 10

Q. After the death of Mrs. Pemberton were you seen by Mr. Stout in reference to the payment of this fee? A. I think Mr. Stout spoke to me about it; yes, sir.

Q. Where was that, and when? A. I think it was in the drug store.

Q. How soon after her decease, do you recollect? A. A short time after; I think Mr. Stout came in to send a message; the telegraph office is in our drug store, and he came in there and he said, "By the way, you have a bill against Mrs. Pemberton's estate, and I will see that 20 you are paid that bill if you will make it out."

Q. Why were you not paid the evening you were there? A. They seemed to think our fee was exorbitant.

Q. What did you charge? A. $10 each.

Q. Then the cause of the non-payment on that evening was that the fee was too great? A. Too much.

Q. Did Mr. Stout raise any such question as that at the time he came to see you in the drug store, after the death of Mrs. Pemberton? A. No, I don't think he 30 did; I think those were his words, "Doctor, by the way, you have a bill against Mrs. Pemberton."

By Mr. Vredenburgh—

Q. Do you remember whether you sat around a table at the time this paper was executed? A. I think there was a table in the room.

Q. Do you remember where Mrs. Caroline Pemberton, the old lady, sat or reclined? A. I think she was reclining on a lounge.

Q. Do you remember where Dr. Mitchell sat? A. I do not.

Q. Do you remember where young Mrs. Pemberton sat? A. No, sir; I do not remember of young Mrs. Pemberton being in the room at the time.

Q. Do you mean to say you do not recollect whether she was there or not? A. That is what I mean.

Q. Your evidence is upon that point; you cannot give us any satisfactory evidence at all? A. No.

10 Cross-examination by Mr. Stout—

Q. The conversation you speak of having had with me in the drug store, was not that on the street between your house and the drug store? A. It may have been, I am not positive.

Q. And didn't you ask me if there was not a way to get your bill from that estate, now that Mrs. Pemberton was dead? A. I think that was in the drug store.

Q. Wherever it was, was not this about that conversation that you asked me that now Mrs. Pemberton was
20 dead wasn't there any way of your getting your fee for the signing of that will, and I said if you would make out your bill and hand it to me I would see that the executor got the bill? A. That is not my recollection of it; I think it was in the drug store; my recollection is that you came in to sign a message, and I think you said something concerning this matter yourself.

Q. Did you speak to me any other time about the fee? A. I think I had spoken to you.

Q. Before that? A. Yes, sir.

30 Q. And asked me if there was not a way for you to get it? A. Yes, sir, I think so.

Q. Didn't you also ask me this morning, of your own accord? A. I did.

Q. If there was not a way for you to get that $10? A. I did.

Q. What was my reply? A. You said if I would make out my bill you would see that it was presented to the executor.

[Objected to as incompetent.]
[Objection withdrawn.]

John E. Schroeder, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—

Q. Where do you live? A. Long Branch.

Q. What is your profession? A. I am a lawyer.

Q. Are you acquainted with Mrs. Caroline H. Pemberton, the proponent in this case? A. I am.

Q. How long have you known her? A. I think four or five years. 10

Q. Did you ever reside at Asbury Park? A. No, sir.

Q. Do you recollect of having any conversation or conversations with Mrs. Caroline H. Pemberton relative to the affairs of hers and her mother and her brother John and Harry at different times? A. I think two or three times.

Q. Do you recollect any conversation at the Look Out Cottage in Asbury Park? A. I think I had a conversation with Mrs. Caroline H. Pemberton, and her mother was present; I think it was in the first part of August, 1880. 20

Q. Are you clear about your dates? A. I am pretty positive; yes, sir.

Q. Now I want you to state those conversations that took place at that time? A. Well, I called there in the afternoon, and in the course of our conversation Mrs. Caroline H. Pemberton commenced to talk about her brothers, especially Dr. Harry, that they had treated her cruelly, and especially in regard to the treatment of her when her son ran away; I think in July, the same year, she said that they had not treated her as brothers ought to have treated her, and that she would have her revenge; and while she was talking in this strain in reference to her brothers, she would say to her mother, "now isn't that so, mother?" and in a very dramatic way would walk up and down the room and say, "Now isn't that so, ma." 30

Q. What did she say further, in reference to them, if anything? A. That they had cheated her.

Q. Was anything said about triumphing over her son, or anything of that kind, then or on any other occasion?

A. She said that they had treated her cruelly and very badly, and had cheated her; I don't recollect anything more in reference to the matter at that particular time, except that she said she would have revenge; she would get square with them, that she had done so much for
10 Dr. Harry, and one thing and another, and that he had not returned the kindness.

Q. What reply did Mrs. Pemberton the mother make, if anything, when she was called upon by her daughter?

[Objected to on the ground that the declarations of a deceased person are incompetent. Objection overruled. Exception.]

A. She reluctantly assented by a nod of the head.

Q. Were there any other occasions, or occasion, after that, when you saw Mrs. Caroline H. Pemberton, the
20 daughter, when she said anything in reference to these matters? A. Three or four days, I think, after that occasion I met her on Third avenue, in Long Branch, and she, on that occasion, referred to them, though not in quite so abusive terms as before.

[Proponent's counsel objects to the last expression of the witness. Stricken out by the Court. Proponent's counsel also objects to the conversations in the absence of the old lady. Objection overruled. Exception.]

Q. State what she said? A. She then said her broth-
30 ers had treated her very cruelly.

Q. Which brothers? A. Dr. John Pemberton and Dr. Harry; but especially Dr. Harry Pemberton; she referred to him particularly and said that she would get square with them; she would have her revenge; she told me that on that occasion also, on Third avenue, in Long Branch.

Q. Was there any other time except those two, when Mrs. Pemberton the daughter expressed herself to you about her feelings towards her brothers? A. I think
40 she expressed to me in reference to her brothers one

evening that I called at her cottage in Asbury Park, about the first or middle of September in the same year; I think I called there about half past seven and stayed an hour or so; I can't recollect the exact language she used on that occasion, but it was similar to what she said, her mother was present.

[Objected to.]

Q. Do you say her mother was present? A. Yes, sir.

Q State to the best of your recollection what expression she used? A. I cannot give the exact expression 10 she used on that occasion, I can give you the general drift, the substance of it was that the brothers had robbed her and cheated her and had treated her very cruelly, and especially in reference to the treatment of her when her son ran away in July, they had not treated her as brothers would and ought to.

Q. Was this said in the presence of the mother? A. Yes, sir; in the presence of her mother, and she on that occassion, in that dramatic style which she always used, said "isn't that so mother, isn't that so," and would 20 speak to her in that way.

Cross-examination by Mr. Stout—

Q. Who are you subpœnaed by to day? A. I am subpœnaed by the doctors.

Q. Who served the subpœna? A. I think Dr. Harry.

Q. You are employed by him in two or three suits against his sister, Caroline H. Pemberton, are you not? A. Two suits.

Q. They are pending now in court, are they not? A. One is determined already. 30

Q. One is determined and the other is pending? A. Yes, sir.

Q. When was this conversation you speak of with Caroline H. Pemberton, at Long Branch, on the street? A. I think it was three or four days after my first interview with her at Asbury Park.

Q. When was your first interview? A. Along about the first of August.

Q. You were at that time employed by Caroline H.

Pemberton, were you not, to get a settlement with her brother, Dr. Harry? A. I don't think at that time.

Q. I would like you to be clear about this date when you met her at Long Branch? A. I give it about as clear as I can.

Q. Give us about the date? A. I say it was three or four days after the first interview.

Q. When was the date of the first interview? A. About the first part of August; it has been some time
10 ago; I don't remember the exact dates.

Q. Was that in the morning or afternoon that you met her at Long Branch? A. I think towards evening.

Q. About what time? A. I think along about five o'clock or half-past five, I don't recollect the exact time; it was in the latter part of the afternoon, towards evening.

Q. That was the time of year when boarding house keepers at Asbury Park are extremely busy, if they are busy at all? A. I don't know, not being in that busi-
20 ness.

Q. Haven't you any judgment about it? A. No, sir.

Q. Don't know anything about it? A. I have never been in the hotel business or boarding honse business.

Q. Haven't you been in boarding houses in Asbury Park in the summer time? A. Not in the evening or afternoon, except Mrs. Pemberton's.

Q. Then you were in there in the evening about the first of August? A. Not in the evening.

Q. In the afternoon? A. Yes.

30 Q. The house pretty full of boarders? A. Yes, sir.

Q. And she was extremely busy, was she not? A. I can't say as to that; she seemed to take the time; I think some of the boarders were out about that time bathing or something; it was about three o'clock in the afternoon that I called there, or half-past three.

Sarah Woolly, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—

Q. Where do you reside? A. Long Branch, N. J.

Q. Your father was Jordan Woolly? A. Yes, sir.

Q. An ex-sheriff of this county? A. Yes.

Q. Were you acquainted in her lifetime with Mrs. Caroline Pemberton? A. Yes, sir.

Q. How long did you know her previous to her decease? A. About seven years.

Q. Intimate with her? A. Yes, sir.

Q. Did you ever visit her at Asbury Park? A. Yes, sir. 10

Q. Did you ever have any talk with her about the disposition which she intended to make of her property at any time? A. Yes, sir.

Q. Where did that take place? A. At Lane's Cottage, on Third avenue, Long Branch.

Q. Who was present at that interview? A. Nobody but Mrs. Pemberton and myself.

Q. Where was her daughter, Mrs. Caroline H. Pemberton? A. At Asbury Park. 20

Q. How long were you with her that day? A. From two o'clock until about half-past five.

Q. Where did your conversation with her take place? A. In her bed room.

Q. Can you give me about the time that was? A. It was in the fall, but I don't know what month.

Q. Do you know what year? A. I think it was 1880.

Q. You may state the conversation between yourself and Mrs. Pemberton?

[Objected to as incompetent.] 30

[Objection overruled.]

[Exception.]

A. Mrs. Pemberton commenced the conversation herself; she asked me about our own estate, and if father had left a will; I said no; she said she thought it was a shame, and she turned to me and said, "I have not but three children, and those three I shall leave equal—they shall all share alike, there shall be no fuss after my death;" that is the conversation that took place.

Q. Did she say anything further? A. Nothing more. 40

Q. Did she express at that time any opinion as to how property ought to be left to children?

[Objected to.]

Q. What did she say upon that point, if anything?

[Objected to.]

A. She said all children should be left equal.

Cross-examination by Mr. Stout—

Q. You are a particular friend of Dr. Harry, are you not? A. Not a particular friend; he is our family phy-
10 sician.

Jane Schreeve, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. Where do you live? A. Long Branch.

Q. How long have you lived in that neighborhood? A. I have been living there for some thirty odd years.

Q. How old are you about? A. I think I am about in my thirty-fourth year—no, my fifty-fourth year, I should say.

20 Q. You have lived at Long Branch for some thirty years? A. Yes, sir.

Q. Did you know the Pembertons when they lived at Oceanport? A. Yes, sir; very well.

Q. The old lady, who is dead now? A. Yes, sir; I used to work there for her, by the day, and used to trade at their store; I used to wash for her and clean house.

Q. What is your occupation now? A. Keeping boarders in the summer season and serving help winter and summer.

30 Q. You have an agency for the procurement of help? A. Yes, sir.

Q. At Asbury Park? A. Yes, sir; or anywhere where they call for them along the shore.

Q. Were you applied to by Mrs. Caroline H. Pemberton? A. Yes, sir.

Q. What season was it, that you were asked to do anything for her? A. I served her at Long Branch when

she first opened the boarding house; I also served her help after she moved to Asbury Park.

Q. Procured help for her? A. Yes, sir.

Q. She was keeping a boarding house at Asbury Park? A. Yes, sir.

Q. Do you remember procuring help for her in the year 1880? A. Yes, sir; that was her first season at Asbury Park, at Look Out Cottage.

Q. What time in the year did you procure the help for her? A. Her first help was in the early part; I could not say whether it was May, I think in 1880; she had some help in the early part of the season to get her house ready; the time exactly I would not like to say, but it was in the latter part of May or the fore part of June. 10

Q. Did you go to Asbury Park? A. Yes, frequently.

Q. In connection with your business? A. That took me there.

Q. Did you go to Mrs. Pemberton's, at the Look Out cottage? A. Yes; I went there to carry help, and I went down to collect money that was due at different times. 20

Q. Did you see the daughter and the mother there frequently? A. Yes; at the Look Out Cottage.

Q. This season of 1880? A. Yes, sir.

Q. Do you remember of seeing this son of the daughter? A. Yes, sir.

Q. Do you remember the occasion of his disappearance? A. I remember when he went away, Mrs. Carrie Pemberton and her mother came to our house with his picture and she showed it; they drove up there. 30

Q. That was after his disappearance? A. Yes, sir; while they were all worried about it and looking for him.

Q. Had you any conversation with either of them, and if so, with which one, upon the subject of the will?

[Same objection, ruling and exception.]

A. Mrs. Carrie was worried about her son, but Mrs. Pemberton, the old lady, was always talking to me and she was always giving me advice about getting along.

Q. Was it after that that you had any conversation with the old lady? A. In 1880, after Mr. Charley went away, she was speaking about being worried about making her will.

Q. Where did you see her? A. I saw her at the Look Out Cottage.

Q. On more than one occasion? A. I saw her one time and she was worried about Mr. Charley having gone away, and she said her daughter worried her be-
10 cause she worried about Charley, and she desired her to make a will, for she didn't know what might *hapen.*

Q. Who desired her to make a will? A. She said her daughter desired her to make a will.

Q. Who worried her? A. She said her daughter worried her, and she said she didn't know what might happen; and she said then she made it very much against her will, very much against her wishes, but to have peace; then I saw her in 1881; she said then, the latter part of the season I think it was, in 1880, she was
20 sorry that she had made a will, but in 1881 she told me she had made it but she intended to get it and destroy it; for she had lost her brother recently, then, and they were fixed well enough, and one child was just as near her as the other, and she wanted it to be her will; then she said, "Let it be much or little, but let it be divided equally between them;" I didn't know exactly how many children she had, for I knew she spoke of her daughter; I didn't know whether it was her daughter that I was acquainted with, or who; and then she said
30 she only had three, and she called over the three that she had, and named Miss Carrie; I was always under the impression that Carrie was her daughter-in-law; I never asked her.

Q. Do you remember where the person you called Miss Carrie was, when you were at Ocean Port? A. I don't remember.

Q. Was she at Philadelphia? A. I could not say.

Q. She was not at home? A. She was not at home.

Q. Let me understand a little more distinctly about
40 these interviews; you speak of an interview with the old

lady in 1880, after Charles had left, that was before the will was made? A. Yes, sir.

Q. And another interview after the will was made? A. Yes, sir; that was in 1881.

Q. Where was it in 1881 that you saw her? A. At Asbury Park.

Q. Did you see her alone? A. I saw her alone.

Q. Where? A. I can't tell what direction from here, but I know there, it was in the cottage where the bed room was, there were curtains in the room. 10

Q. In one of the Look Out Cottages? A. Yes, sir; I I think it was the west one.

Q. Describe to the court in you own way that occurrence? A. What she had told me when I was there one time, that she had made a will, and she would destroy it if she could get it again, as she was speaking she was interrupted by some one coming and calling for Miss. Carrie; then another time I saw her, and she told me again she would destroy if she could get it, and I went down again I think the fore part of August, and she said 20 she had something to say to me, and I went in and she said, "I succeeded in getting the will and have partly destroyed it, and I am going to destroy it;" I was sitting at the upper end of the room, and she went down and then she got out of—I could not say whether it was a drawer or a box, but she got it from some place and came back to me, and she straightened it out, it looked like several leaves of paper, there was two or three, two certainly, if not more, large leaves, and she says—it was torn—and she said, I have partly destroyed it, and she went to 30 straighten it out to show it to me, and it had a red stamp on it; I should judge from the slight look I had of it it was the size of a half dollar, it might have been bigger or less for I didn't stand to examine it, I had no interest in it, and she said, "ain't it a blessing that I got it," I said, "why don't you burn it up," "that is what I will do," she said, and Miss Carrie was just coming in from the other cottage as she said that, and she twisted it up and put it in her pocket, and nothing more was said about it, she opened it and showed it to me and 40

said, "that will be the end of it," and then she repeated again, one child is as near to me as the other, and I want it equally divided.

Q. This paper that you saw was torn? A. It was torn, it looked as if it had been twisted up and she straightened it out, and then when Miss Carrie was coming she folded it up I said, "why don't you burn it up," and she put it in her pocket.

Q. Was that the paper you saw there?

10 [Handing paper in controversy to witness.]

A. No, sir, this is not it, because that was all wrinkled up and it was torn some.

Cross-examination by Mr. Stout—

Q. You have been before this court before this, haven't you? A. Yes, sir.

Q. What for? A. For defending myself.

Q. For doing what? A. For protecting myself.

Q. You shot your husband and was brought before the court? A. I didn't shoot you.

20 Q. Never mind that; have you been convicted of any crime? A. Certainly I was.

Q. In this court? A. In this court.

Q. Have you been convicted for the commission of more than one crime? A. No, sir.

Q. That is the only one? A. I never was before the court but once before this in my life.

Q. I want you to give me the date of the first conversation you had with Mrs. Pemberton in relation to this will? A. In 1880.

30 Q. What time in 1880? A. I could not give the date.

Q. Was it in the spring? A. No, sir; it was along about mid-summer—along towards August.

Q. It was not in August, was it? A. I would not like to be positive about it, for I was back and forth down there different times.

Q. Wasn't it along in June? A. I don't think it was; I think it was nearer August.

Q. Will you swear positively it was in August? A. I won't swear positively about it; I swear to this effect, it

was along about midway or the latter part of the summer.

Q. What were you doing down there at the time she showed you what she supposed was a will? A. Attending to my business.

Q. What was that business? A. Looking after money that was due me.

Q. By whom? A. By servants and Miss Carrie Pemberton.

Q. Did you see Miss. Carrie Pemberton at that time? 10
A. I did; she was busy; and afterwards I saw her and talked with her about my business.

Q. Was this before or after you saw her, that you had the talk about the will? A. Before and after.

Q. That you talked to her about your business? A. When I was talking to Miss Carrie about my business I was not talking with the old lady.

Q. When was the conversation with the old lady; before you saw Carrie on your business, or after? A. The old lady was there, and Miss Carrie was attending 20 to her business, and then she told me about succeeding in getting it, and when Miss Carrie came back she said nothing more, and then she got it in Carrie's absence.

Q. She went to her trunk to get it? A. I don't know whether she got it from her trunk or not; she went and got it.

Q. Did she get it on purpose to show you? A. I can't tell you; she said she had succeeded in getting it.

Q. Can you read writing? A. No, sir.

Q. Did it look like this will? A. It was a wrinkled 30 up paper and torn.

Q. Did it look like this will? A. I would not say to that.

Q. Did it have a seal on just like that? A. It had a seal on.

Q. Just like that? A. I would not say just like that.

Q. Did it have this red seal? A. I would not say.

Q. Where was it torn? A. Near where the red seal was.

Q. Whereabouts? A. It was torn about where the 40

seal was; the stamp was effected by the tear—some of it off.

Q. You don't know whether it was that kind of a seal? A. I didn't read it; she didn't give it to me to read; she straightened it out, and she showed it to me and said she had partly destroyed it.

Q. And she got that out expressly to show to you? A. I don't know what her object was; I don't know anything about that; I did not ask her.

10 Q. You have talked this over with both the doctors? A. I guess not.

Q. Haven't talked with them anything about it? A. I have not told you so, have I?

Q. Have you? A. I have not.

Q. Have you said anything to them about it? A. I had no occasion to say anything, have I? I said nothing about it until I was subpœnaed.

Q. Who did you first tell that Mrs. Pemberton had shown you the will partly destroyed? A. I told you

20 after I was subpœnaed.

Q. You never told it to anybody before you were subpœnaed? A. I had no call to, it was none of my business to know anything about it.

Q. Did you tell anybody of either of these conversations, before you were subpœnaed? A. What business had I to tell it.

Q. Answer yes or no? A. I told you I did not, for I had no business to.

Q. You never have told any of these conversations to

30 anybody, that you have told on the stand? A. Not until after I was subpœnaed.

Q. Have you since? A. I have told it here.

Q. Have you told it before this time on the stand? A. No, sir; I have not been on the stand before.

Q. No; but before you testified about it, did you tell it to Dr. Pemberton? A. No, sir; I didn't have no conversation with him.

Q. Did you tell it to either of these counsel? A. They can tell you better than I can about it.

40 Q. Did you? A. Am I obliged to tell you.

Q. Yes, you are? A. I say I never told until I was brought here.

Q. Never until you were on the stand? A. Not on the stand, but in Freehold.

Q. Who did you tell it to? A. To the counsel.

Q. Didn't you tell it to Dr. Pemberton before that? A. No; I did not.

Q. Never told him anything about it? A. No, sir; I didn't know what I was subpœnaed for.

Q. You didn't know that there was a will case? A. 10 I know nothing about it, it was not my business to know.

Q. Who did you come up with? A. Numbers came when I came.

Q. Who did you come in company with? A. With several.

Q. Mention who they are? A. I don't know; I could not tell you; I know their faces, but I could not call their names.

Q Didn't you come up in company with Dr. Harry and John Pemberton? A. I came on the train, the 20 train didn't come specially for me; they all paid their fare.

Q. Did you pay your fare? A. I got here, and they would not have brought me here unless it was paid.

Q. Didn't Dr. Pemberton give you a ticket? A. He gave me a subpœna.

By Mr. Robbins—

Q. You said you were convicted in court here of a crime? A. I didn't know what he meant.

Q. That was the trouble with your husband? A. Yes, 30 sir.

Q. What was your defence in that case; was it that you did what you did in self defense? A. I did it in self defense; I thought it was an honorable case.

Q. What was your punishment? A. I believe I had some months here in the county jail.

Q. You were fined? A. Yes; I was fined and I paid it.

Q. Were you locked up because you could not pay

your fine? A. No, sir; I could have got bail, but I did not accept of it; I wanted to rest, and I enjoyed it too.

Q. How long were you in? A. I believe five or six months; it didn't do me no harm, I know, for I have had no sickness since; I always worked very hard, and that is all the rest I ever had.

By Mr. Vredenburgh—

Q. You were an old family servant there? A. Yes, sir; I know every face I see here; I was raised in Jersey;
10 I lived with Mr. Arrowsmith when he was a boy.

Q. You have said that you were an old family servant of the Pembertons? A. Yes, sir.

Q. Were you accustomed to talk with Mrs. Pemberton on confidential matters? A. Yes, sir; because she was always giving me advice about getting along in the world, and how to manage.

Q. And this little affair you were asked about, you were defending yourself against the ferocity of your husband? A. Certainly I was.

20 *Georgianna Lucas*, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. What is your age? A. I think about 40 years old.

Q. You are over 35 or 40? A. I guess I am about 40.

Q. What is your occupation? A. I am cooking now.

Q. What is your regular occupation? A. My regular occupation is chambermaid and waiter.

Q. And during the summer where did you carry on that occupation? A. In Asbury Park.

30 Q. In the summer of 1880 where were you? A. At the Look Out cottage of Mrs. Pemberton.

Q. Occupied as a chambermaid? A. Chambermaid and waitress.

Q. Were you necessarily called in the room of the old lady, Mrs. Pemberton? A. I used to attend to that room.

Q. Did you see Mrs. Pemberton, the old lady? A. Oh, yes.

Q. And the daughter? A. Yes; I lived Miss Carrie, she hired me.

Q. Were you there during the summer season, the whole season of 1880? A. I went there in July, the 4th of July.

Q. And stayed how long? A. I think it was the last of September that I left there.

Q. Do you remember the occasion of this young man running away? A. Yes, sir. 10

Q. Under the charge of taking money? A. That was the charge.

Q. Did he come back while you were there? A. No, sir.

Q. He left while you were there? A. Yes, sir.

Q. Did you have any conversation or hear any conversation between the mother and the daughter upon that subject, or upon the subject of a will? A. No, sir, I did not, not with the mother and daughter; I heard Mrs. Pemberton say after Charley went away—she was on her way to the dining-room, and she said she had often been at her ma to make a will, for she didn't know what might happen. 20

Q. You heard Carrie say that? A. Yes, sir; she had often been at her ma to make her will, because she didn't know what might happen; that was after Mr. Charley went away.

Q. Anything else about the will? A. Mrs. Pemberton was very angry with her brothers; I heard her say that she would get even with them. 30

Q. That was young Mrs. Pemberton? A. Yes, sir.

Q. Did she say what for? A. She didn't say what for.

Q. Did she say it in good humor or in anger? A. I don't know; she didn't seem to be in very good humor.

Q. Did you understand she meant it or not? A. I thought she meant it from the way she looked.

Q. Did you hear the mother say anything about a will, or have any conversation with her? A. No, sir, not about the will.

Q. State any conversation in which the mother referred to the daughter; did you hear the mother say anything about the daughter's action? A. Miss Pemberton said she had often been at her ma to make a will, for she didn't know what might happen; that was after Charley went away; I always called them both Mrs. Pemberton.

Q. Did you ever hear the mother say anything about the daughter's worrying her about a will? A. After Mr.
10 Charley went away I heard her speak about it.

Q. What? A. She said Carrie was always worrying her about the will, but she didn't say any more; I was in there one morning cleaning up the room, for I felt very sorry for Miss Carrie after Mr. Charley went away.

Q. Do you remember Mrs. Johns? A. I remember her being there very often.

Q. She was often at the Look Out cottage? A. Yes, sir.

Q. Calling there? A. Yes, sir.

20 Cross examination by Mr. Stout—

Q. You say you heard Carrie Pemberton say that she had often been at her mother to make a will; when was that? A. She was going into the dining-room, she was in the kitchen.

Q. Going from the kitchen to the dining-room? A. She was in the kitchen, and she was going into the dining-room.

Q. Who else was there at the time? A. The cook was in the kitchen.

30 Q. What had she been talking about just before that? A. She just came right in.

Q. And said that right away? A. Yes, and went on in the dining-room.

Q. That is all she said, isn't it? A. She didn't say anything else; she said she had oftentimes been at her mother to make a will, for she didn't know what might happen.

Q. That was all that she said? A. She said that as she went into the dining room.

Q. What else was said by her at that time? A. I told you that she went on into the dining room.

Q. Did she say anything else? A. Not right then.

Q. What else did she say near that time? A. She was worried about Mr. Charley going away.

Q. She came in and said that to you and the cook? A. She didn't say it particularly to me; she was right there.

Q. Did she say it to herself out loud, or talk to you? A. She was talking to us, I suppose. 10

Q. Where was the old lady when she said that Carrie had been worrying her? A. I could not tell you; Miss Pemberton had just come out of her room.

Q. You don't know where she was at the time? A. She was there in the room.

Q. But you don't remember where she was when she told you that? A. Miss Pemberton had just come out of her room and was going into the dining room; she was in the kitchen and went into the dining room.

Q. You don't remember any other conversation that 20 happened at the Look Out Cottage? A. No more than I heard that Mrs. Pemberton was annoyed when Charley went away.

Q. You don't remember anything else about the will? A. No, sir.

Q. Do you remember anything else that either one of these ladies said during that summer, besides the matter you have testified to, can you remember any other conversation? A. I don't know that I can, during the summer. 30

Q. You cannot remember anything else? A. There was a great many conversations passed in the summer that I might have forgot; I could not say.

Harry H. Pemberton, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Robbins—

Q. Where do you reside? A. Long Branch.

Q. What is your profession? A. Physician.

Q. How long have you lived at Long Branch? A. Since the spring of 1873.

Q. What is your age? A. Thirty-two next July.

Q. How, if at all, are you related to Mrs. Carrie H. Pemberton the proponent in this case? A. Her brother.

Q. And how are you related to Mrs. Caroline Pemberton, the decedent? A. She was my mother.

Q. When did she die? A. She died on the twentieth day of November, 1882, in the city of London, 24 Guil-
10 ford street.

Q. Up to what time did you live with your mother and your sister Carrie? A. I came down to Long Branch to practice medicine in 1873, and from that period until 1877; I think the spring of 1877; I boarded at Long Branch, but would visit mother at home different times, whenever I happened to be through making calls.

Q. Where did she reside at that time? A. At Oceanport.

20 Q. How long did she reside at Oceanport? A. She had resided there off and on some twenty years.

Q. What was your father's name? A. John H. Pemberton.

Q. When did he die? A. I think March 17th, 1875.

Q. When did your mother move from Oceanport to another place? A. In the fall of 1876 or 1877, I can't place it exactly, my sister had her up to New York to board at Mrs. Seers in Sixteenth street.

Q. Did she go with her there? A. She did, and they
30 lost their trunks, they were stolen, and mother lost all her securities and everything else, she had to get duplicate copies of her mortgages, they were all stolen, and she came back along in the spring.

Q. Back where? A. To Oceanport.

Q. Resided there how long? A. She resided there until I think the spring of 1877, she came with my sister to my house at Long Branch on the corner of Fourth avenue and Main street.

Q. How long did they reside there with you? A.
40 Until 1879.

Q. Then where did they go to reside? A. Then my sister took a boarding house at 68 West Thirty-eighth street in the city of New York, of Dr. McElvain, and took my mother with her there; I tried every way to prevent it, but I could not do it; then I left Long Branch that winter and went to live with them a short time after they moved there; I lived there in the house and was engaged down town, and I left there, I think, in March, along about the middle of March, the next year, 1880, and resumed my practice again at Long Branch. 10

Q. How long did your mother and sister live together, on this occasion, in the city of New York? A. From October, say the first part of October, of 1879 until about the first part of April, 1880.

Q. Then where did they go? A. My mother was very sick—she had been very sick in New York with double pneumonia—and contrary to the advice of my brother, who was attending her, and Dr. Alfred Loomis, my sister took her down in April and took board with her at the Irving House, at Asbury Park; then my sister got 20 my mother to go security for her, and rented the Look Out Cottages of Mrs. Avery, at Asbury Park, and moved her there; then in the fall of 1880, my mother moved back to the Lane Cottage, at Long Branch, my sister being with her; in the meantime, in the summer of 1880, in July, this boy ran away.

Q. I want to keep now to the residences—we will come to that later? A. During the fall of 1880, and the winter of 1880, my mother lived with my sister, at the Lane Cottage, on Third avenue and Chelsea; my mother was 30 sick pretty near all that winter, the whole winter, in fact; she was in bed most all the time, off and on; an invalid.

Q. Where did she go, and when did she go, from the Lane Cottage to Asbury Park—I want to get the residences up to the time she went to Europe? A. That was in the fall of 1880 and the winter of 1880 and 1881; then in the spring of 1881 my sister took her down to Asbury Park, at the Look Out Cottages again, the same cottages they had formerly occupied, and she lived there 40

during that summer, and in the fall of 1881 my sister took her to Florida; seventy-two years of age; then she got back again to the city of Philadelphia with my sister, and my sister's boy visited her; moved his boarding house and lived with her in the city of Philadelphia, until she came down to the Park again in the summer of 1882.

Q. How long were they in Philadelphia? A. Mother was very sick in Philadelphia she told me, and my sister
10 also said so.

Q. How long was she there? A. I could not say exactly; I don't remember, but some little while from the time of their arrival back from Florida until she came to Asbury Park; she was there that time.

Q. They came to Asbury Park and remained there until you went to Europe? A. Yes, sir; about that I was down visiting my mother; I was very busy in the summer time, and I didn't have much chance to go there; I don't suppose I was there in 1882 more than
20 once during the summer season.

Q. Did she reside with her daughter at Asbury Park from the time they returned from Philadelphia until they went to Europe? A. Yes, sir, to the best of my knowledge.

Q. From the time of your father's death up to the time of your mother's death, did or not your sister Carrie reside and stay and remain with her? A. She did.

Q. And took her about to these various places, as you have stated? A. Yes.

30 Q. What was your father's business? A. He kept a country store.

Q. At Oceanport? A. Yes, sir.

Q. When was it that the son of your sister went away? A. It was the 27th of July, 1880.

Q. Your mother and sister were then residing at Asbury Park? A. Yes, sir.

Q. And you at Long Branch? A. Yes.

Q. And your brother John at Long Branch? A. With me; my brother John came with me in the spring
40 of 1880.

Q. Where did he reside prior to that time? A. In the city of New York.

Q. What was the first knowledge you had of the going away of your sister's son? A. I received a telegram from my mother, "Is Charley at your house? Answer," and then a letter.

Q. From whom? A. My mother, in the evening.

Q. What next about that? A. She said that she had given him several hundred dollars in money, some building loan stock, her bank book and a lot of checks 10 to take up and pay a note that was falling due; she owed Mr. Redway for rent for the Look Out cottages, and asked me if I would go and see about it—if he had not been there and paid it, if I would go and take it up; he also had some money to pay Matthias Woolley the loan dues; I called my brother's attention to it and talked it over; the letter further said that Carrie was sure he had been murdered; she was going to get Mr. Bradley to drag Wesley Lake, and also search the woods around Asbury Park; it looked so farcical to me, I merely said 20 "That fellow has run off with the things," and I wrote back a letter, which I have there, to my mother, which you can produce there—it has a postmark and all on—feeling very indignant about it.

Q. Have you the letter which your mother wrote, which drew this answer? A. No, sir, I have not got it; not only that, but I forgot to state that she came up to see about it shortly afterwards, and so did my sister; she came over to see me in a carriage.

Q. About what? A. About Charley running away 30 and where he was—the mystery to solve it, to find him; I told them my idea was it is plain he was a thief, and he had stole the money.

Q. Who did you tell that to? A. My sister, as well as my mother.

Q. When, in reference to the time he went away and of those visits of your mother and sister, was it that you wrote this letter which is marked "No. 1, July 29th, for identification," and which is dated July 29th, 1880? A. I think this must have been written in the evening. 40

Q. Of what day—the day your mother came? A. Very likely, it is dated July 29th.

Q. And mailed the 30th? A. Yes, sir.

Q. Who had been to see you in reference to his running away before you wrote that letter of July 29th? A. Both my mother and my sister.

Q. When was it that you spoke to her in the way you did to your sister, about his being a thief, as you have characterized him? A. When she came to see me.

10 Q. And before you wrote that letter? A. Yes, sir.

Q. I show you an envelope which is post marked "East Long Branch, July 30th, 1880," and is addressed Mrs. Caroline Pemberton, Asbury Park, Monmouth Co., N. J.; state whether or not that is the envelope which inclosed the letter which is marked No. 1 for identification? A. That is.

Q. In whose handwriting is the letter and the address? A. My own; and my own envelope head.

Q. And it was mailed and went in the usual course of

20 post, so far as you know? A. Yes, sir.

Q. From whom did you receive this letter? A. When the bondsmen were taking the inventory I was with them, of my mother's personal estate; I asked the permission of Mr. Woolly to have that; I found that there.

Q. Who was Mr. Woolly? A. The administrator.

Q. Mr. Matthias Woolly? A. Yes, sir.

Q. And that is the way you received it? A. Yes, sir.

Q. And received it from among the papers which your mother left? A. Yes, sir; safe in my mother's box.

30 Q. Did you have any other conversation with your mother or your sister, in reference to the going away of Charles? A. Yes, sir; the purport of it was about this, if the court will allow me to state it.

Q. When was it? A. It was about July twenty-eighth or twenty-ninth, a day or two after he had so mysteriously disappeared; I got the telegram the same evening as he disappeared; they wanted me before banking hours to pay this note.

Q. The note which is referred to in the letter marked

No. 1? A. The note of hand which was due of my mother's.

Q. Before we go into that, this letter No. 1 refers to a note; what note is that? A. That means a note that my mother wrote me as well; she sent me a telegram and then a letter.

Q. The letter refers to a note? A. Yes, sir; a note of hers that matured that day, which Charley had been given the money to go to the Long Branch Banking Company to pay to Mrs. Avery for the Look Out Cot- 10 tages; my mother had written me asking me—she didn't want the note protested and asked me if I could not pay it.

Q. You write, her "Dear mother," just got your note about my taking up note, I cannot do it;" what note was that, which was mentioned here about taking up? A. The note of hand falling due, which Charley had been given the money to pay and did not—the Redway note—he was the agent of Mrs. Avery.

Q. Thomas R. Redway? A. Yes, sir; or Thomas H. 20 Redway, I don't know his middle letter.

Q. After Charles went away, did you receive this note from your mother which you acknowledged here? A. Yes, sir.

Q. Saying, "Just got your note?" A. Yes, sir.

Q. And why was it that the Redway note or notes was not taken up and settled without calling upon you? [Objected to.]

A. Because I had not the money, I suppose?

Q. This then was the answer to your mother's note, 30 in which she requests you to pay the note which had not been paid, on account of Charles going away with the money? A. That was it in which I denounced him, my sister was apologizing for this act, she was satisfied that he was not a thief, that he had not run away, that he had been robbed or his pocket picked and was ashamed to come home on that account, and she so influenced my mother that she believed it.

Q. Did you see your mother and sister together at

your house that day? A. I don't remember of seeing them together; I was very busy at that time of the year.

Q. You spoke of their being there the same day, were they there together? A. They were there at different times, my mother came in a stage, and my sister came in a hack.

Q. Was it on the same day after Charles departed? A. No, sir; not the same day, the next day or the day after, my mother might have come the next afternoon, 10 and my sister the next day still, anyhow, right at the door so that the attention of several were called to it; my sister threatened revenge for my not sympathizing with her, and she shook her hand in that way.

Q. At that time you made this statement to your sister about the conduct of her son and the construction you put on it; what did she have to say, if anything? A. She said you shall not triumph my Charley's misfortune; my brothers shall not triumph over it; I have sworn it I will have revenge for this; I will get square 20 with you for this work, for not sympathizing with me; you have denounced my son as a thief and a fraud, but you shall not triumph; "revenge is sweet," or words to that effect, she said "I will have revenge," emphasizing it in anger and malice, and she left my house in that state.

Q. Was that before you had written this letter of July 29th, or after? A. Afterwards, because she had the letter and showed it.

Q. I was going to call your attention to this, whether 30 or not your sister had seen this letter of July 29th prior to the time she came to your place, and had this conversation with you? A. She had seen it.

Q. How do you know? A. Because my mother told me how indignant she was that I should write such a letter, denouncing Charles as a thief and imposter.

Q. Did she say anything to you about this letter? A. She did.

Q. What? A. That I was no brother at all; if I was any brother I would go and employ a detective; she 40 said, "you have means, why don't you go and employ a

detective and hunt this thing out; here is Mr. Bradley and strangers and boarders, in the house, doing everything they can; one gentleman has gone to New York with his photograph, and is watching all the steamship offices to see if he had not gone back to Europe," and he actually did do that.

Recess.

[Proponent's counsel makes the offer to produce the letter referred to in his testimony, and called for by counsel for caveators.] 10

[Counsel for caveator's decline to receive the letter, it not being the one called for or referred to by the witness.]

Q. Where did this conversation take place? A. She sat in the hack in front of my door at Long Branch.

Q. Have you detailed about all of that conversation? A. Yes, sir.

Q. Then where did your sister go, as you understood, after that? A. To the depot; went back to the Park.

Q. She came up on the train, and came from the 20 depot in a hack? A. Yes.

Q. Did you see her afterwards and have any conversation with her in reference to the conduct of her son, or your views about it? A. Not at that immediate time.

Q. Did you at any time afterwards? A. Yes, sir.

Q. Where? A. At my house, Long Branch.

Q. How long after this was it? A. Probably a month; some time in the latter end of the summer.

Q. Was anything said then about her son, and your belief and conduct in reference to it? A. Yes, sir. 30

Q. What? A. The same purport; that I was no brother; that I did not sympathise with her; that I did not treat her rightly in accusing her son of being a thief and trying to make his grandmother think he was a thief, and that he had not stolen that money; that he had been murdered and robbed.

Q. Was that before he had been heard from? A. I

found out afterwards that underneath a sham name she was corresponding with him in St. Louis.

Q. At that time? A. Yes, sir; I have her letters to him under the name of Charles Meddle.

[Proponent's counsel objects to this as being improper testimony.]

Q. Where did this second conversation take place which you have just mentioned? A. At my house at Long Branch.

10 Q. Anybody present except yourself and your sister?

A. Yes, sir; I think my sister-in-law and my brother's daughter, and I don't know but what my driver may have heard some of it.

Q. Have you stated about all that was said on that occasion; I mean bearing upon the matter of her son? A. Her conversations were taunts and reproaches because I had not made efforts to procure this boy.

[Objected to.]

The Court—Give the conversation and not charaterize

20 it.

The Witness—In this respect, you shall not gain by Charles misfortune and my misfortune; it shall not influence your mother against him, his grandmother thinks the world of him; I shall see that he is taken good care of, you shall not lower him in the estimation of his grandmother, she shall love him, you shall not take that love away from him, that is about the purport of her words; "I shall never forgive you, never forgive you," and she emphasized "never forgive your unkindness in

30 denouncing him in the manner you have, neither yourself nor John."

Q. The date of this will is August 16th, 1880; when was this first conversation that you speak of, after the going away of Charles? A. The first conversation was either the twenty-eighth or twenty-ninth of July.

Q. Preceding the date of this will? A. Yes, sir.

Q. And the second conversation when she came to your place, was it before or after the date of the pretended will? A. Sometime in the summer again, I say

40 about a month.

Q. About a month after the first interview? A. I should think so, as near as I can remember.

Q. That must have been after the date of this paper? A. If it was a month it was, of course.

Q. Did she say anything to you at that time about a will having been made, or anything in the way of a will having been made by your mother? A. No, sir.

Q. Did you have any other conversation or interview with her referring to the same matters about which I have been asking you, besides those two? A. Yes, sir. 10

Q. When? A. In the fall later on.

Q. Where was that? A. At Lane's cottage on Third avenue in Long Branch after my mother had come back with her; I went there to see my mother she was going on about Charley.

Q. Who was going on about Charley? A. My sister, and in the presence of my mother.

Q. What do you mean by going on? A. This same line of reproaches; "I have no brothers, if my brothers were like your brothers—look at yours, how noble they 20 have done by you, they do not care anything for me, think of such brothers, don't take any pains to look after my son, and he may be murdered and in the bottom of the ocean, or in the lake;" that was about the purport of her conversation all the time, so I talked to my mother privately from her; I would say to her, "mother you know it must be so, he has run away with that money, Carrie says, "he has not Harry," and she says, "the boy had his pocket picked or knocked down and robbed," I said no mother nothing of the kind, his story 30 was when he first came here, when he turned up, that he stole his father's bank book and ran across the ocean, and you trusted him, and the first trust you gave him he betrayed it, he had certainly stolen the money;" my mother would tell my sister what I had said, and then she wonld go on in the same way, that I was no brother, and John was no brother.

Q. Did you have any other talk with her after that upon these same matters? A. Yes; various times, this would come up whenever I would go and see my mother 40

during that fall, my mother was sickly shortly after that, and she suffered a great deal with dyspepsia, and she would tell her that I was satisfied that this boy had been in error, that he had run away, that he had taken this money, but still I could have no effect on her; my sister stayed there with her, lived with her, slept with her, and when I would go there the next time my mother would be all in his favor again through my sister's talk.

Q. Is there any other conversation with your sister, 10 either in the presence of your mother or away, which you desire to detail prior to the taking of the trip to Europe? A. In reference to a note that I wished my mother to endorse for me.

Q. When was that; was that after this conversation which you have already detailed? A. Yes, sir; that was in 1881; in the fall of 1881 I was building, with my brother, a house at Long Branch; I wanted to discount a $1,300 note; I went to my mother and asked her to indorse it for me; she objected, she said she would see 20 about it first; I left the note and I came again to see if she had indorsed it; she objected; she said Carrie did not like it, Carrie did not want it done; I said "Well, mother, all right; it is only an accommodation indorsement."

[Objected to].

[Proponents' counsel moves to strike out the testimony in relation to the note.]

Q. Was anything said, at the time of the talking about the note, about your mother's business, or your conduct 30 towards your sister, as she termed it? A. Not that I particularly remember.

Mr. Robbins—We will leave that note out, then, for the present.

The Court—The last answer will be stricken out.

Q. Was there anything else before you went to Europe? A. Yes, sir.

Q. What was it? A. I called on her Saturday to see my mother; I had not seen her for some time.

Q. When was that? A. In 1882; in the summer she told me she was going to Europe; I asked her about it, and she said Carrie was going to take her—

[Objected to. Objection overruled. Exception.]

Q. Proceed with the conversation? A. I coaxed and entreated my mother to let me go along; she said if Carrie was willing I could do so; I went and saw Carrie —she said no; I entreated and begged and plead and prayed with her to let me go; at last I succeeded in getting permission to go along; my mother was perfectly 10 willing for me to go, would like to have me, but I had to get the consent of Carrie, and used all my ability to get that consent; at last I got the consent; I told her it was a long ways to go alone—only two women alone.

Q. Was there any desire that any other person should go with your mother besides yourself? A. Yes, sir.

Q. Who? A. My brother's daughter.

Q. What was her name? A. May Pemberton.

Q. Did she, in point of fact, go? A. No, sir.

Q. Why not? A. Because Carrie did not want her to. 20 [Objected to.]

Q. By what means did you know that she did not go on account of your sister Carrie? A. Because my sister talked to me and got me to help her to prevent her from going.

Q. Your sister Carrie? A. Yes, sir.

Q. What did she say? A. She said, "The idea of May going over to Europe and Charley not going;" she says, "No, she shall not triumph that way; she shall not have that glory; if anyone goes over to Europe to 30 see my relations, I want Charley to go, and I want you to help me; if you say so, mother wont let her go."

Q. Do you know whether or not money was raised for the purpose of Dr. John's daughter going? A. Yes, sir; $600.

Q. When was it that the matter was spoken of by Mrs. Carrie H. Pemberton; before or after the money was raised? A. After the money was raised.

Q How long was it after the interview when it was decided that you should go, that you actually did start 40

for Europe? A. I went down again to see my mother on Sunday, and spent the Sunday with her.

Q. How many days? A. I think the first day I spoke with her about it was on Saturday, and the next Sunday I drove down and spent the day with her; I talked with my mother then, and said I would like to go; and she said, "If Carrie says so, if y ou can get Carrie to consent, I am perfectly willing you should go, and perfectly willing to pay your expenses.

10 [Objected to. Overruled. Exception.]

Q. When was it after that Sunday that you actually started to Europe? A. On the twenty-seventh day of October.

Q. How long was that after this Sunday that you have spoken of, when you were there last? A. About a month; I didn't actually know my mother was going to Europe; I didn't know that either was going until I went down on that Saturday in the fall of the year.

Q. Was there any other conversation between that
20 Sunday and the time you actually started, which you had, either with your mother or your sister, in reference to the business of her estate or the business as to her property? A. Yes, sir; if you will allow me to explain about that $1,300 note again, and also a $600 note; the point was just here, I had to get my sister's consent for my mother to indorse these papers—they were renewals —so that when I was away in Europe my brother could renew the note.

[Objected to.]

30 Q. Where was this talk about these notes, whatever it may have been? A. At the Lane Cottage, the first talk, at the Pemberton, at Asbury Park and at my house at Long Branch.

Q. Was anybody with you when you went to Asbury Park and talked about the notes at the Pemberton Cottage? A. My sister and mother.

Q. Was any lawyer with you there—was Mr. Campbell there? A. I think he was, once.

Q. Do you recollect of his being there on one occasion?

A. I think I do; he was there on another matter, but that was brought in.

Q. Did any of these conversations with your mother take place before Mr. Campbell? A. I remember that the Cook Howland matter was the engrossing subject, but I do believe there was some mention made of that $1,300.

Q. Anything in reference to your going to Europe; do you remember about that? A. Yes, sir; I think that was gone over too. 10

Q. What was there in connection with this $1,300 note and the $600 note that had to do with the influence of your sister over your mother or whether you should go to Europe or not?

[Objected to Overruled. Exception.]

A. If you will let me explain—there was a $1,300 note that would mature while I went to Europe.

Q. Whose note was it? A. That was my own note; I was the maker, my mother was an accommodation indorser and I wanted to leave in case I was away six 20 months, two renewals in blank, leave them with my brother, with the dates blank, so he could go to the bank and pay the discount and renew them, and I had to get my sister's permission to make those indorsements; my mother said "if Carrie says so I will do it," then while my sister was out my brother and my brother's wife had got my mother to indorse a $600 note, that note my brother's wife discounted and gave the money to May, intending her to go to Europe; as soon as my mother told my sister she had indorsed the note for John, she rared and went 30 on in a terrible way and demanded to see it, so my mother had to go and get the note and show it to her.

Q. What note was that? A. That was the $600 note, signed by Caroline Matilda Pemberton and John as maker; my mother had no money to go to Europe with, not a dollar, she came back to Asbury Park penniless, without having received that sum of $6,000; the question was, "how can I get the money;" I suggested to her to mortgage the Lane Cottage property which was free and clear, Carrie says, "oh no, you can't mortgage the Lane 40

property, I object; I won't have the Lane property mortgaged;" I suggested to my mother that we take some mortgages which she had, and pledge them at the Long Branch Banking Company, as collateral for a $2,500 note, my sister assented to that, the note was discounted and the bank gave my mother the money, that was another instance, the truth, the simple truth; then again my mother, who was an old lady—I objected to her going security to Dr. McElvain of 68 West Thirty-eighth
10 street New York, for $1,800; my sister mailed the lease down to Long Branch to my mother; I prevented my mother from signing that for two or three days, but down came my sister on the train, stayed over night, got a notary and got the security so that she hung my mother up for $1,800 more; again the Kings cottage at Long Branch; I objected again on account of her being an old lady and this being a speculation of hers, the boarding house business, of going security there again for a large amount of rent; my sister would get hold of
20 her, she slept with her, and the next morning she would sign anything; again the Look Out cottage at Asbury Park; I objected to my mother going the security and indorsing notes to Thomas Redway for those cottages; she listened for a while to my advice, until I was away, the moment I was away it was done, and she did it.

Q. What date did you start for Europe? A. October 27th I think, it was on Saturday, although we left Long Branch on Friday—my sister purchased the tickets.

Q. Who went to Europe in your party—anybody ex-
30 cept you and your sister and mother? A. That is all, and Charles Isaacson he was at the steamship and stayed there all night in the berth with my sister and mother, and that was the night she claimed she handed him this paper.

Q. Where did you start from when you went to Europe from the city of New York? A. From Long Branch, from my house.

Q. Did you go together to New York city, you and your mother and sister? A. No, sir; my sister was
40 there; I had gone up in the morning with her, Friday

morning, to see about purchasing the tickets; while I was going to several steamship offices to get better rates, I came back to the National Line steamship office; she said, "I have got the tickets, I have made a bargain, I have got them, I made the contract, and have made the arrangements;" I said that is very—

Q. I don't care about that; did you remain all night in New York the night before you started? A. Yes, sir.

Q. Where did you sleep that night? A. I slept in the next stateroom. 10

Q. On what steamer did you go? A. On the steamship Egypt, the National Line.

Q. Had you any knowledge of the will, or the paper which is called the will, previous to your going to Europe? A. None.

Q. Was it referred to in any way to you prior to your arrival in England? A. No, sir, any more than—

Q. Was it or not before you went to Europe? A. My mother referred in three conversations at that time to me that she had no will; if you would allow me to tell 20 you how it was, the circumstance was—

Q. No; my qnestion is, did your sister Carrie refer to you in any way about that will prior to your going to Europe? A. No, sir.

Q. Who went up with you to New York from Long Branch or Asbury Park—who went with you on the train? A. My mother.

Q. Did you have any talk with her at that time about whether or not she had a will? A. Yes, sir.

Q. State that? A. Just before we reached the Passaic 30 drawbridge the cylinder of the locomotive burst of the train we were on, delaying us some two hours; I spoke to mother of the uncertainty of traveling, that it might be the same with the ocean steamer, and that I thought she ought to make a will to protect John, because a few days prior I had had a conversation at father's grave at Shrewsbury with her on the same subject; she said "No, Harry, there is no need of a will, the State makes good enough wills," or words to that effect; "I have no will."

Q. Did she talk to you about it any more, except on 40

that occasion? A. Yes, sir, on the deck of the ocean steamer, when we were four or five days out; we had had a very stormy night, about the only one we had, and we were discussing, as passengers do, the dangers of traveling, and I made the remark, "Suppose we all went to the bottom; mother, you ought to have made a will to protect John;" she said, "Oh, don't talk to me about wills. I have no will. If I die you can do as you please about it. You can arrange it among yourselves, and if
10 we all die, then John can have it all."

[Objected to as incompetent.]

Q. Was there anybody by the name of Cook who went across with you? A. Yes, sir.

Q. What was his full name? A. Samuel A. Cook; he had the same stateroom as myself.

Q. You and he roomed together? A. Yes, sir, the same room; it had four berths in it, and we were the only two who occupied it.

Q. The same gentleman who was sworn in this case?
20 A. Yes, sir.

Q. After you got over to England, how long were you there before your mother was taken sick? A. About a week.

Q. Where was she taken sick? A. Twenty-four Guilford street.

Q. Had you been in London all the time from the time of your arrival in England? A. Yes, sir.

Q. And stayed at the same place all the time? A. No, sir; we had moved from—I can't remember the
30 name, to twenty-four Guilford street.

Q. How long had you been there previous to her being taken sick? A. She was taken sick shortly after we got to twenty-four Guilford street; Bedford Place was the name of the first place we stopped at, and then we moved from there to twenty-four Guilford street, Russell Square.

Q. Did Mr. Cook go to London too? A. Yes, sir.

Q. How long was your mother sick prior to her death? A. Three or four days complaining; was not sick at all;
40 up around the room all but the last day.

Q. I wish you would go on now and state the occurrence at this place where she died. A. In regard to all the circumstances?

Q. Not everything; but as to her being taken sick, and anything which may have been said by your mother or your sister Carrie; the matter of the employment of counsel to draw a will, and matters of that kind? A. My sister and I would go out to look at the sights, and we would come back and find that Thomas G. Venable had called on her and paid her annuity there in her 10 hand, which she showed to us; also one of her relations, Maria Green, had called; that Mr. Cook had been there and expressed sorrow that we were out, and would like to have met us, and would call again on Sunday; he called on Sunday afternoon; while he was there my mother said to him, "I request you, Mr. Cook, to draw me a will, and in it leave my property share and share alike to my children, and leave my son John's share in trust for his daughter, May; my sister was present; Mr. Cook stayed in the house all that night for the purpose 20 of executing that paper on the Monday morning; he wanted to go back to his hotel, but we both, my sister and myself, asked him if he would not stay, and I gave him up my room; after consulting with the doctor, I called in a physician in consultation on Sunday morning.

Q. What was his name? A. Dr. Robinson, of London, quite a noted physician; he did not seem to think my mother was any ways dangerous; I begged and plead with him, privately, out of the room, to give me the best 30 of his advice; he came again in the afternoon or evening; I coaxed Mr. Cook, and so did my sister, to stay until Dr. Robinson came; he examined my mother with a stethoscope and she seemed to be apparently bad; capillary bronchitis, conscious; I remember very well the records of her temperature; it was only 98½ to 99, almost normal; regular full pulse; the doctor and I had concluded on the treatment of milk punch for her on account of her advanced age, and we gave her some about once in three hours; Mr. Cook slept in the adjoining 40

room, my bed room; and along about close to two o'clock in the morning my sister made a milk punch; I gave it to my mother, gave it through a tube; I had bought a tube and fed her all her nourishment through a tube on the Saturday and Sunday prior to her decease, one of these bent tubes, and she took that from me through a tube, in a recumbent position; after she had drank she said, "Harry, I feel better now, a great deal better; lay me over just a little bit; turn me and I think I will
10 sleep quietly;" and I did so; placed the covers up around her neck and kissed her—the last kiss I ever gave her alive; we went over by the fire place a little ways from the bed; my sister and I discussed this very will that was to be drawn on the Monday morning which Mr. Cook was staying there purposely, and for no other purpose than to make it; my sister says, "I guess I will put this shawl around my mother's neck;" she went up to the bed, took the shawl and says, "My God! she is dead! oh, my God, what shall I do?" she says, "Oh,
20 Harry, how I have deceived you, how I have deceived her—if I must tell the truth, there is a will; oh, poor Dolly, poor Dolly;" and she kissed her cold lips, and she says, "I shall do just as she requested;" and she threw her hands around my neck, and she knows it; she sits right there; and she says, "We shall share alike; we shall do just as she says;" I went in the next room and I called Mr. Cook; Mr. Cook came out there partly dressed; he was there in a minute; my sister laid her out, called the landlady up and she was present; then I
30 asked her, "A will; where is any will, Carrie?" she says, "Oh, my God, if I must tell the truth, there is a will;" says I, "Where?" she says, "In America;" I says, "Who has it?" she says, "Charley; I gave it to him on board the steamship Egypt the night we sailed from New York;" I said, "What is the purport of it?" she says, "I don't know;" it is the truth.

Q. Was there anything further said at that time, or afterwards, by your sister, in reference to the will? A. Yes, sir; she said she got it from her after Charley ran
40 away at Asbury Park; she was in such a rage at the

way we acted towards her; I asked her who the signatures were to the will, and she said the doctors down there.

Q. Was this in England? A. This was in England then, when we were conversing about it; I asked her what it conveyed; in talking it over with her, I says, "What is it?" she says, "I shall do right, I shall do right with my brothers, it makes no difference what it is;" she says, "I will do right;" so, then, when we were at Wanstead Park, at my cousin Venable's, the executor of my uncle Robert's estate, one of the executors to both of them, aunt Harriet Venable and Thomas G. Venable, I said, "Carrie, where is the will in America?" and she says, "Charley has it;" I says, "What do you intend to do now about this?" she says, "I intend to do right; I intend to do right;" and I says, "You see that you do;" and she says, "I intend to do it;" there was some annuities due my mother from two other brothers, and this gentleman was the executor of these estates and he wished to pay somebody who had the right and proper authority to the money, and he wished to know; my sister said she was the executor in this will; it was all left to her control and, therefore, he says, "Before I pay it, I want to be sure you will do right;" she said, "Certainly, I will do right;" and both of these executors said, "All right;" and handed her the draft.

Q. Did she state to you or in your presence any of the contents of the alleged will? A. She said there were mortgages left to John and me.

Q. Did she say anything further about the contents of the paper? A. Not that I remember; I didn't have much more to say about it; I believed that she would do right; she talked as though she would, and until she saw this boy—

Q. She also stated at that time that she was left executrix in this paper? A. Yes, sir.

Q. Did you hear any conversation between Mr. Cook and your mother preceding her decease? A. Yes, sir, I did.

Q. What was that? A. I heard my mother tell Mr.

Cook "I request you to draw me a paper," and she heard my mother also.

Q. Who, your sister Carrie? A. Yes, sir, she was right there present all the time.

Q. What were the instructions which your mother gave to Mr. Cook about the preparation of that will?

[Objected to. Objection overruled. Exception.]

A. It was just this, that he should draw her a paper leaving her children share and share alike; her object
10 seemed to be to protect my brother John, and wished him to have his in trust.

Q. Was this, or not, in the presence of your sister Carrie? A. It was, and she made no mention of any other paper, neither did my mother.

Q. Did she make any statement at that time which would indicate at any time that there was any other paper in existence? A. She did not.

Q. No other will? A. No, sir, she never mentioned any other.

20 Q. When did she first mention to you that there was a will? A. After my mother's death.

Q. As you have already stated? A. Yes, sir.

Q. How long after her decease was it that you returned to America? A. We left London on the 6th day of December, 1882, on the steamship Italy, of the National Line.

Q. When did you arrive in New York city? A. On December 20th, 1882.

Q. Was your sister Carrie with you when you arrived?
30 A. Yes, sir.

Q. You and she came over in the same steamer? A. Yes, sir, as good friends as could be.

Q. Where did you go after your arrival in New York city? A. Her son was waiting for us on the pier; he came aboard long before the passengers got off, laughing and seemed very much pleased, and we went with him up to a restaurant opposite Macy's, and had our lunch; we then went to his rooms in Thirteenth street; while there I requested her—I had asked her where this paper
40 was; I said "You ask Charley what he has done with

that paper, you say he has got the will;" I heard her in the next room say "Let your uncle Harry see it; you need not be afraid of him, he won't destroy it; if it was John I would be afraid of him, because he gets so angry, but I think you can safely let him see it;" they were talking in there, and that is all I heard; then we went to the Central Safe Deposit Company, under the Masonic Hall, on the corner of Twenty-third street and Sixth avenue; we three went in there with our bundles and parcels; she could not get admission; he got admission 10 by giving the passwords and whatever their rules are there; by and by an officer of the company came and invited us in the inner vault; he went to a little box, opened it, took out this paper which is here to-day.

Q. This paper which I now show you? [handing paper to witness] A. It had a cover on it.

Q. Is that it? A. Yes, sir; that is the paper and the cover; I said "let us look at the signature;" I am used to looking at legal papers; signed a good many myself, and made a good many in my time; I said, "Yes, that 20 is mother's signature; it looks a little coarser, though, and more tremulous than she usually writes;" and so it is; says I, "Ha, Dr. Mitchell and you have got Dr. Kinmouth," and she says "Yes;" I said what did you put two doctors on for? she made no reply, and the officer of the company—I then took out this little book I have here, which I carried with me, full of notes I made on the steamer and in Europe, and I says to her, "I will put this down to show the doctor when we go to his house to-night," and there is the entry; Mr. R. Ten- 30 broeck Stout's name was not there; the only two names there were Dr. H. S. Kinmouth and Dr. Henry Mitchell; this interlineation was not there; turning over the body of the will with her and him, I said, "Let us see, anyhow, what it does give;" I looked it over and read it with her—she sits right here, and he says, "Look for the rest and residuary clause, there must be a residue in there;" I didn't know what was in the paper, and I looked over the residuary clause; I said, "Here it is," "And also the rest, residue and remainder of my per- 40

sonal property, whatever and wherever it may be, except that which is hereafter particularly described;" I read it right there with him, in the vault; she had been asking me, coming over on the steamer, what the word residue meant; I did not understand the purport of it then, but I saw it afterwards; he says, "It don't give us the Garfield, then; hey, mother, hey, hem, hem, don't give the Garfield, hey;" says I, no.

Q. Who said that? A. Charles; I said I guess that
10 goes to us all; I said, "Hello, Catharine, what is the meaning of that," something like that; her name all the way through was Catharine; says I, "What is the matter?" and I counted and it was mentioned "Catharine" six times; and then we left it tied up in this cover, and that young man sitting over there locked it up and put it away; that note was not on there; that has been written since it come to Freehold; that note at the bottom, "Mrs. Pemberton, this 16th day of August, 1880, had dealings at the store of Steinberger Bros." I saw Mr.
20 Stout write that on, in the surrogate's office in this county, on January 9th or 10th, with a stylographic pen; I came down in the evening and told the doctor, and she talked it over with us, and never made any mention—she could not explain about the two doctors; I thought it so singular that there should be two doctors as witnesses on my mother's will; I saw it afterwards when I saw the doctors; I saw the object; I didn't at the time; we called my sister's attention that evening to the word "Catharine," and she could not explain it, but when I
30 came to Freehold and looked at the papers again it had been altered; "Catharine" had been erased and "Caroline" inserted, and this note written here, right through Dr. Kinmouth's name, afterwards.

Q. I find, by referring to the will, that these mortgages were left to your brother, John—one from John Keough and wife to Michael Whalen, $200; one from Caroline Rogers to Caroline Pemberton, $200; one from Caroline Rogers to Caroline Pemberton, $800; now, at the time of her death, which of these mortgages, if any,

were in existence and available, for your brother, John? A. None of them were.

Q. What had become of them? A. Two of them had been paid to my mother; the $800 one was pledged to the Long Branch Banking Company as collateral for the $2,500 note.

Q. I find in this alleged will that these mortgages were left to you—"Asbury Tabor and wife to Caroline Pemberton, $500; Catharine Sagarton to Isaac Beal, $350; William Jeffrey and wife to Caroline Pemberton, 10 $600; and Mary Jane Genning and husband to Catharine W. Treat, $512;" at the time of your mother's decease which of those mortgages were in existence and available? A. None of them.

Q. What had become of them? A. They had been paid or pledged as security to the bank.

Q. I find in this alleged will a devise to your sister, Caroline, of certain premises in Long Branch, which were conveyed by Sheriff Allen to your mother, and also certain premises adjoining the same, which were con- 20 veyed to her by Mr. Stokes; now, what was the value of those two lots which laid there together? A. My mother refused $12,000 for—

Q. No; I want to know the value of your judgment? A. I should place it at $12,000, at least, besides the furniture.

Q. I mean the real estate? A. $12,000.

Q. Do you mean to say that the house and lots were worth $12,000, outside of the furniture? A. Yes.

Q. There is also here a mortgage left to her of $650, 30 made by Catharine Herbert and John K. Herbert, to Caroline Pemberton, what had gone with that mortgage at the time of yonr mother's decease? A. Paid.

Q. It had been paid? A. Yes, sir.

Q. There are two lots of land lying at Oceanport devised to Charles G. Pemberton, what were they worth at her death? A. $800.

Q. I find another lot at Eatontown left to May Pembrrton, was she the daughter of your brother John? A. Yes, sir.

40

Q. What was that lot worth? A. That lot is in the woods worth $100.

Q. Was there any property which would come under the term "rest and residue" in the will—personal property? A. All the personal property would come under that heading.

Q. After taking out the bank stock and the building loan stock, which is disposed of? A. The bank stock is not disposed of, that is still good.

10 Q. Oh, yes, I also find that there was left by the will to your sister Carrie, bank stock; I don't know how many shares? A. Ten shares of $50 each, of the Long Branch Banking Company.

Q. Was that available and in existence or belonging to your mother's estate at the time of her decease? A. It was pledged to this $2,500 note, but that has all been paid by the administrator since her death, and that remains.

Q. That remains for your sister? A. Yes, sir.

20 Q. If the will should be admitted to probate? A. Yes, sir.

Q. There is some building loan stock, what about that, left to your sister? A. That was pledged with the loan at the bank, and retired by the administrator since my mother's death to pay that note.

[Objected to.]

Q. What had been done with the building loan stock? A. That was pledged as a collateral to the bank.

Q. Is it in such shape and existence that it will be 30 available for your sister in case this will goes to probate? A. Not now; it is not available, the administrator has retired it.

Q. Is there anything which is left to be divided under the term "rest and residue" of personal property? A. No, sir.

Q. What is there in the way of real estate which remains undisposed of? A. The Garfield property at Asbury Park and the Lloyd property on Monmouth avenue, Long Branch.

40 Q. What about the Garfield property—what is that

worth above incumbrances? A. It is mortgaged for $600.

Q. Does it leave anything? A. Yes, sir; it is worth about $10,000 I suppose.

Q. What is the Lloyd property worth free of incumbrances? A. It is not incumbered; I should judge it was worth $800.

Q. You said there was no more personal property except that which was disposed of in that paper, coming under the term "residue;" are you clear about that? 10 A. No; allow me to corr ct myself there; of course all my mother's furniture, carpets and personal effects, wardrobes and everything like that; she had five, six or seven thousand dollars' worth of personal property in the shape of furniture.

Q. It would come in under the term "residue" or personal property? A. Yes, sir.

Q. Outside of the other personal property which I have mentioned to you? A. Yes, sir.

Q. And which is specified particularly in the paper 20 which is said to be a will? A. Yes, sir; then there was some $1,200 or $1,500 in cash that my mother had on her person when she died.

Q. Which would also come under the "residue?" A. And a note of hand of my sister's which she had, of $600, in her pocketbook.

Q. Are there any other things of personal property? A. The cash that she had on her person when she died.

Q. You have specified that? A. I got that changed at London to American money, in gold. 30

Q. What was the amount? A. Somewhere in the neighborhood of $1,500; you see the English executor paid my sister the annuities due her there; she had several annuities from several different brothers; one brother's annuity was £150 every three months, while she was here it used to come over to the Long Branch Banking Company and the Bank of Commerce; another brother left her £20 a year for life; another left her £50 a year for life; the same executor controlled all of these estates, so that is the money that was on her person. 40

Q. All I care about is this, to know what there was on which would be covered by the residuary clause? A. All the money that was on her person when she died.

Q. Then you have specified everything that you can think of? A. Yes, sir; what I wanted to get at was to tell you who had that money and how it was got.

Q. When was this Garfield cottage built? A. It was built during the winter of 1881–2.

Q. Do you know at what expense? A. The contract
10 was something over $5,000; it may have been $6,000.

Q. What was your mother's age at the time she commenced the building of that? A. About seventy-three.

Q. What was it occupied for afterwards? A. Boarding house.

Q. Who occupied it? A. Mr. Stockton.

Q. Was it a large house? A. Yes, sir; forty-eight or fifty rooms.

Q. Have you any knowledge of your own as to what caused your mother to enter into that scheme at that
20 age? A. My sister.

Adjourned to January 2d, 1884.

FREEHOLD, N. J., January 2, 1884.

Harry H. Pemberton, resumed the stand for further direct-examination—

By Mr. Robbins—

Q. Do you recollect a conversation which you had with your sister Carrie after you returned from Europe, in which she spoke anything about your assisting her or standing by her, or anything of that kind? A. Yes,
30 sir.

Q. Where did that take place? A. Up-stairs in her bed-room at our house at Long Branch.

Q. How long after your return from Europe was it? A. Some four or five days.

Q. Was any one else present except yourself and your sister? A. No. sir.

Q. Please state the conversation which occurred there between you and your sister? A. I was asking her what she intended to do in reference to doing right with my brother and myself.

[Objected to. Objection overruled. Exception.]

Q. Go on and state what took place? A. She said that if I would join her against John she intended to do right with me; she intended to give me the Monmouth avenue property—"That shall be yours."

Q. Did she say anything in reference to what had always been her intention as to that property—did she use any expression in that way? A. She said I always intended you to have the Monmouth avenue property. 10

Q. Where did you live at the time your father, and your mother, and your sister Carrie lived at Oceanport? A. At Long Branch.

Q. All the time? A. During the summer of 1873 and 1874, I had an office in the Trenton House, in Asbury Park.

Q. At that time while you were living at Long Branch, and your father and your mother and your sister Carrie were living at Oceanport, did anything occur in the way of any alleged attempt at suicide on the part of your sister? A. Yes, sir. 20

Q. Where was it? A. It was in the summer of 1874, along about July.

Q. State in your own way the circumstances? A. I had just arrived at my office at the Trenton House, Asbury Park, when I received a telegram from my father: "Come home at once; Carrie has killed herself." 30

[Objected to.]

Mr. Robbins—

Have we not the right to show, as substantive proof, all matters, no matter how remote, which would give the daughter the power to unduly influence the mind of the mother upon the point of the making of this paper which they call a will, even if that occurrence which gave her the undue influence might have occurred or taken place six years before the will was made? The

question is one of undue power to control, rightly or wrongly, the mother, and we contend that we may go back to this most powerful cause and show, independently of the testimony of Mrs. John's, and especially in connection with that testimony, this circumstance to explain and show the undue influence, and the reason of the undue influence of Mrs. Pemberton over her mother and its extent.

Caveator's counsel offers to show that in 1874 Mrs. 10 Carrie Pemberton, the daughter, attempted actually to commit suicide, and the effect at that time of that act upon the mind and conduct and health of her mother, who was present at the house where it occurred and had full knowledge in connection with the mother, the alleged testatrix, being offered in the first place, as a substantive fact, explaining the reason of the undue power and influence of Mrs. Carrie H. Pemberton, over the mind and conduct of her mother, the alleged testatrix, which finally culminated in her executing or signing 20 the paper which is offered here and called a will. It is also offered for the purpose of sustaining and corroborating the testimony of Mrs. Johns in her evidence, and also that of other witnesses bearing upon the same point to show that this undue power and influence resulted in the preparation and signing of this pretended will, and also to show the existence and extent of such power.

[The court inquires of counsel if they claim that this act was intended at the time to unduly influence in any way the execution of this will.]

30 [Counsel state that they claim that it was a step in the direction of obtaining an undue influence over the mother, whether the object was a deed or will, or any particular instrument, but it was to obtain an undue power over the mother.]

[Proponents' counsel objects to the offer.]

[Offer excluded. Exception.]

Q. Did you have any conversation with your sister Carrie after your return from Europe with reference to the number of witnesses which appeared upon this will,

or who signed this paper which is called a will? A. Yes, sir.

Q. When did that occur? A. In the presence of my brother, his wife and daughter, and her son, in our office at Long Branch.

Q. When was that, after your return from Europe? A. The same evening as we arrived that day; after we had been to the safe deposit company; in the evening when we got home; after supper.

Q. What did she say? A. The witnesses were dis- 10 cussed; we asked her why she put on two doctors; she could not explain that; there was no mention made by her or any other witness, but the the two were on there.

Q. Who? A. Dr. Mitchell and Dr. Kinmouth.

Q. Anything said about your brother John seeing the will? A. My brother John wanted to see the will, and proposed that we should go up the next day and see it; she positively refused that, and so did her son, who had it.

Q. Did you see your mother between the time that 20 she came to see you at Long Branch after Charles had run away, and the date of the will? A. Only once, she came up to see me.

Q. To Long Branch? A. Yes, sir.

Q. That was about the twenty-ninth or thirtieth of July, 1880? A. Yes, sir.

Q. And the will bears date the sixteenth of August, 1880; now between those two dates, did you see your mother? A. No, sir.

Cross-examination by Mr. Stout— 30

Q. How old are you? A. Thirty-two next July.

Q. When did you first go away from home, from your father's house? A. Do you mean in my boyhood?

Q. Yes. A. When I was about twelve years of age; I went to school at Matawan.

Q. Were you sent there by your father at his expense? A. By my parents, I presume.

Q. Was that a paid school or a public school? A. A paid school—a boarding school—the Collegiate Institute.

Q. How long did you attend school there? A. Something over a year or two years.

Q. Then where did you go? A. I think I went to school at Shrewsbury.

Q. Was that a public school? A. No, sir; a paid school.

Q. A boarding school? A. No, sir; I walked over there every day from Oceanport and home again.

Q. Who paid your expenses at that school? A. My
10 parents as near as I can remember.

Q. How long did you remain in that school? A. Two or three years.

Q. Then where did you go? A. I went a while to Mr. C school at Oceanport.

Q. A paid school? A. Yes, sir.

Q. At whose expense were you there? A. My parents I presume.

Q. How long were you there? A. Some months, I can't say how long.

20 Q. From there where did you go? A. I think I went to school in New York City, the Thirteenth street school.

Q. At whose expense? A. A public school.

Q. At whose expense were you there? A. My sister kept a boarding house at 125 Ninth street, and I lived with her at that time.

Q. How long did you remain there? A. I don't remember, a year maybe.

Q. Then where did you go? A. I think I went to school again at Shrewsbury.

30 Q. At whose expense did you go there? A. My parents, I think.

Q. Was your father deceased at that time? A. No, sir.

Q. Where did you go from there? A. Sometime when I was about sixteen or seventeen years of age, I went with Dr. Hunt to study medicine, and was a clerk in his drug store.

Q. Did you board at home? A. No, sir, at Eatontown.

Q. Who with? A. I think his name was White.

Q. At whose expense? A. My own, I think, partly; the deficiency, I think, was given me by my parents.

Q. Did your mother not advance to you amounts of money prior to the making of this will? A. No, sir.

Q. Never? A. No, sir.

Q. Did she not at one time give you $500? A. No, sir.

Q. Didn't she pay a note for you of $500? A. No, sir.

Q. Did you or not at one time have your mother's property in charge for her? A. I put out money for her on bond and mortgage. 10

Q. And didn't you attend to all of her business? A. I attended to that part of it some with her attorneys.

Q. For how long did you do that? A. I don't know, a year or two; sometimes when she had any money to put out I would tell her of a party, or if I knew of a good mortgage that some one wanted to assign I got it for her.

Q. You, then, for a while, did control her property for her? A. No, sir; she wrote her own checks, and the papers were made all to her. 20

Q. She never trusted anybody with her money or her bank account, did she, as to drawing of checks or attending to her financial affairs? A. She had a bank account of her own.

Q. She attended to the money part of her business herself, didn't she, always? A. Generally, I guess.

Q. Didn't she express a great dissatisfaction at the way you conducted her business? A. Never.

Q. Did not to you? A. Never to me or to anyone else, that I ever heard tell of. 30

Q. To come down to this will, when you first came from Europe I understood you went with your sister and her son, Charles, to some safe deposit company? A. We went first and had a lunch, and then went to her son's room in Thirteenth street, and from there we went to this safe deposit company.

Q. Where is that safe deposit company? A. Corner of Twenty-third street and Sixth avenue.

Q. And the son produced this will from the vault? 40

A. In the first place he tried to get in and left us outside.

Q. He did produce it? A. By and by a gentleman invited us in, and then he went and unlocked a box and took this paper out.

Q. You looked very carefully at this will all the way through? A. I looked particularly at the residuary clause, for they were both hammering at me for it, to find it.

10 Q. You looked very particularly, didn't you, to see the word "Catharine?" A. I saw that, and made mention of it.

Q. You are sure that the word "Catharine" was not erased, as it appears there now, at that time? A. No question; positive.

Q. Are you as sure of that as you are of anything else you have testified to?

[Objected to.]

A. I am sure of that; no question about that.

20 Q. You noticed that particularly? A. Several times; and called their attention to it.

Q. Did you notice any other part of the will any more particularly than you noticed that? A. I noticed this, that there were only two signatures there, and took them down in her presence, in a little memorandum book, and that interlineation was not there.

Q. Did you notice that there were only two signatures any more particularly than you noticed about the word "Catharine?" A. I noticed there were only two signa-
30 tures as witnesses, and my mother's signature; I examined that.

Q. Did you see the word "township" there, erased at that time as it appears now? A. I don't know about that.

Q. Why didn't you notice that? A. Because she wanted me to find what was coming to her, consequently I looked for her name; but your name was not there, Mr. Stout.

Q. I did not ask you that; at that time was the word
40 "Caroline" written anywhere in the will? A. Yes, sir.

Q. Where? A. Once it was written.

Q. You are sure that the word "Catharine" was not erased? A. I am sure of that; it read "Catharine," and I called their attention to it.

Q. I think you said somewhere in your testimony that you asked your mother to make a will before going to Europe? A. My sister said to me before we went to Europe, "Why don't you get your mother to make her will, to protect John, to make his interest to May?"

Q. In pursuance to that, did you ask your mother? 10
A. I took my mother out to see my father's grave at Shrewsbury, and in returning stated to her the request, that she was going so far hadn't she better make a will? she knew that John was unprotected, and she replied that she had no will, and that the State made good enough wills, or words to that effect, and not to bother her about it.

Q. In England when your mother was first taken sick who attended her as a physician? A. I did.

Q. For how long did you attend her before calling in 20
any one to assist? A. Probably two days.

Q. What did you treat her for? A. All she had was bronchitis, and not bad at that.

Q. What did you give her? A. I gave her carbonate of ammonia, muriate of ammonia, inhalations of f , and steam.

Q. When was it that you first determined on giving milk punches? A. I had given her milk punches before I called in Dr. Robinson, very shortly after she was sick.

30

Q. What kind of liquor was used in those punches? A. Mostly used brandy.

Q. Where did you get the brandy? A. I got it in London.

Q. At a drug store? A. I think not, I think I got it at a regular liquor store.

Q. Did you get it? A. Yes, sir.

Q. Did you get all the brandy that was used there, or liquor of any kind? A. I think I did.

Q. Did you in fact get all of the medicine that she 40

took? A. I got all that I prescribed and that Dr. Robinson and I prescribed.

Q. How many days do you say she was sick in all? A. Not over four days.

Q. Were you and your sister together all the time during her sickness? A. A great deal of the time; I was out at different times.

Q. How long were you out at a time, the longest? A. I might have been out half an hour or an hour.

10 Q. When you went out you left your sister in charge of your mother? A. Yes, sir.

Q. And when you came back you found her there? A. Yes, sir.

Q. You had no employed nurse, had you? A. No, sir; we had determined to get one on Monday.

Q. Then it was absolutely necessary for you or your sister to be there with her? A. Yes, sir.

Q. On the Saturday before her death, were you with your mother all day? A. I don't know that I was all 20 day; I might have been out a while in the day.

Q. Was your sister with her all day? A. She might have been out; she didn't stay in the room all the time; she was down stairs and went out.

Q. Are you sure she was out on that Saturday? A. She was out of the room.

Q. On the Sunday following that Saturday, was she out, to your knowledge? A. She might have been out of the room or down stairs.

Q. Do you mean out of the house? A. I don't re- 30 member; she might have been out ten or fifteen minutes, I could not say.

Q. Were you out during that day? A. I might have been.

Q. Were you? A. I think in all probability I may have gone out for ten or fifteen minutes; I was there most of the time though.

Q. At whose solicitation was it that Mr. Cook came there? A. He came there himself; he had been there the day before.

40 Q. And you requested him to stay to make this will?

A. We both did; my sister requested him as much as I did, and she knows it.

Q. Did your sister speak to him and request him to stay? A. Both did; jointly.

Q. Did you at that time or any time, while you were in England, tell you sister that you could stimulate your mother up to making a will? A. No, sir.

Q. By giving her brandy? A. No, sir; I did not; my mother was as conscious as you are within five minutes of her death. 10

Q. Didn't you give her this milk punch on Sunday for the purpose of strengthening her up so she would be able the next morning to make a will? A. I did not.

Q. What kind of rooms were those that you occupied —communicating? A. Yes, sir; drawing room and two bed rooms.

Q. We have not had the position of those rooms yet; I would like to have that; how were they? A. I will give it to you on a diagram, if you want [draws diagram.] 20

Q. The room you have marked No. 1, on the diagram made by you, is what you call the drawing room? A. Yes.

Q. Whose room was No. 2? A. Mine.

Q. Whose was No. 3? A. That we used as a sort of store room.

Q. Where was your mother sick? A. Here in No. 1.

Q. Which is the room in which Mr. Cook slept that night? A. In No. 2.

Q. Was the door between No. 1 and No. 2 a narrow or large door? A. A large door. 30

Q. A double door? A. A very large door; this was a parlor like, and this was the bed room.

Q. Can you give me about the size of room No. 1? A. I don't know that I could.

Q. Give it as near as you can? A. Perhaps 12 feet by 10.

[Defendant's counsel offers the diagram in evidence.]
[Marked Def'ts. *Ex. a.*, Jan. 2, '84.]

By Mr. Robbins—

Q. You say that "Caroline" was written once in that will when you saw it in New York city; where was that? A. There.

Q. The place where "Caroline" is written, to which you now refer, is in the item which reads in this way: "Item. I do give and bequeath unto my daughter, Caroline Hannam Pemberton, all that lot or parcel," and, etc.? A. Yes, sir.

10 Q. You spoke about the desire of your sister to know something about the will, giving that as a reason why you observed the name "Catharine" written in the place where "Caroline" now appears; I want to ask you, did she want to know whether it referred to the residue merely or to the whole will? A. All, but particularly the residue.

Q. What did she say, or where did she speak upon that point; that is, her desire to know about the will? A. Coming over on the ocean steamer she had asked me 20 the definition of the word "residuary" or "residue," and what it meant; and when we got to New York, and was in his room, after they had consented that I should see the will, then she said she wanted to know what the residuary clause was, because it gave her the Garfield.

Q. The Garfield cottage? A. Yes, sir; the Garfield cottage.

Q. And that led you to look through to see what was left to her by the will? A. Yes, sir.

Q. Was that the cause of your looking through as you 30 did, and observe the name "Catharine"? A. Yes, sir; looking for the Garfield.

By Mr. Vredenburgh—

Q. You have said that before your mother died that Mr. Cook was called to draw a will; when first did your sister ever disclose to you that there was a will? A. After my mother's death.

Q. How long? A. While she was apparently in remorse over her body.

Q. Just immediately after her death? A. Yes, sir.

Q. Did she say where it was? A. I asked her "Where is it?" and she said "My son has it in New York" or "in America;" "I gave it to him on board the steamship Egypt the night we left New York."

Q. Did she tell you anything about the contents of it then? A. After that I asked her, and she said there were a lot of mortgages given to me, but she could not remember them.

Q. Before you got over on this side—while you were in England? A. Yes, sir. 10

Q. You asked her what was the contents of the will? A. Yes, sir.

Q. What did she say? A. She said she didn't remember, any more than she knew the Lane property was all hers, and the Garfield was hers, and there was some mortgages left to me.

Q. Did she tell you who drew the will at that time? A. Yes, sir.

Q. Who did she say? A. Tenbroeck Stout.

Q. Did she tell you who the witnesses to the bill were? 20 A. She said they were two doctors, but she did not remember their names.

Q. That was before you started from Europe? A. Yes, sir; what she did say was she would do right, she intended to do right.

Victoria Bruff, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. How old are you? A. I am thirty-four years old.

Q. You are living now in New York City? A. Yes, 30 sir; I live there in the winter.

Q. Did you know Mrs. Pemberton, the mother of this lady? A. Yes, sir; I knew her very well.

Q. You knew the mother and daughter? A. Yes, sir.

Q. Do you remember the occasion of her preparation of her going to Europe? A. Yes, sir; I was there.

Q. What was your avocation or business? A. I dressmake.

Q. Was you employed in that capacity for them? A. Yes, sir; I was employed by Mrs. Pemberton to do her mother's sewing.

Q. And you went to do it? A. Yes, sir.

Q. Where at? A. Dr. John Pemberton's house at Long Branch.

Q. How long was that before they went to Europe? A. I was there two or three weeks, I don't remember exactly; I think it was nearly three weeks.

10 Q. Do you remember the occasion of the proposition that May Pemberton, the daughter of Dr. John, should go to Europe? A. Yes, sir; I went there employed to do Mrs. Pemberton's work and May's, and some for Mrs. Caroline Pemberton at the same time, and it was said that May was to go to Europe with her grandmother and aunt.

Q. Do you remember any occasion of an occurence between the mother and the daughter upon the subject? A. Yes, sir.

20 Q. Give the whole of it in your own way, what you heard between the mother and the daughter? A. I didn't see it, Mrs. Caroline and her mother was in the trunk room where they were looking over things, and Mrs. Pemberton came into me and said, "I am almost driven crazy," those were her words, and she commenced talking to me, and Mrs. Pemberton came in and said, "What are you telling Victoria."

Q. Who said that? A. Mrs. Caroline says to her mother, "What are you telling Victoria," those were her

30 words to her mother, and then she said, "I am telling Victoria you don't want me to take May to Europe, and you want me to tell John so;" those were the mother's words, and Mrs. Pemberton says, "I think you had better tell John, for I don't want to tell John;" I don't want any hard feelings with John in his house," those were Mrs. Caroline Pemberton's words to her mother; and Mrs. Pemberton said she did not want to hurt John's feelings because her sons had done all that they could to make her happy; those were her words.

Q. Do you remember the daughter saying, "Don't you dare take May to Europe."

[Objected to as leading.]

A. No, sir; I didn't hear her say, "don't you dare;" I heard her say to her mother, Dr. John came in in the meantime, and asked his mother to go to drive; Mrs. Carrie went in the room to put on her mother's things, and her mother came back in the room where I was sewing, and Mrs. Carrie says to her, "Don't dear, tell John what I said to you;" those were her words. 10

Q. Was John there at that time? A. No, sir; he had gone down-stairs, waiting for his mother.

Cross-examination by Mr. Stout—

Q. Are you the dressmaker of Dr. John Pemberton's wife? A. Yes, sir.

Q. At present? A. Yes, sir; I sewed for her this summer.

Q. And he is your physician? A. No, sir; he doctored me when I was in the house sick, but he is not my regular physician. 20

Q. Has Dr. John ever made any charges for attending on you? A. Yes, sir; I paid him this summer what I owed him; Dr. Harry attended me in the fall one or two days that I was sick in bed, and I paid Dr. John for it.

By Mr. Vredenburgh—

Q. Do you know whether May did go to Europe or not? A. No, sir; she did not go to Europe.

Q. What was the fact as to your making dresses for May to go to Europe? A. I made May a travelling dress; fixed a velvet dress, a wrapper, and several other things. 30

Q. For what purpose? A. For going to Europe with her grandmother and aunt.

Q. I understood you to say that in point of fact afterwards, she did not go? A. She did not go.

Recess.

Sylvester H. Hunt, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. You are a practicing physician at Long Branch for how many years? A. I have been at Long Branch about two years.

Q. You have been practicing medicine for how long? A. Twenty years.

Q. Before you practiced at Long Branch you were at
10 Eatontown? A. Yes, sir.

Q. Within how short a distance of Oceanport? A. About a mile or a mile and a half.

Q. Do you know Mrs. Pemberton? A. I do.

Q. And her mother, Mrs. Caroline Pemberton? A. Yes, sir.

Q. Were you called as a physician at their house at Oceanport, to attend to the daughter, Mrs. Caroline H. Pemberton?

[Objected to.]

20 A. Yes, sir.

Q. Do you remember what year that was—do you remember whether it was in the year 1874? A. Yes, sir, 1874.

Q. Who sent for you? A. Her father came.

Q. What were you called to attend her for—what was the matter?

[Objected to.]

[Caveators' counsel offers to show by this witness that he was called to attend the proponent for an alleged case
30 of self-poisoning, and offers to show the fact of her condition at that time, and also the effect of that upon the mother, who was at the same house, and whom the doctor also saw at the same time; also to show the extent of the excitement that was produced in the mother by the condition of the daughter.]

[Objected to. Offer excluded. Exception by caveators.]

Mr. Robbins—On the part of my client in this case I make the same offer with this witness, and I state to the

court that it is the same occurrence about which I asked Dr. Harry H. Pemberton when he was upon the witness stand a little while ago, and I make my offer upon the same statement and for the same reason which I made at the time that I asked him about it, and about which the court then ruled.

[Offer excluded. Exception.]

Cross-examination waived.

Mrs. Margaret Lane, called on behalf of the caveators, being duly sworn, testified as follows— 10

By Mr. Vredenburgh—

Q. You live at Long Branch? A. I do.

Q. And have lived there for many years? A. I have lived there 80 years.

Q. Did you know Mrs. Caroline Pemberton, deceased? A. Yes, sir.

Q. And the daughter who is present here? A. Yes, sir.

Q. Do you remember an occasion of their calling upon you at Long Branch just preceding a start for Europe? 20 A. Yes, sir, it was among their last calls.

Q. Were you an intimate acquaintance then? A. Very pleasant calling acquaintances.

Q. Had you any conversation upon the subject of their going to Europe? A. Only in regard to the trip—how they were going.

Q. Had you any conversation upon the subject of Miss May Pemberton going to Europe? A. Yes, sir.

Q. Did you understand that she had had dresses made for the purpose of going to Europe with them? 30

[Objected to.]

Q. Was there any conversation there in reference to Miss May Pemberton going to Europe? A. Yes, sir.

Q. What was it? A. The impression.

Q. Do you recollect the conversation? A. Yes, sir.

Q. Then give your present recollection of it? A. That every preparation had been made for the daughter to go

to Europe by the father and mother, and they were very anxious for her to go, and that Miss Carrie Pemberton objected to it.

Q. State what Mrs. Carrie Pemberton said as to whether Miss May should go to Europe or not? A. She said she would not take her; she would not take the responsibility.

Q. Young Mrs. Pemberton? A. Yes, sir; she said so; she gave her reasons; she gave different reasons for not
10 taking her.

Q. What did the old lady say at that time? A. She said that the father—she said "My son and his wife"—those were the words she used—"will be very much disappointed, for they are very anxious for May to go; they seemed to look upon it in an educational point of view; that it would be a finish for her."

Q. What did young Mrs. Pemberton say? A. She said there was plenty of time for May yet to go to Europe; she was young; there was plenty of time; and
20 that she was not going to take her.

Q. What was the manner of the young Mrs. Pemberton in saying that, decided or otherwise? A. It was decided.

Q. What did the mother say; did she offer any opposition then? A. No; she offered no opposition; only from what I could understand from what she said, that she would have been pleased if her daughter had seen fit for her to go; she said that the brother Harry was also willing for her to accompany them, but she did not
30 see fit to take her, and was not going to.

Q. That was young Mrs. Pemberton? A. Yes, sir.

By Mr. Stout—

Q. Who did you say was present at this conversation? A. Mrs. Pemberton, the mother and the daughter were present.

Q. You say the daughter objected to Miss May going? A. Yes, sir.

Q. She said she did not want to have the responsibility? A. Yes, sir.

John Pemberton, called on behalf of the caveators, being duly sworn, testified as follows—

By Mr. Vredenburgh—

Q. Your age is what? A. About fifty.

Q. You are a practicing physician? A. Yes, sir.

Q. At Long Branch? A. Yes, sir.

Q. You are one of the children of the testatrix? A. I am.

Q. Do you remember the occasion of your mother coming to you while at Long Branch, in the year 1880? 10 A. I do.

Q. What was the cause of her visit there? A. She came to see what we knew about Charley running away; I drove up in my carriage just as—no, you are speaking about my mother?

Q. Yes? A. I was told—

[Objected to.]

Q. Bring your mind to the case of your mother coming to you in reference to this young man's having run away with her money? A. I came in, mother was in 20 the house, she took me aside in the parlor and asked me what I thought of it; I asked her in regard to the circumstances, what she had lost, what had been taken, and she mentioned a bank book and notes, etc., and checks, mentioned about the amount; I told her that I did not believe that he was murdered or drowned; it was my impression that he had run away, that he had taken the things and run away; she said she was very sorry that I said so, and very sorry that I thought so, and she did not like to think so, and she begged me not to speak 30 of it for the family's sake; I took her in my carriage and we rode about and talked the matter over, and at last I took her to the depot to go home, and she seemed to be very reasonable and calm about the matter, and seemed to be coming over to my views; she expressed herself that she didn't know but what maybe I was right; the next day after that my sister came; I drove up in my carriage; I had been out seeing my patients; I drove up just at the time that sh had been talking

with my wife and brother; she was gesticulating wildly; she was going on as a mad, crazy person.

Q. Who was? A. My sister; she said, "I will be revenged on my brothers; I will triumph over my brothers; they shall not triumph over Charles; and she shook her fist right out at me and my wife.

Q. Did you mention whether this was the same day or the day after your mother was there? A. The day after mother first came in, a day or two after that, my
10 mother came and her manner was entirely altered from what it was the first time she was there.

[Objected to.]

She seemed to be angry; it was very unusual for her to be angry to me, she always kissed me when she saw me; that day she would hardly kiss me, and she commenced saying, "Carrie says that you want to ruin her"—

Q. Was Carrie there at the time? A. No, sir.

[Objection overruled. Exception.]

A. She said Carrie says never any poor girl ever had
20 two such brothers; Carrie says her boarders treat her better than her brothers; "Have you had detectives around looking after him?" says I; "No," she says, "Mr. Bradley has had the lake dragged, Bradley has had the woods searched, Carrie says that you and Tillie would like to see her earning her living as a washerwoman; Carrie says you enjoy yourself riding around taking things comfortable, and she has to work hard until her feet swell, waiting on her boarders, and you don't have to do anything, and Carrie says you would
30 like to see her starve; you would not care what became of her, either you or the doctor; Carrie says I ought to protect her, you would not take any care of her;" and she went on in that kind of a manner, and I took her in my carriage and I made one or two calls; she wanted to see about the rent of one or two of her cottages, and wanted to see one or two other parties, and by and by I took her to the depot; I got there about half an hour before the train arrived, and she was talking in about the same manner and the same tone, and the same style;
40 walking up and down and repeating, or endeavoring to

repeat, what Carrie said; she said Carrie says this and Carrie says the other; I can't exactly recall all the expressions that she did use; by and by the train hove in sight and we parted.

Q. Did you see her at any time between that and the making of the will? A. I saw her a good many times; we were very friendly after that; in the fall of the year she returned; I only saw her two different times; on those two occasions, the time when Charley ran away and at the time when I suppose—well, I know—it may have been three or four days afterwards; then I saw her again once during the summer, she called at our cottage.

Q. Then after this time you say your mother was excited about what Carrie had told her against you, you did not see her until after the will was executed? A. No, sir; I didn't know anything about the will; I didn't know that there was any will.

Q. You don't mean to be understood as having seen her several times between that and the date of the will? A. No, sir.

Q. Did you see her at the time or just before they started for Europe? A. Yes, sir; my mother and sister spent a month at our house before they went to Europe; mother asked me on one or two occasions, particularly on one occasion, she said to me, "John, what do you think about me going to Europe?"

Q. I want to draw your attention now to an occasion when you saw your sister and your mother on the subject of the disposition of her property? A. I took my sister out riding two or three days before they went to Europe; I think it was about three days before they started; I took her around by Seabright and down along the river through Red Bank; she said to me, "John, mother has no will; why don't you get her to make a will?" says I, "Carrie, do you know that she has no will?" she says, "I know she has no will;" says I, "I will talk about that to her;" she broached this question to me, and it has always been a mystery to me why she did it.

[Objected to.]

—that same evening when I returned home, mother was sitting on one side of the table and my sister on the other and my wife in the parlor, within a few feet, and I said, "Mother, Carrie tells me you have no will;" and she says, "I have no will, John;" says I, "Mother, why don't you make a will before you go to Europe? you are going a long way; we may never see each other again; you may be lost; you ought to make a will;" and she says, "Well, what do you want me to make a will for?" 10 I said, "I would like you to make a will to take care of me;" she said, "It is not necessary, for if I die, or when I die, you will all share alike; the state makes a will good enough;" the next day, or the day after, my sister got up very early in the morning and started off with my brother to New York, with the intention of inquiring about tickets; it was not understood entirely that they were going to Europe right away; they were going to New York for a few days; I received a telegram about noon from my brother, saying, "Get mother 20 ready; I will be down there at 5 o'clock; we have bought the tickets;" I had been taking my mother riding, along on my visits, and driving along Ocean avenue, I had another conversation with her on the same subject; I said, "Mother, won't you make a will before you go?" and she says, "John, if I get sick, or think I am in danger of dying, I will promise you I will make a will; you shall all share alike."

Q. Do you know, of your own knowledge, of your sister, previous to the making of the will, which was dated 30 August 16th, 1880, using any methods or saying anything to prejudice your mother against your family? A. That was a common thing for her to do; for twenty years she has never done anything else.

[Objected to by proponent's counsel, and moved to be stricken out. Motion granted.]

Q. Facts are what we want? A. My wife and daughter had been at New York; they had been to the theatre on an invitation of a friend; my sister seemed very much annoyed that they did not return that evening, 40 and she asked me if I thought they were going to stay all

night; I told her I didn't know whether they would or not; they had not said anything, and I supposed she had not got through her shopping, and that was the reason she did not return; the next evening she returned.

Q. When was this? A. This was two or three days —about the time of those conversations.

Q. In what year? A. In the year—in the fall of the year 1882, in October, about the twenty-fifth; they left on the twenty-seventh; my sister said to my wife as she 10 was sitting at the table—

Q. In the presence of your mother? A. In the presence of my mother; she said, "Tillie, why did you stay all night in New York for;" my wife says, "I wanted to go to the theatre," and she says, "I suppose you went to see the Tawnerhills;" Miss Tawnerhill was an acquaintance of my wife and an actress, and she says, "You will bring your daughter up to be a strumpet;" she says, "That is what you are trying to do."

Q. Did your mother say anything to that? A. My 20 mother was very much excited by the remark, and we all felt very much aggrieved at the table; my wife and I did, and my daughter also.

Q. Which daughter was that? A. I only have one, my daughter May.

Q. Can you refer to any other fact, showing the same thing near to the year 1880? A. Something has been sworn to in regard to that $600 note; it was discussed and agreed on, and understood that my daughter should go to Europe. 30

Q. Discussed between who? A. Between my mother and myself, and my sister and my brother; it was all an understood thing.

Q. Was anything done in the way of getting ready to go to Europe? A. My mother indorsed a note for me to get the money out of the bank; I could not raise the money at that moment, and I told mother, "She shall be no expense to you, I will pay her expenses if you will indorse the note for me; I will discount it and get the money;" mother did it after a discussion with Carrie, 40

in which my sister objected very strenously to her indorsing the note, and I was not able to get the note indorsed that day; the next day when Carrie was out, I asked mother to indorse the note and a renewal note, which she did, and I gave to my wife, who took it up-stairs and put it in her trunk, intending to take it to the bank the next day and get it discounted; Carrie heard of it from her mother telling her; I came into the room and she seemed to be excited and flushed in the
10 face and a little bit ashamed; she looked that way, as if she was ashamed.

[Objected to.]

She was flushed and she was standing up at the time, and she says, "John, Carrie requests me to get that note; have you got that note that I signed?" I said, "Why; what does she want to know about it?" she says, "Well, she wants to see about it;" so I asked my wife to go up stairs and bring the note down; she went up stairs and brought it in; and I handed it to mother, and she
20 handed it to Carrie; she looked at it and said, "I don't see why you want to do that for," looking at her mother; and she said, "John wants to send May;" and she said, "She ain't going; she shan't go."

Q. Did you have a dressmaker to make dresses for your daughter for the purpose of dressing her properly for going to Europe? A. Yes, sir; I did.

Q. And that was done when you believed she would go with her grandmother? A. It was; yes, sir.

Q. When were you first informed that she should not
30 go? A. About two or three weeks after the money had been obtained; after I had it.

Q. How long before they went to Europe? A. A few days.

Q. Who told you she should not go? A. My sister; we had words about it in the office.

Q. What did she say? A. She said she shan't go; she said, "How do I know what will become of her; she might get lost in London, or she may fall overboard; I won't take any charge of her, I don't know what might
40 become of her; she might run off with some man for all

I know; I won't have anything to do with her;" I said, "You speak very sisterly; very much like an Aunt."

Q. What did your mother say? A. Mother said, "Oh, Carrie," some such expression, "Oh, Carrie, don't talk so; don't go on so;" she was angry; she was in a rage about it; she says, "Think that I can't do anything but what they have to go;" I said, "Carrie, I send her as a means of education;" I was thinking of sending her to school, but I would rather send her to Europe than to send her to school, and we had discussed that matter 10 and it was settled.

Q. Did your mother attempt to oppose your sister's will about that? A. Very feebly; she would make some expression like that, "Oh, Carrie, why don't you let her go?" or, "What is the reason you don't want her to go?" and my sister would give her reasons, such as they were, saying, "I won't do it; I won't have her;" one reason was, she said, "She will be young Miss Pemberton, and I will be old Mrs. Pemberton;" that was one remark that she made. 20

Q. Who was she to go with in the first place, with the young Mrs. Pemberton or your mother? A. She was to go with my mother; she assumed the authority to control and prevent it.

Q. You understood your brother Harry was going? A. Yes, sir.

Q. How did he feel in reference to her going? A. He and I had talked this over, and he was perfectly willing for her to go; in fact, he had talked with Carrie and endeavored to persuade her to let her go, and she had 30 objections in the first place to her going, and the doctor had talked with her and overcome those objections.

Q. Have you a letter sent to you, a threatning letter sent to you by Mrs. Pemberton? A. My wife received such a letter.

Q. About a cross-examination? A. Yes, sir.

Q. Have you got it here? A. I have.

[Letter produced.]

[Counsel submits the letter to the court, but states that he thought it was to the witness instead of his wife.] 40

Cross examination by Mr. Stout—

Q. If your daughter had gone to Europe she would have been of course in the custody of your sister? A. I did not so expect it.

Q. In other words, your sister would have had to look after her and taken care of her? A. I did not so expect it.

Q. How old was your daughter? A. About twenty years of age—will be twenty next birthday.

10 Q. You said that Carrie objected to the care of her?

A. She said this—she as much as led us to think—she led me to think and my wife to think—she came to me in a great state of agitation and said, "Did you hear that," she said she would put her in the way of being run off with; "she would not care what became of—" she said, "I would not dare to trust her, she would push her overboard, she is so ugly."

Q. Were you ever in business in Salem, N. J.? A. I was never in business, no, sir.

20 Q. Were you not there as a silent partner? A. No, sir.

Q. You lived in Salem? A. I did.

Q. What name did you go go by when you was there? A. My own name.

Q. John Prince wasn't it? A. Yes, sir; John Prince and Pemberton.

Q. Was "Pemberton" added to it? A. Yes, sir.

Q. Are you sure of it? A. Yes, sir.

Q. Wasn't you known there as John Prince? A. I

30 was by my sister and her husband and by a few other parties, but I was well known in Philadelphia by my own name.

Q. What did the clerks in the house know you as—John Prince, did they not? A. Some knew me as "Prince," and some as "Pemberton."

Q. How did you receive your mail, as John Prince? A. Both ways.

Q. You were afterwards in business or before in business in Baltimore, were you not? A. No, sir.

40 Q. Did you live in Baltimore? A. No, sir.

Q. Were you ever in the employ of D. S. Sayers? A. I think I was as a boy.

Q. Did you remain with him long? A. Some few months.

Q. You then went on a whaling expedition? A. I did.

Q. And took with you some of the money of Mr. Sayers? A. No, sir; I did not.

Q. Not a bit? A. No, sir; not a bit; like a good many other boys I had a notion to go to sea, and I got 10 tired being in the store, and I went to sea.

Q. And took the checks of this man? A. No, sir; nothing.

Q. And took no valuable thing? A. No, sir; I did not.

Q. When you returned didn't you return him some of the money, or some money? A. No, sir.

Q. $400 about? A. No, sir; I never took a cent of his money.

Q. And he said that would be all satisfactory? A. 20 No, sir; I never took a cent of his money.

Q. Didn't your father, on that occasion, go to New York and try to get the matter settled? A. There was no settling about it; when I came back after the voyage I went home.

Q. And then you were sent for, were you not? A. I was not sent for; no, sir.

Frederick F. Wilson, called on behalf of the proponents, being duly sworn, testified as follows—

By Mr. Stout— 30

Q. Where do you reside? A. Asbury Park.

Q. Were you acquainted with Caroline Pemberton in her lifetime? A. Yes.

Q. Are you acquainted with Caroline H. Pemberton? A. Yes, sir.

Q. Have you ever visited the house of either of these ladies? A. Quite frequently, in short calls, on business.

Q. Where at? A. Asbury Park, and once or twice at Long Branch.

Q. Did you know the hotel at Asbury Park known as the "Pemberton"? A. Yes, sir.

Q. Was that rented of you by Mrs. Carrie Pemberton? A. By Mrs. Pemberton's daughter; yes, sir.

Q. In what year? A. The first year it was rented; two years ago last November.

Q. Did you ever have any business transactions with
10 the old lady? A. Yes, sir.

Q. What were those transactions?

[Objected to.]

[Proponents' counsel offers to prove, by this witness transactions, which he had with the old lady and with the daughter, in which transactions the old lady's opinion or judgment was opposed by the daughter, and in which the mother exercised her own judgment in opposition to that insisted on by the daughter, as a rebuttal to the testimony purporting to show undue influence.]

20 [The court overrules it, understanding that the incident is not connected with any incident referred to in the evidence heretofore.]

[Exception by proponent.]

Cross-examination waived.

Cook Howland, called on behalf of the proponent, being duly sworn, testified as follows—

By Mr. Stout—

Q. You are in business at Asbury Park, as a builder? A. Yes, sir.

30 Q. And have been for how long, about? A. Ever since Asbury Park was first run out.

Q. Did you know Caroline Pemberton in her lifetime? A. Yes, sir.

Q. Did you ever have any dealings with her? A. Yes, sir.

Q. Do you know the Garfield House at Asbury Park? A. Yes, sir.

Q. Who built that? A. I built it.

Q. You were the builder? A. Yes, sir.

Q. Who was the owner? A. Mrs. Caroline Pemberton.

Q. The old lady? A Yes, sir.

Q. In what year did you build that? A. I commenced it in the fall of 1881.

Q. And finished it when? A. The 1st of June, 1882.

Q. Who did you make the contract with for the building of that house? A. With Mrs. Pemberton, the old lady. 10

Q. A written contract? A. Yes, sir.

Q. Before you entered into that contract did you have several talks with the old lady as to the plans of the Garfield House?

[Objected to as leading.]

[Objecton overruled.]

A. Yes, sir, several interviews.

Q. Was the daughter present at some of them? A. Yes, sir. 20

Q. Did the daughter ever make any suggestions to the plans and the building? A. Yes, sir.

Q. When those suggestions were made were they, or not, opposed by the old lady—any of them? A. Some.

[Caveator's counsel objects, and moves to strike out the question and answer]

[Motion granted.]

Q. Give the conversation that you remember between the old lady, yourself and the daughter in connection with the building of this Garfield House? A. It would be hard for me to do it *verbatim.* 30

Q. Give the substance? A. Mrs. Pemberton, the old lady, gave me to understand that she was the owner of the house—that it was her property, and it was to be built as she wanted it; that was the understanding.

Q. If there were any instances where she and the daughter were in conflict as to the building of it, give it and the result? A. I could not say what points, but in reference to the rooms and the construction of the rooms

there were several times where Mrs. Pemberton made suggestions and the old lady thought differently.

Q. Who would prevail? A. Whenever there was a question raised the old lady invariably had her way, and then she would say it was her house.

Q. Did she or not exercise an independent judgment in the presence of the daughter?

[Objected to as being a conclusion.]

Q. When these objections were made? A. When we
10 were preparing the plans.

Q. Prior to signing it? A. Yes, sir.

Q. State anything more that you remember that was said by them? A. Whatever statements I should make it would be in general terms, that she wanted me to do it, and gave me directions how to do it.

Q. Was that in the presence of the daughter? A. Pretty much all; I don't think I ever talked with the old lady five minutes unless the daughter was present, unless she went in the other room for something.

20 Q. What was the daughter's actions as to controlling the mother in that matter?

[Objected to.]

By the Court—

Q. If you remember any instance wherein the daughter in any way attempted to control the mother in reference to the building of that house, state it? A. I don't know of any special circumstances of that kind.

By Mr. Stout—

Q. Do you remember the time when Uriah White was
30 present, and a controversy came up about the plumbing? A. Yes, sir.

Q. State how that was, and what was said by either one? A. I can't give it in detail; I can say that the mother was there as supreme authority, and said this way or the other way.

[Objected to as an opinion. Objections overruled. Exceptions by caveators.]

Q. In regard to the payments who made those? A. I

think the payment was left in the hands of Dr. John Pemberton; I would not like to be too positive, but I think the first payment was made through him.

Q. What was the character of the old lady's mind as to business capacity?

[Objected to. Sustained. Exception.]

Q. Did, or did not, Carrie Pemberton, the daughter, in any transaction you had with them, or when you were present, exercise any influence of any kind over the mother? 10

[Objected to. Objections sustained. Exception.]

Q. In the building of this Garfield House, did the daughter in any way, to your knowledge, control the mother; have you any knowledge upon that subject? A. Yes; I have some.

Q. State your knowledge? A. I state that she did have some influence, I thought, in the matter of laying out the house and the rooms and the closets and such like, and gave her mother to understand the way she thought it was best to arrange it. 20

Q. What was that arrangement that she controlled? A. One thing was the pantries and wardrobes, and something about the kitchen and the range, and she made suggestions as to which kind she thought was the best, and the old lady seemed to concede that that was so.

Q. Was there anything else? A. I don't know that I can remember the particular points; there was nothing that led me to understand that there was any unusual influence in the matter more than what passed between two persons in an enterprise of that kind. 30

Q. Was there any control of the daughter exercised over the mother?

[Objected to. Question withdrawn.]

Q. Give any other instance? A. I don't know of any instance when Mrs. Pemberton done anything or undertook to do more than what she didn't want, or was not free to do; in my talk with her in reference to the building of that house, the bargain and the price, and the arrangement, generally, about the building; I don't know of anything but what she acted free. 40

Cross-examination by Mr. Robbins—

Q. Do you know what was the purpose that house was to be used for after it was built? A. I know what Mrs. Pemberton told me she built it for.

Q. What? A. For her daughter to keep boarders in.

Q. What may have occurred before she saw you about the building of it, you don't know at all? A. No; of course not.

Q. This instance that you have spoken of that occur-
10 red after it had been decided to build the house? A. Some of them; the thing was in question, I think, three or four weeks before the bargain was consummated to build; I think I called down there by direction of Mrs. Pemberton several times, and talked the matter over.

Q. Always found the daughter by? A. She was at home each time.

Q. And present at the interviews? A. Most of the time she was present.

20 Q. Wasn't she present always? A. They lived in the cottage by the sea, and she several times made business out in the other room.

Q. All the time when she was absent was when she casually happened to go out of the room? A. Yes, sir; that is all.

By Mr. Stout—

Q. What was the daughter's actions towards the mother, and how did the mother act? A. She seemed to give the very best attention to her mother, the very
30 kindest attention.

[Objected to.]

By the court—

Q. Did the daughter in any way to your knowledge attempt to control the mother in any way—in building that building? A. I saw nothing to indicate it.

By Mr. Vredenburgh—

Q. You have stated that Dr. Pemberton made you

payments on the building? A. Yes; the first one or two.

Q. Do you recollect of seeing the mother at all in the matter, after the foundation was laid? A. No, sir; not until the house was nearly finished.

Q. The mother was in Florida a part of the time? A. So I believe from her letters.

Q. All winter? A. I believe she was.

Q. When did you start to build the house? A. In the latter part of October. 10

Q. When did you complete it? A. I forget the contract time, but I think it was the first of June.

Q. Do you know how the mother came to invest her capital in that building? A. No, sir.

Q. How she came to embark in that speculation? A. I do not.

Q. What inducement was brought to bear upon her? A. No, sir.

Q. Or by whom? A. I do not?

By Mr. Stout— 20

Q. Who occupied this house after it was completed? A. A gentleman by the name of Stockton.

Q. Did the daughter, or has she occupied it since? A. Never to my knowledge.

By Mr. Robbins—

Q. Where is the Garfield located? A. On Second avenue, the third or fourth lot west from the ocean.

Q. Do you know how it came to be rented by Mrs. Pemberton? A. Nothing that I could testify to, only what I heard from outside talk. 30

Q. When was the Garfield rented after it was built? A. I could not say when it was.

Q. Where did Mrs. Carrie H. Pemberton go then? A. She occupied a house on the corner of Ocean and Second avenue.

Q. Did she occupy that prior to the building of the Garfield? A. No, sir; they were both building at one time.

Q. You built them both? A. No, sir.

Q. The intention was in building the Garfield that Mrs. Carrie Pemberton should occupy it? A. Mrs. Pemberton told me so.

Q. Did Mrs. Carrie Pemberton tell you so herself? A. She may have, I don't remember.

Q. Didn't she write to you from Florida about that? A. Yes, sir.

Q. Mrs Carrie H. Pemberton? A. No, sir; the mother.

10 Q. Didn't Mrs. Carrie H. Pemberton, the daughter? A. I don't remember ever receiving a letter from her.

Q. Didn't you go to Long Branch to see Mrs. Carrie H. Pemberton about the erection of that cottage at one time? A. Probably I did; I went down there and saw her, and her mother together.

Q. Didn't you go to see her, and didn't you make her, Mrs. Carrie H. Pemberton, the principal one to see at Long Branch? A. All my business transactions was with her mother.

20 Q. And she by? A. Mr. John Pemberton was the only one I recognized as her agent.

Q. Didn't you go to Long Branch to see Mrs. Carrie H. Pemberton, and didn't you see her in reference to this building of the Garfield in presence of Dr. Harry Pemberton, and treat her as the principal party for you to consult with in the matter? A. I could not answer that positively; I don't know that I went for the purpose to see this lady; I went to see them after they returned from the south, and talked with them about

30 some improvements.

Frederick F. Wilson, recalled—

By Mr. Stout—

Q. Do you remember when the Garfield was built? A. I think he began it somewhere about the last of October or first of November.

Q. When was the Pemberton built, the house that Mrs. Pemberton now occupies? A. It was commenced in November.

Q. Of the same year? A. Yes, sir.

Q. Did Mrs. Carrie Pemberton rent that house of you? A. Yes, sir; she rented it before it was built.

Q. And about the time you were commencing it? A. She rented it before it was built.

Q. Was the Garfield begun when she rented it? A. Just about, I guess.

Q. How long did she rent the Pemberton House for? A. One year; and two more, if she wanted it.

Mr. Robbins— 10

Q. Why did you say that she rented it for one year, and two more, if she wanted it? A. Because I wanted to.

Q. Did you mean us to understand that she occupied it for three years? A. No, sir.

Q. Then you attempted to deceive us to the extent of two years out of three? A. No, sir; she could not have occupied it three years; it has not been built three years.

Q. Did you not go to Mr. Stout a moment ago and suggest to him that he had forgotten something in your 20 examination? A. No, sir; I did not suggest that he had forgotten anything.

Q. What did you suggest to him to start him off in your examination? A. That has nothing to do with it; I object.

Q. In point of fact, before you were recalled this time, and before Mr. Stout took his fresh start, didn't you go to him and talk to him? A. I went to him.

Q. And talked to him? A. Yes.

Q. And he called you? A. After a little he called me. 30

By Mr. Stout—

Q. You told me something in regard to what you have testified to, as to the three years that she rented it for? A. Yes, sir.

Adjourned to January 14, 1884.

William D. Campbell, called on behalf of the caveators, being duly sworn in open court, deposes and says—

Examined by Mr. Vredenburgh—

I am practicing law in Long Branch, New Jersey; have been practicing there since June, 1881; I remember accompanying Dr. H. Pemberton to Asbury Park on the last Sunday in September or the first Sunday in October, 1882; we went to the house of Dr. Pemberton's sister; she was at the Pemberton House, on Ocean ave-
10 nue; I went and remained there to dinner; I heard part of Dr. H. Pemberton's testimony in which he referred to an interview between himself, his mother and his sister; that was on the south end of the piazza; there were no others present except myself; we were talking there, and doctor asked his mother whether he was going to Europe with her or not; she made answer to him that he would have to ask his sister Carrie and get her consent before she could say whether he could go or not; she then turned to me and said, "Why, Mr.
20 Campbell, you don't know what it is. Carrie kicks me around like a football. Winter before last she had me over in Philadelphia all winter, and last winter she made me go down to Florida. And now she says I've got to go to Europe; and I presume I've got to go. If I don't I'll never have any peace"; she further stated that she was getting too old for such trips, and would a great deal rather stay home with her children, and if she did have to go to Europe with Carrie she wanted one of her boys—who were physicians—to go along with her to
30 look after her, and she dare not take Harry until she had asked Carrie; if she did she would have no peace while she was gone; that was about the extent of the conversation at that time; I saw the conversation was leading to personalities, and I attempted to deviate the conversation to other subjects; there was another conversation in reference to a note or notes amounting to about twelve hundred dollars, I think, which took place previously in the dining-room; she told Harry that he would have to go to his sister and get her con-

sent before she would endorse a note for him; she (the mother) spoke very earnestly and very feelingly, so it seemed to me; I never heard a person speak more so.

Cross examined by Mr. Stout—

I have been an attorney of Dr. Pemberton; I am now in one case in the common pleas, an appeal case, and am also associated for Dr. H. Pemberton in a case in New York; I appear for Dr. Pemberton and others; I have never been consulted by Dr. Harry Pemberton in this case; at the conversation in the dining-room of 10 which I spoke, there were present Dr. Harry H. Pemberton, his mother, his sister, and myself; I was within about three feet of Dr. Harry and his mother, and his sister was in another part; she was not near enough to hear; the conversation was in the usual tone of voice; Carrie was about ten feet distant from the rest of us; on the piazza Carrie was about three feet from the rest of us; we were all within about three feet of the old lady.

[The evidence relating to the conversations by this witness are objected to by counsel for proponent before 20 the same was given.]

WILLIAM D. CAMPBELL.

Mrs. Caroline Matilda Pemberton, called on behalf of the caveators, being duly sworn in open court, deposes and says—

Examined by Mr. Vredenburgh—

I am the wife of Dr. John Pemberton, and live at Long Branch; keep house there; my daughter May is about nineteen years old; I was in New York in February, 1880, in East Twenty-fourth street; we were board- 30 ing, I remember being in Thirty-eighth street at the house of doctor's sister, Mrs. Carrie Pemberton, the proponent of the will; my husband wished me to go with him there to Thirty-eighth street, to see his mother and sister, because his sister was sick; I saw doctor's sister and his mother at the same time; his sister did not look well; when I first went to the room I spoke to Carrie

first, because I saw she was sick; I said, "Carrie, what is the matter with you?" she said, "I am a desperate woman;" then their mother came up, and I shook hands with her and spoke to her, and said "What is the matter with Carrie?" she said, "She almost worries me to death because John (my husband) would not let her have money;" then she told me that a night or two before she woke up and missed Carrie; they slept together in the same bed; then she spoke and found she was not in
10 the room, then she went to Harry's room and found she was not there; then she went to the parlor; then to the bath room and found the door fastened; she spoke and asked who was there, and asked to have the bath room door opened; finally, after waiting some time, the door was opened, and she went into the room and saw Carrie; she was very cold—nothing on but a night dress; it was a bitter cold night; doctor's mother said Carrie must have been there some time, she was so chilled with the cold.

20 [The statements by Mrs. Pemberton to the witness objected to and overruled, so far as they relate to the occurrences of that night, and Carrie's going to the bath room.]

[Exception taken by the caveators.]

On that occasion I paid to my husband $150, who at the same time paid it over to his mother to pay the rent due on the house in Thirty-eighth street; Carrie had asked my husband for this money some days before; when this conversation occurred I was living in New
30 York, and about the twentieth of March, or the last week in March, myself and family moved to Long Branch; about the beginning of April, I think about the first week, before the middle I know, I went to Asbury Park in the cars; Carrie's mother had been sick, and she was lying in bed then; the brothers had been up to see her during her sickness; that day I saw doctor's mother there at Mrs. Pemberton's; I met Carrie on the train; she came and sat near me in the train and asked where I was going; I said I was going to see her mother; we
40 went in the stage together to the house; Carrie then said

she wished I would tell her brothers not to come there anymore; she did not wish them to come there anymore; the mother was lying on the bed; she could hear the conversation; she said, "Carrie, don't speak so!" Carrie said, "I take care of you, mama, they're no good, I wish they'd stay away;" I told this to my husband and his brother the same day, when I returned a very short time after; Carrie discouraged my visits to her mother in this way: when she spoke to me on the train that day, she seemed angry when she heard where I was going; she 10 spoke in an angry manner to me; in the stage she commenced speaking against her brothers, saying she wished they wouldn't come there anymore, the same as I have told you; I had oysters in a small can as a present for my mother-in-law, and in the hall she (Carrie) said, "What have you there?" I said, "A few oysters for mother;" she said, "Oh, very nice," taking them out of my hand in the hall; then she carried them in the room, and about ten minutes after she asked her mother if she would not like to have some oysters she had 20 brought her; she did not tell her mother I brought the oysters.

Q. Were there or not other occasions during that summer of 1880, when the same spirit was shown by Carrie toward you and the brothers, in regard to intercourse with their mother? A. There were many other such occasions about that time; I remember the occasion of Charles going away that summer of 1880, because I received a dispatch from doctor's mother, asking if Charles was at our house, or had been there that day; those 30 were the words as near as I can recollect, and I answered "No, I have not seen him;" then the next day doctor's mother came there and said Charles had gone away; they had not heard from him, and were very much alarmed about him; Carrie thought he was murdered and drowned in the lake, and asked my husband and brother what they thought about it; they said they did not think so; they thought he had gone away, or gone to Germany to his father; the next day Carrie came there in a carriage; she sent the driver to the 40

house; he rang the bell and I answered its call; he said there was a lady in the carriage wished to see me; I went and recognized my sister-in-law, she said, "Isn't it a dreadful thing to think of my poor boy being murdered or drowned in the lake;" she asked where her brothers were; I told her they were both out at that time; she said it was strange; why didn't they come to see her wheh she was in so much trouble; that Mr. Bradley and others were dragging the
10 lake and hunting for him; I said her brothers didn't think he was drowned or murdered; they thought he had gone away and considered he was safe; then she was very angry and said, "Do my brothers say that?" I said "Yes, they think so;" she asked me what I thought; I said, "You'd better look on the brighter side as they do;" then she seemed very angry and agitated and said, "If my brothers think that, tell them I will have revenge, they shall not triumph over me;" that is, think that her son had run away; that was about all
20 she said that day that I recollect; then she went away angry; the next day the mother came again to our house at Long Branch; she seemed very much distressed that day when she came; she talked to me while she remained there, she was very agitated, and spoke of different things that Carrie said; she said Carrie was very angry at her brothers—thought they treated her badly; she said to me, "Tillie! Carrie says I must make a will to protect her from her brothers."

[Objected to by counsel for proponent.]

30 The mother and daughter came to my house about the first of October, it was the beginning of the week—Monday or Tuesday, and they stayed until the twenty-eighth, when they left for England; Carrie stayed with her mother, and slept with her all the time; I prepared dresses and everything for my daughter May to go to Europe; she was all prepared to go; Carrie opposed her going; at first it was objected to on account of the expense it would be to her mother, but my husband said that he would pay the expense; then he made a note,
40 and his mother indorsed it for $600; I think Carrie

knew of the note before it was made; we were all downstairs together—I mean Carrie, her mother, my husband and myself—and at my husband's request; I went up and got the note; I handed it to my husband, he gave it to his mother, and she said, I am sorry to give you this unnecessary trouble, but Carrie insisted upon seeing the notes; the note and renewal notes which I brought; Carrie took the notes, looked at them, threw them on the table in an angry manner and said, "I thought I told you not to sign this, May shan't go anyhow;" Carrie used to talk to her mother from the time they'd go to bed about nine or ten o'clock, until one or two in the morning. 10

The further examination of witnesses in this matter stands adjourned to Friday, January 18th, 1884.

Friday morning, January 18, 1884, the further examination of witnesses in this matter was resumed.

Direct examination of *Mrs. Caroline Matilda Pemberton* continued—

At the time of this conversation about May, dresses had been made by the dressmaker, Victoria, for my daughter May for a European trip; when I found Carrie did not wish to go to Europe, and would not go, I gave up the preparations; I recollect they spoke of raising money, and doctor's mother said, "Why, I can mortgage the Lane property;" this was after the conversation in which she spoke against May's going; it was perhaps a week afterwards—a few days, anyway; Carrie spoke up quickly and said, "Oh, you must not mortgage the Lane property, mother; raise money on other mortgages;" she gave the names of several mortgages—the Tabor mortgage, the Rogers mortgage and the Jenung mortgage, and she spoke of others, I think; mother then spoke about arranging it in some way, and the next morning she asked Dr. Harry to go and make some arrangements about the mortgages; he went out for that purpose I think, and the next evening some one came 20 30

and brought Dr. Harry some money, and he took it in and gave it to mother; that was for the Tabor mortgage I think; I saw the money paid by Dr. Harry to the mother; it was $600.00; I recollect it, because I saw her counting over the money, and she said, "Don't these new bills look nice?" there were six $100 bills; they talked of going the next Wednesday after the conversation, but they went sooner than they expected to—they went on Saturday; on Friday morning I heard her stir-
10 ring very early, and talking to her mother, and when I went down stairs she was sitting at the table—she and Dr. Harry; that morning she did not say when she expected to go to Europe; Dr. Harry went to New York with her; they sailed the next morning; Dr. Harry came back from New York that evening, and took his mother back to New York the same evening; I heard them say that Carrie bought the tickets; the doctor received a telegram from his brother Harry requesting his mother to be ready to go to New York that evening, to
20 take the steamer "Egypt" the next morning; he came back from New York in the afternoon, about three o'clock, to accompany his mother to New York; I did not see Carrie again until her return from Europe; she did not come back to the house before going to Europe, but I understood her that she would be back that evening; I know Dr. Harry had not made any preparations to go to Europe the next day; he called on us to come and help him pack his trunk, and we had all we could do to get it done.

30 Q. State whether you recollect any conversation between John and his mother upon the subject of a will a short time before they sailed for Europe, and if so, state it?

[Objected to by proctor for proponents.]

[Questions allowed by the court.]

A. On one occasion, a few days before they went away, my husband had taken Carrie out for a drive; they were out two or three hours together, and after returning I came in the room; they were all sitting talking together
40 —that is, both the doctors, Carrie and the mother; I

heard them say something about a will, and doctor's mother said, "John, I haven't a will; when I die you will all share alike;" they were talking about the trip to Europe—where they were going and how long they would stay; the morning Carrie went to New York she did not say "good bye;" after they came back from Europe they all came down to our house—Carrie, Charles and Harry—and this was the morning Carrie and Charles were going away; Carrie called me back as I was leaving the room; it was the next day after Christmas, as near as I can recollect; it was that week; they were at our house a week; Carrie said, "Recollect, I warn you if my brothers attempt to break the will you cannot hold your head up in Long Branch again, or your daughter either;" those were her words as near as I can remember.

[The above conversation is objected to by proctor for proponents, and the objection overruled.]

[Witness shown a letter]—That letter is directed to me; I received that letter and the enclosure through the regular course of the mails; it is all in my sister-in-law Carrie's handwriting; the doctor's mother went away Friday evening, Carrie went away in the morning; the mother was crying when she went, and said she did not want to go, that Carrie was hurrying her; she cried bitterly and put my hand on her heart, saying she felt badly; in my previous testimony I have said that I was at Mrs. Pemberton's at Asbury Park, I meant to say that it was at the Irving House, and I wish now to correct it.

[Proctor for caveators offers a letter and the envelope containing it, in evidence; which letter and envelope are marked *Exhibits B* and *C*, on the part of the caveators.]

After the conversation about raising the funds, I saw the mother the next day give the securities to Dr. John Pemberton to take to the bank.

Cross-examination—

These securities that I have just spoken of are the same mortgages to which I alluded a few moments ago;

they were not taken to the bank as collateral security for the notes of my husband, I do not know much about such matters, but I know they had nothing to do with that note; I understood they were put in the bank to raise money for the trip to Europe; they were taken to the bank by my husband; I do not recollect of any note at the time the securities were taken; the note was there before that; I mean to say the doctor's note was there before that.

10 [Note dated October 24th, 1882, for $2,500, made by Caroline Pemberton, payable to herself and endorsed by her, shown witness]—

That is the note which the mortgages were given to secure; I do not know positively that they were, but I think so; I heard them talk about taking the securities to the bank, and suppose they were given to secure this note; this letter which has been offered in evidence was written in regard to some silver; she speaks of other things, I think, besides silver; the letter was in 20 relation to a trunk and its contents, and nothing else; I did not go under the name of Mrs. Prince at Salem; I was living there with my husband; we did not receive our mail in the name of Prince; at the time this letter was written, this trunk was in our house; she had not demanded this trunk and contents of me before this letter was written; I can only answer for myself; I heard some talk about the trunk before the writing of this letter; I have always been friendly to Carrie; she was at our house nearly four weeks before she went to Europe; 30 she would sometimes say very unkind things to me while she was at my house; I always remembered that she was my husband's sister and in my house; I may sometimes have said unkind things when in reply to her remarks to me; there was not, generally, discord between her and my husband and my husband's brother and myself, when she was at my house; there was discord occasionally; I recollect on one occasion when Carrie came there, and we had finished dinner, of my going into the kitchen and cooking a beefsteak for her 40 myself, and placing it on the table for her; my brother

Harry said, "You are foolish for doing it, she will abuse you;" she had even abused me while I was doing it; I do not know why she requested her brothers not to come to Asbury Park to see her.

Re-direct—

Doctor's mother asked me before she went to Europe if I would take care of some trunks for her; I did not know what was in the trunks; I said I would; I had no charge of these trunks from Carrie—only from the mother. 10

[Note above referred to, dated Oct. 24, 1882, offered in evidence by the proctors for caveators, and marked *Exhibit D* for caveators.]

Q. After the sending of this letter, and at or about the time of the receipt of it by you, were you or not arrested by an officer of the county, under a charge on the complaint of Mrs. Carrie Pemberton, of stealing the silver referred to in this letter.

[Objected to by proctor for proponents.]

[Question overruled, and exception allowed.] 20

I do not know to what the term "cross examination" in that letter refers; she and her brothers were talking about the will when she was at our house at Christmas time.

Q. What did you suppose it referred to where it speaks of cross-examination?

[Objected to by counsel for proponents.]

[Question overruled. Exception allowed]

Witness says—This is the genuine signature of Caroline Pemberton the testatrix, to this note and also her indorsement. 30

C. MATILDA PEMBERTON.

Dr. Harry Pemberton, having been previously sworn, being recalled on the part of the caveators, says—

I was present on the occasion when the $150, was paid by Mrs. Caroline M. Pemberton to my mother, in February, 1880; I saw that money, the $150, paid by her—the last witness, to my mother; my mother was the se-

curity for my sister Carrie on the lease for which this money was paid.

[Note dated Oct. 24, 1882, shown witness.]

That is my mother's note, and it is her signature as maker and indorser; the purpose of raising that money from the bank, was for her and Carrie to go to Europe; $600 was paid me by Tabor the night before that note was drawn up, it must have been on the twenty-second or twenty-third; the note was originally to be $3000, but this $600 was paid by Tabor who got the money from George West; I paid this money $600 to my mother in $100 bills; I went to New York with my sister on the Friday before she sailed; my sister Carrie bought the tickets; I was not present when she bought them; I left her in the National Line office, and had gone to the Williams & Guion line, and the Cunard line; when I left her I did not expect to go to Europe the next day, I expected to go the following Wednesday; when I came back and found she had bought the tickets to sail the next day, I was taken by surprise—completely so; she had not consulted me at all about going the next day; I had no intimation of it; I sent a telegram to my brother, stating that Carrie and I was going on Saturday, and I would be down in the afternoon, and for him to get mother ready to go; I have knowledge of Carrie's shutting herself up in the bathroom in Thirty-eighth street.

[Objected to.]

My mother missed her out of the bed and requested me to go to look for her.

H. H. PEMBERTON.

Dr. John P. Pemberton, having been previously sworn, being recalled on the part of the caveators, says—

I know what the will purports to leave to the proponent; the value of the property which the will purports to give the proponent is about $20,000, real and personal.

[Objected to. Question allowed. Exception taken.]

The will gives my daughter May a lot in the woods at

Oceanport; it is worth about $100; the securities which the will purports to leave to me are paid; some were paid in the lifetime of my mother; the value of the property which I would receive if the will is admitted to probate is not a penny; my brother Harry does not get anything of value under the will—not a cent; I recollect this conversation about the Lane property just before they went to Europe; that is the property given by the will to Carrie; my mother thought she would be short of money, and said "I can get all the money I want, I can raise it on the Lane property, that is free and clear;" Carrie said immediately and very quickly, "Oh, no, mamma, you mustn't mortgage the Lane property; why don't you raise the money on the other mortgages that you have—the Tabor, the Rogers, the Jenung mortgage?" mother said "Well, if you think so, we will get it that way;" mother then asked Dr. Harry if he would not go and notify Mr. Tabor and Mr. Dunham, who was the purchaser of the property which the Rogers mortgage covered, to pay the mortgage; doctor did so, and Mr. Tabor came and paid $600; at the time I took mother to the depot, and she was repeating and recapitulating these sayings of my sister, saying "Carrie says this," "Carrie says that," and "Carrie says the other;" she seemed to get angrier and more excited the longer we were detained at the depot for the arrival of the train; she was walking up and down the depot and talking and gesticulating so wildly that I requested her to leave that part of the depot and come to another part; I said "Mother, people will overhear all these things;" she commenced wringing her hands and burst into tears, crying and walking up and down, and she said "Oh, my God! will that train never come?"

[Objected to for proctor for proponent.]

—"Carrie says I must make a will to protect her from you and Dr. Harry; Carrie says you and he would like to see her in the gutter. Will that train never come?" and then bursting into tears again; "I am afraid to go home; you don't know how desperate Carrie is; she has threatened to make away with herself; even now I can

see that poor girl stretched upon the bed, or I shall find her body when I go home floating in the ocean;" I told her to calm herself and be quiet; just then the train came along and I put her on.

[Objection made by the proctor for the proponent to all that part of this witness' testimony which relates to the conversation at the depot.]

JOHN P. PEMBERTON.

FREEHOLD, N. J., March 10, 1884.

10 Caveators rest.

Mrs. Caroline H. Pemberton, recalled on rebuttal—

By Mr. Stout—

Q. Immediately on your return from Europe, or soon after, did you go with your brother Harry, and your son, to some deposit company's office in New York, to see this will of your mother's?

[Objected to as leading.]

A. I did.

Q. Did you see the will that day? A. I did.

20 Q. Where was that got from, and who got it? A. In the safe deposit company; I don't know the name of it; it was at the corner of Twenty-third street and Sixth avenue.

Q. Who got the will? A. My son.

Q. Where from? A. In his box at the private office.

Q. Did you and your brother look there at the signatures? A. We did.

Q. State whether those signatures—

[Objected to as leading.]

30 Q. What was the appearance of the signatures, and how many were there, and what signatures were there? A. My mother's signature was there, and Dr. Mitchell's, and Dr.—I forget what his name is, and I saw your name there.

Q. Just say what names were on that will at the time you saw it in the safe deposit company in New York,

immediately on your return from Europe? A. Dr. Mitchell's, and your name, and my mother's name—

Q. State whose names? A. Dr. Henry Mitchell—I knew it very well, and this name here—

Q. Dr. Kinmouth? A. Yes; and also this writing in here, which my mother showed me before.

Q. Had you seen that before? A. I had seen it all.

Q. You had seen the will before this time, had you? A. Yes, sir.

Q. How did you come to see it before? A. After my mother had signed it, she gave it to me to look at, and she said, "I have written my name very badly for me;" she said, "Dr. Mitchell makes a very good signature, and so does Dr. Kinmouth, but Mr. Stout's is not quite so good." 10

Q. You saw it at that time? A. Yes.

Q. That was before you went to Europe? A. Yes, sir; when she first made it she said, "I have made my will."

Q. How soon after the will was made was this? A. That same evening my attention was particularly called by her asking me to look at her own signature, as being not as good as she usually writes. 20

Q. Did you, at the safe deposit company, notice whether the word "Catharine" was erased and the word "Caroline" inserted? A. I made the remark to my mother; I said that was erased before signature.

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

Q. That was after you had seen this? A. Yes, sir; I had seen that certainly; my mother told me that was erased before signature; I remember the word "Catharine," because she said Mr. Stout made a mistake and put it "Catharine" instead of "Caroline," and she said it was a very stupid mistake and it was all through—she said it was stupid of Mr. Stout to put "Catharine" instead of "Caroline," when she had given him my name. 30

Q. That evening you saw that erasure? A. Yes, sir; that same evening; she said that was erased before signing.

40

Q. You are acquainted with Mr. Redway who testified in this case? A. I am.

Q. He has testified that you obtained your mother's signature to some notes, and that it was very much against her will; state whether or not you did secure those signatures, and in what way you secured them? A. She secured them because I was going to take two cottages at Asbury Park, and the lady required two-thirds payment down, and she would accept my mother's
10 notes, and she very willingly did it, for she was glad to go the Park herself.

Q. Mr. Redway makes this answer, "The daughter said to her, you must indorse these notes;" is that so? A. I never dare say that to my mother, for she would immediately never do anything you told her to; she was very obstinate.

Q. Did you tell Mr. Redway, or did you tell your mother in his presence, that you would "get square" with your brothers? A. I never make use of such lan-
20 guage; I am too much of a lady.

Q. Did you say that? A. No; I was born and bred a lady, and I never use that kind of language; it would be impossible for me to have spoken in such a way as that.

Q. Do you know Mrs. Johns, who testified in this case? A. I do.

Q. What was her business? A. She kept a boarding house next door to me, in Thirty-eighth street, New York city.

30 Q. Did she also keep a boarding house at Asbury Park near you? A. Yes, sir; and she never paid her bills there, either.

Q. Did you say, in her presence, that you would have revenge of your brothers? A. I never make such remarks.

Q. Did you say that? A. I am positive I never did.

Q. Who is Emma Hooper? A. She is a colored servant who lived with me in the capacity of laundress that summer.

Q. Did you discharge her from your service? A. I did not discharge her until the end of the season.

Q. She has testified that you told her that your mother had made a will? A. I never make a confidant of servants.

Q. Did you tell her that? A. I could not have told her such a thing; it is impossible.

Q. She said in these words, "As I was going in the room where her mother was signing a will, I spoke to her and asked her what her mother was doing, and she said she was going to make a will;" was there any such thing said? A. No; positively not; read that over again; I did not hear one portion distinctly.

Q. She said, as you were going in the room where your mother was signing the will? A. That I was going in the room where my mother was signing the will?

Q. Yes; and she said she asked you what your mother was doing, and you said she was going to make a will? A. I say positively, most emphatically, no.

Q. When your mother did make the will were you in the room? A. I was not; I was around attending to my business at the time.

Q. Did you go in and out?

[Objected to as leading.]

A. Passed through, I did.

Q. Were you in and out or not, as some of the witnesses have stated? A. I was once or twice—passed through attending to my business.

Q. What was your business at that time? A. I kept boarders; I had about fifty guests at the time in the house, and there was considerable to do.

Q. Did you go in that room and sit there the whole time your mother was signing that will, or while the preparations were being made? A. I did not.

Q. Do you remember who got the pen and ink that night? A. I do not; I don't remember; it was our room; I presume the pen and ink were there; it was both office and bed-room; I received my money there, and made my bills out.

Q. You keep a hotel register? A. Not then—I did in

a small way; I kept a register, but I did not have the people register their names.

Q. On that account it was necessary for you to keep a pen and ink in your business? A. Yes, it was.

Q. And you did have them there? A. Yes, sir, we did have.

Q. Do you know Mary Williams? A. Yes, sir; she was a colored waitress with me that same summer.

Q. Was she discharged? A. She was; she was taken
10 sick and I paid her wages two weeks, and waited on her, and got a servant in her place, and she was rather impertinent and I retained the servant whom I kept in her place.

Q. She testified that you said you would "get square" with your brothers; is that true? A. I say again I could not express myself in such language as that.

Q. Whether you did or not? A. I did not.

Q. She says in substance, "Carrie and her mother were lying on the bed, and I heard the mother say,
20 'Don't worry me so much about the will;' is that true? A. She never had any occasion to come into my room.

Q, Was that true? A. That was not; she could not have heard it; she was a waitress in the other house.

Q. She also says that you said that you had been at your mother to make a will; did you ever say anything of that kind to her or anyone else? A. I never did; I could not say such a thing.

Q. Why? A. I would be too stupid if any such thing occurred; I would not be so stupid as to say it to her.
30 Q. Did you ever say it? A. No, sir; to servants I don't make confidants.

Q. If it had been said, would it have been true?

[Objected to.]

A. No, sir; it would not have been.

[Answer stricken out by the Court.]

Q. I now come to the testimony of Mr. Cook, who was at your place in Europe; he has testified in regard to your mother wanting to make a will, or something of that kind; state how he come to go there on that Sun-
40 day, and what was done from the time he came until he

went away? A. I don't know how he happened to come there, but my brother went out, as he said after another physician, and he said, "Mr. Cook is coming here;" that is the only intimation I had of it, and then I saw Mr. Cook, but I knew nothing of his coming, nor did my mother, or did she ever know that he was there, and she died not knowing it.

Q. Did he have a conversation with her about making a will, to your knowledge? A. Never had such a conversation; he was not allowed in her room except to take a peep at her to see how she looked. 10

Q. He said he went to the bed side and she gave instructions about making a will, or words to that effect? A. He never did, she was slumbering most all of the time.

Q. Did you know that he was there for the purpose of making a will? A. I did not until my brother—in the afternoon my brother said, "Had she not better make a will?" and he said the London doctor said we can stimulate her enough, and we can trace her hand; I said that would not be legal, and the London doctor said it would be. 20

Q. Who said that? A. My brother Harry said that to me in his bed room, in the presence of Mr. Cook.

Q. When was that, on the Sunday evening? A. On the Sunday afternoon, and he also said it in the hall; the London doctor said it would be legal if you traced her hand, so my brother said.

Q. Your brother Harry says the last medicine or stimulant that was given her, was a brandy punch? A. It was either brandy or whiskey; I would not be positive which. 30

Q. Who mixed it? A. My brother Harry.

Q. Who gave it to her? A. He held it to her lips; she took it with both hands, and she drank it eagerly and with avidity—drank it off.

Q. Then what did you do? A. Both of us assisted her to bed; she was sitting up at that moment.

Q. Then where did you and your brother go? A. We

sat in the room right by her; she had occasion to get up at that moment.

Q. Your brother, Dr. Harry, says that you were in the room, and a few minutes after you went to the bed and exclaimed "My God, she is dead!" or words to that effect; state what did happen at the time of her death, or at the time you discovered her dead? A. We were both sitting there after we laid her down; she said—she motioned to go over on her side of the bed; I slept with
10 her, and she seemed to want to make an effort to go on her side of the bed, and I said "Don't move, mother, we will lift you," and Harry said "Don't move, don't make any effort, we will fix you," and she said "I want to leave room enough for Carrie to sleep;" she thought she would move; she slept next to the wall where the draught would not reach her, and I slept near the fire on the outside of the bed, and we laid her in that way, and I pinned a big blanket around her shoulders, as she would throw her arms out, and I had rubbed her with
20 hot turpentine and something, and I pinned the shawl around her, and my brother said "Come and sit down," as she said she felt as if she wanted to go to sleep, and we both sat there; there were two easy chairs, one on each side of the fire-place, and the table right by us, on which my brother kept minutes of the medicine that he gave her, at ten this, and quarter-past eleven something else, and so on, as he said "I want to show John my treatment when I go back;" and then he whispered "I am afraid we will lose mother, I am afraid we will lose
30 her to-night;" I said "Is it possible," and he said "I think so," and we turned the gas lower so as she might sleep; I said "Perhaps this is the crisis. Many persons recover when they are given up. She may recover. She recovered before of pneumonia in spite of everything. She has a good constitution. This is the crisis, and she may recover," and then we stopped speaking; I said "hush" very gently, hoping sleep would restore her; at that time they were giving her—steaming something for her to smell through a kettle or an inhaler; it was im-
40 provised for the occasion, and I advanced, I was so anx-

ious about her, for she would knock it away from her; I thought I might get her to inhale some while she was sleeping, and I held it to her mouth and she did not seem to breathe; she looked—something struck me all at once, and, starting from her, I called "Harry, Harry, come here," something like that, and he came right up and he said "Poor Dolly is dead."

Q. What did you do after that—did you make any exclamation? A. With that he said, "She is dead," and he seemed to be very much excited, and I was too; I 10 don't know what I did then—I cannot say; and then he called Mr. Cook to come right in the room.

Q. Did you say in these words, or in substance, "I have deceived you; she has made a will?" A. I never said such a thing as that; I told him in the afternoon before that she had made a will—in the morning some time, as soon as he thought she was ill and was going to die.

Q. And then is when he wanted to make a new will? A. Yes, sir; but she knew nothing about it; she was 20 never told about it? she died not knowing it; she never had a word spoken to her by anybody that I know of.

Q. Mr. Webster was sworn in this case—do you know him? A. He was my waiter-man that summer; he was a colored man.

Q. You say Mr. Webster was a colored man? A. Yes, sir.

Q. Emma Hooper and Mary Williams are colored? A. Yes, sir.

Q. Servants? A. Yes, sir. 30

Q. Victoria Bruff, is she colored? A. Yes, sir.

Q. And Jane Schreve? A. Colored.

Q. And Georgiana Lucas? A. Colored.

Q. Did you ever say to any of these persons anything about your mother making a will? A. No; I could not.

Q. Or that you would get the best of your brother? A. I never dreamed of such a thing.

Q. Or that you would "get square" with your brothers? A. No; most positively no.

Q. Did you ever say anything in regard to a will to those persons, or in their presence? A. Never.

Q. Did you ever, in any way whatever, attempt to influence your mother to make this will in question? A. Not that I know of ever; she spoke to me about it very often.

Q. Did you ever say anything to your mother about making this will in question, or any other will? A. My mother very often said things to me.

10 [Question and answer read over by the stenographer.]

Mr. Vredenburgh—She said "about it" at the end of her answer.

The Court—What did you say?

The Witness—I think I did say that, but they were both talking just then.

Q. Did you ever do anything that would to your knowledge, influence your mother in making this will in question?

[Objected to Question withdrawn for the present.]

20 Q. Coming back to the notes spoken of by Redway that your mother indorsed for you, who paid those notes? A. I did.

Q. Out of your own money? A. Out of my own money that I made at the Look Out Cottages.

Q. Mr. Redway says that you, in the presence of your mother, made a threat that you would "get square" with your brothers; is that so or not? A. No.

Q. He says it was in connection with the matter of your brother's treatment to you in regard to your son?

30 A. I do not remember anything of the kind.

Q. Mr. Redway speaks of your mother building the Garfield House at Asbury Park; did she build that house? A. She did.

Q. Who had the management of the building of that house? A. Cook Howland.

Q. Who conducted the business part of it? A. Sometimes my mother—both of us together, I think.

Q. Did she ask you to assist her in the business part of it? A. About how the house should be constructed

40 of course; she was building it for me.

Q. She expected you to occupy the house? A. Yes, sir; she said "I like Asbury Park, and I always feel well here, and I would like to have a house where we can live six or nine months in the year," and so we were very particular in the way it should be constructed, so we could have a bed-room off the parlor, with a fire; she did not like Long Branch.

Q. As to the building of the house, did you influence your mother to build that house? A. I suppose I may have done so. 10

Q. Did you talk to her about it? A. We talked about it and the money that might be made in it, and also that it would be a good investment, which it has been.

Q. What is that property worth, about? A. It cost my mother in the neighborhood of $10,000; worth from $10,000 to $12,000.

Q. That is not conveyed by the will? A. No, sir; she acquired that by my keeping boarding house, and saving my money instead of spending it.

Q. At the time of her building that house, did she attend to the making of the contract with Mr. Howland? 20 A. She did.

Q. Did she attend to the payments generally? A. I think she left some of the payments to my brother John to pay; when we were in Florida I think all the payments were made by him.

Q. Was she, or not, capable of attending to her own affairs at that time?

[Objected to. Objection sustained.]

Q. Mr. Webster, the colored man, has testified that you said in his presence to your mother that you would "get square" with your brothers; did you say that? 30 A. No, I did not.

Q. Mr. Webster also says that you said to your mother at the breakfast table that Charley was very foolish to run away, for he was the only child that you had and that he would fall heir to your property, and that the property on the corner of Chelsea avenue and Third avenue was coming to you, and you turned to your mother and said "Isn't it, ma, isn't that so?" and your 40

mother said "Yes"; is that true or not? A. If anything of the kind occurred it was in reference to my Oceanport property, which was mine by my father's will; if I did say such a thing it was that; in case there was any possibility of it having been said, it would be in reference to that.

Q. He also says that you said he would fall heir to all his grandmother's property when she died, at the same time and place; is that true? A. Not at all; I never
10 said such a thing.

Q. Mrs. Johns has testified that there was a letter sent by your brother Harry to your mother, and that it was read over in the presence of you and your mother and Mrs. Johns, and that you made the remark to your mother, "You see, mother, what they do and how they act," and that your mother said "You are always finding fault, and I don't know but what they are right," and that you swore that you would have revenge on your brothers; is that true? A. It is not; in the first place,
20 my mother never would have been so stupid as to have read the letter before her.

Q. Mrs. Johns also testified that in New York you spoke to your mother about indorsing the Redway notes, and that she refused, and you said, "Well, mother, you must; I have got to mail them;" did you, in Mrs. Johns' presence, say that? A. Mrs. Johns never was present at that time at all?

Q. When the notes were given? A. Why, no; she was in New York at the time; it is untruthful on her
30 part.

Q. Did your mother always yield to you? A. No; I always yielded to her; she always had her own way.

Q. Did you ever tell Emma Hooper that you were left alone, and that your mother should make a will in your favor, or in words to that effect? A. Never.

Q. Did you ever speak to Emma Hooper in regard to your mother making a will? A. I was brought up by my mother never to make confidence with servants, therefore, I could not say it.

40 Q. Yes or no—did you? A. No, sir.

Q. Mary Williams, the colored woman that was sworn, did you ever say to her anything in regard to your mother making a will? A. Never; the same answer.

Q. Did you ever say anything to your mother in her presence, about a will? A. Never.

Q. Or that you would "get square" with your brothers? A. Never; I do not use slang.

Q. Did you ever tell Mr. Schroeder, or say in his presence, that you would have revenge on your brothers? A. I did not. 10

Q. Had you employed Mr. Schroeder to transact business for you? A. I did; and mother also, on my behalf.

Q. Do you know in what year you employed him? A. That same year.

Q. What was the particular thing he was employed for? A. He was employed to settle up some business transactions in regard to the estate, and some bills that my brother brought against me, or at least talked about, that we owed, that he had, and my mother said, "I wish you would have this settled in my life, Carrie, because I 20 don't know what sort of bills will be brought up against you when I am dead and I can't testify; I wish you would have them settled up in my life."

Q. And you employed Mr. Schroeder? A. I employed Mr. Schroeder to attend me; he was written to several times by me; and I called on him, and my mother called on him, but he never attended to it; he is a friend of my brothers, personally.

Q. Jane Schreve, was she a colored servant? A. No, sir; she was some colored woman my brothers doctored, 30 and an agent for servants, a sort of an intelligence office.

Q. Did you ever say to her, or in her presence, that you would get square with your brothers? A. I never talk in the presence of such people anyway, and I never said that.

Q. Just yes or no? A. No, sir; I did not; a class of persons like that, I do not consider my equal to talk to.

Q. Georgiana Lucas, was she with you? A. She was a waitress.

Q. Colored? A. Yes, sir. 40

Q. Did you ever say anything to her in regard to the will? A. Never.

Q. Ever say anything to her about getting square with your brothers? A. Never.

Q. Your brother Harry has testified that you have threatened revenge on him, for not sympathizing with you at the time your son ran away? A. I never saw my brother.

Q. Did you threaten revenge on him? A. I never
10 did.

Q. On either of your brothers? A. I did not even see them.

Q. You did go down to their house at Long Branch, did you not? A. I did; I drove down in a carriage.

Q. Did you ask them to assist you? A. I did not see them; I saw Mrs. Pemberton; they were not in.

Q. State what happened there? A. Mrs. Pemberton came out in the street, and I asked her this question, and she laughed, she seemed to rejoice; I said, "How
20 can you rejoice over my misfortune;" and she seemed to laugh with her face and eyes glancing at me in different directions; I said, "Even a savage would have more kindness in a mother's agony than you, take care Tillie, God's arm is not shortened that it cannot reach you; you have a daughter, I a son, look out something may yet happen to your daughter; had circumstances been reversed, I would not have rejoiced in your misfortune as you rejoice in mine; nor could I be so cruel to you under such circumstances.

30 Q. In your conversation there at Long Branch at any time, in any ones presence, did you ever have any reference to the making of a will or getting your mother's property? A. I did not.

Q. Dr. Harry has testified that he asked his mother about going to Europe, and that she said that he must get your permission; do you know anything about that? A. I did not know that I was so important a party as that, no, sir; I do not remember it at all.

Q. Did you object to his going? A. No; I rejoiced
40 at it; I thought he would assist in taking care with his

medical knowledge of my mother, which he did not—his medical knowledge proved naught.

Q. Was there a talk about May Pemberton going? A. No; not at that time at all.

Q. Was there afterwards? A. Afterwards, when we were at the house there was talk.

Q. Did you object to her going? A. Most seriously.

Q. Why did you object to her going? A. I did not want the responsibility and care of a young lady of 18; I thought she might take a fancy to some of those nice 10 young gentlemen and run away; it was in the blood, and I would be blamed for it.

By Mr. Vredenburgh—

Q. It was in the blood, you say? A. Yes, they all do it.

By Mr. Stout—

Q. There had been runaways in the family before this? A. Yes, sir.

Q. Three or four instances? A. Yes, and I didn't know but she would follow suit. 20

Q. The fact is, you did not want her because of the responsibility and the care? A. I did not want the responsibility and care; it all devolved upon me, and I had the responsibility of my mother; I had traveled with her in Florida, and had taken good care of her, and through the Southern States, and I did not want an additional burden.

Q. And you objected to her going? A. I objected to it most decidedly; I told mother if she wanted the responsibility, all right; I did not, and I would not take 30 her; Harry did not want it either.

Q. Dr. Harry has testified you said that you would do right with regard to the property regardless of a will; did you have any such conversation with him as that? A. I never had such an idea; I was executrix of the will, and if I said anything of that kind I meant to follow out the will the way it was intended.

Q. But you don't remember of saying anything of the kind?

[Objected to as leading.]

A. I don't remember anything of the kind.

Q. Do you remember saying anything of the kind to him? A. I don't remember anything of the kind.

Q. Dr. John has testified that he said to your mother, in your presence, "Mother, Carrie tells me you have made no will; and she says 'No;'" do you remember
10 anything of that kind? A. I never said anything of the kind, positive of it.

Q. Do you remember Mr. Campbell being at your house? A. I do; and we had nothing for dinner but a beefsteak; it was the day before we were going away.

Q. In 1882? A. Yes, sir; we moved the next day; I was astonished at him bringing anybody to dinner the last day, and that was Sunday, and we could not buy anything.

Q. He says that there was a conversation on the
20 piazza, and that you were very close by, and the talk was between he and your mother in regard to her going to Europe, and that she said, "Why, Mr. Campbell, you don't know what it is; Carrie kicks me around like a foot ball; winter before last she had me over to Philadelphia all winter, and last winter she made me go down to Florida, and now says I have got to go to Europe;" was there anything of that kind said in your presence? A. In the first place she never went to Philadelphia at all that winter, she stayed at Long Branch,
30 at our cottage on Chelsea avenue.

Q. Was there anything of that kind said in your presence? A. No; not that I know of; we were talking about Cook Howland and the case that was going on; nothing at all about that, except I said we were going to Europe; my son was present during the whole interview.

Q. Did she say you kicked her around like a foot ball? A. No, sir; my mother never would make such remarks as that.

Q. Then she did not say it, did she?

40 [Objected to. Question withdrawn.]

Q. Did you hear her say that? A. No.

Q. Do you know what the particular conversation was there with Mr. Campbell at that time, the subject of it? A. Yes, sir; the suit that my mother had with Cook Howland for building the Garfield cottage, in which Mr. Campbell was the attorney.

Q. For whom? A. My mother; by my brothers' advice, she accepted Mr. Campbell as her attorney.

Q. And was fighting against Howland's claim for building the Garfield? A. Yes, sir; it was considered 10 not to be sound, the foundation, and he asked for an additional price, and my mother objected to paying the additional price, and my brother advised her to have a law suit, and selected Mr. Campbell as the attorney, and she afterwards said she was very sorry, she would a good deal rather have had Mr. Howland have it than Mr. Campbell.

Q. Up to the time your mother went to Europe, did she or not attend to her own business matters, in general, I mean? A. Generally she attended to her business 20 matters; always did.

Q. Did she attend to her bank account? A. Sometimes she did, and sometimes she sent me with the bank book, and sometimes she sent my son down.

Q. But she looked after it? A. If she felt well she would go down, if she did not she would not.

Q. Do you remember about the time this will was made, do you know? A. She used to attend to my business that summer she banked for me; she took my money to the bank generally, $350 or $400 a week. 30

Q. Would she do any buying for you? A. She would.

Q. Did she during that summer? A. She bought chairs and cots, and cot-beds, and napkins, and towels.

Q. Where did she purchase those? A. Sometimes at Hathways and Steinberghs, and at ; rocking-chairs and things of that kind she would buy on her own responsibility; two she bought, I remember especially.

Q. Did she buy provisions? A. Yes, sir; she often bought provisions; she went down and bought $10 worth of vegetables one morning, and I said, "Please don't do 40

that again, you will ruin me;" I didn't know what to do with them all.

Q. Who paid for all those things she bought for you? A. I did.

Q. Did you ever in any way influence your mother toward the making of this will?

[Objected to.]

Q. Did you ever do or say anything for the purpose of influencing your mother in making this will?

10 [Objected to. Objection overruled. Exception by caveators.]

A. I have no recollection of doing so; she always said she was going to try and protect me.

Q. Did you do anything? A. No; she always said that herself; "When I am gone my dear you have no friend left; when your mother is gone you will be left alone in the world, and you have no one to protect you but your mother, and your mother will try and protect you."

20 Q. And after she made it, she showed it to you? A. Yes, sir; she said, "Now I can die happy."

Q. Did you know what was going to be the contents of that will, until she handed it to you that night? A. I did not; she said she thought she had done about right by everybody.

Q. Did either of your brothers ever threaten you in regard to this will, or the probating of it? A. Yes, sir; after I returned from Europe, both of them did

Q. State what Dr. John did first? A. Dr. John was

30 going out riding, and he called my son to go out with him.

[Objected to. Objections sustained.]

Cross-examination by Mr. Robbins—

Q. How long did Mrs. Schreve work for your mother? A. She never worked at all, never in her life.

Q. And never was at your mother's house while she was living? A. Never worked for her, never—most positively, never.

Q. Did you ever employ any servants of Mrs. Schreve?

A. I did this once that I have mentioned, these colored servants as waiters and chambermaids.

Q. Any others? A. No, sir.

Q. How many did you ever employ from her? A. At that time.

Q. At any time? A. I could not tell without counting them up—there was Webster, and I had another waiter-man, I forget his name, that was two; Emma Hooper, Mary Williams and the cook; I think that is about all; there might have been more—yes, a dishwasher, I forget her name—about seven; I guess that is all. 10

Q. Did you ever employ them of her at different years? A. No; the next year I had somebody else; I don't remember who.

Q. How long have you known her? A. My brother told me—

Q. No; how long have you known Mrs. Schreve? A. When I was at my boarding house corner of Fourth avenue and Main street.

Q. Yes, but that don't give me the information yet? A. What do you want? 20

Q. I want to know how long you have known Jane Schreve? A. I could not say; I should think about four years since I first saw her; she came to the office and my brother said, that is Jane Schreve; and he said, "I am her physician, and she is quite well to do and keeps an intelligence office."

Q. Which brother? A. Harry; that is the first time I ever saw her, and he also wanted me at that time to teach her music lessons, and my mother objected to my teaching a colored girl; she thought it was a little too much to ask Carrie to teach "a nigger;" she thought it a little too much. 30

Q. "A nigger," you say spelled with two "g's?" A. She said "nigger," mother said that; I didn't say it.

Q. You wouldn't use such an expression? A. No; mother said that she said it because she felt indignant to think that my brother would so demean me.

Q. Is there anything else you want to add upon that point? A. No. 40

Q. How long have you known Mrs. Johns? A. Three or four years—when I took the Look Out Cottage.

Q. Did Mr. Redway ever come to New York to see you? A. He did.

Q. Upon what point? A. About making the payments for the cottages.

Q. What cottages? A. Look Out Cottages.

Q. He had the renting of them? A. He was the agent.

10 Q. And through him did you make your arrangements about the house? A. I did.

Q. You rented them of him? A. I rented them from him.

Q. Were the notes given to him? A. One note; I don't remember whether one or two for $500, two-thirds payments on the Long Branch Banking Company.

Q. Where was it that the contract was made about these? A. Asbury Park.

Q. When was it that he saw you in New York City?

20 A. I don't remember, sometime before we moved.

Q. How many times was he at New York city? A. I don't remember.

Q. Your mother did indorse those notes? A. She did; note or notes, I don't remember now.

Q. Where was it that she did it? A. I think in my room.

Q. At what place? A. Thirty-eighth street, New York city.

Cross-examination by Mr. Vredenburgh—

30 Q. Were you within two or three feet of your mother when this paper was signed by her? A. What paper?

Q. That which you propose for probate here as her will? A. I was not there at all when it was signed.

Q. You were not there when she signed it? A. No, sir.

Q. Dr. Mitchell who swears that you were within two or three feet of her when she signed, does not then tell the truth? A. I don't remember whether he does or

not; I don't remember being present; I was in and out of the room two or three times.

Q. Do you say you were not there, or that you don't remember? A. I don't think I was present.

Q. Are you positive or not? A. I am not positively positive, but I think so.

Q. You first answered it, before I mentioned Dr. Mitchell's name, that you were positive you were not there; now you say you don't know whether you were present or not? A. I don't think I was at the time it was signed; I don't remember seeing my mother sign it.

Q. Is your memory bad? A. No; it is generally considered pretty good.

Q. He says, also, that you were in the room most of the time while they were there; is that true or not? A. I was passing in and out.

Q. Is that true that you were there nearly all the time? A. I was there some of the time, but I don't think I was there nearly all the time; I am positive that I was not.

Q. You won't be positive about that though? A. No; because I had my duties to attend to in my house.

Dr. Charles Pemberton, called on behalf of the proponents, being duly sworn, testified as follows—

By Mr. Stout—

Q. You are the son of Caroline H. Pemberton? A. I am.

Q. The proponent in this case? A. Yes.

Q. Do you live with her? A. Yes.

Q. Did you in 1880 live with her? A. Yes.

Q. Did you ever see that paper before? (showing witness paper offered in evidence as will.) A. Yes; I did.

Q. Did you ever have that in your possession? A. I did.

Q. How did you get it? A. My grandmother gave it to me the first day of October, the same year she died.

Q. Who was your grandmother? A. Mrs. Caroline Pemberton.

Q. What did you do with the will? A. When she gave it to me at that time, I put it in my trunk.

Q. What were her instructions to you? A. To keep that will safe, that she had protected my mother in that will, and that she was going to Europe, and to keep it safe.

Q. You put it in your trunk? A. Yes.

Q. Did you put it anywhere else after that? A. I put it in the safe deposit company after that.

10 Q. Where? A. Corner of Twenty-third street and Sixth avenue, New York city.

Q. Did any one have hold of that will but you from the time your grandmother gave it to you until your mother and Dr. Harry returned? A. Nobody; the bank did not have it in their possession, for I had a set of keys; they had to unlock it first, and then my set of keys afterwards.

Q. No one had possession of that will but you? A. No, sir.

20 Q. When your mother and uncle Harry came home, he says you three went to this safe deposit company to see the will; do you remember that? A. Yes.

Q. You did go? A. Yes.

Q. Did you look at the will? A. We did.

Q. State whether or not those signatures were there, and which ones were there at that time? A. All the signatures were there—Caroline Pemberton, Kinmouth, Henry Smith, R. T. Stout.

Q. They were all there at that time? A. They were 30 all there.

Q. Was anything else there—any other writing? A. Yes, sir, there was a little; it looked as if it was in different ink.

Q. This interlineation clause, was that there? A. Yes, sir, that was there.

Q. You are positive of that? A. Yes, sir.

Q. Do you remember Dr. Harry going over the will and coming to the word "Catharine"? A. I remember it distinctly.

40 Q. Was that as it is now? A. It was that way;

"Catharine" erased with red ink, and "Caroline" with black written over it.

Q. And in the places that it shows through the will? A. Yes, sir.

Q. What did you do with the will then? A. I locked it up again in the box.

Q. Then did you afterwards bring it to the surrogate's office? A. Yes, sir.

Q. And lodged it with him? A. Yes.

Q. Did any one do any writing upon or anything with that will, further than to look at it, from the time you first got it until the surrogate got it? A. Nobody made a scratch on it. 10

Cross-examination by Mr. Robbins—

Q. How long have you lived with your mother? A. I will have to count back, I don't remember exactly; I should think about six or seven years.

Q. Before that you lived where? A. Before that I lived in Germany.

Q. Who did you live with there? A. My father. 20

Q. What is his name? A. Henry Isoocson.

Q. Any middle name? A. No, no middle name.

Q. Did he go by any other name? A. Not that I know of.

Q. Was he ever known by the name Gortatioski? A. Not that I know of.

[Objected to.]

The Court—As to the father, that ought to be excluded.

Q. How long have you lived in Germany? A. I don't remember exactly; my father took me away in 1869, I think—the beginning of 1869; I was only a boy then; I think I was about ten years in Germany. 30

Q. When did you return here from Germany? A. I don't remember the year exactly.

Q. Your father return with you? A. No.

Q. Come back alone? A. Yes.

Q. Where did you go when returned to America?

A. I came in search of my mother; I landed at Philadelphia; I had a ticket to New York.

Q. In 1869 you think? A. No; 1869 my father took me away from the United States.

Q. When did you return? A. I don't remember exactly the year I returned; I didn't make a note of the time.

Q. What year was it that you returned to your mother, Mrs. Pemberton? A. That was about six months after
10 I landed in the United States.

Q. When did you begin your search for your mother after you landed? A. I began my search immediately; I wrote some letters, but I did not get any answer; I did not know the exact address where she was.

Q. Did you have any information before you left Germany? A. No; I asked my father frequently, but he always avoided talking about the matter.

Q. Can you tell me when it was that you finally did reach Mrs. Pemberton? A. I can't tell exactly now; I
20 would have to figure up by other circumstances, going back, different circumstances—what I done in the meantime.

Q. I would like you to tell me as near as you can the year when you finally reached Mrs. Pemberton? A. I think it was in October, 1879, to the best of my recollection, or 1878; I think it was, I am not sure.

Q. And she was then living where? A. At the Chew Cottage at Long Branch, corner of Fourth avenue and Main street.

30 Q. What time in 1879 was it? A. I am not positive whether it was in 1879.

Q. What time in the year was it, whenever it was? A. In October.

Q. Then how long did you continue to reside with Mrs. Pemberton? A. I resided with her ever since.

Q. You were away for a time? A. I was away several times.

Q. But once you went to the West? A. Yes, I was out West.

40 Q. How long after you returned to Mrs. Pemberton

was it before you went West on this occasion? A. The same year the will was made.

Q. In 1880? A. Yes, sir.

Q. How long before the will was made was it, that you went west then? A. I think it was the end of July that I left.

Q. And the will, do you remember the date of that? A. No; I do not.

Q. The sixteenth of August of the same year? A. I think that was it. 10

Q. Then there elapsed about two or three weeks between your departure and the date of the will? A. I suppose so; if it is dated August 16th it would be.

Q. Did the mother of Mrs. Pemberton live with her at the same time you did? A. Yes.

Q. And during all the time you did; I mean prior to your going west? A. Yes.

Q. At Long Branch? A. Yes.

Q. Who composed the family at Long Branch when you were there, and before you went west? A. At 20 Long Branch, when I first came there?

Q. Yes? A. My mother, and my grandmother, Dr. Harry and myself.

Q. You were living at Asbury Park at the time you went west, were you not? A. Yes, sir.

Q. Who composed the family there? A. My grandmother, my mother, and myself.

Q. How long had you been at Asbury Park before you went west? A. We came there some time in April; I don't remember exactly. 30

Q. Where did you start from when you went west? A. From Asbury Park.

Q. Was this the occasion when you took some checks and money, this occasion that you went west?

[Objected to. Objection withdrawn.]

A. It was.

Q. Whose money and checks were they? A. The money was my mother's, and the checks were my grandmother's, which I returned when I came back.

Q. What time in the day was it that you left? A. I think it was in the afternoon.

Q. What time? A. I don't remember exactly the time.

Q. From whom did you receive the checks and the money? A. From my mother.

Q. What did they amount to in the whole? A. The money was $280.

Q. In bank bills? A. In bills, and the checks were
10 $50 each.

Q. Did you have the bank book also? A. Yes, sir; and I had a building loan book, which I returned also, when I came back.

Q. You had a bank book? A. Yes.

Q. Besides this building loan book? A. Yes, sir; the Long Branch Banking Company's book.

Q. Why did you say you had a loan book; how was that important in answer to my question? A. She wanted me to pay $5 for building loan.

20 Q. Did you do it? A. No; not at that time.

Q. When did you, in point of fact? A. After I returned.

Q. How long was that? A. I think it was three months afterwards.

Q. I suppose she must have been fined, in the interim, according to the loan rules?

[Objected to.]

Q. What were your instructions as to the money and the bank book—what were you to do with the money,
30 and the checks and the bank book? A. I was to deposit the checks for her in the Long Branch Banking Company.

Q. What were you to do with the money? A. My mother gave me the money to pay one of the installments of the notes off.

Q. In the Long Branch Bank? A. Yes.

Q. Then you were to pay $5 to the loan, you were to deposit the checks—to whose credit? A. To my grandmother's credit.

Q. And the money you were to pay upon a note which was in the bank? A. Yes, sir.

Q. By what means did you go from Asbury Park that day, by train? A. By train.

Q. Where did you stop first? A. In New York; I went the same afternoon—

Q. The Loan Association was not in New York, neither was the Long Branch Banking Company? A. And from there I went to St. Louis.

Q. You did not stop in Long Branch at all? A. No. 10

Q. You went first to New York and arrived there that evening, of course? A. Yes.

Q. And then you went to St. Louis, when? A. The same night.

Q. How long were you in New York? A. A couple of hours.

Q. Took the first train, didn't you, which you could take? A. Yes.

Q. Sent no word home? A. No.

Q. When did you first communicate again with your 20 folks at Asbury Park? A. I don't remember how long afterwards.

Q. I would like to know? A. I can't remember.

Q. Did you at any time during the time you were in St. Louis? A. Yes.

Q. How long before you returned home was it that you communicated with them? A. I don't remember.

Q. Did you communicate with them more than once? A. I think I did.

Q. How many times would you say? A. I don't re- 30 member.

Q. Can you give me any idea? A. I could not.

Q. Not over twice, probably? A. I don't remember.

[Proponent's counsel objects to this line of examination.]

Q. Did you make any effort to have these checks cashed in the bank? A. No, I did not, although they were indorsed; I could easily have cashed them.

Q. Do you know whether payment was stopped on the checks? A. I don't know; I did not care about it. 40

Q. Did you return all the checks? A. Yes.

Q. Did you return the check of Uriah White for $125? A. I don't remember any such check.

Q. Didn't you get any of the checks cashed? A. I did not get the checks cashed that my grandmother gave me.

Q. Did you get any of the checks which you had that day, cashed? A. I don't think so.

Q. Didn't you? A. I don't think so.

10 Q. Didn't you get any checks cashed in New York? A. No.

Q. Or elsewhere? A. I don't think so.

Q. Did you return any of this property until you came back from St. Louis? A. No.

Q. What name did you go under while you were in the west?

[Objected to.]

A. My own name.

Q. Any other? A. No, sir.

20 Q. Didn't you go under any other name while you were away from home when you took the money and the checks—think a moment? A. I don't remember of any such circumstances.

Q. Didn't you go under the name of Gortatoski while you were away? A. No, sir.

Q. Didn't you go under the name of "Charles Meddle" while you were in St. Louis? A. No.

Q. Didn't you write letters in which you stated that you went under another name while you were in St.
30 Louis? A. I don't remember.

Q. Didn't you write letters here to the east, in which you stated or signed yourself as Charles Meddle? A. I don't remember.

Q. Do you say now, I ask you the question distinctly, that while you were in St. Louis you did not sign your name to any letters or papers, or give out your name as Charles Meddle? A. I don't remember any such circumstance; I don't remember anything about it.

Q, I ask you the same question again now, as to any
40 other name, whether you did not sign or give out your-

self under any other name than that of Charles Pemberton? A. I don't remember.

Q. Your memory is a blank on that point? A. I don't remember.

Q. You don't remember whether your memory is a blank or not? A. I didn't say that; I said in reference to the other questions, I did not remember.

Q. Did you bring anybody's bank book with you when you came from Germany? A. No, sir.

Q. Didn't you bring your father's bank book with you from Germany? A. No, sir. 10

Q. Who furnished you with the money to come here then? A. I was in business in a banking office in Hamburgh.

Q. I ask you distinctly if you brought the bank book of your father with you, or any book which represented his bank book, or took the place of it? A. No.

Q. Or of any other person? A. No.

Q. Where did you remain while in New York, between the time of your arrival from Asbury Park and until the time you started for St. Louis. 20

Recess.

A. At the railroad station.

Q. What railroad station? A. The Erie, if I remember right.

Q. Then you went west by the Erie? A. Yes.

Q. And you went immediately from the New Jersey Central Railroad station to the Erie? A. Yes.

Q. You went to New York from Asbury Park by the New Jersey Central? A. Yes. 30

Q. And landed at the foot of Liberty street? A. Yes, I think so.

Q. And you went from there immediately to the Erie station? A. Yes.

Q. And that was the station of the road on which you went west? A. Yes.

Q. And you took the first train going west which you could take? A. Yes.

Q. Look at that letter, and tell me in whose handwriting it is?

[Objected to.]

A. It is in my handwriting.

Q. Did you send it at the time it bears date?

[Objected to.]

Q. Is it all in your handwriting—look it all over and tell me whether the whole of the letter, body and signature, is in your handwriting? A. Yes, sir.

10 Q. I show you now an envelope; state whether or not that is also addressed in your handwriting? A. Yes, sir.

[Envelope and letter dated November 25th, 1880, offered in evidence; marked for identification Nos. 1 and 2.]

Q. Was this letter written during the time you were west, when you went and took with you the money and the checks?

[Objected to. Overruled.]

20 A. It must be by the date, I should judge.

Q. Then you did not return home until after that time, of course; now, will that letter aid you to say how long you were in the west; you went in July—how long was it after the date of this letter, November 25th, 1880, that you returned to Asbury Park? A. It must have been soon after that.

Q. Can you tell how soon after? A. No; I don't remember how soon.

Q. Can you remember at what place you made your 30 home while in St. Louis? A. I was in different places there; I don't remember.

Q. Did you board or live at any time at 1109 Pine street, St. Louis? A. Yes, sir.

Q. This letter was written from there undoubtedly? A. I should judge so by my writing my address underneath there.

Q. You meant that 1109 Pine street as being your address? A. Yes.

Q. And the place to which your mother was to write

you in case she answered your letter? A. I should think that was the object.

Q. Did you mean her to address her letter if she wrote you to Charles Meddle? A. That must have been the object.

Q. It was the object, was it not? A. I should judge so.

Q. You would say so distinctly, wouldn't you? A. No, I should judge so.

Q. Why don't you say so positively? A. Because I don't remember the circumstances distinctly. 10

Q. I ask you now the distinct question, whether you did not sign your name to that letter "Charles Meddle, 1109 Pine street, St. Louis," for the purpose of having yourself addressed by your mother in case she answered your letter by that name, and to that place? A. Yes; I did it for fun though.

Q. You took the money and the checks for fun too? A. I wrote that way because at the same time I was studying the play "London Assurance," and I was "Charles Meddle," and I had her address me in that way. 20

By Mr. Stout—

Q. That is in the play? A. Yes, it was a lawyer's part of the play.

By Mr. Robbins—

Q. How was it to be known when the letter carrier brought the letter? A. The letter was addressed 1109 Pine street, so they could find it; I informed the lady of the house at the same time if a letter came under that name to give it to me. 30

Q. Did you write any other letters? A. I don't remember; I think I did.

Q. Signed them Charles Meddle? A. I don't remember.

[Caveators' counsel offers the letter in evidence.]

[Objected to.]

By Mr. Stout—

Q. You signed your name "Charles Meddle," why did you sign it "Charles Meddle?" A. I signed it because I was acting a play at that time, and the character I was playing was "Meddle."

Q. Your mother knew that? A. Yes.

By Mr. Robbins—

Q. What was this "Meddle's" first name in this play, was it "Charles?" A. I think so.

10 Q. Don't you know your play better than that? A. I have not read it over since that time.

Q. What was the name of the play? A. London Assurance.

Q. Did you study the part of Meddle, whatever his first name may have been? A. Yes.

Q. Got it so you could play it? A. I got it so I knew it pretty well.

Q. Could you speak your part without prompting? A. I never tried it that way.

20 Q. Did you mean to sign the name of the character that you represented in that play? A. I suppose that must have been my object.

Q. Then if you did not do it you are wrong in the theory which you advanced here about signing the name if it was not Charles Meddle? A. No, I don't say that.

Q. What would you say if that was not his name? A. The name was "Meddle."

Q. Wasn't it "Mark Meddle"? A. I think that was it.

Q. Why did you sign your name "Charles" when the 30 first name of the character was "Mark"? A. I don't remember.

Q. Your memory fails you there again; did you say that your mother knew that you were acting in that play, or learning that play, at the time you wrote this letter? A. I think so.

Q. I understood you gave that as one reason why you signed your name as "Charles Meddle"? A. Yes.

Q. That was the reason, wasn't it? A. I think so.

Q. Why did you write in this way then: "But now I

have got to tell you something that you will be in a fearful rage with me for. I am preparing myself to be a comedian. I have been taking lessons from G———, of this place, who is an old actor, in elocution as well as acting. I have prepared with him the character of Mark Meddle, in London Assurance." Now, if she knew, why did you write in that way? A. I don't know.

Q. Give it up, do you? A. I don't say that; it is so long ago I don't remember what I thought at that time.

Q. You must be wrong in saying that she knew about it after having heard read the letter, such part as I have read? A. I don't know that I was. 10

Q. Do you say now, after hearing that part of the letter, that your mother knew that you were playing the part of Charles Meddle in that play, or going to play it, before you wrote her that letter? A. I don't know.

Q. Did you, in point of fact, play any of the piece which you have mentioned in there, or take any part in them? A. I never played them in public.

Q. When was it that you hired the box in the safe deposit company on Twenty-third street, New York city? A. I don't remember the date. 20

Q. How long was it before the return of Mrs. Pemberton and Dr. Harry from Europe? A. Some time; I don't remember exactly.

Q. Couldn't you tell me somewhere near the time? A. I don't remember when.

Q. Was it as much as a month before? A. I don't remember.

Q. Did you go to New York at the time Mrs. Pemberton and her mother embarked for Europe? A. I was in New York at that time. 30

Q. Where did you go from when you went to the vessel, or were you staying in New York at that time? A. I was in New York at that time.

Q. Living there? A. Yes; boarding there.

Q. At the time they started for Europe? A. Yes.

Q. Do you remember the date of their departure? A. No; I don't remember the date; I think it was somewhere in October. 40

Q. Do you remember the day of the week it was? A. No; I do not.

Q. When did you first know about their going to Europe, I mean the actual day of their starting? A. I heard the same day they started.

Q. Did you know before they started the day on which they intended to start? A. No, sir.

Q. Hadn't you been informed by your mother, or by Dr. Harry, or by the old lady, what time they were going
10 to start? A. I don't think so.

Q. What was the first knowledge you had of them that day, when they did actually start? A. I think my mother came up to my place that day and informed me of it.

Q. You knew they were going to Europe before then? A. Yes.

Q. How long had you known that? A. I think during the summer I heard my grandmother and mother talk about it.

20 Q. Do you mean to say your mother came there on the very day they started, and that was the first you knew of the day they were going to start? A. That was the first I heard of the day.

Q. Did she start on that day that she came to your place? A. Yes.

Q. That same day? A. The vessel sailed, I think, the next morning at six A. M., I think.

Q. Then she came to see you the day before they sailed? A. Yes.

30 Q. That was the day she bought the tickets? A. I don't know anything about that.

Q. How long before that time had she been to see you at your boarding place? A. She had not been to see me before that, I don't think.

Q. Was anyone with her when she came that day? A. No.

Q. And she told you they were going to start the next morning? A. Yes.

Q. Was anybody with her when she came? A. No.

Q. Do you know whether the starting the next morning was sooner that had been anticipated? A. No.

Q. Do you know whether she returned to Asbury Park between the time she was at your boarding house and the next morning, when they actually started? A. No.

Q. You don't know whether she did or not? A. She did not.

Q. Then she must have stayed all night at New York? A. They stayed aboard the vessel that night; went 10 aboard the vessel about eleven o'clock.

Q. Do you know when your grandmother came up there to go on board the vessel? A. Yes, sir.

Q. Was it that night? A. Yes, sir; the train was behind time; I believe they had an accident, or something—the engine gave out, I guess.

Q. Can you remember the time of day that your mother came to your place that day before she sailed? A. No; I don't remember the exact date, it was the end of October. 20

Q. Do you know whether her mother went to New York with her that day? A. I don't think she did.

Q. Then some one must have gone back to Asbury Park for the old lady that day? A. Yes.

Q. Who went? A. I believe Dr. Harry did.

Q. Then she must have gone there that morning when she came to your place—your mother must? A. She didn't come in the morning.

Q. She came there through the day? A. Yes.

Q. She came from Asbury Park that day or Long 30 Branch? A. Yes.

Q. From Dr. Johns'? A. Yes.

Q. And then some one went back, do you mean to say, after the old lady, and brought her that afternoon? A. I believe so.

Q. And then went on board the steamer the same day? A. That night.

Q. And remained there that night? A. Yes.

Q. And sailed the next morning? A. Yes, sir.

Q. So that the whole business of buying the tickets 40

and bringing Mrs. Pemberton there, the old lady, was all accomplished in that day? A. I don't know about buying the tickets; I have no knowledge about that.

Q. Don't you know it was the purpose of your mother and your grandmother and Dr. Harry to leave on the Wednesday following that day when they were there? A. No.

Q. You don't know anything about that, one way or the other? A. No.

10 Q. Where did you stay that night, the night that they stayed on the steamer? A. I stayed on board the vessel too.

Q. The steamer Egypt? A. Yes, sir.

Q. Where did you meet with Dr. Harry and your grandmother that evening? A. I think at the Pennsylvania railroad depot.

Q. Who was with you? A. My mother was.

Q. And you went from there where? A. To the Egypt.

20 Q. And there you remained? A. Yes.

Q. With whom did you remain that night? A. I slept on kind of lounge there; I did not undress; I dozed there until five o'clock in the morning; I stayed until the vessel sailed.

Q. In whose room did you stay? A. In my mother's and grandmother's room.

Q. Then your grandmother and your mother and you remained in the same room that night? A. Yes.

Q. Where did Dr. Harry remain? A. He was in an

30 opposite berth; there was another stateroom.

Q. He was not in the room that night? A. He was not in that room that night.

Q. At what time did you receive this paper which is called a will, if you did, from your grandmother? A. The first of October.

Q. Where did you receive it at, what place? A. At Asbury Park.

Q. Who was present at that time? A. I was alone with her.

Q. Where was your mother? A. She was around there.

Q. Where were you at the time, what part of the house? A. I was in my room; I was packing up everything—books, clothes; I was going to leave the next morning.

Q. Where were you going? A. Going to New York.

Q. To remain? A. Yes.

Q. And did you go, in point of fact? A. Yes.

Q. And did remain, in point of fact? A. Yes. 10

Q. What house was it where the paper was delivered, if it was? A. The Pemberton House.

Q. In whose room? A. In a room I occupied at that time; it was not my room, but I occupied it at that time.

Q. How long had you been living there then? A. In that room?

Q. Yes? A. I had been there a couple of weeks in that room.

Q. How long had you been living at the Pemberton House with them? A. I had been there since June. 20

Q. There was no one present when this paper was delivered to you? A. No, sir.

Q. Do you know from where she got it? A. No, I do not.

Q. You were busy packing up your trunk? A. Yes, sir, I was packing my trunk.

Q. She was not in there at the time? A. How do you mean?

Q. When you were packing your trunk? A. She came in there. 30

Q. She was not there at the time you were packing your trunk, except as she came in while you were doing it? A. She talked with me.

Q. Was she there when you commenced and while you were doing it, all the time? A. No, sir.

Q. She came in while you were engaged in packing? A. She came in; she was in there quite a little while; she knew I was going to leave the next morning.

Q. Do you know where she kept her papers ordinarily? A. I believe she kept them in a tin box. 40

Q. Where was that kept? A. I don't know where she kept that.

Q. How do you know she kept them in a tin box? A. I don't know where she kept that.

Q. I didn't ask you that; I asked you where she ordinarily kept papers, and you say in a tin box; how do you know that? A. Because I had seen her take papers out of the box and read them over.

Q. Where did she keep the box? A. I don't know; I
10 don't think she kept it always in the same place.

Q. Where did she keep it, so far as you knew? A. I think she kept it, ordinarily, in her trunk.

Q. And her trunk where? A. In my mother's room; they occupied the room together.

Q. So the trunk and the tin box and the papers were all in the same room with your mother ordinarily? A. Yes; because they roomed together.

Q. What sort of a tin box was it? A. It was about *that* long.

20 Q. Fifteen inches by five or six inches high? A. I should think about that.

Q. You don't know where she got the paper from? A. No.

Q. Did you ever see it before that day? A. No.

Q. Had they talked about going to Europe at that time? A. They talked about it all summer, of going to Europe.

Q. But they had not come to any definite purpose about it? A. No definite date.

30 Q. They had not come to any definite purpose as to whether they were going or not? A. Yes; they were going.

Q. But no time fixed? A. No.

Q. No time fixed when you left for New York? A. No; no definite time.

Q. Nothing arrived at on that point? A. Not definitely.

Q. Do you know whether or not your grandmother was in the habit of keeping some of her papers at the

Long Branch Bank? A. I believe she left them there the year before when she went to Florida.

Q. It was her habit to leave her papers, when she was going away, with the Long Branch Bank? A. I don't know that it was her habit; she did the year before.

Q. That was the place where she did her banking business? A. Yes.

Q. Didn't she leave her papers, when she went to Europe, in October, 1882, at the Long Branch Bank?

[Objected to. Objection overruled. Exception.] 10

A. I have no knowledge at all about that.

Q. Did she not in 1882, when she went to Europe, leave her papers to your knowledge, or as you were informed, at the Long Branch Banking Company? A. No, I believe she left a great many with Dr. Harry.

Q. Dr. Harry went along? A. But he had a box in the safe deposit company in New York.

Q. That don't answer my question; I ask you if, to your knowledge, or as you were informed either by your mother or her mother, that Mrs. Pemberton, the old 20 lady, left her papers, or some of them at least, at the Long Branch Banking Company when she went to Europe? A. I have no knowledge about it.

Q. Why do you say she left some with Dr. Harry? A. Because I was informed so.

Q. By whom? A. By my mother, and Dr. Harry acknowledged it to me in New York.

Q. Do you know what papers she left with him? A. No.

Q. Do you know anything of any of her papers ex- 30 cept those which you say she left with Dr. Harry, and except the one which you say she left with you?

[Objected to.]

Q. How long after she was in your room on that occasion was it that you went to New York? A. I went the 2d of October.

Q. And this was on the first? A. Yes.

Q. What time of the day? A. In the afternoon.

Q. Was your mother in the room at any time while your grandmother was there? A. No, she was not. 40

Q. How long was your grandmother in the room? A. I don't remember; she was there some time.

Q. What did you do with the paper after she gave it to you? A. I locked it in my trunk.

Q. Immediately? A. I was packing my things, and when I locked my trunk—

Q. In what condition was the paper when it was given to you? A. The exact condition it is now.

Q. Inclosed in an envelope? A. No, but with that
10 kind of a covering.

Q. Then the paper was in no way inclosed except in the cover which is on it at present? A. Yes.

Q. So that you could open it at will and examine it at will? A. Yes.

Q. Do you know where she produced it from? A. No.

Q. Did you have any box in your trunk, except the ordinary wooden till and fixtures of a common, ordinary trunk? A. It had a kind of an old-fashioned lock; yes, sir.

20 Q. A common wooden trunk; was it covered with thin leather and paper, and so on? A. It was covered with leather, and had a heavy bottom to it; it was made to be tossed around.

Q. Where did you keep it in your trunk? A. There are two departments; in the lower part of it one part you take out, and then there is another part underneath, so I put it in there.

Q. You had no tin box? A. No.

Q. Did you see your mother after your grandmother
30 was in your room? A. I saw my mother in the course of the afternoon, and grandmother too; we were sitting in their room afterwards talking together, after I got through packing my trunk.

Q. Did you examine the paper when she delivered it to you; no, I didn't examine it immediately.

Q. When did you examine it? A. I examined it that evening.

Q. Where? A. In my room.

Q. Anyone with you? A. No.

40 Q. No one with you? A. No.

Q. Why did you examine it? A. I looked it over.

Q. Why did you look it over? A. I had no particular object.

Q. Read it all? A. Yes, sir.

Q. And nobody was there? A. No.

Q. Are you clear about that? A. Yes.

Q. Did your mother see this will while you had it? A. At that time?

Q. Any time? A. I don't know.

Q. You put it in your trunk, didn't you? A. I put it in my trunk. 10

Q. Why don't you know whether she saw it or not? A. Because I don't know whether my grandmother showed it to her or not.

Q. After it was given to you? Q. How do you mean after it was given to me?

Q. Did your mother see this will after it was given to you—this paper which is called a will? A. I don't remember.

Q. What did you do with it after she gave it to you? A. Immediately afterwards? 20

Q. Yes. A. I locked it in my trunk first.

Q. Then what did you do with it? A. I left it in there.

Q. Did you take it with you to New York? A. Yes.

Q. Where did you leave your trunk after you got in New York? A. At my boarding house.

Q. Were you in the city all the time, after you went from Asbury Park? A. Yes.

Q. You were not away at any time? A. I believe I was away; I don't think I was away for some time after I first went there. 30

Q. Before your people went to Europe, after you went there, were you out of the city? A. I don't think so.

Q. Did the will remain in your trunk all the time it was delivered to you by Mrs. Pemberton? A. Until it was put in the Safe Deposit Company.

Q. Did your mother visit you at any time while you were in New York? A. No.

Q. Not once? A. No.

Q. Did you have the will out of the trunk at any 40

time after you went to New York? A. Not till I put it in the safe deposit company.

Q. Never took it out at all? A. Before I put it in the safe deposit company I looked at it.

Q. How many times did you look at this paper, between the time it was given you by the old lady, before you put it in the Safe Deposit Company? A. I don't remember.

Q. Did you look at it more than once? A. I looked
10 at it after she gave it to me and then before I took it to the Safe Deposit Company; I don't remember any other time.

Q. Did you have it out of your trunk the day the people started for Europe? A. No.

Q. Are you clear about that? A. Yes.

Q. You can't tell me on what day you hired the box at the Safe Deposit Company? A. No.

Q. Haven't you any way in which you could tell? A. I would be able to find out, but I don't now.

20 Q. Now, I understand you to say that at the time this paper was given to you, as you say it was on the first of October, the same month when your mother and your grandmother and Dr. Harry started for Europe? A. Yes.

Q. The same month? A. Yes, sir.

Q. Do you know of any reason why this paper was not left with the bank in which your grandmother did her business?

[Objected to. Overruled.]

30 A. I don't know.

Q. Do you remember of having a talk with Dr. John Pemberton after the return of Dr. Harry and your mother from Europe? A. Talk about what?

Q. A talk with him after they returned? A. After they returned from Europe?

Q. Yes? A. We went down to their house after they returned from Europe.

Q. Did you talk to him about the will, or the paper you call a will, that time? A. He asked me questions
40 about it.

Q. Didn't you tell him at that time that your mother gave you that will on board the steamship Egypt, the night that you slept there? A. No.

Q. Or words to that effect? A. No.

Q. Did you, at any time, tell Dr. Harry Pemberton what I have asked you, or words to that effect? A. No.

Q. Do you remember asking Dr. Harry Pemberton, the morning the steamship sailed, this question, "Uncle, suppose you die on the Egypt, or the Egypt went down, who would be your heir?" A. I don't remember any 10 such thing.

Q. Did you ask it? A. I don't remember about it.

Q. You can't say whether you did or not? A. I don't remember one way or the other.

Q. What time did you leave the steamship Egypt that morning that they sailed? A. I left the ship just a little before the vessel sailed.

Q. Then you remained as long as you could with safety? Yes; until they were ordered off the boat.

Q. Where did you meet with your mother and Dr. 20 Harry on their arrival from Europe? A. At the dock.

Q. Where did you go to, then, with them? A. We went to a restaurant.

Q. Then where? A. Then we went to the place I was lodging at at that time.

Q. The same place where you had kept your trunk before? A. No, I had changed my place when they went to Europe.

Q. Your mother was with you at your lodging place? A. Yes, sir. 30

Q. And Dr. Harry? A. Yes, sir.

Q. Have any talk with your mother there? A. Of coure, we all talked together there.

Q. Any private talk with your mother? A. I don't remember.

Q. You don't say you did not? A. I don't say I did not.

Q. Then you went to the Safe Deposit Company? A. Yes, sir.

Q. What occurred there? A. When we were at my 40

place Dr. Harry was anxious to look at the will, he wanted to see it.

Q. Was there any talk about whether he should see it or not, between you and your mother? A. I asked my mother if I should show it to him.

Q. You did in point of fact? A. Yes.

Q. That you asked privately of course? A. Yes.

Q. And in another room? A. I don't know whether it was in another room, there was a bath-room right
10 next door to my room.

Q. And you and she talked in there didn't you? A. Yes, I supposed we must have.

Q. And Dr. Harry was in the other room? A. Probably, he had gone out for a moment.

Q. You are not clear about that? A. No.

Q. Your question was as to the propriety of showing Dr. Harry the will? A. Yes, sir.

Q. And after that talk you went to the Safe Deposit Company to see it? A. Yes.

20 Q. How did you come to rent the box at the Safe Deposit Company? A. I don't remember.

Q. Why didn t you keep it in your trunk? A. I don't remember.

Q. Can you give me any reason which moved you to change the place of the paper from your trunk to a Safe Deposit Company? A. No; I cannot.

Q. But you did in point of fact go and rent a box? A. Yes, sir.

Q. Wasn't there anything which made you take that
30 course? A. I don't remember of anything.

Q. It is only in 1882, can't you remember back that far? A. I don't know what induced me at the time to do it; of course I had a reason at the time I did it, but I don't remember.

Q. How did you come to select that particular company? A. It is on the thoroughfare there on Sixth avenue.

Q. Did you correspond with your mother while she was in Europe? A. I never received any letter from

her until my grandmother was dead; Dr. John informed me of my grandmother's death.

Q. Do you remember the date of her death? A. I think it was the twentieth of November, if I am right.

Q. Wasn't it on the twenty-third of November that you got this box? A. I don't remember, it may have been.

Q. Didn't you receive a dispatch by cable from your mother to the effect of your grandmother's death? A. No, I did not; I did not receive any notice from her at 10 all at that time; not until after she had been dead a couple of weeks; then I received a letter from her informing me of it by letter.

Q. How long had she been dead when you heard of it from any source? A. Dr. John sent me this letter; he wrote me a letter that he had received a cablegram from Dr. Harry to the effect that my grandmother was dead.

Q. Had that anything to do with your renting this box? A. I don't know.

Q. Did you have the sole access to the box at the Safe 20 Deposit Company? A. Yes.

Q. You had a key? A. Yes.

Q. By which you could go in and get it? A. Yes.

Q. Was there anything else kept there except this paper? A. Yes.

Q. What else? A. Some business receipts and other things that we had in our business at Asbury Park.

Q. Who? A. My mother's business—grocery receipts and things.

Q. When were those papers left with you? A. My 30 mother left those with me.

Q. When? A. Before I left Asbury Park.

Q. Why did she intrust you with those papers of hers to take away to New York city—what made her do that —do you know any reason? A. I don't know, except they would be safer than being left in the house.

Q. Why safer with you in New York city in your trunk than in her place at Asbury Park under her own hands? A. Because the place at Asbury Park was left all alone.

40

Q. Where did she go? A. I believe she went to Long Branch.

Q. You went into the box in the Safe Deposit Company? A. The Safe Deposit Company had to unlock first with one of his keys, and then I went in.

Q. Who took the will first? A. Dr. Harry.

Q. Dr. Harry was the first one who looked it over? A. No, we looked it over together—three of us; Harry stood in the middle, and we both at the sides of him; I
10 was on his right side and she on the left.

Q. Was anybody else present? A. The Safe Deposit Company man was present.

Q. During the whole interview? A. I don't know whether he was during the whole interview; he was present for a while, standing at his desk.

Q. Was he present when he was talking about the word "Catharine"? A. I don't remember about that.

Q. Was he present when the talk was about Dr. Mitchell and Dr. Kinmouth? A. I don't remember, I did not
20 take any further notice of him.

Q. Was there any talk about the residuary clause of the will, what it would carry with it—about whether the Garfield House was included in the residuary clause of the will? A. There was some talk about it.

Q. What was that talk? A. I think Harry said it would go according to common law, because it was not mentioned in the will; each one have their thirds.

Q. Did you have any talk with the officer who opened the safe? A. I don't think I did, any more than to say,
30 "good day."

Q. Say anything to him about his remaining? A. No.

Q. Clear about that? A. Yes.

Q. How many letters did you receive from your mother while she was in Europe? A. I received one letter which was written before grandmother died, but I didn't get it until after she was dead, she must have been dead seven or eight days; it was written three or four days before she died.

Q. Did you receive any letter from her addressed to

you from 24 Guilford street, London? A. I don't remember.

Q. I wish you would think about that? A. Was not that the place where my grandmother died?

Q. Yes, I think so? A. I don't think I received any letter from her at that place; I received a letter from her at Wansford Park.

Q. Are you clear you did not receive a letter from her from 24 Guilford street, London? A. I don't think I did. 10

Q. Did you have this paper which is called a will, in your hands at all that day at the office of the safe deposit company? A. The day Dr. Harry and my mother had it?

Q. Yes; did you have it in your hands that day? A. I suppose I put it back in its place and took it out of the box.

Q. That is all? A. Yes; they were all present when I took it out of the box.

Q. You did not have it in your hands while it was 20 being read? A. I had hold of it some of the time to help read it—to assist in looking it over.

Q. Can you tell me now the points in the will, and with reference to the will, which were mentioned there that day by any of the persons present? A. Harry looked down and saw his mother's signature, and said, "Yes, that is my mother's signature," and then he looked over and he said, "Stout's signature, Dr. Mitchell and Kinmouth, their signatures there too?"

Q. Do you know whether he knew their signatures at 30 all? A. He said their names were there.

Q. I got the impression from your answer that you meant to say that he identified their signatures? A. No, not that; he saw their names there.

Q. You don't mean to convey that impression? A. No.

Q. Did you read the interlineation that you say you saw at the foot of the attesting clause that day? A. What interlineation?

Q. You spoke of one? A. The one near the names?

Q. Yes. A. I don't remember whether I did or not. 40

Q. Do you remember whether you saw it or not? A. I saw it, but I don't remember whether I read it aloud or not.

Q. Can you give me any idea what that little fine writing was—have you any independent recollection? A. It is about the name of "Catharine" being struck out, and "Caroline" written in place of it.

Q. You observed that especially? A. I don't know that I did especially, Harry looked at the signatures
10 first.

Q. Why do you remember especially about that? A. I don't remember especially about that.

Q. Why do you remember it to mention it in your examination to-day? A. I didn't mention it in my examination, Mr. Stout asked me to name everything there.

Q. Why did you think it important to mention that among the things in connection with the will? A. Because Dr. Harry testified it was not there.

20 Q. And you thought it would be important to contradict him on that point? A. He has testified not correctly on that point.

Q. So you thought you would meet it? A. No, not that I would meet it, but I was positive it was there.

Q. Had it occurred to you in any way prior to the time you heard Dr. Harry testify, anything about it one way or the other? A. I remember it was there.

Q. I mean to say, had there any impression been made upon your mind, either one way or the other, before you
30 heard Dr. Harry testify? A. How do you mean impression made?

Q. Well, an impression, an effect? A. I don't remember; I remember the signature, and all were there; I don't remember one more than the other.

Q. Did you ever see a paper in the form of a will before? A. How do you mean?

Q. A will with the attesting clause and the name, and all that? A. Yes.

Q. Did you ever see anything like that before on a
40 will? A. What?

Q. That fine writing? A. I never saw any will; Harry mentioned something about it.

Q. What did he say about it? A. The first thing when he read it over he said, "that says Catharine," and then mother showed him that it was crossed off with red ink and Caroline is written in.

Q. Is it "Catharine" all the way through wherever "Caroline" ought to occur? A. I don't remember.

Q. Was any point made there that day about "Caroline" appearing in one place and "Catharine" in the 10 others? A. I don't remember.

Q. Didn't you tell, after you came down to Long Branch after the death of Mrs. Pemberton, and in the presence or to Dr. John and Dr. Harry, in talking over your grandmother's death, didn't you say to them, about November twenty-third, that you did not know of any will of your grandmother's? A. I don't remember any such circumstances; I don't think I could have said it, because he knew about the will.

Q. You never saw any will except this one? A. I 20 have never seen wills.

Q. Did you ever see any paper in the form of a will before this? A. No, I never saw any wills.

Q. Then why, if you did not know anything about it, why would you have taken any notice of that fine writing, why would it have made any impression on your mind at the safe deposit company? A. I don't know why it did; I don't know that it did particularly then, but it did at the other times I read it.

Q. Why, if you were not acquainted with the form of 30 drawing a will, and the attesting clause, would that have made any impression on your mind? A. I can't say why it did, but it did.

Q. Was anything said about it that day? Q. How do you mean that day?

Q. By anybody about this codicil to the attesting clause? A. I think—

Q. I ask you distinctly if you did not tell him at that time, Dr. John, that you did not know of any will of

your grandmother? A. I don't remember any such thing.

Q. I show you the paper which is called a will in this case, and also the brown covering which is indorsed "Will of Caroline Pemberton, deceased," and marked "No. 1 for identification, June 18, 1883;" was this brown paper which is marked No. 1 for identification, around the will when it was at the safe deposit company? A. Yes.

10 Q. And was it around the paper when you say your grandmother gave it to you? A. Yes.

Q. Was it in the same condition it is at present? A. Yes; all except that No. 1 for identification—what is that down there, that little writing?

Q. I don't know what that is—all except the pencil writing? A. Yes.

Q. The writing in ink at the foot of the brown paper? A. Yes; that was there.

Cross-examination by Mr. Vredenburgh—

20 Q. You say that this paper was handed to you, I understood you the first day of October, at Asbury Park, and it was inclosed in this inclosure, and of course it was tied with this string? A. I believe so.

Q. You believe it was tied up in this paper with this string? A. I think it was tied about the same; I know it had a string about it.

Q. You mean to say the form of it; I don't want you to guess when you know; you see how it is now, was it open *that* way or tied up? A. I am pretty sure it was

30 tied up.

Q. And you untied it, after it was given to you, this string, and opened this paper and read this will? A. I read the will, yes.

Q. In order to do it you had to untie it? A. I say I am not positive whether it was tied or not, I think so.

Q. Do you mean to say it was not tied—are you getting afraid of that assertion? A. No, I am not getting afraid of it; I don't remember positively.

Q. Don't you know it must have been tied? A. I don't know.

Q. Do you say it was not? A. I don't say it was not or was.

Q. Then you did untie it, and you opened it and read it? A. I read it.

Q. Had you any authority from the person who gave you this paper to do that? A. I don't know.

Q. Don't you know? A. No; my grandmother told me she had protected my mother in that will. 10

Q. I ask you if you had any authority from the person who gave you that paper to open and read it? A. I don't remember.

Q. Didn't it occur to you that you were doing a highly improper trick in opening this will and reading it?

[Objected to. Overruled.]

A. I don't know what I thought at the time.

Q. Not only did you read it then, but you say you read it at other times? A. Yes, sir, I read it another time to my recollection. 20

Q. You had no authority from the person who gave it to you to do that? A. I don't remember.

Q. Did you go to Long Branch and stay at Dr. John Pemberton's while they were in Europe? A. I came down and visited him several times.

Q. How long were you at his house, about? A. I don't remember exactly; not a long time each time.

Q. You were at his house? A. Yes.

Q. Were you there about the time of the death of your grandmother? A. I think after the death I came down 30 and saw him after he informed me.

Q. You were out to his house before the death, and while they were gone? A. I think I was.

Q. Where was this paper when you were down to Long Branch? A. In New York.

Q. You left it in New York? A. Yes.

Q. Didn't he have some conversation—I ask your direct attention to this matter—as to the leaving of a will? A. No.

Q. No conversation at any time? A. No. 40

Q. Between you and Dr. John Pemberton? A. No, sir.

Q. Either before or after the death, about this will? A. After the death he asked me about it.

Q. Not before at all? A. After they returned from Europe.

Q. He asked you about this will? A. When my mother, me and Harry were down there, Harry told him about it.

10 Q. He didn't say anything to you about it before Harry told you? A. No, not before Harry told me about it.

Q. Didn't you say in the presence—I say now after the one time you say you did have a conversation with him, had you any other conversation with him? A. I don't remember; he asked me about it.

Q. Do you say you had not, or had, more than one conversation about this will with Dr. John? A. I don't remember.

20 Q. Do you remember having a conversation in the presence or hearing of Mrs. John Pemberton? A. No, I don't.

Q. Do you say you had not? A. I don't say one way or the other; I don't remember.

Q. Did not Dr. John Pemberton say to you "Why have you told me this falsehood," or words to that effect; "Why did you say to me that there was no will, and that you knew of no will, when it turns out you knew that there was a will," did he say that to you? A. I 30 don't think any such conversation took place.

Q. Are you sure he didn't say that to you, or words to that effect? A. I don't think so.

Q. Didn't you say on that occasion, and right in that connection, that your mother had given you this will? A. I don't think I could have said any such thing.

Q. I did not ask you what you could have said, but what you did say, and did he not then say, "Whose mother," and didn't you say your mother gave you this will? A. I don't think I said any such thing.

[Caveators' counsel renews offer of letter and envelope marked *Exhibit 1* and *2*.]

Harry H. Pemberton, recalled for further cross-examination—

By Mr. Stout—

Q. Did you have a conversation with your sister Carrie and her son Charles after the death of your mother, and after you had learned there had been a will made by your mother, and in that conversation make threats to your sister, that if she offend that will for probate you would ruin her credit and ruin her and disgrace her, or words to that effect? A. No, sir. 10

Q. No language to that effect were used by you? A. No.

Q. At the same time did you tell her if she offered that will in court that you would fight it through every court in the United States, or words to that effect? A. I told her I would fight that will; I should caveat against that will if she attempted to probate it; I did not believe it was my mother's will, and I do not. 20

Q. Did you say to her that you would spend the whole estate before you would allow that will to be probated? A. I don't remember using those words; I may have told her; I did not believe it was my mother's will.

Charles Pemberton recalled.

By Mr. Stout—

Q. What is your business? A. I am a doctor of medicine.

Q. Were you in the presence of your mother and uncle Harry when a conversation was had between them, in which he made threats to your mother? A. Yes. 30

Q. State what those threats were? A. He threatened if my mother offered that will for probate he would fight it through every court and spend the whole estate in law, and he would ruin her reputation, malign her and slander her in such a way that she could not live anywhere in Jersey.

Caroline H. Pemberton recalled.

By Mr. Stout—

Q. Do you remember a conversation between you and your brother, Harry, in the presence of your son, Charles, where your brother made threats to you in regard to this will? A. I do.

Q. State what those threats were? A It would be hard to think of them, they were so terrible; I cannot remember them all; he threatened if I probated that
10 will that he would fight it through every court in the United States; that he would waste the whole substance in law; and he shook his fist in my face and said, "You shall not profit by this will; you shall not, Caroline Pemberton, profit by this will; I will ruin you—your credit; you wont be able to show your face in Jersey;" I said, "I defy you; you cannot;" he said, "I will; it does not make any difference; I will do it, and I shall do it;" and words to that effect, and a great deal more; it was terrible; he shook his fist in my face two
20 or three times.

By Mr. Robbins—

Q. Was anybody present? A. My son.

Q. That was all? A. I don't remember anybody else.

Q. You were terrified, I suppose? A. They were terrible threats to be made to a woman alone, with no protection but a boy.

Q. You would not have talked that way or written that way to anybody? A. I don't think I would; I don't know what I might do.

30 Q. Do you mean to say that you were in any way intimidated on account of your being unused to anything of that kind? A. I happened to be a courageous woman.

Q. Did he say anything like this to you, "I warn before I strike?" A. I don't know anything about that; I don't think was the expression made.

Q. Would you use anything of that kind?

[Objected to.]

Q. He threatened something about your character you

say? A. He threatened in the first place to spend all the money that my mother left fighting the will, he also said that he would try to blast my reputation, I said, "You can't do it, I defy you."

Q. Did you in this case use any such threat yourself? A. I don't remember.

Q. Or in connection with this case? A. I don't remember nothing in connection with the case.

Q. Ever use any such threats to Dr. John Pemberton or his wife? A. No; nothing in regard to this case. 10

Q. I understood you to say you were terrified by the threats? A. They were terrible, most vindictive and cruel.

Q. Do you think they compare with anything like this one?

[Objected to.]

Q. Did he warn you before he struck anything of that kind.

[Objected to.]

A. I think he pretty nearly struck without warning. 20

Q. He didn't strike with a pen did he on block boarded paper? A. No; he shook his fist in my face within about an inch of my nose.

Mr. Robbins—I want to call the witness' attention before I leave this point, to the letter from her in black marked *Exhibit C* for caveators, and propose to ask by way of comparison in reference to the contents of this letter, to see whether or not the witness could have been affected as she states by these remarks, which she says Dr. Harry made. 30

[Offer overruled.]

Proponents rest.

John Pemberton recalled—

By Mr. Vredenburgh—

Q. Charles Pemberton, who has just left the stand, has been asked in reference to a certain conversation with you; I want to call your attention to this conver-

sation; before or about the time of your mother's death, I want you to give the conversation in reference to this will between you, and where was it, and what was it? A. When I received the telegram announcing my mother's death, I was very much overcome of course, and for a day I hardly did anything, the next evening, twenty-four hours after I received the telegram, I sat down and wrote a letter to Charley, informing him of the sad news, and I think I received a telegram in an-
10 swer to it from him, saying that he would be down in the course of a day or so; he came down and stayed at our house for five or six days; I asked him if mother had any will, if he knew of the existence of any will or any papers purporting to be a will; he said "No; I don't know of any;" says I, "Then she must have died intestate, unless she has made a will over there." After they returned from Europe, he had been down to our house several times before that, and stayed several days, and about Thanksgiving Day, shortly after
20 they left; he had been there two or three times certainly; on two occasions previous to this one, when he came in answer to my letter announcing mother's death, when they all returned to my house after coming back from Europe, Charley came along with them; the next morning we had some conversation with regard to the will which my brother had seen, and was telling about it; and I said in an angry tone to Charley, "Charley, how could you tell me such a falsehood; how could you come to my house and receive my hospitality and be treated as a relative and
30 lie to me in such a manner as that?" says I, "Where did you get that paper from?" he says, "My mother gave it to me on the steamship Egypt;" says I, "Whose mother, my mother or your mother;" says he, "My mother;" I said, "You mean Carrie;" he said, "I mean Carrie; she gave it to me on the steamer Egypt;" then says I, "Why didn't you tell me there was a will?" I was very angry, and my sister spoke up and said, "Why I suppose I told the boy not to tell anything about it; that is the reason he did not tell you; I told him not to
40 disclose anything about it."

Cross-examined by Mr. Stout—

Q. Who do you say were present? A. All of us were present.

Q. Who do you mean? A. The whole family; my brother, myself and wife, my sister and her boy.

Q. Did you at that time make threats to your sister? A. I did not; I was very angry with my sister.

Q. Did you at any time make threats to your sister? A. I did not, except in this way.

Q. Did you threaten to kill her? A. I did not; I 10 told her, on the contrary, that I should always hold her responsible—always believe her to be the author of my mother's death; that is what I told her; I told her that she killed her mother when she took her away from this place contrary to my advice, and I hope she will recollect it as long as she lives.

Caroline M. Pemberton recalled—

By Mr. Vredenburgh—

Q. Do you remember after the death of the grandmother of seeing Charles Pemberton at your house on 20 the occasion just referred to by your husband? A. Yes.

Q. Did you hear him say anything as to from what source he procured that paper, or will, as they call it? A. Yes, sir.

Q. What did he say? A. He said his mother gave it to him on the steamer Egypt before they sailed for Europe.

By Mr. Stout—

Q. Do you say that Carrie Pemberton was present at the time? A. Yes, sir. 30

Harry Pemberton recalled—

By Mr. Robbins—

Q. Were you present at the conversation which has just been detailed by Dr. John Pemberton and his wife? A. Yes, sir.

Q. Did you hear Charles Pemberton say anything at that time as to the person from whom he received the paper called the will? A. Yes, sir.

Q. What did he say upon that point? A. He said his mother gave it to him on board the steamer Egypt the night before she sailed from New York.

Caroline H. Pemberton recalled—

By Mr Stout—

Q. This last conversation related by Dr. Harry and
10 his brother and Mrs. Pemberton, in which they say you were present, did you hear the conversation? A. The one just after we came back from Europe?

Q. I believe that was it? A. I don't know when it occurred.

Q. It was at Dr. John's house? A. I told them that my mother gave Charles the will.

Q. Did Charley tell them that you gave him the will on the Egypt? A. He did not, he said "My grandmother gave me the will;" "My grandmother gave it to
20 me," and I said "My mother gave it to him."

Q. Did Dr. John threaten you anything about killing you or anything of that kind.

[Objected to. Sustained.]

Testimony closed.

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