

IN CHANCERY OF NEW JERSEY.¹⁰

BETWEEN

ELEANOR HOLCOMBE,
REBECCA F. MATHEWS, *et als.*,

Complainants,

and

LEVI HOLCOMBE, *et als.*,

Defendants.

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J. G. SHIPMAN & SON,

Solicitors.

[Filed October 23, 1882.]

To the Hon. THEODORE RUNYON, Chancellor of the State
of New Jersey:

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Humbly complaining, show unto your Honor your orators, Eleanor Holcombe, Rebecca F. Mathews, wife of James B. Mathews, and James B. Mathews her husband, of the county of Hunterdon, in the State of New Jersey, that John C. Holcombe, late of the township of Delaware, in the said county of Hunterdon, and State of New Jersey, on or about the twenty-third day of July, A. D., 1882, departed this life at the age of ninety years, and that at the time of his death he was seized of certain real estate, to wit, a farm and meadow land situate in the township of Delaware, in

the county of Hunterdon, bounded by lands of John M. Wilson on the north, Benjamin A. Holcombe on the east, John Barber and the Flemington Railroad on the south, and the Delaware river on the west, containing about one hundred and thirty-five acres of land, and a house and lot in Lambertville, in said county, situate on Delaware street, adjoining lands of Caroline Dilts and others, and that he
10 was also possessed, at the time of his death, of personal estate amounting to thirteen thousand dollars or thereabouts; that the said personal estate consisted of bonds and mortgages, notes of hand, horses, cattle, and other stock upon the said farm and other personal property which will appear by the inventory, and to which your orators beg leave to refer if it be necessary so to do. And your orators further show that the said John C. Holcombe had two children, to wit, Edwin Holcombe and Louisa Holcombe; that the said Louisa Holcombe intermarried with one George B.
20 Holcombe and had by such marriage four children, viz., Levi Holcombe, John C. Holcombe, Martin V. B. Holcombe and Eveline R. Holcombe; that the said Louisa Holcombe died about thirty years ago leaving all the said children above named surviving her, and who are all still living, and your orators further show that the said Edwin Holcombe intermarried with your oratrix, Eleanor Holcombe, on or about the year of our Lord one thousand eight hundred and forty-one, and that by that marriage your oratrix, Eleanor Holcombe, and the said Edwin Holcombe had
30 one child, to wit, a daughter named Rebecca F. Holcombe, who intermarried with James B. Mathews, and who are two of the complainants to this bill of complaint.

And your orators further show that the said Edwin Holcombe died on or about the month of August eighteen hundred and eighty-one, or about one year before the death of his father, the said John C. Holcombe.

And your orators further show that on or about the year eighteen hundred and seventy-four, the said John C. Holcombe made his last will and testament in substance as follows, your orators not being able to give the very words in

which it is written, but the substance of it and almost the very words : that in and by the said last will and testament the said John C. Holcombe did devise to his said son Edwin Holcombe and to his heirs forever the said farm hereinbefore described and all the personal property that was on the said farm ; that he gave by his said will to each of his grandchildren, children of his deceased daughter Louisa Holcombe, to wit, to Levi Holcombe two thousand dollars, 10 John C. Holcombe two thousand dollars, to Martin V. B. Holcombe two thousand dollars, to Eveline R. Holcombe two thousand dollars, which was to be paid to them severally by his executors in one year after his death. All the rest and residue of his estate after the payment of his debts and funeral expenses and the legacies above named, he left to his said son Edwin Holcombe; that by his said will he appointed the said Edwin Holcombe and John C. Holcombe, his grandson, executors of his last will and testament aforesaid.

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And your orators further show that the said will was executed with all the formalities required by law and the statutes of New Jersey for a will to be executed to pass and convey real and personal estate ; that the witnesses to the said will were Samuel Hoppock and Nelson V. Young ; that the will was drawn by the said Nelson V. Young, who is now dead.

And your orators further show that the said last will and testament was placed in the hands of the said Nelson V. Young for safe keeping by the said testator, John C. Hol- 30 combe, and that it remained in the custody of the said Nelson V. Young until the death of the said Nelson V. Young in the year eighteen hundred and seventy-six or thereabouts; that after the death of the said Young the said will went into the custody of John Horn, Esq., of Lambertville, who had charge of the papers of the said Nelson V. Young ; that the said John Horn subsequently delivered the said last will and testament to Alexander H. Holcombe and he afterward delivered it to the said testator, John C. Holcombe; that the said testator kept it in his possession until the fourth

day of May, A. D., 1881, when he said to his son, Edwin Holcombe, that the said will had better be sent away from the house; that the said will had been opened by somebody and he would send it away; that the said testator, however, kept the said will until the third day of September, A. D., 1881, when he delivered it for safe keeping to one Richard H. Wilson, a friend and neighbor of his in whom he had
10 confidence and he told the said Wilson that he wanted no change made in the said will and that he had given the said farm to his son Edwin and his heirs. Prior, however, to the placing of the said will in the hands of the said Richard H. Wilson the said testator made a codicil thereto by which codicil he gave to your oratrix, Eleanor Holcombe, the one-third of all his real estate which is above described; that the said codicil was executed about the month of October, A. D., 1881; that it was drawn by said Richard H. Wilson and was witnessed by one Jackson B. Sherman and by
20 Richard H. Wilson, and was executed with all the formalities required by law for the conveyance of real and personal estate by last will and testament.

And your orators further show that no other changes whatever were made in the original will by the said codicil and that it was in all other respects ratified and confirmed by the said testator, John C. Holcombe.

And your orators further show that the said codicil was attached to the said original will and both were placed in the hands of the said Richard H. Wilson for safe keeping
30 as your orators have above set forth.

And your orators further show that the said Richard H. Wilson kept the said last will and codicil in his custody until on or about the nineteenth day of July, A. D., eighteen hundred and eighty-two, which was just before the death of said testator, who died on the twenty-third day of July, A. D., 1882, on Sunday; that on the said day the said Eveline R. Holcombe, who had lived with said testator from the time she was six years old and who had kept house for him for many years, who was the only person residing with testator, his other grandchildren coming to see him whenever

they wished ; that the house being a double house, the testator living on one side of the house with his granddaughter, and his son Edwin and family on the other side of the house. She requested the said Richard H. Wilson to deliver the will and codicil into her custody, which he accordingly did, and in person delivered the said last will and codicil to the said Eveline R. Holcombe.

And your orators further show that the said John C. 10 Holcombe, as already stated, was ninety years old, and that for some months before his death he was very feeble in body and mind and for a week and more before his death was entirely enfeebled in his mind, so that he could recognize no person and was entirely incompetent to transact any business whatever.

And your orators further show that the said testator never authorized the said Eveline Holcombe to ask for the said will or to take it into her custody ; that he had no knowledge that she ever made such a request and that the 20 conduct of the said Eveline was entirely without authority, and that she illegally and surreptitiously obtained the custody of the said last will and testament from the said Richard H. Wilson.

And your orators further show that the said testator did not know up to the time of his death, and was entirely incapable of knowing, even if any one had ever told him, which no one ever did, that the said last will and the said codicil were in the custody of said Eveline Holcombe.

And your orators further show that from the day and 30 hour when the said Eveline Holcombe received the said last will and testament and codicil from the said Richard H. Wilson up and until the moment of his, the testator's, death ; he, the said testator, was entirely out of his mind, and entirely incapable of doing any business or performing any rational act whatever, or of understanding the nature or character of any business whatever.

And your orators further show that on the twenty-fifth day of July, A. D., 1882, on the day the testator was buried, the said John C. Holcombe, testator's grandson, drew from

his pocket the key to the testator's private desk in which were contained all the papers of the said testator, and there declared in the presence of your orators and other persons who were there present, that he had written authority to take charge of the papers, and did take charge of them, and another person, a friend of the family, declared that the said John C. Holcombe had written authority to take, and 10 that the authority was given to him long ago, and that the said John C. Holcombe took possession of all the papers of said testator and carried them out of the State of New Jersey to his residence near New Hope, in the county of Bucks, in the State of Pennsylvania.

And your orators further show that during the testator's last illness and after the said Eveline had obtained said will and codicil from Richard H. Wilson in the manner your orators have described, the said grandchildren, except your oratrix, Rebecca F. Mathews, were constantly at the house 20 of said testator, and that they had a private meeting at the house of said Martin V. B. Holcombe, one mile from Lambertville, for some purpose, before the death of testator, and that immediately after the death of said testator they also had a meeting at the house of said John C. Holcombe, deceased, testator.

And your orators further show that on the Tuesday succeeding the burial of said testator, and after the last meeting at the house of said testator, the said Levi Holcombe came to your oratrix, Rebecca F. Mathews, and told her 30 that there would have to be an appraisement and that prior to that your orator James B. Mathews said to Levi Holcombe, where is grandfather's will? And the said Levi said he knew nothing about any will or words to that effect.

And your orators further show that they really felt satisfied in their own minds that the said John C. Holcombe, the said testator, did leave the said last will and the said codicil in full force at the time of his death, but as the said Levi Holcombe denied knowing anything at all about it they did not know what to say, and thought it was possible

that said will might have been destroyed, although they did not see how it could have been with the consent of testator while he was capable of doing any business, but as the said Levi Holcombe insisted upon making an appraisement and administering on the estate, and insisted upon your oratrix joining him, your oratrix after taking counsel of a gentleman at Lambertville consented to proceed and take the said appraisement, and the said appraisement was taken accord-10
ingly, and amounted to the sum of thirteen thousand dollars or thereabouts, and that your oratrix, Rebecca F. Mathews, when she and the said Levi went to the surrogate of the county of Hunterdon with a view of taking out letters of administration, stated to the said surrogate that she believed there was a will somewhere, although not found, and the surrogate made reply in substance, that as no will was found they might better take out letters, and if it should turn out that a will should hereafter be found that all these proceedings would be void and of no effect, and under those20
circumstances she did proceed to qualify as administratrix, said Levi also qualifying as administrator.

And your orators further show that the said Levi took into his own possession and custody all the notes, bonds and other obligations belonging to the estate of said John C. Holcombe and holds them still; that nothing ever has been done toward the settlement of said estate; no sale was made of the stock on said farm; that it was all left in the possession of your oratrix, Rebecca F. Mathews, and still remains in her possession and under her control. 30

And your orators further show that they were dissatisfied in reference to said will, and were satisfied, as they are now satisfied, that the said testator left the said will and codicil in full force and virtue at the time of his death, and that it is still in full force and virtue, and they charge that by virtue of said last will and testament the said farm is vested in fee in your oratrix, Rebecca F. Mathews, subject to the rights of Eleanor Holcombe, and that by the said codicil the said one-third interest in all his lands and real estate above described vested in fee in your oratrix, Eleanor Hol-

combe, and by the said last will and testament all the rest and residue of said testator's estate is vested in your oratrix, Rebecca F. Mathews, after the said Levi Holcombe shall have received the sum of two thousand dollars, Martin V. B. Holcombe two thousand dollars, John C. Holcombe two thousand dollars, and Eveline R. Holcombe two thousand dollars, and after all just debts and funeral expenses of said
10 testator shall have been paid.

And your orators charge that the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe, and Eveline Holcombe well know this to be so, and that they or some of them are concealing and suppressing the said will and codicil to deprive your orators of the rights which properly belong to them under the said will and codicil.

And your orators further show that they have repeatedly insisted to said defendants, or some of them, that the said will and codicil were in existence and have urged them to
20 produce it, and that as lately as the seventh of September, A. D., 1882, the said Eveline Holcombe confessed to your oratrix, Rebecca F. Mathews, that she knew all about the will and knew what was done with it. But she refused to furnish your oratrix with any information concerning the will or where it was.

And your orators further show and charge that not only the said Eveline knows where the said will and codicil are, but the said Levi and Martin V. B. and John C. Holcombe also know where it is, but refuse to produce the same that
30 they may be offered for probate.

And your orators show and charge that the very reason why the said Levi takes no steps to administer upon said estate and why he took no steps to dispose of the personal property on said farm and leaves it in the possession and control of your oratrix, Rebecca F. Mathews is because he as well as the said other persons know that the said will and codicil are in existence; that the said Levi has no right to administer the said estate, and that the personal property and stock on said farm by the terms of said will belongs to your said oratrix, Rebecca F. Mathews.

And your orators further show that the said defendants have on one or two occasions intimated that the said testator had destroyed the said will himself in his lifetime, but your orators distinctly charge that the said testator never did destroy the said will and codicil; that they remained in full force in the hands of said Richard H. Wilson until long after the said testator had become entirely incapable of performing any act whatever, and that he could not have10 destroyed either the said will or codicil, and if the said will and codicil, or either of them, has been destroyed they have been destroyed by the said Levi, Martin V. B., and John C. Holcombe and Eveline Holcombe or by some or one of them without the knowledge or consent of the said testator, John C. Holcombe, and against his will for the purpose of preventing your orators from having the rights which said will and codicil gave to them.

And your orators further show that after the death of the said Edwin Holcombe and while the said will was in the20 custody of said testator, John C. Holcombe, as your orators have hereinbefore set forth, some suggestions were made to said testator by person or persons who were in the interest of said defendants about changing his will, or whether the will as it then stood would vest the title in the heir or heirs of his son Edwin, and the testator replied that the property was willed to said Edwin and his heirs; that he would not alter or change the said will for the world; that he said on another occasion that the said defendants, or some of them, had wanted him to alter his will and he said in reply that30 he never would alter it, and that the said testator told his son, Edwin Holcombe, when he, the said Edwin, was upon his deathbed in the month of May, 1881, he need not worry about his family, that he had left the said farm to him and his heirs and that his daughter, meaning your oratrix, the said Rebecca F. Mathews, would get it after his death, that is, the death of the said Edwin Holcombe, and told him he would leave a home to his wife, meaning your oratrix, the said Eleanor; she need not worry about that.

And your orators charge that in consequence of the dec-

laration made by said testator to his said son Edwin in reference to your oratrix, the said Eleanor, the said testator made the said codicil to his last will, giving to your said oratrix the one-third interest in all his real estate above described to provide your said oratrix a home as he had told the said Edwin he would do.

And your orators charge that the said Levi Holcombe, 10 Martin V. B. Holcombe, John C. Holcombe and Eveline R. Holcombe are combining and confederating to conceal and suppress the said will and codicil and to prevent their being offered to probate and established, and are seeking to deprive your orators of the rights which belong to them under the said will and codicil.

And your orators further show that in pursuance of said conspiracy the said Levi Holcombe, with the knowledge and consent, as your orators charge, of the other defendants did, on or about the fifth day of September, A. D., eighteen hundred and eighty-two, apply to A. E. Sanderson, a Judge of 20 the Court of Common Pleas of the county of Hunterdon, to appoint three commissioners to divide the said lands and real estate aforesaid, of which the said John C. Holcombe died seized, equally among the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe, Eveline R. Holcombe and your oratrix, Rebecca F. Mathews, and that the said Judge gave public notice according to the statutes of said application for the ninth day of October, A. D., 1882, and that unless proper objections were made to him on that day 30 he would appoint the following persons whom he named in said notice, viz., Reuben P. Ely, Richard H. Wilson and Charles O. Holcombe commissioners to divide said lands according to law.

And your orators further show that on the day named they appeared by their counsel before said Judge and objected to said proceeding as well as to the commissioners named, and requested an adjournment to give them an opportunity the better to contest the said matter; that the said Levi Holcombe appeared by his counsel and objected to said adjournment, and that the said Judge did adjourn the

further hearing of said matter of said appointment until Monday the twenty-third day of October, A. D., eighteen hundred and eighty-two, when your orators are advised that said Judge will proceed to appoint said commissioners unless restrained by the order of this Court.

And your orators further charge that all the said actions and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators. 10

In tender consideration whereof and forasmuch as your orators are without adequate relief in the premises save in this Honorable Court where matters of this kind are cognizable and relievable, to the end therefore that the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe and Eveline R. Holcombe and their confederates may full, true, perfect and direct answer make to all and singular the premises, and that as particularly as if they were herein repeated and they particularly interrogated thereto paragraph by paragraph, but without oath, your or-20 ators expressly waving answer under oath. And that the said will and codicil may be fully established by the decree of this Honorable Court, and that the said defendants and their confederates may be required to produce the said original will and codicil before this Honorable Court, and that they may be required to give a full and perfect copy in their answer to this bill of the said last will and testament and of the said codicil, and that the said Levi Holcombe in particular and his agents, attorneys and counselors and all the other said defendants and all other persons acting for 30 them may be restrained by injunction issuing out of and under the seal of this Court from making partition of the said lands, and from having commissioners appointed to make partition according to said notice, and from taking any action whatever in the said matter, and from selling the same, and that they may be also restrained from encumbering the said lands by any mortgage, judgment or recognizance or in any way whatsoever, or in any way interfering with said lands and that said Levi Holcombe may be also restrained from disposing of any part of the said personal

estate or of any of the assets of said estate, and that your orators may have such other and further relief in the premises as to your Honor may seem meet and according to equity and good conscience. May it please your Honor the premises considered to grant unto your orators not only a writ of injunction conformable to the prayer of this bill of complaint, to be directed to the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe and Eveline R. Holcombe, their and each of their confederates, agents, attorneys, counselors and all and every person or persons acting with them, restraining them as in said bill is prayed. But also the State's writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe and Eveline R. Holcombe, commanding them and each of them at a certain day, and under a certain penalty therein to be expressed personally to be and appear in this Honorable Court before your Honor to answer this bill of complaint, and to do and receive what to your Honor shall seem meet and agreeable to equity and good conscience.

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

J. G. SHIPMAN & SON,

Solicitors for and of Counsel with the Complainants.

NEW JERSEY, ss.

Rebecca F. Mathews being duly sworn on her oath says she is one of the complainants above named ; that she has heard the said bill read ; that the facts, matters and things therein contained so far as they relate to her acts and doings are true, and so far as they relate to the acts and doings of other persons, she believes them to be true ; that she is a

daughter of Edwin Holcombe and of the said Eleanor Holcombe, who is a complainant in this bill; that James B. Mathews is her husband; that she is personally cognizant of most of the facts stated in the above bill; that she was present and heard her grandfather when he told her father on his sick-bed in his last illness that he need not worry; that he had left his farm and all that was on it to him and his heirs, and that his daughter would get it, and heard him 10 also say to her father at same time that deponent's mother would be taken care of and he need not worry about that; that she heard Eveline R. Holcombe say on September fifth last, in reply to question of deponent, whether she knew what grandfather did with his will, "Yes, I do; I know all about it and what was done with it;" deponent says that when she went to the surrogate's office to apply for administration she heard surrogate say that if there was a will, as soon as it was found the proceedings would be void; and deponent heard her legal adviser say to the surrogate and 20 those present, what about this will, and the surrogate said these proceedings would be of no avail if there was a will; and deponent says she was induced to go and apply for letters of administration by Levi Holcombe, who denied that he knew of the will, and said something must be done, and also by advice of her lawyer, who lives at Lambertville, and who advised that deponent should do so to secure and take care of the property, and that it would make no difference as soon as the will was found; and deponent has several times told Levi that the will must be found, and nothing 30 should be done until it was found, and that all the stock on the farm and the personal property is all in her possession just as it was before death of John C. Holcombe, the testator.

REBECCA F. MATHEWS.

Sworn and subscribed before me this 20th day of October, A. D., 1882.

JOHN SIMERSON,
Notary Public.

NEW JERSEY, ss.

Eleanor Holcombe being duly sworn on her oath says she is one of the complainants above named ; that she has heard the above bill of complaint read ; that the facts, matters and things therein set forth so far as they relate to her actings and doings are true, and so far as they relate to other persons she believes them to be true ; deponent says that she is
 10 the widow of Edwin Holcombe ; that Rebecca F. Mathews the said complainant is her daughter by said Edwin Holcombe and their only child ; that deponent's maiden name was Eleanor Moore ; that Edwin Holcombe, her husband, was the only son of John C. Holcombe, the person named as testator in the above bill of complaint ; that deponent has heard the affidavit of Mrs. Rebecca F. Mathews read, and also of her husband, James B. Mathews ; that deponent heard the conversation between her husband's father, said John C. Holcombe, and her husband when he told him he
 20 need not worry ; that his daughter would get the farm and all that was on it ; deponent would be taken care of ; that deponent saw Mr Jackson B. Sherman, the witness to the codicil, this day and he told deponent that Mr. John C. Holcombe, on the day codicil was witnessed by him, (Sherman,) as well as Mr. Wilson, the person who drew the codicil ; told him that by the codicil he, John C. Holcombe, left deponent one-third of all his real estate the same as if Edwin had inherited it, and that the codicil was witnessed in the fall of the year 1881.

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ELEANOR HOLCOMBE.

Sworn and subscribed before me Oct. 20, 1882.

JOHN SIMERSON,

Notary Public.

NEW JERSEY, ss.

James B. Mathews being duly sworn on his oath says he is one of the complainants above named ; that he has heard the bill read ; that the facts, matters and things therein stated so far as they relate to his acts are true, and so far as they relate to the acts of others he believes them true ; that

he was present on October 9, 1882, before Judge Sanderson at Flemington, New Jersey, and heard him announce that he would appoint commissioners on the 23d of October, A. D., 1882; that he has heard the affidavit of his wife read and that the most of the facts therein stated are true to the personal knowledge of this deponent; that he was not present at the conversation between John C. Holcombe and Edwin Holcombe, or with Eveline; otherwise he is acquainted¹⁰ with the facts therein stated; and deponent says that John C. Holcombe, the testator, some weeks before his death said to deponent they, meaning his grandchildren, children of Louisa, are trying to get me to destroy my will, but I won't do it; I am satisfied with it.

J. B. MATHEWS.

Sworn and subscribed before me Oct. 20, 1882.

JOHN SIMERSON,
Notary Public.

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NEW JERSEY, ss.

Alexander H. Holcombe being duly sworn on oath says he has and is acting as attorney for Mrs. Mathews, one of the complainants; that in September last he had a conversation with Richard H. Wilson; that deponent asked said Wilson about the will of John C. Holcombe and asked him what he had done with it, and Wilson told him he had carried it up to the house where testator was and given it to the person in charge of the old man, meaning Eveline R. Holcombe; and deponent asked him where the will was and³⁰ he told deponent he supposed the girl could tell where it was, meaning said Eveline R. Holcombe, and said Wilson told deponent in the same conversation that he took the said will up to the house and delivered it up three or four days before old man's death, and took it at the request of the person in charge, or some one of them, meaning as deponent supposes, her brothers.

A. H. HOLCOMBE.

Sworn and subscribed before me Oct. 21, 1882.

F. PIERSON, *Master in Chancery of N. J.*

NEW JERSEY, ss.

Alexander H. Holcombe being further duly sworn on his oath says he is an attorney at law of Lambertville, New Jersey; has practiced law for twenty-five years in that place; that he knew John C. Holcombe, Sr., in his life time; that he knew Nelson V. Young in his life time also; that the said John C. Holcombe, Sr., about two years after Nelson
10 V. Young's death brought his will to deponent's office to keep for him; that deponent was doing some legal business for Holcombe was the way he came to bring the will to deponent; that deponent kept it, the said will, in his possession for about a year, and then said John C. Holcombe, Sr. came over after it and took it with him; and deponent says after said John C. Holcombe's death deponent asked Mr. Richard H. Wilson about what had become of the will and codicil, and what the trouble was, and Wilson said he did not know; that he had drawn the codicil from the will and
20 had kept them both in his possession, both will and codicil, until three or four days before the old man's death, when he took them to the house and delivered them up, as deponent has already sworn; and deponent says he went this night to see Richard Wilson but he was away from home, and deponent could not get to see him; and deponent says he has been the legal adviser of Mrs. Mathews, and now is her adviser.

A. H. HOLCOMBE.

Sworn and subscribed before me Oct. 21, 1882.

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L. H. SERGEANT,

M. C. C.

NEW JERSEY, ss.

Jackson B. Sherman being duly sworn on his oath says he is a resident of Delaware township, Hunterdon county, New Jersey; that he knew John C. Holcombe in his life time; that in the fall of the year eighteen hundred and eighty-one, about cutting corn time, Richard H. Wilson came to deponent and asked him if he would go and do his

neighbor a favor ; deponent asked what ; and he said to go to Mr. Holcombe's ; Holcombe wanted to make a change in his will, and to make a codicil, and wanted deponent to witness it ; and deponent went with Wilson to Holcombe's ; that when deponent got there he found Mr. Holcombe, Sr. there, and he saw Mr. John C. Holcombe, Sr. sign the codicil ; and deponent heard John C. Holcombe declare that it was a codicil to his last will and testament, and saw Mr. 10 Richard H. Wilson sign the codicil as a witness ; and deponent also signed the codicil as a witness in presence of testator and Wilson ; and Richard H. Wilson told deponent that the change John C. Holcombe was about making and did make in his will was and did give Eleanor Holcombe, widow of Edwin Holcombe, one-third interest in his real estate, the same as if Edwin Holcombe, his son, had not died ; and deponent saw what he supposed was the original will there that day.

J. B. SHERMAN. 20

Sworn and subscribed before me Oct. 21, 1882.

A. H. HOLCOMBE,

M. C. C.

NEW JERSEY, ss.

Samuel C. Hoppock being duly sworn on his oath says he has lived in Lambertville for about eight years ; and deponent says that he knew John C. Holcombe, Sr., in his life time, and knew Nelson V. Young ; that deponent says 30 some time in the year eighteen hundred and seventy-five, just what time deponent cannot tell, that Nelson V. Young came to deponent and asked him to come over to his office, that he wanted him to witness Mr. John C. Holcombe's will ; that deponent went with said Young to his office and there found Mr. Holcombe ; and deponent saw said Holcombe sign said will and also saw said Nelson V. Young sign the said will as a witness ; and deponent also signed the paper as a witness ; that neither Mr. Holcombe or Mr. Young said anything of the contents of the will ; and depo-

nent does not know what was in the will ; that Nelson V. Young is dead.

S. C. HOPPOCK.

Sworn and subscribed before me Oct. 21, 1882.

A. H. HOLCOMBE,

M. C. C.

10 NEW JERSEY, ss.

John H. Horn being duly sworn on his oath says he lives at Lambertville, New Jersey ; that he is a justice of the peace ; that he knew Nelson V. Young in his life time ; that he died at his home in Lambertville on the twelfth day of May, A. D., 1877 ; that shortly after that time deponent took charge of some of said Young's papers ; that one day shortly after his (Young's) death John C. Holcombe, Sr. came to Nelson V. Young's late residence, and finding deponent there asked him if there was not a paper there be-
20 longing to him ; if his will was not there ; and deponent told him, Holcombe, he thought it was ; and deponent went and found the will of said Holcombe in a sealed envelope, and was about to give it to him when Holcombe said to deponent, I want you to take it, and take care of it and not lose it ; and deponent did take the will and kept it in his, deponent's, possession for seven or eight months or longer when John C. Holcombe came to deponent and asked him for the paper, and told him he wanted to take it home with him and look it over, and he would afterward bring it back ;
30 and deponent then gave up said will to said Holcombe and he took it home with him, and that was about nine or ten months after Young's death.

JOHN H. HORN.

Sworn and subscribed before me this 21st day of October,
A. D., 1882.

A. H. HOLCOMBE,

M. C. C.

On filing the foregoing bill with the eight affidavits there-
to annexed, it is ordered by the Court, that an injunction
issue restraining the defendant, Levi Holcombe, from fur-
ther prosecuting the proceeding instituted by him in the
Court of Common Pleas of the county of Hunterdon, for
the partition of certain lands in said county, of which John
C. Holcombe died seized ; and also restraining the said Levi
Holcombe, as one of the administrators of the said John C. 10
Holcombe, deceased, from making any disposition of the
personal estate of the said John C. Holcombe, deceased, ex-
cept such as may be necessary to pay the debts and funeral
expenses of the said John C. Holcombe, deceased.

Dated Oct. 23, 1882.

Respectfully advised,

A. V. VAN FLEET, V. C.

ANSWER OF DEFENDANTS.

10

The joint and several answers of Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe, and Eveline R. Holcombe, and Levi Holcombe, administrators of John C. Holcombe, deceased, the defendants in the above stated cause named.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exceptions to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as these defendants are advised it is material or necessary for them or either of them to make answer unto, answering say :—That the facts set forth in said bill of complaint, relating to the death of John C. Holcombe, the grandfather of these defendants, and the property of which he died seized and possessed, are true, as well as the facts stated in said bill relating to the family of the said John C. Holcomb their grandfather, the marriages contracted and the death of their mother and the death of Edwin Holcomb their uncle.

And these defendants further answering say that they have annexed to this answer a copy of a paper which they believe to be a copy of the will of said John C. Holcombe referred to by said complainants and which these defendants procured from Richard H. Wilson, who these defendants are informed is the person who drew the codicil to said will, and which they now present as all and the only evidence they or any of them have of the contents of said will and codicil.

And these defendants further say that the first knowledge or information they or either of them had of the existence of the copy of said will and codicil was obtained from the said Richard H. Wilson on the ninth day of November instant, at the office of of their counsel, Richard S. Kuhle, in Flemington, where the defendants had requested said Wilson to meet them and confer with their counsel as to the contents of said will and codicil which they knew had 10 been in the custody of said Wilson, and that said Richard H. Wilson produced said copy at that time and delivered it to their counsel with the following statement, that on the sixteenth day of June A. D. eighteen hundred and eighty-two, he received a note from the defendant, Eveline R. Holcombe, asking him to send grandfather's will, (meaning the will of said John C. Holcombe) with Harry Holcombe, the son of Martin V. B. Holcombe, who lived with his grandfather, if he thought it safe ; that Harry left the note with him on his way to school in the morning saying he 20 would call after school and get it ; that he, the said Wilson, proceeded to take a copy of the will and codicil in order to guard against loss, but being interrupted in making the copy when Harry called for it, he had only copied the will and so much of the codicil as appears on the said copy, and that he made a writing in pencil on said copy, in the following words, which show and state fully and correctly the terms of said codicil, viz. : "By the codicil the residue by the fifth item given to Edwin, is given to the five grandchildren in equal shares, Edwin's widow to have same as would have 30 been her dower."

And these defendants further show that the will and codicil which said Wilson delivered to said Harry Holcombe was delivered by this defendant, John C. Holcombe, to their grandfather on the Sunday morning following the said sixteenth day of June last past, at the house of the said John C. Holcombe in the presence of the said defendant, Eveline R. Holcombe.

That their grandfather took said will, and after reading it over handed it to the said John C. Holcombe and re-

quested him to read it over and tell him how he understood it, to see if he, their grandfather, understood it correctly; that after reading it over, said defendant, John C. Holcombe, told their grandfather what he understood by the term of the will; he replied that is just as I understand it, and it is all wrong; I had no idea Esquire Young had drawn my will that way; I thought Eveline had a home
10 here and Edwin was only to have the farm and stock, but he has got the word elsewhere put in and that takes all, the Lambertville lot too; that is all wrong, and it must not be; I had no idea I would outlive Edwin. Said defendant then said to his grandfather—if there is no will, aunt Ellen (meaning the complainant, Eleanor Holcombe) will be cut off. That their grandfather replied—I knew it, but Becky (meaning the complainant, Rebecca F. Mathews) will get a good deal more than the rest of you, and she can take care of her mother.

20 And these defendants show in explanation of the above conversation, that at that time both their grandfather and the said defendant understood that Edwin's child would inherit all the real estate, and their aunt Ellen would have her thirds; that when the will was made, their grandfather only owned the said farm; that he held a mortgage on the Lambertville property, which was conveyed to him in eighteen hundred and seventy-nine to satisfy the mortgage, and that he never intended that Edwin should have any greater portion of his real estate than the farm.

30 And these defendants further say that while they had the information that their grandfather had made a will, the defendants, John C. Holcombe and Eveline R. Holcombe had no knowledge whatever of its terms or conditions until the said eighteenth day of June last past, and the said defendants, Levi Holcombe and Martin V. B. Holcombe, had no knowledge of its contents until it was produced by said Wilson as heretofore stated.

And these defendants further say that after their grandfather had read the said will, and had requested the defendant, John C. Holcombe, to read it, and had expressed

his dissatisfaction with its terms, as hereinbefore stated, this defendant, John C. Holcombe, asked their grandfather if he should return the will to Mr. Wilson. That their grandfather replied, "no, I will take charge of it." That the said will and codicil were then and there left in the possession of their grandfather, and that they never saw it afterward, nor heard their grandfather allude to it in any way, except as hereinafter stated and that they have no¹⁰ knowledge of the existence of said will and codicil, now or at the time of their grandfather's death.

And these defendants further say that in relation to all the allegations in said bill respecting the dates and terms of said will and codicil, and the names of the persons in whose custody the same was placed, these defendants have no knowledge or information, except that which they have heretofore set out. And so with all the conversations which in said bill of complaint are set forth purporting to have been had between the different persons therein stated in the ab-²⁰ sence of these defendants they can either admit or deny.

And these defendants deny that the said will and codicil were left in the custody of Richard H. Wilson until the nineteenth day of July last past, but declare the truth to be that it was as early as the sixteenth day of June last past and as much as five weeks before the death of their grandfather, and these defendants admit their grandfather to have been about ninety years of age at the time of his death, but deny that for some months before his death he was very feeble in body and mind, but declare the truth to be that while³⁰ he was feeble in body by reason of his old age, that his mind and reason were strong and his faculties preserved in a remarkable degree for one so old, up until the twelfth day of July, A. D., eighteen hundred and eighty-two when he was stricken with palsy, and from that time until the hour of his death, which occurred on Sunday, the twenty-third day of July following, he was not in a condition of mind or body to understand or transact any business, but that prior to that time, to wit, the twelfth of July eighteen hundred and eighty-two, he had transacted his own business, and con-

ducted his own affairs, except such as the feebleness of his body prevented him from attending to, and these he had provided for by giving the defendant, John C. Holcombe, a power of attorney, a copy of which is annexed hereto, and to which these defendants refer, for an accurate understanding of its terms and powers.

And these defendants further say that the allegations in
10 said bill of complaint that said Eveline had no authority to ask for said will or to take it into her custody; that said testator had no knowledge that his will was in the possession of said Eveline, and that she illegally and surreptitiously obtained the custody of said will and testament from said Richard H. Wilson, are one and all totally false and made by the complainants, without any knowledge or information and without the belief even that they are true, and again declare the truth to be that said will was sent for at the request of the testator, and delivered to him and its custody
20 retained by him of his own will entirely, and with full knowledge and understanding on his part of the fact that it was his will, and while these defendants have no knowledge that their grandfather destroyed said will. They are of the belief that he did destroy it, and declare that at the time it was delivered to him, he was capable of understanding it, and did fully understand what he was doing, if he did destroy it.

And these defendants further answering admit that on the day of the burial of the testator, these defendants and
30 the complainants being together at the late home of their grandfather, as was customary and proper, the desk where his papers had been kept was opened, and the papers examined by all, and by common consent and request of those present, the defendant, John C. Holcombe, took said papers to his home, which is in Pennsylvania just across the Delaware river from the residence of their grandfather; that it was the custom of the defendant, John C. Holcombe, to cross the said river in a row boat, and when it was suggested that he should take the papers into his custody, he thought it to be his duty to do so under the power of attor-

ney, and these defendants all thought that was the right thing to do.

And the said defendant, John C. Holcombe, further says that he faithfully discharged his trust and returned the said paper when requested to, for the purpose of having the estate of his grandfather appraised.

And in answering the allegation in said bill that during the last illness of their grandfather and after said Eveline¹⁰ had sent for and procured the custody of said will, these defendants were constantly at the house of the testator and had a private meeting at the house of the defendant, Martin V. B. Holcombe, for some purpose before the death of the testator, and after the death of their grandfather they also had a meeting at his house; these defendants say, it is entirely false and without a single fact or circumstance by which any such state of facts could have been supposed to exist.

That this defendant, Levi Holcombe, says he did not hear of his grandfather's illness until two or three days before he²⁰ died, and he, living six miles distant, did not see his grandfather until after he was dead.

And the said defendant, Martin V. B. Holcombe, says he had not been at his grandfather's for three or four days before he died, and was not present when he died. And this defendant, John C. Holcombe, says he was daily at his grandfather's house during his last illness, as had been his custom to attend his grandfather during any illness for a long time, and this defendant, Eveline R. Holcombe, says that she attended her grandfather constantly during his last³⁰ illness, and devoted her time and care to him, as was her duty, and as had always been her custom from a little girl, and that at no time during the last illness of her grandfather, or at any other time before or since has there been any meeting of these defendants of any kind, and that the only time they were all present at one time for a long period before his death or after was on the day of his burial, and that then the only meeting or conference was on the occasion of the opening of the desk and examining the papers of the deceased, in the presence of the complainants.

And these defendants further answering say that at the time the desk was opened and the papers examined there was nothing said about a will and that the said complainant, Rebecca F. Mathews, afterward with the defendant, Levi Holcombe, took out letters of administration as set forth in said bill without raising any objections or questioning as to the existence of a will, except that she asked the defendant,
10 Levi Holcombe, if grandfather had left a will, and said defendant replied that he knew of no will and did not suppose there was any ; and all this defendant, Levi Holcombe did in relation to the appraisement and inventory of his grandfather's estate and the granting of letters of administration, was with this sole object, to conduct the business according to law and with the belief that his grandfather had left no will.

And these defendants further answering deny that any of them insisted that the complainant, Rebecca F. Mathews,
20 should join said Levi in administering the said estate, but the truth is that they all had concluded to let said Levi administer the estate as he was the oldest grandchild, but that the said Rebecca F. Mathews insisted upon joining him under the peremptory demand of her counsel, Alexander H. Holcombe, Esq., of Lambertville, and that these defendants acceded to her demand and letters were accordingly granted, as set forth in said bill.

And these defendants further answering say that the defendant, Levi Holcombe, did take into his custody the
30 papers, bonds and notes of the deceased without any objection or question on the part of any one at the time he took them.

And this defendant, Levi Holcombe, further answering says that he has placed all the papers, notes, bonds and securities which came to his hand as the administrator aforesaid in the vault of the Flemington National Bank for safe keeping, where they now remain ; that he proceeded at once to notify the persons who owed the estate that payment would be required the first of next April ; that it was impossible to take possession or dispose of the stock and farm-

ing utensils and grain, as the said Rebecca F. Mathews and her husband hold the farm, stock and utensils under a lease made to them by the deceased, and that he is unable to exercise any control over them on this account, and he further says that the deceased had two cows which the said James B. Mathews claimed he was not obliged to keep or care for after testator's death; and that this defendant, Levi Holcombe, then made an agreement with said James B. Mathews that he should keep the said cows until April for the benefit of the milk and butter, and that said cows are now in the custody of said Mathews under said agreement.

And these defendants further answering say that to their best knowledge, information and belief their grandfather left no will in force at the time of his death, but that the same was destroyed by him under the circumstances hereinbefore set forth.

And this defendant, Eveline R. Holcombe, further answering says that after the death of her grandfather she had a conversation with the complainant, Rebecca F. Mathews, with reference to the will, in which she told her there was a will; that she had sent for it at his request and that she believed it had been destroyed, but she denies that she ever made any confession, as the complainant alleges, respecting said will, or that she ever said she knew all about the will, what was done with it, or refused to furnish any information she had respecting it.

And these defendants further answering say that the allegations respecting the proceedings taken before Augustus E. Sanderson, Esq., a Judge of the Court of Common Pleas of Hunterdon county, to partition said real estate are true and that said proceedings are now pending before said Judge; that said proceedings were taken in good faith and with a view to settle the estate of their grandfather according to law, and that the conduct of these defendants has been fair and lawful throughout and that they have been prompted by only one desire, which has been to secure the administration and settlement of their grandfather's estate according to law, and under the belief that there was no will in

existence at the time of his death.

And these defendants further answering say that no inducements whatever were held out or brought to bear upon the said Rebecca F. Mathews to have her join the said Levi Holcombe in taking out letters of administration, but on the contrary, the said Rebecca F. Mathews insisted that she should be allowed to join in administering, and her counsel,
10 Alexander H. Holcombe, not only did not offer any objections but insisted also that his client should be a co-administrator, and that the only anxiety shown by either said Rebecca F. Mathews, or her counsel, or her husband, or her mother, was that she should be granted the right to administer with said Levi Holcombe.

And these defendants further answering charge that said complainants had knowledge before the death of their grandfather that he had destroyed his will and codicil, and endeavored to persuade him to deed a portion of his real estate
20 to said Eleanor Holcombe in order to defeat the rights of the defendants in the estate of their grandfather as his heirs at law ; and in support of this, these defendants charge that during the last illness of their uncle Edwin Holcomb, the said defendants or some of them endeavored to have their grandfather make a deed of the low lands or meadows to the complainant, Eleanor Holcomb, and that their grandfather had told the said James B. Mathews, a short time before his death and after the said will had been delivered to him, that he had destroyed it, and that said James B. Mathews then
30 in a threatening manner told their grandfather that if that will was not found after he was gone he would make a time around there.

And these defendants further answering charge that the said defendant, James B. Mathews, is the person who more than anyone else is promoting these proceedings hoping thereby to delay the sale of said farm and thus secure a profitable term of occupancy, with all the troubles and vexations which attend the accounting for the profits of a farm, he hopes to obtain through the necessarily tedious proceeding of this Honorable Court in determining the matters

set forth in the bill of complaint, he having declared on more occasions than one that they, meaning himself and wife, could hold the farm for two years.

And these defendants charge that the principal object the said complainants have in filing their said bill of complaint is to retain the possession of said farm and thereby secure a pecuniary advantage in its use and occupation during the pending of these proceedings which they hope to prolong¹⁰ and delay.

And these defendants deny all unlawful combination and confederacy in said bill charged, without that that any other matter or thing material for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge of these defendants. All which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray that a degree may be made by this Honorable Court²⁰ dissolving the injunction therein, dismissing said bill of complaint and requiring said complainants to pay all reasonable costs and charges in this behalf sustained.

R. S. KUHL,

Solicitor and of Counsel with Defendants.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss

Levi Holcomb, one of the above named defendants, of full age being duly sworn according to law both deposeth and saith that the matters and things set forth in the above answer, so far as relates to his own acts are true and so far as relates to the acts of others he believes them to be true; and deponent further says that while he understood that his grandfather, John C. Holcomb, had made a will some time

before his death, he had no knowledge of its terms and bequests until the month of November instant, when Richard H. Wilson produced a copy of the same before his counsel, Richard S. Kuhl, at a conference which Mr. Wilson had been requested to attend for the purpose of giving any information he could respecting said will, preparatory to filing the said answer ; that a copy of said paper is annexed hereto ; and deponent further says that he has no knowledge or information of the existence of said will of his grandfather at the time of his death ; that he verily believes there is no will in existence ; that his grandfather destroyed it prior to his last sickness, and that it has been under this belief that he has proceeded to administer and settle the estate of his grandfather ; and deponent further says that being the oldest grandson and being also the elder of his cousin, Rebecca F. Mathews, he thought it his right or privilege to take the management of the business, and did so with no other purpose than to secure a lawful settlement and distribution of his grandfather's estate, and that it was understood that he should administer by all the heirs, and no objection was made to his administering alone until the day the appraisement of his grandfather's estate was made, when the counsel of his said cousin demanded that she should be permitted to join him, to which he at once consented, and the letters were granted accordingly ; and deponent further says he has no knowledge of the length of time of the last illness of his grandfather, except as he has been informed, but believes it to have been very short and that his grandfather was always of strong mental capacity and of marked business ability, and did transact all his business until he was stricken with palsy ; and deponent further says that the farm of said deceased and the stock and utensils thereon are under a contract with said James B. Mathews or Rebecca F. Mathews from the deceased, as well as the grain and products, to farm the said farm on shares until April first next ; that he has taken all the steps possible to dispose of them until that time ; that the evidence of indebtedness to his grandfather's estate are deposited in the vault of the Flemington National

Bank, in Flemington, for safe keeping ; that he has notified the debtors to pay next April, and taken every step necessary or lawful to advance the interest of said estate, and to secure a speedy and proper settlement of the same.

And deponent further says that at no time before or since the death of his grandfather did his brothers, Martin V. B. Holcomb, John C. Holcomb, and his sister, Eveline R. Holcomb and himself, meet at any place together, and that the 10 only occasion within the recollection of deponent when they were all together was the day his grandfather was buried, and the only conference ever had together was on the last mentioned day in the presence of the said complainants on the occasion of the unlocking of the desk and the examination of the papers of his grandfather, and that nothing was said by anyone about any will of his grandfather ; that he was not present during the last illness of his grandfather nor present when he died.

LEVI HOLCOMB. 20

Sworn and subscribed before me this 22d day of November, A. D., 1882.

L. H. SERGEANT,
M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

Eveline R. Holcomb, one of the above defendants, being duly sworn according to law, on her oath deposeth and saith that the matters set forth in the foregoing answer, so far as relates to her own acts are true, and so far as re- 30
lates to the acts of others she believes them to be true. That some time in the month of June last past, on a Sunday morning, she heard her grandfather John C. Holcomb, ask her brother John one of these defendants, to get his will from Mr. Wilson. That a time or two during the following week he spoke about it, and wondered if John would attend to getting it. That on Friday of that week fearing her brother would forget to bring the will when he came on Sunday morning, as was his custom, she addressed a note to Richard H. Wilson, and sent it by her nephew Harry Hol-

comb, who lived with her grandfather, and who attended school at Stockton, where Mr. Wilson resided, asking him to send the will down if he thought it safe, if not to bring it. That Harry brought the will and gave it to her upon his return from school. That she gave it to her brother John, on the following Sunday morning, which she believes to have been the eighteenth day of June, and saw him give
10 it to the testator; saw him reading it and heard her brother and her grandfather talking about it, but being about her work she did not hear their conversation. That she understood although she is not able to say from whom; that her grandfather was not going to return the will to Mr. Wilson, but intended to destroy it. That she never saw the will afterwards and believes that it was destroyed by her grandfather. That at that time and up
20 until the twelfth day of July following, her grandfather was in his usual health and was capable and did transact his business, with full and complete understanding, until he was stricken with palsy on the twelfth of July, after which time he was not able, nor could he understand to transact any business.

That she had lived with her grandfather for a number of years acting as his housekeeper and attending to all his wants. That he was a man of unusual mental vigor and during all his life up until he was stricken with palsy, he attended to his own business affairs, receiving and receipting for moneys paid to him, and paying the accounts and
30 dues which were presented against him, and deponent further says that at no time either before or after the death of her grandfather did she meet the other defendants either at the house of her grandfather or at the house of Martin V. B. Holcomb, and that the only occasion she now recalls when she did meet them, or confer with them, was on the day her grandfather was buried, when his desk was opened and his papers examined in the presence of the said complainants. That nothing was said by any one about a will until some little time after, when the complainant, Rebecca F. Mathews, asked her if there was a will; I told her

here was ; she wanted to know if I had sent for it ; I told her yes, that grandfather wanted to see it ; she wanted to know how long before grandfather died ; I told her I could not tell. That was our talk, and deponent says it is not true that she ever made any confession, as the complainants term it, to Rebecca F. Mathews ; that she never made use of the language set out in said bill of complaint—that she knew all about the will, and knew what was done with it 10—nor anything to that effect. That no one ever asked her, except her cousin Rebecca, and that she told her all she knew about it. That grandfather had sent for it ; it had been given to him and she supposed he had destroyed it.

And deponent further says that this is all she knows about her grandfather's will, and she believes her grandfather destroyed it before his death, and before the twelfth day of July preceding his death, and she further says that on one occasion, two or three weeks before her grandfather was taken sick, James B. Mathews was in the kitchen 20 shaving grandfather, and being in the adjoining room, heard said Mathews say to her grandfather—well, if that will is not found after you are gone there will be a big fuss about it. After said Mathews went out, grandfather asked me if I had said anything to them (meaning the complainants, said Mathews and wife) ; I told him I had not ; well, he said, don't say anything to them that I have had it. Prior to this he had told me not to tell them, for he said they will make a great fuss about it.

And deponent further says that her grandfather never 30 said anything to her about his property or the terms of his will before her uncle Edwin died, except that at the beginning of house-keeping, when a mere girl, she did not want to stay, and her grandfather would say—I can't live with aunt Ellen, and if you will stay you shall always have a home there, (meaning on the farm) and that her grandfather always gave her to understand that the farm was to be Edwin's, further than this deponent knew nothing about the terms of the will, until it was brought from Mr. Wilson's, and then her grandfather told her he was going to destroy

it. He would say, in speaking of the will and when he requested her to say nothing to them (meaning the complainants), he supposed they would make a great fuss about it, but he had a right to do as he pleased with his will, and with his property, and now that Edwin is dead and things are so changed, it ought to be destroyed.

And deponent further says that Dr. George H. Larison
10 was called to attend to her grandfather the day he was taken sick, which she thinks was July twelfth, and that up until the moment he was stricken down he was in his usual bodily health, and capable of transacting business with an understanding of it remarkable for one of his years.

EVELINE R. HOLCOMB.

Sworn and subscribed before me this 22d day of November, A. D. 1882.

L. H. SERGEANT,
M. C. C.

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STATE OF NEW JERSEY, HUNTERDON COUNTY, ss

John C. Holcomb, one of the above named defendants, being duly sworn according to law on his oath deposes and says that the matters and things set forth in the foregoing answer so far as relates to his own acts are true and so far as relates to the acts of others he believes them to be true; that he resides in the State of Pennsylvania, across the Delaware river, nearly opposite the late residence of his grandfather, John C. Holcomb, deceased; that on the Sunday
30 preceding the time he delivered the said will to his grandfather his grandfather had requested him to get his will from Mr. Wilson, and he promised him he would; that upon going to see him the following Sunday, which he believes was the eighteenth day of June last past, he found that his sister Eveline had sent for it and upon her giving it to him he delivered it to his grandfather, who sat down and after reading it over asked deponent to read it and tell him how deponent understood it; deponent read it over aloud, told him his understanding of it; his grandfather replied, that is

just as I understand it and it is all wrong ; I had no idea Esquire Young had drawn it in that way ; Edwin was only to have the farm and stock on it but he (meaning Nelson V. Young, who drew the will) has got the word elsewhere in there; that takes everything, the Lambertville lot and all ; that is all wrong and must not be ; I had no idea I would outlive Edwin, and I will destroy it ; the law makes a better division than that ; deponent replied that aunt El-10 len, meaning the complainant, Eleanor Holcomb, would be cut off if there was no will ; deceased replied, I know it, but Becky (meaning the complainant, Rebecca F. Mathews) will get a good deal more than the rest of you, and she can take care of her mother ; that deponent asked if he should return the will to Mr. Wilson ; deceased replied, no, I will take charge of it ; that as deponent now remembers his grandfather folded up the will and put it in his pocket; that he never saw it afterward and never heard his grandfather speak of it but once after he gave it to him ; that was about 20 a week or two afterward on a Sunday morning; James B. Mathews, one of the complainants, had been in to shave his grandfather, as was his custom ; he told deponent that Burroughs (meaning the said James B. Mathews) thought he had destroyed his will and that Burroughs had told him he would make a time here if it was not found after he was gone.

And deponent further says he has no knowledge or information of the existence of any will of his grandfather at the time of his death and he believes none was in existence at 30 that time and that his grandfather had destroyed it as he told deponent he intended to do.

And deponent further says that the said John C. Holcomb, deceased, was capable and did transact his own business up until the time he was stricken with palsy, and that his mental faculties remained remarkably strong until that time, and that he discovered no symptoms of paralysis or palsy in his grandfather prior to his being stricken down, and that the statements in the bill of complaint in this cause that for months prior to his death he was incapable both

mentally and physically to transact any business understandingly are untrue.

And deponent further says his conduct in unlocking the desk of his grandfather and examining his papers on the day of the burial, was in pursuance of what deponent understood to be his duty under the power of attorney which he then had ; that no objection was made by anyone, and
10 that he then understood that every one acquiesced in it, as well as his taking the papers away subsequently, and that a true copy of said power of attorney is annexed hereto ; and deponent further says that at no time, at any place, or under any circumstances, has there been a meeting of these defendants and that the only time they were all together for a long time within deponent's recollection was the day of the burial of his grandfather, upon the occasion of unlocking the desk and examining the papers ; deponent heard nothing
20 said about any will that day ; deponent further says that at the time his grandfather executed the said will he only owned the said farm ; that he afterward acquired the lot in Lambertville by purchase, and it was this circumstance that gave rise to the objections made by his grandfather the morning he gave him his will, when he spoke of the word elsewhere, and said he only intended that Edwin should have the farm.

JOHN C. HOLCOMB, JR.

Sworn and subscribed before me this 22d day of November, A. D., 1882.

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L. H. SERGEANT,
M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

Levi Holcomb, administrator of the estate of John C. Holcomb, deceased, being duly sworn according to law on his oath says that the matters and things set forth in the aforesaid answer so far as relates to his own acts as administrator are true, and so far as relates to the acts of others he believes them to be true.

And deponent further says that he has proceeded to ad-

minister said estate according to law, and that what he has done has been to secure the best interest of said estate.

LEVI HOLCOMB.

Sworn and subscribed this 22d day of November, A. D., 1882, before me.

L. H. SERGEANT,
M. C. C.

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STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

Martin V. B. Holcomb, one of the above named defendants, being duly sworn according to law on his oath says that the matters and things set forth in the foregoing answer so far as relates to his own acts are true, and so far as relates to the acts of others he believes them to be true; that while for some time before the death of said John C. Holcomb, his grandfather, he knew that he had made a will, he never had any knowledge of its terms and conditions until the ninth day of November instant, when Richard H. Wilson produced what he stated to be a copy of the will and copy of codicil in part.

And deponent further says that he now believes that said will was destroyed by his grandfather before his last sickness, and that no will was in existence at the time of his death; deponent further says that at no time before or after the death of his grandfather did he meet with the other defendants at any place for any purpose, and that the only occasion he now recollects when these defendants were all together anywhere for any purpose was on the day his grandfather was buried, when the desk was opened and the papers examined in the presence of the said complainants.

And this deponent further says that all the allegations contained in said bill that for months prior to the decease of his grandfather he was incapable of transacting any business understandingly are untrue; that defendant used to farm said farm for his grandfather, which he left in the spring of eighteen hundred and seventy-nine, since which time he has resided upon a farm about four miles from the residence of his grandfather; that he was not present at the time his

grandfather died, and the last he saw him alive was about the nineteenth day of July last past, and he had not seen his grandfather for weeks prior to the last date.

MARTIN V. B. HOLCOMB.

Sworn and subscribed this 22d day of November, A. D., 1882, before me.

L. H. SERGEANT,
M. C. C.

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STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

Richard H. Wilson being duly sworn according to law on his oath deposeth and saith he is fifty-five years of age, resides at Brookville, near Stockton, about two miles from the late residence of John C. Holcomb, deceased, whom he has known for forty years; that he knew Edwin Holcomb, and is well acquainted with the parties to this cause; sometime shortly after Edwin's death said deceased applied to de-
20 ponent to add a codicil to his will, giving deponent to understand that Eleanor (meaning the complainant, Eleanor Holcomb) had been importuning him to make some provision for her, now that Edwin was dead; deceased instructed deponent to draw a codicil giving Eleanor the same as she would have had had Edwin lived; that Eveline R. Holcomb was to have part of the house on the farm for a home with some of the household goods, and the residue to be divided among his grandchildren, and not to Edwin as the will directed; deponent drew the codicil incorporating the
30 the above terms which was executed according to law, and left in the care of deponent; that on the sixteenth day of June, 1882, deponent received a note from said Eveline asking deponent to send grandfather's will by Harry if he thought it safe to do so, if not to bring it, as grandfather wanted to see it; Harry was to call for it on his way from school; deponent in order to guard against the loss of the will in its transmission to the testator proceeded to take a copy of the same, but being called away, when Harry called for it, he had only completed the copy of the will and part of the codicil, as appears by the copy hereto annexed; and

deponent wrote the following words in pencil upon said copy as a memorandum of the contents of said codicil and which are a true memorandum of the same except as to the bequest of a home for Eveline on the farm, viz: "By the "codicil the residue by the fifth item given to Edwin is "given to the five grandchildren in equal shares, Edwin's "widow to have same as would have been her dower." That said will and codicil were delivered to said Harry Holcomb; 10 deponent pinning it fast to his coat pocket; deponent never saw it afterwards; that on the ninth day of November last deponent was requested to go to the office of Richard S. Kuhl, in Flemington, in order to give any information of the contents of said will which he might have, and there he produced the said copy of the will, codicil and memorandum annexed hereto, which was the first that any person other than himself had any knowledge of its existence; deponent further says that during the time he has known said John C. Holcomb he has always regarded him as a man of intel- 20 ligence and good understanding of business affairs; that he transacted his own business until the time of his death, and not until he was stricken with palsy in July last was he incapable of transacting his business with a clear and intelligent understanding of what he was doing.

RICHARD H. WILSON.

Sworn and subscribed before me this 22d day of November, A. D. 1882.

L. H. SERGEANT,

M. C. C. 30

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

George H. Larison being duly sworn on his oath deposeseth and saith that he is a physician and surgeon residing at Lambertville, where he has been engaged in the practice of his profession for twenty-two years past; that during the past ten years he has visited the family of said deceased professionally; that he has always known deceased to be of good mind and understanding, and to have transacted his own business up until the time of his death intelligently

and with a clear idea of what he was about; that on the 12th day of April last deponent had a settlement with the deceased of an account between them amounting to one hundred and seventy dollars on deponent's side and forty dollars on deceased's side; that they went over the respective accounts; deceased paid deponent the balance due him except twenty-five dollars for which deceased gave deponent
 10 his due bill; receipts were drawn and passed between them for the respective amounts and the transaction closed in a manner which showed deceased to be in possession of his mental faculties and reason to a remarkable degree, and that his conduct was that of a man who had an intelligent understanding of the business he was transacting; that deponent saw the deceased on the 30th day of June following, and found him in a good mental and physical condition as when he settled with him in April; that at no time prior to the deceased being stricken with palsy had there been any evi-
 20 dence of that disease in the deceased; that deponent was first called to attend deceased in his last illness on the 12th day of July, 1882, that from that day he was incompetent to transact any business; that deceased died July 23d, A. D. 1882.

GEORGE H. LARISON.

Sworn and subscribed before me this 22d day of November, A. D., 1882.

L. H. SERGEANT,
 M. C. C.

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STATE OF NEW JERSEY, HUNTERDON COUNTY, ss

James Wilson being duly sworn according to law on his oath deposeth and saith that he is 60 years of age, a farmer residing about two and a half miles from the late residence of John C. Holcomb, deceased, whom he has known all his life and transacted business with him for the past twenty-seven years, and during all this time and up until he was stricken with palsy, from which he died in July last, deponent always knew deceased to be capable of transacting, and that he did transact his own business with intelligence and

a good understanding of what he did; that in the early part of May last past deceased came to deponent's farm with said James B. Mathews to buy seed potatoes; said Mathews bought for himself and deceased for himself, each transacting their own business; that in the month of June last past deponent was at the home of deceased and talked with him in relation to their business affairs, which consisted of moneys which deponent had borrowed of deceased; that said deceased at that time was in every way capable of transacting his business and did transact it with an intelligent understanding of it; deponent did not see deceased after the last date; that he heard about the middle of July that deceased had been stricken with palsy, of which he afterward died; deponent attended his funeral.

JAMES WILSON.

Sworn and subscribed before me this 22d day of November, A. D., 1882.

L. H. SERGEANT, 20

M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

John H. Wilson being duly sworn on his oath deposeth and saith that his age is 78 years; that he resides in West Amwell township, about three miles from the residence of John C. Holcomb, deceased, whom he had known for sixty years past; that his relations with the deceased and his family were of the friendliest character, and it was the custom of said deceased and deponent very often to converse about business generally and about the investment of moneys and the securities therefor; that the matter of settlement and distribution of the estates of persons living in the neighborhood was a subject often discussed between them; that deponent always knew deceased to be capable to transact his own business with intelligence and understanding up until he was stricken with palsy in July last, from which he afterward died; that the last conversation deponent had with deceased was on the twenty-seventh day of June last; that on this occasion deponent said to deceased (the conversation

being on the subject of wills and the distribution and descent of property when there was no will) that he always thought that where there were no children living one grandchild was as near as another; deceased replied he thought so too, or words to that effect; deponent further says that this conversation was without reference to anyone or to any particular estate or to the estate of the deceased.

10

JOHN H. WILSON.

Sworn and subscribed before me this 22d day of November, A. D. 1882.

L. H. SERGEANT,

M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

Reuben P. Ely being affirmed, on his affirmation says, that he is 67 years old; that he has resided in the city of Lambertville for twelve years last past, about two miles
20 from the late residence of John C. Holcomb, deceased, and during all this time has been well acquainted with said deceased, with his son Edwin, and with the parties complainant and defendant in this cause; that said Edwin Holcomb died on the 19th day of August, A. D., 1881; that he always knew said John C. Holcomb, deceased, to be fully competent to transact and that he did transact his own business up until his last sickness, which was only a short time before he died; that in the month of May, 1882, deponent
30 was at the house of said John C. Holcomb, deceased, on an occasion when one Isaac Leach paid his interest upon a note which said Holcomb held against him for one hundred dollars; that deceased got the note, calculated the interest which was indorsed upon the note, and the money paid to him; that on the 9th day of June, 1882, he met deceased in Lambertville and talked with him there; he told deponent it was his birthday, spoke of having the pump fixed at his Lambertville property, and mentioned the fact that he must go around to Alexander H. Holcomb's office to see Mr. Holcomb about some rents he was collecting for him; that deponent walked with him to Holcomb's office and was pres-

ent when he talked over the subject of his rents with said A. H. Holcomb, who had not collected any as he said ; that the conduct and conversation of the deceased on this occasion was that of a man who, though feeble from age, had a clear understanding of the business he was transacting and did transact it with intelligence and good reason ; that two days following, on the 11th of June, deponent was at the home of said deceased and found him in his usual good health ; 10 that he did not see deceased after that time until he was stricken with palsy ; deponent further says that on the day deceased was buried he was present when the said defendant, John C. Holcomb, opened his grandfather's desk and examined the papers ; this was done by the mutual consent of the complainants and defendants who were present ; nothing was said at that time about any will of the deceased.

REUBEN P. ELY.

Affirmed and subscribed before me this 22d day of November, A. D., 1882.

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L. H. SERGEANT,

M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss

Harry Holcomb being duly sworn on his oath says he is 12 years old next month ; that sometime last summer he took a letter or note for his aunt Eveline R. Holcombe to Mr. Richard H. Wilson ; Mr. Wilson told him to stop at his house after school, which deponent did, and Mr. Wilson put a sealed envelope in his coat pocket and pinned it fast ; 30 that when he reached his home his said aunt unpinned and took the same envelope which Mr. Wilson gave, sealed just as it was given to him ; deponent further says he never knew what the said envelope contained, until he heard Mr. Richard H. Wilson at Kuhl's office in Flemington, about two or three weeks ago talk about giving him the paper and making a copy of it ; deponent further says the school closed the last of June, and he got the paper some little time before that.

HARRY HOLCOMBE.

Sworn and subscribed before me this 22d day of November, A. D., 1882.

L. H. SERGEANT,
M. C. C.

STATE OF NEW JERSEY, HUNTERDON COUNTY, ss.

George M. Holcomb being duly sworn according to law
10 on his oath deposeth and saith that his age is 70 years; that
he has known said John C. Holcomb, deceased, for 40 years
past; that he has resided in Lambertville for 18 years; that
he is the subscribing witness to the power of attorney an-
nexed to the above answer; that he saw deceased last on the
25th day of June last; that deceased spoke of the power of
attorney and the reasons why he gave it; that he wanted
John (meaning the defendant, John C. Holcomb) to attend
to his outside affairs as he could not get around very well
to do it himself; at this time deceased transacted the busi-
20 ness of executing said power of attorney, appearing to under-
stand what he was about and the reason why he gave it; and
deponent further says that during all the time of his ac-
quaintance with said deceased he has often met him at his
house and in Lambertville, and up until his last sickness
has always regarded him as an intelligent business man and
one when he had made up his mind generally stuck to it;
deponent further says that the interview with deceased above
stated at the time the power of attorney was executed was
on the 25th day of June last.

30 GEORGE M. HOLCOMB.

Sworn and subscribed this 22d day of November, A. D.,
1882, before me.

L. H. SERGEANT,
M. C. C.

KNOW ALL MEN by these Presents, That I John C. Hol-
comb of the township of Delaware, in the County of Hun-
terdon and State of New Jersey, do hereby appoint my

grandson, John C. Holcomb, junior, of the Township of Solebury, in the County of Bucks and State of Pennsylvania, my true and lawful attorney, for me and in my name and stead, to demand, collect, receive, sue for and take all necessary and lawful means and process to recover all monies, debts, dues and effects, due and payable, coming or belonging or which may at any time hereafter be due, payable, or belonging to me from any person or persons whatsoever; 10 giving all necessary receipts or acquittances for the same; and to pay out on my account all just debts, taxes, claims or demands lawfully held against me, and in general as my agent to have the oversight of my affairs and interests which my declining years seem to require; giving and granting to my said attorney full power and authority, to do and perform every act and thing necessary to be done to carry out the objects and purposes herein mentioned, as fully as I might or could if personally present; hereby ratifying and confirming all that my said attorney may lawfully do or 20 cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and eighty-two.

JOHN C. HOLCOMB. [SEAL.]

Sealed and delivered in the presence of

GEORGE M. HOLCOMB.

Copy of Will and Codicil.

"In the name of God, amen. I, John C. Holecombe, of the township of Delaware, county of Hunterdon, and State of New Jersey, being of sound mind, memory and understanding, but knowing the uncertainty of life, and of earthly things, do make and publish this my last will and testament, in manner and form following, that is to say :

1st. First, it is my will and I hereby order and direct my executors, whom I shall hereafter appoint, to pay all my just debts and funeral expenses, as soon as conveniently can be after my decease.

2d. Second, I give and bequeath unto my son, Edwin Holcombe, all my messages of land and tenements, situated in the township of Delaware, in the county of Hunterdon
10 and elsewhere, to have and to hold the same in fee forever.

3d. Third, I give and bequeath unto my four children eight thousand and one hundred dollars, to be paid within one year after my decease, as follows, viz: To Levi Holcombe, two thousand dollars; to John C. Holcombe, Jun., two thousand one hundred dollars; to Martin Holcombe, two thousand dollars; to Eveline Holcombe, two thousand dollars—the said Levi, John C., Martin and Eveline being the children of my deceased daughter, the wife of George B. Holcombe.

20 4th. Fourth item, I give and bequeath unto my son, Edwin Holcombe, all my farming utensils and stock that I may own at the time of my decease, also I give unto him one-half of all my household goods and kitchen furniture and the remaining one-half of my household goods and kitchen furniture, my will is, shall be equally divided among my four grandchildren, share and share alike; and in case either of my said grandchildren should die leaving no child or children, then the survivor or survivors of them or their heirs shall receive the share of the one
30 or more (without issue) deceased, but if any die leaving issue then the child or children of the one deceased to take the deceased parent's share.

5th. Fifth item, I give and bequeath unto my son, Edwin Holcombe, all the residue of my estate of every kind, and to his heirs and assigns in fee forever.

6th. Sixth and lastly, I hereby nominate and appoint my son, Edwin Holcombe, and my grandson, John C. Holcombe, Junior, executors of this my last will and testament.

In testimony whereof I have hereunto set my hand and

seal this third day of January, A. D eighteen hundred and seventy-six.

JOHN C. HOLCOMBE. [L. S.]

Signed, sealed, published and declared by the said John Holcombe as his last will and testament in our presence at the same time; and we at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses.

10

S. C. HOPPOCK,
N. V. YOUNG,

Witnesses.

I, John C. Holcomb of the township of Delaware in the County of Hunterdon and State of New Jersey, being the testator named in the foregoing will, do publish and declare this codicil.

COPY OF PENCIL MEMORANDUM:

20

By the codicil, the residue by the fifth item given to Edwin, is given to the five grandchildren in equal shares.

Edwin's widow to have same as would have been her dower.

A true copy.

G. S. DURYEE, *Clerk.*

Replication.

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The usual replication was filed by the complainants.

TESTIMONY.

10

Examination of witnesses, &c., in the above stated cause depending in the court of Chancery of the state of New Jersey, taken by consent before me Charles A. Skillman, one of the Masters and Examiners of said Court, at my office in the city of Lambertville, on the fourteenth day of March, A. D., eighteen hundred and eighty-three, in the presence of Jehiel G. Shipman, Esquire, Solicitor and of Counsel with the said Complainants, and of Richard S. Kuhl, Solicitor and of Counsel with the said Defendants.—

Due and legal notice of the taking of testimony at this time and place acknowledged on the part of the Solicitor of the defendants.

Eleanor Holcombe, of the township of Delaware, County of Hunterdon, a witness produced on the part of the Complainants, being duly sworn, on her oath saith :

(The counsel of the respective parties, agree that the testimony may be taken by questions and answers.)

I reside in Delaware township, Hunterdon County, New Jersey; my husband's name was Edwin Holcombe; he was the son of John C. Holcombe; I was married to him November 18th, A. D., 1841; I had one child by that marriage, a daughter; her name is Rebecca F. Mathews, formerly Rebecca F. Holcombe; my daughter was married September 13th, A. D., 1862; her husband's name is James B. Mathews; he and my daughter are both living; they have one child living, a daughter; she was fifteen years old on the thirteenth day of August last past; her name is Mary Ellen Mathews; my husband is dead; he died the 19th day of August A. D., 1881; my husband lived up to the time of his

death on the farm of John C. Holcombe, his father's farm; for twelve years he lived on the other side of the canal, it was on the same farm; after that he lived in the same house with the old gentleman, as two families; the part we lived in was the kitchen, and two rooms over it, and their part was two rooms and a kitchen, and three rooms over them; we had an out kitchen we used beside the kitchen I speak of; the house was built originally for one family; a kitchen 10 was built at each end to make it suitable for two families. The granddaughter of John C. Holcombe kept house for him; her name was Eveline R. Holcombe; John C. Holcombe had two children; my husband was one; Louisa Holcombe was the other; Louisa Holcombe married George B. Holcombe; she was married in October, in the year 1841; I cannot give the date; it was six weeks before we were married; the daughter Louisa is dead; she died December 1st, A. D. 1852; she left four children; their names and ages are:—Levi Holcombe, 41 years old on the first 20 day of next July; John C. Holcombe, 40 years old the 23d day of August next; Martin V. B. Holcombe, 38 years old the eighth day of March instant, and Eveline R. Holcombe who I think will be 34 years old next August; those grandchildren are all living; Levi lives at Ringoes; John lives just across the river from John C. Holcombe's, in Pennsylvania; Martin lives in West Amwell, about three-quarters of a mile from Lambertville; I don't know where Eveline is now; up to the time of the death of her grandfather, John C. Holcombe, she lived with him; a few 30 weeks after his death she moved away from John C. Holcombe's late residence; she moved away the 24th of August last past; she came to Lambertville, I was informed by her; can't say that I am certain she moved to Lambertville; it was said that a load of goods went there; I heard it said by a person in Lambertville that her goods went to Leah Moore's; she lived with her grandfather, I think, from the time she was six years old; John C. Holcombe's wife, my husband's mother, died on the tenth day of November, A. D. 1873; John C. Holcombe, at the time of his

death, was in his 90th year; he had lived on that farm all his life time, I may say; he lived for a while after he was married on a part of the farm since owned by Andrew Holcombe; he moved in the house where he died, fifty-seven years before his death; he lived with his father-in-law, Jacob Fisher, some six years; he moved back from Mr. Fisher's in the year 1853; it was the six years prior to 101853 that he lived with his father-in-law; John C. Holcombe was a farmer; he was engaged in the business of a farmer, but did not do any hard work, say work, for thirty years past; he was around, but did no hard work; Edwin, my husband, farmed the place until 1867, when his health got poor, and he farmed a part of the farm on the other side of the canal; Levi Holcombe farmed the other part for two years; he, Levi, lived on it; Martin lived there nine years and farmed it; my husband always worked over on the other side during the summer, and helped get the 20 hay; had his team always over there, he kept it in that barn; there was only one barn on the place; he took his hay and his grain that was cut on his side over to that barn; my husband lived on the side over the canal for twelve years; then our son-in-law James B. Mathews moved on the farm and we lived with them in the old homestead house; there our son-in-law and my husband continued to live until my husband's death; we moved back with Mathews in March 1879; my husband was sick seventeen weeks; he had it was thought an inward cancer; he had typhoid fever and never 30 recovered.

Q. Had your husband been complaining any before these seventeen weeks prior to his death, if so for how long a period?

A. It was several years; I would say as much as fifteen years before his death, he was complaining; the last four years he was very much complaining.

Q. What was his complaint?

A. He was ruptured and had kidney disease.

Q. Was that all the disease?

A. He had gravel.

Q. When was it first discovered he had a cancer, as near as you can tell?

A. It was not certain at what time, but he was certain there was something for two years before his death; it was thought it came from the pressure of his truss.

Q. Up to what time did he continue about his business?

A. The last of March in 1881, when he quit work entirely. 10

Q. When did he take to his bed?

A. It was in April, I think the 12th.

Q. Did he ever get up from his bed after he was taken down?

A. No, sir. He was around the house a part of the time until the 24th of April.

Q. When was he taken down to his bed finally?

A. From that day the 24th, he was never around the house.

Q. When did he die? 20

A. The 19th of August A. D. 1881.

Q. Did you ever hear his father John C. Holcombe say anything about his having made a will.

A. Yes, sir

Q. When was the first time you ever heard him speak of having made a will, just give the date?

A. On the 4th of May 1881.

Q. Where was it?

A. Up stairs by the side of Edwin's bed.

Q. Who were present? 30

A. Rebecca Mathews and myself; by Rebecca I mean my daughter.

Q. Anybody else?

A. No, sir.

Q. Well, John C. Holcomb and your husband were also present?

A. Yes, sir, of course they were by.

Q. Tell now all that John C. Holcombe said on that day, and on that occasion about having made a will?

A. Edwin asked him if he would fix something for me,

as he would not get well. John C. Holcombe told him he need not worry about things for he had left him all this farm and these things that are on it ; if he did not get well Rebecca would get it all just as it was left to him, and that would give me a home with her. He asked her if she got all those things as they were left to her father, if she would take care of her mother. She told him she would.

10 Q. Did he say in that conversation what provision he had made in his will for his other grandchildren, the children of his daughter, Louisa Holcombe?

A. Yes, sir.

Q. Well, what did he say?

A. He had left each of his grandchildren two thousand dollars apiece; each one of his deceased daughter's children.

Q. What else did he say as to the contents of his will on that occasion ; tell every word you can recollect he said?

A. He said after his funeral expenses were paid, and the 20 debts were paid, he would get the rest; that was just as he said it; Edwin would get the rest. He said that John Horn had had his will after Nelson Young's death ; that lawyer Holcombe had had it a while in his safe. He said he had it at home; he did not say at what time he brought it home; he said he was going to put it out of the house, for he seen that some of them had had it open ; he said then you are willing I shall divide those lots in the cemetery between the two girls, then there need be no sale of anything when I am gone; that ends that conversation.

30 Q. Did he say in that conversation who were the witnesses to his will?

A. No, sir.

Q. What real estate had the old gentleman?

A. That farm, and the house and lot in town.

Q. What was the farm esteemed to be worth?

A. Seven thousand, two hundred dollars is what it is valued at; that is the tax valuation. The house is \$1,800 or \$2,000. I cannot say which that is valued at.

Q. Did he say in that conversation when Nelson Young had drawn his will?

A. Seven years before that, he thought seven years before, he did not say positive.

Q. Where did Nelson Young live?

A. In Lambertville.

Q. What was his business?

A. Esquire Young. I don't know that he followed any other business than that; he had an office.

Q. When did he, Nelson Young, die? 10

A. I cannot tell the date; I think '75 or '76, I cannot tell certain.

Q. Did you have any other conversation or hear any other conversation between John C. Holcombe and any other person prior to your husband's death?

A. No, sir.

Q. After the death of your husband, quite shortly after, did the old gentleman say anything to you about the rooms you wanted, and if so, what did he say?

20

The question objected to by Mr. Kuhl on the ground it is leading.

A. On the 27th of August, 1881, he came to me and asked me if I wanted those rooms, meaning those he and Eveline lived in, for they told him that they wanted him to build a house for Eveline, for I wanted those rooms to live in. I told him that I had not had those rooms while Edwin lived, I certainly did not want them now.

Q. Anything else in that conversation? 30

A. No, sir.

Q. Where was that conversation?

A. In our out-kitchen door.

Q. Did you hear a conversation on the day of your husband's funeral between John C. Holcombe and his son-in-law, George B. Holcombe?

A. Yes, sir.

Q. Where was it?

A. In the end room of his house.

Q. Whose house?

A. John C. Holcombe's, what they call the back room.

Q. Who were present?

A. John C. Holcombe, George B. Holcombe, they were the only ones I saw excepting the one who was with me.

Q. Who was that person?

A. My sister, Margaret K. Frankenfield.

Q. State now all the conversation that passed between
10 John C. Holcombe and George B. Holcombe on that occasion, just as they said it as nearly as you can?

A. George B. Holcombe said to John C. Holcombe, you are not satisfied with your will since Edwin has gone. He says, yes, I am. George B. said, I thought you would want to make some change in it now. He said, I am satisfied with it as it is. George B. said, I thought you would want to sell your farm now. He says, no I don't.

Q. Anything else?

A. That ends that conversation, all I heard.

20 Q. Did you hear any conversation between him and Reuben P. Ely?

A. Yes, sir.

Q. When?

A. On the 30th of August, 1881.

Q. Where?

A. In the room next to our room; it was the summer time and the doors were open.

Q. State the conversation, all of it?

A. Reuben P. Ely asked John C. Holcombe how his will
30 was wrote; if it was left to Edwin or to Edwin and his heirs. John C. Holcombe told him that it was left to Edwin and his heirs. John C. Holcombe said he wanted to fix it, that I could have my home there. Mr. Ely told him to make a new will and leave it to Edwin's wife he said, and then to his daughter. John C. Holcombe said he would not change that one for the world.

Q. Go on, anything else in that conversation?

A. Nothing else in that conversation. Yes there is. He told Mr. Ely, J. C. Holcombe told Mr. Ely, that he was going to get some one to take charge of his will. Mr. Ely

told him Richard Wilson would be a good man to take charge of it; that ends it.

At 12.15 the further examination was adjourned to 1.30, P. M. at my office.

At 1.30 P. M. the examination of Eleanor Holcomeb resumed.

10

Q. Did you have a conversation with the old gentleman the next day?

A. Yes, sir.

Q. Where?

A. In his own room, he was not well.

Q. State what passed between you and John C. Holcombe the next day in his room about his will?

A. He said Mr. Ely and he had been speaking of the will, of his will. He had told him, John C. Holcombe had told Reuben Ely, he would not change that will for the world, for he would not break his word to the dead; that is all that conversation.

Q. When did you next have a conversation with him?

A. On the second day of September he said Richard Wilson was coming to get his will, to take charge of it; on the third of September he said that Richard Wilson had come and got his will. We saw Richard Wilson there, standing on the porch talking to John C. Holcombe; that is all of that.

30

Q. On or about the 19th of September, 1881, did you see Mr. Richard H. Wilson?

A. I did not see him myself.

Q. Did you hear him say anything?

A. No, sir, I was not present.

Q. Did you have a conversation with the old man, Mr. John C. Holcombe, on May 24, 1882.

A. Yes, sir.

Q. Where was it?

A. In our house.

Q. Who was by?

A. Rebecca Mathews, myself and John C. Holcombe; and Mrs. Mathews was present part of it; her name is Mary Ann Mathews; she is my daughter's husband's mother.

Q. What did Mr. John C. Holcombe say in reference to his will on that day; give his language as nearly as you can recollect it.

10 A. He said he had so much trouble, that Eveline and the boys were at him to destroy his will; John wanted him to divide his farm, to keep a part of it in the name of John C. Holcombe. I asked him if his will was the one that Nelson Young had made for him; he said yes; that Nelson Young and Samuel Hoppock were the witnesses; that Richard Wilson had it. On the 30th of May he asked me if I was going away again; I told him I was. He said Rebecca will get all this farm and all these things here, and your home will be with her; that ends that conversation.

20 Q. On the 24th of May, when he said that Eveline and the others were wanting him to destroy the will, did he say anything as to whether he would or would not destroy the will, or did he say what reply he had made to them, to their request to destroy the will?

Question objected to by Mr. Kuhl on account of its being too leading.

A. He did not say what reply he had made to them; he 30 said he'd be damned if he would do it.

Q. Did he ever speak to you that he had made a codicil to his will?

A. No, sir.

Q. You said he said he'd be damned if he would do it; in what connection did he use that expression?

A. That he would not destroy it.

Q. When did he use that expression, after he had done telling you what Eveline and the others wanted him to do, to destroy the will; just repeat the conversation so as to give us the connection in which he used the expression, he'd be

damned if he would do it?

A. I asked him why they wanted him to destroy it; they said they were not satisfied; I asked him if he was satisfied; he said he was, and then he used that expression -

Q. After the death and burial of John C. Holcombe did you hear any conversation between your daughter and Eveline Holcombe in reference to reading the will?

A. Yes, sir.

10

Q. Where was it?

A. At the barn, where we were milking.

Q. How soon after John C. Holcombe's funeral was it?

A. On the evening of the same day.

Q. Please state now what that conversation was?

A. Rebecca said to Eveline the people thought, some of the people thought (were just the words) when John invited them to leave the room, the will was to be read; she said we had not intended to have it read to-day.

Q. Anything else of the conversation?

20

A. Nothing at that time.

Q. How long was John C. Holcombe confined to his bed before his death?

A. Twelve days, I think; it was from the twelfth to the twenty-third, I think; I was not present.

Q. Had he any particular disease?

A. Paralysis, I believe.

Q. When was he taken with paralysis?

A. On the 12th of July, 1882.

Q. What effect had that upon his mind and body?

30

A. I was not present.

Q. Did you see him from the time he was stricken with paralysis up to the time of his death?

A. I did not.

Q. Before he was stricken with paralysis, immediately before, how was his bodily health?

A. I was not present.

Q. How long before he was stricken with paralysis did you see John C. Holcombe?

A. The 2d of June, 1882.

Q. Where was he?

A. He was at his home.

Q. How was his bodily health then?

A. He was getting feeble I thought.

Q. Was he able to engage in any kind of employment then, or to walk out?

A. He was not able to engage in any employment; he
10 was able to walk out as far as the barn and around the
wagon house and house; some days he was not able to do
that.

Q. When did you first begin to notice particularly this
decay in his bodily health and strength?

A. It was about the time of Edwin's death.

Q. How was his mind about the time of Edwin's death,
and shortly afterward?

A. Shortly after his death Dr. Studdiford said he had
received such a shock (witness interrupted). (Counsel says
20 the witness need not state what Dr. Studdiford said, as it is
not evidence, and then says to witness, state your own ob-
servation; witness continues.) I considered his mind rather
impaired, weak at times; some days he would sleep very
much through the day; he said his head was feeling badly;
I have known him to get up at night and sit and talk to
himself an hour at a time.

Q. Did you notice those things before or after Edwin's
death?

A. Not until after.

30 Q. How did his mind continue then up to the time he
was stricken with paralysis, did it continue to grow more
feeble or did it remain about stationary?

A. It remained about the same; I did not see a great deal
of difference; he grew more feeble in body.

Q. On these occasions that you speak of, when he would
talk to himself at night, can you tell what he said?

A. Well, he would sit and talk about the great hereafter,
and say this great universe, I would like to tell you about
things; I must talk although I know I ought not to say these
things, but I must talk, and such things as that, over

again.

And being cross-examined by Mr. Kuhl, counsel of the defendants, says:

Q. What time of the night would he get up, as you have described?

A. At different times, but not in the same night. 10

Q. Would it be before or after the family had retired?

A. After, when we heard him.

Q. Did John C. Holcombe sleep on the first floor in a different part of the house from where you slept on the second floor of the same house?

A. Yes, sir; he slept on the first floor.

Q. Who was with him in the part of the house where he slept on these occasions when he would get up and talk to himself an hour at a time; tell everybody you remember to have slept in his part of the house during the time of these 20 night awakenings?

A. Eveline R. Holcombe and Harry Holcombe; they were all that slept there.

Q. Did not John C. Holcombe, one of these defendants, stay all night with the old gentleman during this time?

A. He stayed there some nights; he might have stayed there some nights, all night for all I know.

Q. Don't you know that he did?

A. After Edwin's death he stayed there two nights with his grandfather, but I don't know as I can tell the exact 30 dates.

Q. How are you able to give us the precise dates which you have given in your testimony in this cause?

A. Because I set them down just as they happened.

Q. Where did you set them down?

A. On paper.

Q. Where is the paper?

A. I have one of them here.

Q. How many of them are there?

A. Well, I have two or three of them.

Q. Where are the others?

A. At home.

Q. Why did you not bring them?

A. I did not suppose they would be needed.

Q. What led you to think the one you have here would be needed?

A. I thought perhaps you would want to ask me if I had
10 it down.

Q. What do the papers you speak of contain; I mean to what subject does their contents relate?

A. To what happened on such dates.

Q. In connect'ion with Mr. Holcomb and his business?

A. Not altogether; I generally kept a memorandum of each day.

Q. You have those memorandums, have you?

A. Yes, sir.

Q. Are they at your home, except the one you have
20 here?

A. They are not concerning this; some of them are not concerning this.

Q. Are they at home?

A. I have them all at home.

Q. You mean then that these papers are a diary of events without regard to any special subject.

A. Yes.

Q. Will you produce them at our next day's examination?

30 A. Well, there are some things in them that don't relate to this; I will submit them to my counsel and act under his direction.

Q. Are those memorandums kept on commercial note paper like the sheet you have here?

A. Some of them are not.

Q. How have you kept them?

A. In a book; a small memorandum book.

Q. State to what the memorandums refer; I mean the subject to which they or any of them refer?

A. The common events of the day, as each day came.

Q. State as near as you can how many memorandum books, or papers, or both, you have to which reference has been made?

A. Three small books, I think, but won't be positive; the papers I can't be positive, I think there are three.

Q. State as near as you can, when you put down the first entry in the book or on paper; I don't mean the exact date, but as near as you can recollect? 10

A. I think in 1880.

Q. Had you kept any diary before that?

A. Nothing more than accounts. I always kept accounts every day for some time.

Q. You mean book accounts of what was bought and sold?

A. Yes, and what was done each day.

Q. Do you mean to say that you kept a diary before 1881 like the diary you have kept since that time?

A. They are not quite the same. 20

Q. Wherein do they differ, describe each fully?

Question objected to by Mr. Shipman, because it would lead into private matter, which would be improper, and it is irrelevant.

Counsel for defendants says he does not ask for the contents, but the form in which each were kept.

A. Those which have been kept since 1881 are more of a diary, and the others are more of an account book, things 30 which I have bought and sold.

Q. Have you not kept an account book since 1881?

A. Not much of a one as I have no use for one.

Q. Such accounts as you have kept, where have you kept them?

A. They are all in these same books, these small books.

Q. Will you allow me to see the paper you have here?

Answer by counsel. Her counsel instructs her to say she has put it in the hands of her counsel and will retain it in

his hands until he sees the other memorandums.

Q. Will your counsel let me see them?

A. Counsel says not to-day until he can see the other memorandums.

Q. What was your object in beginning to keep a diary in 1881.

10 A. So I could remember what passed.

Q. What passed in relation to Mr. Holcombe's affairs?

A. In relation to our own affairs.

Q. What do you mean when you say your own affairs?

A. Mine and my daughter's.

Q. Don't those papers and books contain memorandums relating to John C. Holcombe's affairs?

Question objected to by Mr. Shipman ; cannot prove contents without notice to produce them and because it is irrelevant.

A. Some of the papers relate to what he told us.

Q. Well the books?

A. The books do not, but the one, and that has but very little of that in. It is on the papers concerning his affairs.

Q. Haven't you taken the dates which appears in your testimony from these memorandums?

A. I get the dates from the memorandums.

Q. Don't you get the language or words which appear in
30 the conversations you have detailed also from these memorandums?

A. The words were wrote down just as he spoke them to us, and when he spoke them, at the time he spoke them.

Q. You mean to testify that you wrote these memorandums at the time the conversation occurred, and that John C. Holcombe saw you write them, or knew that you wrote them?

A. They were wrote at the time he spoke them, he did not see us write them.

Q. Where did you go to write them?

A. When he was at our house we wrote them there.

Q. I mean where in the house did you write them?

A. Sometimes in one place and sometimes in another.

Q. Please specify the spot?

A. It was inside of the house when he was down stairs, we wrote it there, when he was up stairs, it was wrote in the next room.

Q. Whose room?

10

A. Our room,

Q. What led you to make any memorandum relating to these alleged conversations and dates?

A. The same as to all others that we made, to remember them.

Q. What made you think you wanted to remember them.

A. So that if any time we needed to refer to them we would have the dates the same as other things we made a memorandum of.

20

Q. Can you give any reason for not making any memorandum relating to Mr. Holcombe's affairs prior to 1881, or for making them after or during 1881?

A. Because we did not live in the house with him until 1879; for twelve years prior to that time we lived on the same farm, but not in the same house, so that I knew nothing to make any diary of, of their daily affairs.

Q. Whose daily affairs?

A. Of John C. Holcombe's affairs; we kept our own accounts before that.

30

Q. Where did you keep these books and memorandums during the time you were writing them?

A. Kept them in a drawer.

Q. Where was the drawer?

A. In the bureau. The one we used daily we kept in a cupboard. In those places we kept them all, in our part of the house.

Q. Who did the writing in them?

A. My daughter and myself.

Q. Would you usually be together when the writing was

done.

A. Part of the time, but not always.

Q. Would your daughter sometimes write what you had heard said?

A. We generally both heard what was said.

Q. Do you now recollect of ever putting down anything that Mr. Holcombe said to either of you, or you to him,
10 except about his will or his property?

A. Yes, sir, I put down things concerning each of us in business relations.

Q. What in business relations other than his will or property did you ever put down?

A. Things that were raised on the farm and trucking, what they sold and what they put on and all such.

Q. I mean memoranda of conversations?

A. I can't say that I have been very particular in putting down conversation, I sometimes put down small conversa-
20 tions.

Q. Can you call to mind any conversation with Mr. Holcombe other than those relating to his will that you put down?

A. I could not tell the dates. I don't know that I could tell the exact words.

Q. What did you and Mr. Holcombe talk about other than his will that you put down?

A. About getting headstones for his son, said he was not able to go, was not well enough to go.

30 Q. And you put this down?

A. Yes, sir.

Q. What was your object?

A. To remember when he said he wanted to go and get them; he said when he got well enough and I came home he would go and get them; he was never well enough, and so he never went.

The examination of this witness not having been concluded at the hour of adjournment, the further examination of witnesses in this cause was by consent postponed to Thurs-

day, April 5th next, at 9 o'clock A. M., at my office.

CHARLES A. SKILLMAN,
M. C. C.

May 23d, 1883—The further examination of witnesses in this cause having by consent been postponed to this day, the respective counsel J. G. Shipman and R. S. Kuhl, met at my office and agreed to a further postponement until the 10 fourteenth day of June next, at nine o'clock A. M., at my office in the city of Lambertville, and the same is accordingly so adjourned.

CHARLES A. SKILLMAN,
M. C. C.

June 14th, 1883—The parties appeared by their respective counsel as before.

The further cross-examination of *Eleanor Holcombe* resumed. Witness saith—

Q. Have you memorandums of conversations with John C. Holcombe with you; if so, may I see them?

A. They are in Mr. Shipman's hands.

Mr. Shipman here produces three memorandum books and three sheets of note paper (one of them being a half sheet).

30

Q. Are all these memorandums all you have of these conversations?

A. Yes, sir.

Mr. Shipman produces them, and are marked for identification.

1 Book marked exhibit A.
1 Book " " B.
1 Book " " C.

1 sheet note	paper marked	exhibit D.	
$\frac{1}{2}$ sheet	"	"	E.
1 sheet	"	"	F.

For defendant—.

Q. Did you have any other conversation with John C. Holcombe other than these you have mentioned about the disposition of his property or his will?

A. No, sir.

Q. You talked with him often, did you not?

A. Certainly I talked with with him often?

Q. In these conversations you have detailed, did Mr. Holcombe seem to understand what he was talking about.

A. He appeared to, in the conversation I have referred to here.

Q. In whose handwriting is exhibit "D."

20 A. My daughter's and my own.

Q. Which is hers and which is yours?

A. That one, exhibit "D," is all in my daughter's handwriting.

Q. Did you see her write it?

A. Yes, sir.

Q. Where did she get it from?

A. Some scraps of paper that I had wrote with a lead pencil; it was getting rubbed out, the pencil mark, and I asked her to write it off.

30

Being shown exhibit "E," says it is in my own handwriting. Being shown exhibit "F," says it is in my daughter's handwriting.

Q. Where did your daughter get the contents of exhibit "F?"

A. Off of papers I had in my possession written with a lead pencil, except in two places, the memorandum of conversation of August 7, 1882, (marked in brackets I was not present,) and where above the memorandum of September

30th the words "not present" are written in pencil mark, she did not get from me.

Q. Where are your pencil memorandums you speak of?

A. They were worn out; I threw them in the stove after they were copied.

Q. When were they copied?

A. I don't know that I could tell the exact time they were copied. 10

Q. Tell as near as you can, and who were present and when you did it?

A. It was in November, when part of it was wrote, 1882; we were up-stairs when part of it was wrote; my daughter and myself were present; the other part was wrote through the winter; I cannot tell the exact time.

Q. Please state what part of exhibits D, E and F were written in November and what part in the winter?

A. Exhibit D was written in November, the other two were written in the winter. 20

Q. Why did you not write them all in November.

A. I suppose she had not time to just copy them then; I know of no other reason.

Q. What kind of paper did you write the pencil memorandums on?

A. It was pieces of paper that came out of books, something like exhibits A, B and C.

Q. Have you books you took the papers out of?

A. I have not, only part of the back of it, and a leaf or two perhaps. 30

Q. They were in the book until you had them copied?

A. No, sir; they were not in the book.

Q. Why did you take them out of the book?

A. I often took pieces of paper out of the book to write on; they were on the pieces of paper; they were not in the book when I wrote them

Q. When had you written the pencil memorandums?

A. As they happened.

Q. Did anybody ever see them?

A. No, sir; I don't know that they did; only my daugh-

ter of course.

Q. Who did you first show them to?

A. I never showed them to anyone.

Q. You showed them to your daughter when you gave them to her to copy, didn't you?

A. Certainly, I showed them to her then, and she was by when part of them was wrote with a pencil.

10 Q. Did you ever tell anybody about them until you spoke of them in your present examination?

A. No, sir; I don't know as I did in particular, as I was in the habit of making a memorandum of all things

Q. Then, so far as you know, nobody except you and your daughter knew anything about them until your examination in this cause?

A. Not that I know of, unless they picked them up somewhere; like memorandums we make we generally lay them aside; don't know that anyone could have seen them.

20 Q. Have you the book cover from which you took the leaves on which you made the pencil memorandums?

A. I have one half of it, but not with me.

Q. How many leaves did you tear out to make memorandums on?

A. I could not tell how many, as I tore out for other purposes, to make memorandums on.

Q. Why did you not leave the leaves of the book on which you say you made the memorandums in the book the same as appears by exhibits A, B and C?

30 A. I tore them out, put them in my pocket, carried a short pencil, and as things happened I set them down; other things as well as those, and then put them in one of these books I have here.

Q. Then exhibits A, B and C are copies, are they?

A. Yes, sir; some part of them, some part were wrote in the book.

Q. Take exhibit A and state in whose handwriting it is, and what part is copied from memorandums and what part written originally in it?

A. This is my daughter's book; I have not written any-

thing in it.

Q. The same question as to exhibits B and C?

A. Part of exhibit B is in my handwriting and part is in my daughter's; witness says there is one that is copied on that page (marked by me page 16).

Q. How many pages are copied?

A. The next page (17) and 19 and 20, 21, 22, 25 and 28 were copied, some of them part of the page. (The numbers 10 on the pages were put there by the Master for identification.)

Q. Why did you not copy the contents of exhibits D, E and F in exhibits A, B and C the same as other matters have been copied in them?

A. I did not think it was worth while to put such things as that with daily affairs as in the book.

And being examined re-direct by Mr. Shipman says:

I have the cover from which I tore the leaves, and will produce it hereafter; after I go home. 20

ELEANOR HOLCOMBE.

Sworn and subscribed this 14th day of June, A. D. 1883, before me.

CHARLES A. SKILLMAN,
M. C. C.

Rebecca F. Mathews, a witness on the part of the complainants, being duly sworn, saith: 30

I am one of the complainants in this suit; I am the wife of James B. Mathews; have been married to my husband twenty-one years the 13th of next September; I have one child, a daughter, named Mary Ellen Mathews, 15 years old last August; I am daughter of Edwin Holcombe and Eleanor C. Holcombe; I called her Eleanor C., the C. standing for Coates; my mother is one of the parties to the suit; she is called Eleanor there; my father has been dead since the 19th day of August, 1881; he lived in Hunterdon county,

on John C. Holcombe's, his father's, farm; he died there; he lived there prior to his death all his life as far as I know; my age is 40 the 18th of last February; my father was confined sixteen or seventeen weeks prior to his death; he was confined to his bed those seventeen weeks most of the time; he had typhoid fever, different diseases, complication of diseases; prior to that time his health had been poor; a number of years heard him complain; he did work quite a bit; he worked a part of the time up to his last sickness; some days he was not able; his permanent trouble and chronic complaint was he was ruptured, gravel and kidney trouble; my grandfather's name was John C. Holcombe; I remember him some 33 or 34 years; he did not live with my father at any time; my father lived with him; John C. Holcombe died the twenty-third of July, 1882; he was in his ninetyeth year; my father lived with John C. Holcombe, that is in the house with him at the time of my father's death; they lived as two separate families; Eveline R. Holcombe, the granddaughter of John C. Holcombe, kept house for him; she had lived with him from the time she was six years old; kept house for him since grandmother's death; my grandmother died about nine years ago last November; she was a daughter of George B. Holcombe and Louisa Holcombe, and Louisa was a daughter of John C. Holcombe.

Adjourned to 1 o'clock P. M.

30 At hour named the direct examination of witnesses resumed.

Q. Did you hear a conversation between your father and grandfather, John C. Holcombe, during your father's last illness?

A. Yes, sir.

Q. When was it and where?

A. On the 4th of May, 1881, in the room where my father lay sick.

Q. State now all the conversation between them you

heard at that time on the subject of your grandfather's will, giving the words of each as nearly as you can?

A. My father asked him if he would not fix something for mother, so that she could have a home there; grandfather John C. Holcombe told him he need not worry about things, for I have left you all this farm and these things, and if you do not get well Becky (meaning myself) will get them, just as they were left to you, and that will give¹⁰ her mother a home with her. He said I have left each of the children, meaning his deceased daughter's children, two thousand dollars apiece, and after my funeral expenses and debts are paid, the rest will be yours, what's left. John C. Holcombe asked me if I got those things as they were left to my father, if I was willing to take care of my mother; he said his will had been at John Horn's after Nelson Young's death, and lawyer Holcombe had had it in his safe; he was going to put it out of the house, for some of them had had it open. John C. Holcombe asked my father²⁰ are you willing that I shall divide those lots in the cemetery between the two girls?

Q. Did he mention the names of the girls?

Objected to by Mr. Kuhl because the witness was proceeding to detail the conversation, and made no mention of any names until the counsel interjected the question, and asks that the witness shall be allowed to detail the conversation without interruption.

A. Yes, sir.

30

Q. State their names?

A. Eveline and Becky; meaning his granddaughter, Eveline, and myself; that is all I believe.

Q. Did your father make any reply to what your grandfather requested of him?

A. Yes, sir; he was willing.

Q. Did your grandfather on that occasion state who had drawn his will?

A. No, sir.

Q. Did he state who the witnesses to it were?

A. No, sir.

Q. Have you stated now all that took place between your father and grandfather on this occasion you mention; if not, please state anything else you heard on that occasion?

A. That was all I heard at that time.

Q. When next did you hear your grandfather state anything about his will, if ever?

10 A. Nothing until after my father's death.

Q. Well, state the time?

A. I heard him speaking to Mr. Ely on the thirtieth day of August, 1881.

Q. Where?

A. In his part of his house, in his parlor.

Q. Well, state what the conversation was?

A. Mr. Ely asked him how his will was wrote, whether to Edwin or to Edwin and his heirs; John C. Holcombe told him to Edwin and his heirs; he told Mr. Ely that he 20 wanted to fix something for Edwin's wife, so she could have her home there. Mr. Ely said why not make a new will and leave it to Edwin's wife, and then to her daughter.— John C. Holcombe said I would not change my will for the world; he told Mr. Ely that he wanted to get some one to take charge of his will; Mr. Ely told him that Richard Wilson would be a good man to take charge of it; that is all that day.

Q. The day after that did you hear anything from your grandfather on the subject of his will, and if so what did he 30 say?

Q. He said Reuben wanted him to make a new will; he had told him he would not change that one for the world; he would not break his word to the dead?

Q. When did you next hear him speak about his will?

A. The 2d of September, 1881.

Q. What did he say then?

A. He said he was going to get Dick to take charge of his will; that he was coming the next day for it.

Q. Well, did you hear him say afterwards whether Mr. Wilson had got the will or not?

A. Yes, sir.

Q. What did he say about it?

A. He said that Dick had been there and taken the will home with him.

Q. When did he say that?

A. Toward evening, September 3d, 1881.

Q. Did you hear your grandfather on a previous occasion speak to your mother about wanting some room? 10

A. Yes, sir.

Q. When was that occasion?

A. On the twenty-seventh of May, no, twenty-seventh of August 1881.

Q. Where was it; what part of the house where your grandfather spoke to your mother?

A. Grandfather was in the yard, mother in the out-kitchen door.

Q. Tell what passed on that occasion?

A. He asked mother if she wanted them rooms; they were 20 at him to build Eveline a house, for mother wanted those rooms; mother told him that she did not have them while Edwin lived, she certainly did not want them now.

Q. Did you hear your grandfather speak anything about his will about the 24th of May, 1882?

Objected to by Mr. Kuhl because it leads the witness and reveals to her that the counsel wants her to fix the twenty-fourth day of May as the date of the conversation for the purpose of having it correspond with the date named by 30 Eleanor Holcombe, the former witness; counsel holding the memorandum or exhibit C. from which Eleanor Holcombe testified in his hand when he asked the question.

The complainants counsel disavows any such purpose in asking the question in the form he did and regards the objections of counsel of defendants quite out of place.

A. Yes, sir.

Q. Where?

A. In our part of the house.

Q. What did he say about it?

A. He said, I have got so much trouble; Lina and the boys were at him to destroy his will; John wanted him to divide the farm so as to keep part of it in the John C. Holcombe name; mother asked him if his will was the one that Nelson Young had made for him; he said yes, Nelson Young and Samuel Hoppock were the witnesses, and Richard Wilson has it; mother asked him why they wanted him to destroy his will; he said they were not satisfied with it; he'd be damned if he would destroy it.

Q. Is that all that took place on that occasion, ma'am?

A. He asked mother if she was going away again.

Q. What did your mother reply?

A. She told him she was.

Q. What did he reply to your mother when she said she was, if anything?

A. He said that Becky will get this farm, and your home will be with her.

Q. Give the day as nearly as you can when this conversation took place?

A. It was the 24th of May, 1882, I think.

Q. Did your grandfather divide the cemetery lots between you and Eveline Holcombe?

A. Yes, sir.

Q. When?

A. No, sir; I can't remember just the dates.

Q. Give them as near as you can when the deeds were made, I mean?

A. I have forgotten the dates, but I have the deed.

Q. Was it before or after your father's death that your grandfather made the deed to you and Eveline?

A. Before.

Q. He gave a separate deed to each one of you, did he, for your shares?

A. Yes, sir

Q. How many lots to each?

A. Forty.

Q. Where is the cemetery?

A. On the road leading from Lambertville to Stockton. I should suppose about a mile from Lambertville.

Q. Do you remember when John C. Holcombe died?

A. Yes, sir.

Q. When was it?

A. The 23d of July, 1882.

Q. When was he buried?

A. The 25th of July.

10

Q. After the funeral was over do you remember of John C. Holcombe saying anything about people leaving the room?

A. Yes, sir.

Q. Who were present then of the family?

A. Levi Holcombe, John, Martin, with their families, Eveline, my husband and mother and myself, George B. Holcombe, his son-in-law.

Q. Please to state what passed then on that occasion?

A. John asked the people if they would leave the room while they looked over the papers to take charge of them; George B. Holcombe said they had been talking it over and had concluded that John was the one to take charge of them; Mr. Ely, Reuben Ely, said John had written authority to do so; George B. Holcombe said yes, given to him long ago.

Q. Reuben Ely was present in the room?

A. Yes, sir.

Q. Is Reuben Ely any relation to the family?

A. Yes, sir.

30

Q. What?

A. A cousin to my grandfather, John C. Holcombe.

Q. This was the same day, I understand you, that the old gentleman was buried?

A. Yes, sir.

Q. Did you have any conversation with Eveline on that day after this conversation you have stated taken place?

A. Yes, sir.

Q. Where?

A. In the barn-yard.

Q. What hour of the day?

A. Between 5 and 7 o'clock in the evening.

Q. What passed between you and her.

A. I said to Eveline, some of the people thought the will was to be read to-day, when John invited them to leave the room; she said we hadn't intended to have it read to-day.

Q. Had you any other conversation with Eveline on the
10 subject of your grandfather's will, after this occasion, if so
state when it was?

A. On the 7th of August, '82.

Q. Where?

A. On the back porch of their part of the house.

Q. State what passed between you and her on that occa-
sion?

A. I asked her if she knew what grandfather had did
with his will; she said yes, I do, I know all about it; I ask-
ed her if she knew who was sent after the will; she said yes
20 but that I won't tell, but I saw it brought into the house.

Q. Anybody present with you?

A. No one, excepting Eveline and myself.

Q. On this occasion then, on the day of the funeral of
John C. Holcombe, did John C. Holcombe take charge of
the things, papers, of the old gentleman?

A. Yes, sir; he did.

Q. Did he make any statement or take any inventory of
the papers or give any notice of the papers he took with
him?

30 A. I never heard or saw any inventory of them; they were
looking over the papers and reading over different papers,
that is what they were; he put them altogether in a package
and took them with him.

Q. Where did Mr. Holcombe live, John C. Holcombe?

A. In Pennsylvania.

Q. Did anybody live with your grandfather except Eve-
line in their part of the house?

A. Harry Holcombe, son of Martin V. B. Holcombe.

Q. How long had he lived there?

A. He had lived in the house all his life except about

one year; he was born there and lived with his father 'till his mother's death and then he was at his grandmother's a short time, then his aunt Eveline took him to live with her.

Q. How old was this lad?

A. He is about 11 years old.

Q. He is a great grandson then of John C. Holcombe, the elder? 10

A. Yes, sir.

Q. Toward the latter part of John C. Holcombe's life did the grandsons come there frequently to Eveline's house?

A. Yes, sir; quite often.

Q. Do you know of your personal knowledge of them or some of them having a meeting at Martin Holcombe's?

A. Only what John and Levi told me, that they had been there.

Q. When did they tell you that?

A. It was the Sunday following grandfather's burial. 20

Q. Did they tell you when they had been to Martin's?

A. They told me on that Sunday that they had been up there, as Martin had been hurt.

Q. Did they tell you who else had been there?

A. No, sir.

Q. Did you hear anything passing between John and Levi and Reuben Ely and anybody else about administering and when the ten days would be up?

A. Yes, sir.

Q. When was it? 30

A. On the afternoon of the same day, after grandfather's burial.

Q. Where was it?

A. It was in what had been grandfather's bed-room when he was living.

Q. Who was in there?

A. Reuben Ely, Levi and John C. Holcombe, Jr.; I did not see Eveline in the room.

Q. Where was you?

A. At the garden gate in front of the window of that

room.

Q. How near to the window?

A. About as far as across this room; I can't say how many feet.

Q. Now state just what passed among those gentlemen in that room that you heard?

A. I heard Mr. Ely say to them after the ten days are up
10 go on and administer; that is all I heard.

Q. When was anything said to you, ma'am, about administering and who said it?

A. On Monday, the last Monday in July, by Levi Holcombe.

Q. What did he say to you?

A. How about having an appraisement and getting administrators appointed; then he went on to tell who he thought would be good men for the appraisers.

Q. Who?

20 A. Reuben Ely, or Richard Wilson, or Mr. German, or any of them would be good men.

Q. What did you say to him?

A. I supposed there ought to be something done; I told him I would tell him before he went away what I thought about it.

Q. Did you ask him then anything about the will, and if so what?

A. No, sir; I did not say anything about it.

Q. Did you speak to him at any time about the will or
30 say anything to him about it before administration was taken out?

A. Yes, sir; the will was spoken of at Flemington before administration was taken out at the surrogate's office.

Q. By Levi?

A. No, sir.

Q. What was said about it?

A. Mr. Holcombe, as my counsel, asked the surrogate in the presence of Levi, John, Martin and myself, if we allowed this to go on and letters of administration be taken if the will was found at any time, if that would hinder us from

doing anything with it.

Q. What was the reply of the surrogate?

A. He said in case the will was found the administrators would give up peaceably the papers in their hands.

Q. Now do you recollect of your asking Levi where the will was when he spoke to you about the appraisement; and he replied he knew nothing about the will?

A. I don't recollect of asking him about the will. 10

Q. What was your father's age when he died?

A. He was in his 61st year when he died.

Q. How was your grandfather's physical strength shortly before his death?

A. He appeared to be getting quite feeble.

Q. When was he stricken with the sickness that produced his death.

A. Somewhere about the 12th of July, 1882.

Q. What was that disease?

A. Paralysis. 20

Q. Did that affect his mind as well as his body?

A. Yes, sir; I think it did.

Q. Had he any consciousness after that time up to the day of his death?

A. I don't think he knew anyone, at least he didn't know his own family at that time.

Q. From the 12th to the 23d day of July was he capable of doing anything or understanding anything intelligently?

A. I did not consider that he was.

Q. Prior to the 12th of July, for two months say, how 30 was his bodily strength, weak or otherwise?

A. I considered him very weak.

Q. Could he go about of any consequence?

A. He could go as far as the barn some days, or down to the canal bridge; Eveline and I would often have to go and help him back to the house.

Q. Why would you help him back, on account of his physical infirmity or the weakness of his mind or both?

A. He seemed to be tired out and could not walk.

Q. Had you discovered at any time before the 12th of

July any weakness in his mind and if so how long before the twelfth of July?

A. On or about the last of February or the first of March he asked me rather a strange question for an intelligent person; he asked me if I had ever been acquainted with Edwin; (he is my father) if I remembered of their moving along the York road for Edwin and I to go to school together.

Q. Did you answer that question and if so what did you say to him?

A. I answered the first part of the question that certainly I was acquainted with my own father; I don't remember just the words he made answer to that.

Q. Well, state anything else you discovered after that, that indicated weakness of mind in him?

A. He was speaking of buying potatoes; he got two bushels of Mr. Wilson; he said he charged him such a blamed
20 price for them, twenty dollars; his sitting up and talking at night.

Q. Well tell about that?

A. Well, he said he must talk, he ought not tell such things; he must talk; the great universe, the high and mighty things, the great hereafter, and all such words in connection with other words which I am unable to make any sense of.

Q. How long was this before the 12th of July?

A. It was in the fall after my father's death, somewhere
30 about the last of September or fore part of October.

And being cross-examined by Mr. Kuhl says—

Q. The relations between your grandfather and your mother were very affectionate, he had always esteemed her very highly as a daughter-in-law, had he not?

A. I never heard him express a great deal of affection for anyone or anything, but he always treated her in a respectful manner, as though he esteemed her as highly as he did anyone else.

Q You are quite sure this is all true?

A. To my best belief it is.

Q. Did you ever know of any ill feeling between them, and do you say you never saw or heard anything of the kind?

A. I have heard him often speak quick and angrily to her as well as others; it was soon over; he would say needn't mind what he said ; it amounts to nothing anyhow. 10

Q. How did you come to see and hear your grandfather when he would sit up in the night and talk as you have described.

A. Eveline would come to the door and call to us, and say just come and hear grandpap talk.

Q. Well what would you do?

A. We would get up and go in to hear him; go down-stairs; Eleanor Holcombe, my mother; my husband never went as she did not call to him expressly.

Q. Well state fully just what you would do, what would 20 be said and all about it, and how many times you say under your oath you and your mother got up in this manner and went down stairs.

A. When we got to the bottom of the steps we passed through the door into their parlor; Eveline would meet us and precede us to his room; she would tell us to be right quiet now and hear grandpap talk; we would stay at the door just inside his room until he was through; she came to call us on two different occasions when mother and I went in. 30

Q. Is that all you did?

A. All that I remember particularly.

Q. What was your object in going down-stairs; it would be after you had retired, would it not?

A. Yes, sir; to hear what he was saying as Eveline had called to us to come.

Q. Didn't you think as old and feeble as your grandfather was and acting as you say he did, that he ought to have some one to stay with him?

A. Certainly, I did not think he ought to stay alone en-

entirely.

Q. Eveline slept up-stairs too, as well as you and your mother when this occurred?

A. She slept up stairs part of the time.

Q. When this occurred she was sleeping up stairs, was she not?

A. She was down stairs when she called us.

10 Q. Did you and your mother ever say anything about having some one to stay with your grandfather?

A. I often said to Eveline it was not right for him to stay entirely alone.

Q. Did either of you ever offer to stay with him?

A. Yes, sir.

Q. Did you ever stay?

A. Yes, sir; I did.

Q. What would take place when you would stay with him?

20 A. Nothing particular; only he would get out of the bed or off his settee and lie down on the floor; Eveline and I would pull him around awhile and try to get him up; he would swear a little at us because we could not pick him right up and lay him on the bed; I don't know of anything particularly happening other ways.

Q. When as near as you can tell did this last occurrence take place, and was it repeated more than once?

A. Some few weeks before his death the last time, and quite frequently before that.

30 Q. Then you mean to say he was out of his head?

A. No, sir.

The witness here asks—may I ask a question? do you mean the last time I stayed with him? that was what I referred to.

Counsel says yes, let the answer refer to the time the witness speaks of.

The counsel of complainant objects to the remark of counsel of defendant.

Q. State after the conversation which you have detailed as taking place on the fourth of May, 1881, at the side of your father's sick bed, what you did or what you know of anybody else doing in relation to the conversation?

A. I was writing down what was being said.

Q. As it was being said?

A. Yes, sir.

Q. In the presence of your father and grandfather. 10

A. I was sitting in the next room and the door was open between us.

Q. Who knew you were writing down the conversation?

A. I don't know as any one knew it while I was writing it.

Q. How did you come to be in the next room with the door open, writing down just what was said?

A. The door was scarcely ever closed between the two rooms, as the rooms were only a few feet in width; I was but a very short distance from the bed where grandfather 20 was sitting.

Question repeated.

A. I was sitting by the window.

Q. Did you have paper and pencil, or pen?

A. I had my books—these that are in evidence, the ones that mother and I had.

Q. Did you write in them?

A. No, sir; on paper. 30

Q. What did you do with the paper?

A. I think it is here.

Q. Which one?

A. No. 1.

Q. You mean exhibit D?

A. I mean the paper put in evidence; I don't know whether it is exhibit D.

The further examination adjourned to Friday, June 15th inst., at 9 o'clock A. M

Friday, June 15, 1883—Present as before; the cross-examination of *Rebecca F. Mathews* resumed.

Q Where was your mother, Eleanor Holcombe, during the conversation May 4, 1881?

A. She was in the room beside the bed of my father.

Q. What time in the day was it?

10 A. In the forenoon.

Q. Did you see your grandfather go into the bed room of your father that morning?

A. I was up stairs when he came up.

Q. What were you doing up stairs that morning?

A. I was sitting by the window.

Q. What were you doing there?

A. Making a memorandum of some groceries that I wanted from the store.

Q. Why did you come up stairs in the bed room adjoining your father's to do this?

A. I had to pass through his bed room to get into this room, and to get a piece of paper and my pencil which lay in the window to write with.

Q. Did you keep your paper, ink and pencil up-stairs?

A. The book which I took the piece of paper out of was in the window up-stairs; was laying in the window up-stairs.

Q. The paper on which you wrote the memorandum for groceries?

30 A. The paper I wrote all on.

Q. Was it a leaf or leaves which you tore out of the book upon which you wrote the conversation and memorandum for groceries?

A. The leaf that was torn out of the book for the groceries, two pieces torn out for the conversation.

Q. Which did you write first?

A. I wrote my groceries.

Q. Who did you write it for?

A. I wrote it down so that I would know when I went or sent to the store, so that I would remember and know what

I wanted; I am in the habit of doing this.

Q. Why did you remain sitting by the window after you had finished your grocery memorandum?

A. I had nothing particularly to call me away, and I didn't suppose it made any difference to anyone how long I remained there.

Q. How long did you remain there by the window?

A. I didn't notice the time that I went, nor what time it 10 was when I left; I can't state.

Q. State the time as near as you can?

A. I am unable to state how long.

Q. During the whole conversation you have detailed?

A. During the conversation of the 4th of May; the whole of it.

Q. Did anyone know that you were sitting there?

A. My mother and grandfather saw me there.

Q. Did you go or send to the store that day?

A. Not that day.

20

Q. Did you take any part in this conversation?

A. Only in reply to my grandfather's question to me.

Q. Why did you not go into the room where the parties were when you were spoken to?

A. I was such a short distance from them that I did not think it was necessary; my grandfather was sitting almost right in the door between the two rooms; there were two doors between the two rooms, one door was near the head of the bed and there was where my grandfather was sitting.

Q. Did you go up-stairs for any purpose except to write 30 the grocery memorandum?

A. I stopped by my father's bed and talked to him a few minutes.

Q. Is that all?

A. Yes, sir.

Q. Had you said anything to anybody or anybody anything to you about taking down the conversation of May 4th, 1881, before you wrote it down.

A. No, sir.

Q. What did you do with exhibit D after you had writ-

ten it down?

A. The slip of paper after I had written it I handed to my mother.

Q. When and where?

A. I gave it to her before we went down-stairs, in the room she was in, by my father's bed in which he was lying sick; I passed into the sickroom after I had written it.

10 Q. Who was by when you gave it to her?

A. John C. Holcombe, my grandfather, was in the room.

Q. Did he see you give it to her?

A. I do not know whether he did or not; he said nothing about it.

Q. Did you or your mother say anything about it?

A. No, sir.

Q. What did you say to her when you gave it to her?

A. I merely handed it to her, I said nothing to her.

Q. Nor she to you?

20 A. Not about that.

Q. Have you ever seen the paper you handed your mother since then?

A. Yes, sir.

Q. When and where?

A. When she asked me to copy it for her on that paper.

Q. You mean exhibit D?

A. Yes, sir.

Q. Didn't you testify yesterday that you wrote down this conversation on the paper No. 1 in this cause which is exhibit D, but you did not know it was exhibit D?

A. Only by the number that was on.

Witness being shown exhibit D.

Q. Is that the paper you referred to as number one?

A. Yes, sir.

Q. Did you and your mother go down stairs before your grandfather, that day?

A. I went down.

Q. How long after you handed your mother the paper?

A. I went on down stairs as soon as I handed it to her.

Q. Didn't you go up stairs and sit down by the window

for the very purpose of taking down what would be said?

A. No, sir. I did not know that there was to be anything said.

Q. You have often heard your father and grandfather talk before that?

A. I have often heard them talking together.

Q. Have you ever taken down their conversations before?

A. Nothing except what relates to their business affairs. 10

Q. Where did you take these others down, in what?

A. In those books. Exhibit A is the most of it.

Q. Why did you not take this conversation down with the others?

A. It did not happen at the time that I was taking the others.

The solicitor of complainants requests an adjournment to June 21st 9 A. M.

The solicitor of defendants objects.

20

The adjournment is hereby consented to, June 21st, 1883, at 9 o'clock A. M., at the same place.

June 21st, 1883, 9 o'clock A. M., the parties met. Present as before.

The cross-examination of *Rebecca F. Mathews*, the witness, being resumed, saith:

Q. On May 4th, 1881 did you have a writing desk or any place where you usually did your writing or kept your writing material, such as pens, paper, ink or pencils? 30

A. I had no writing desk. The pencil that I was using was lying in the window and the paper also.

Q. Where did you usually keep them?

A. Those I kept for my daily use were in a cupboard down stairs, those that I used that day were up stairs, lying in the window, we had two or three pencils, no particular place for keeping them all.

Q. You say before you sat down by the window to write your grocery memorandum, you passed through your father's sick room and talked with him. Who was present?

A. My mother.

Q. Your father too?

A. Certainly.

Q. Anybody else?

A. No one but myself.

Q. Please detail that conversation the same as you have the one that occurred after you had gone into the adjoining 10 room, and you say your grandfather had come up stairs?

Objected to because no cross-examination and irrelevant.

A. I don't know as I can state the exact words that I said to my father or that he said to me. I asked him how he was feeling, and if I could do anything for him. That was a usual thing for me to do several times through the day, as for anything further I don't just remember what was said.

20 Q. You then passed into the other room and left your mother by your father did you?

A. She was in that room.

Q. How long after you went into the adjoining room did your grandfather come into the room where your father was lying?

A. I cannot state the exact time it might have been fifteen or twenty minutes.

Q. Did you remain by the window until your grandfather came up and conversation was commenced?

30 A. Yes, sir, I think I did.

Q. Did your grandfather pass through the room you were sitting in, going into the room in which your father was lying?

A. As he came up the stair way he was not obliged to pass through any room to get to it. He did not pass through the room; the stair way came directly up into my father's room.

Q. Where were you that you were able to hear the conversation between your grandfather and Reuben Ely on the thirtieth of August 1881?

A. I was in a room adjoining my grandfather's parlor in our own part of the house.

Q. What room was the room you were in?

A. Our kitchen.

Q. Were you about your work?

A. I was sewing or preparing sewing for the machine.

Q. Any body with you?

A. Yes, sir, my mother.

10

Q. Did she hear it?

A. Yes, sir, I suppose she did.

Q. What was she doing?

A. She was helping me prepare my sewing for the machine.

Q. Was the door open?

A. It was not standing wide open.

Q. Upon a crack?

A. I suppose it was open about two inches; it might have been a little more.

Q. Was it usual to keep the door between your kitchen 20 and your grandfather's parlor open or shut?

A. It was often left a little way open.

Q. Was there any object in leaving it open?

A. As my grandfather usually left it open himself, I could not say what object he had in doing so.

Q. What was the first thing that you heard between Reuben Ely and your grandfather on this occasion?

A. I heard him and Mr. Ely speaking of my father; my grandfather was speaking about his death and wishing he could have lived to have had what he had left him, 30 meaning my father.

Q. Where did your first see or hear Reuben Ely that morning?

A. It was in the afternoon that Mr. Ely was there; I first heard him in the room with my grandfather.

Q. Had he come from your grandfather's part of the house into your grandfather's parlor?

A. I suppose he must.

Q. So far as you know your grandfather came into the parlor with him did he not?

A. My grandfather was in the parlor when he came.

Q. How long had your grandfather been there before Mr. Ely came in?

A. I don't know how long he had been in the room, he had just been to the door speaking to us when Mr. Ely came in the room.

Q. What did you do with reference to this conversation,
10 anything?

A. No, sir. I didn't do anything.

Q. What did your mother do with reference to it.

A. I didn't see her do anything.

Q. Do you know whether she did anything or not?

A. I suppose she must have set it down.

Q. Why do you suppose that?

A. Because she gave it in, in her testimony.

Q. Do you say that you knew nothing about this conversation being written down until your mother testified in this
20 cause?

A. I think she told me she had written it down, as I saw it on paper I suppose she must have done so.

Q. When did your mother tell you she had written it down?

A. I think it was at the time she wished me to copy some writing for her.

Q. Do you refer to exhibits D. E. and F.

A. Yes, sir.

Q. You are sure you knew nothing of its having been
30 written until you were asked to copy it?

A. I can't say positively as I don't remember.

Q. Was anything said between you and your mother about this last conversation at the time it occurred?

A. I think I made the remark that Mr. Ely was very considerate for her welfare, as he wished him to make a will in her favor.

Q. You say you think, do you swear so?

A. Yes, sir, I do.

Q. Why have you not detailed this before?

A. I don't know the question was directly asked me be-

fore.

Q. Have you any reason to give why you did not write down this last conversation?

A. No, sir, I don't know that I have any particular reason.

Q. Have you ever heard any talk about your grandfather's building Eveline a house before you heard him speak of it in the conversation of August the 27th, 1881? 10

A. No, sir.

Q. Had you ever heard that your mother wanted the rooms you speak of before this?

A. No, sir; I had not.

Q. Did you have any conversation with your grandfather or hear any, between the 2nd of September, 1881, and May the 24th, 1882?

A. On the 3d of September, 1881, I heard one.

Q. My question is, between the 3d of September, 1881, and May the 24th, 1882? 20

A. I don't remember.

Q. You don't mean to be understood as saying you had none?

A. I had, and heard conversation but not on this subject that I remember.

Q. On what subjects?

A. On the subject of his will.

Q. Do you refer to the conversations that have been written down by you and your mother as to the subject of his will? 30

Objected to as indefinite.

A. Yes, sir

Q. Did you take any of them down between the dates I have mentioned?

A. I don't remember of having done so.

Q. Have you any knowledge that your mother took any of them down?

A. I am not positive.

Q. Do you know any reason for taking down the conversations about your grandfather's will?

A. No, sir; I know of no particular reason.

Q. Have you any knowledge of any trouble about your grandfather's will except what he told you or you heard him say?

A. No, sir; not until his death.

10 Q. Who was present at the conversation in the barnyard between you and Eveline on the evening of the day of the funeral, July 25, 1882?

A. My mother, Eveline, and myself.

Q. What were you doing there?

A. Milking.

Q. All of you milking when it took place?

A. Mother and I were milking, Eveline stood with her pail in one hand and one hand on the cow's back.

Q. Whose cow's lack?

20 A. John C. Holcombe's, the one she was going to milk.

Q. Have you told all that passed between any of you in that conversation?

A. That was all of any account

Q. Do you remember of anything else?

A. No, sir; I don't remember of anything else, only we finished milking and went into the house.

Q. What was done in reference to writing down this conversation and who by?

A. I think it was written down by mother.

30 Q. What do you know about it, state fully; what was done, when and where?

A. She told me she had done it; when and where she did not say.

Q. Had done what?

A. Had written the conversation down.

Q. When did she tell you this, and how did it come to be talked about?

A. She told me the next day; we was talking that she, Eveline, had spoke as though they had full control of the will, as she said we had not intended having it read to-day.

Q. Was anyone present during the conversation between you and Eveline on August the 7th, 1882, or have you ever heard that anyone was present or heard it?

A. No, sir.

Q. What did you do with reference to this conversation?

A. I went to our part of the house and told mother about it, that is all I did.

Q. What did your mother do? 10

A. I suppose she must have written it down.

Q. Do you know anything about its being written down?

A. I know it was written down, but the time and place I can't say.

Q. How are you able to speak exact dates in your testimony as you have done, in reference to the conversations and occurrences you have detailed?

A. By their happening near the time of other things that I remember.

Q. Nothing else helps you remember them? 20

A. Their being set down helps me some, certainly.

Q. Have you ever read exhibits D, E and F?

A. Yes, sir.

Q. When last?

A. I can't state the date, its been some little time since.

Q. How long, as near as you can tell?

A. About near two weeks.

Q. Where did you read them over?

A. At home.

Q. How did you come to do it? 30

A. To see what was on them, I suppose; I don't know that I had any particular reason for doing it.

Q. Had you ever read them before?

A. Yes, sir.

Q. When?

A. The one at the time I was copying it for her; I don't remember when as to the others.

Q. You read them over before you were sworn in this cause, did you not?

A. Yes, sir.

A. As it was our usual way of going into the garden; I knew of no reason to prevent our going on that day.

Q. Was anyone with you?

A. Yes, sir; my mother.

Q. Were you both on your way into the garden?

A. Yes, sir.

Q. Your object was in the garden beyond the gate was it not?

10

A. Certainly.

Q. How far beyond the gate?

A. I can't state the exact distance; I suppose it might have been ten or twelve yards; I don't know how long the garden is.

Q. How did you come to stop by the gate?

A. The gate being closed we had to stop to open it.

Q. Is that all you stopped?

A. All we stopped until we got in the garden.

Q. What do you know about this conversation being 20 written down; state all you know about it?

A. I know but very little about its being written down.

Q. Go on and state the little you know?

A. Well, in fact I can't say that I know anything about its being set down.

Q. Take exhibit D and state what part of it is in your handwriting?

A. All of that.

Q. Do the same with exhibit E?

A. The first four lines on page beginning May 24, 1882, 30 looks a little like mine but I won't be sure; the balance of the page is not my handwriting; it looks very much like my mother's; the first half of the next page is in my handwriting ending with the words "take charge of it;" the balance of the page is in my mother's handwriting.

Q. Do the same with exhibit F?

A. All of exhibit F is in my handwriting.

Q. Was your writing on exhibit E done at one time?

A. I can't positively say; I think it was.

Q. Was exhibit F written all at one time?

A. That was written at different times if I remember rightly.

Q. Where was it written?

A. It was written in our part of the house.

Q. When?

A. Along during the winter some time, I cannot say what time.

10 Q. How many times did you write upon exhibit F before you completed it?

A. I am unable to state the exact number of times.

Q. As near as you can?

A. It may have been at 3 or 4 different times, I kept no account of them.

And being examined re-direct by Mr. Shipman, saith—

Q. Do you know Richard H. Wilson?

20 A. Yes, sir; I am slightly acquainted with him.

Q. How long have you known him?

A. I have known of him for several years.

Q. How long have you known him so that you know his person when you saw him?

A. Some 7 or 8 years at the least.

Q. Do you know young Harry Holcombe?

A. Yes, sir.

Q. Whose son is he?

A. Martin's.

30 Q. Did you see him, Richard H. Wilson, at the house of your grandfather shortly before his death?

A. Yes, sir.

Q. How shortly before your grandfather's death was it?

A. On Friday the 21st of July, before my grandfather's death on the 23d.

Q. Where did you first see him on that occasion?

A. He was in the kitchen of grandfather's part of the house.

Q. Had you seen Eveline on that day prior to your seeing Mr. Wilson?

A. Yes, sir.

Q. Where?

A. In their part of the house and also at our part.

Q. At about what hour of the day?

A. I should suppose it was between 7 and 8 o'clock in the morning.

Q. Had you had any conversation with Eveline on that morning before you saw Mr. Wilson there? 10

A. Yes, sir.

Q. State the conversation if you remember it?

A. Eveline asked me if I would stay with grandfather while she did some of her work; she said she had sent Harry to Brookville of an errand and if I would stay till he came back then he could stay with him for a while.

Q. Is that all your conversation at that time.

A. That is all I remember at that time.

Q. Did you go and stay with your grandfather as she requested? 20

A. Yes, sir; I went and stayed with my grandfather nearly all the time she requested me to do so.

Q. Did Mr. Wilson reside at this place called Brookville at that time?

A. Yes, sir.

Q. Did you see Harry return from there?

A. No, sir; I did not see him until he came in the room.

Adjourned until 1 o'clock P. M.

Q. What time of day was it that you saw him? 30

A. I think it was somewhere near ten o'clock when Harry came into the room.

Q. What room did he come in when you first saw him?

A. Into my grandfather's bedroom.

Q. How soon after that did you see Richard H. Wilson?

A. I saw Mr. Wilson before Harry came in.

Q. How long before?

A. I think it was about 9 o'clock, somewhere near that when I saw him.

Q. Where did you see Mr. Wilson first that day?

A. In the kitchen in my grandfather's part of the house.

Q. Did you hear any conversation on that day between Mr. Wilson and Eveline Holcombe?

A. I heard Eveline a-speaking to Mr. Wilson.

Q. Did you hear what she said, if so, tell what she said to Mr. Richard H. Wilson?

10 A. She said something about a paper or papers, I did not understand fully which; she told him that John, meaning her brother John, had been coming up to see him all the week; that he had not had time, so she sent Harry up; that was all I heard distinctly.

Q. Where was you and where was Mr. Wilson and Miss Eveline when you heard the conversation between them?

A. I was in my grandfather's bed room, and they, Mr. Wilson and Eveline were in the kitchen.

Q. How long did Mr. Wilson stay there that day?

20 A. I don't know positively how long he was there.

Q. Do you know at what hour of the day he went away?

A. From half-past nine to ten, between that time he went away; at least that is the last I saw of him.

Q. I want you to explain one thing that I don't quite understand, that is the question you asked in the course of your cross examination, in which you said—"may I ask a question? do you mean the last time I stayed with him? that was what I referred to;" and counsel says yes, let the answer refer to the time the witness speaks of. Explain what

30 you mean by that?

A. I did not fully understand the time he meant; I meant the time before his last sickness he acted in that way, that I had stayed with him.

Q. When these occasions to which you refer, when the old gentleman lay down on the floor, when you and Eveline would try and get him up, were these occasions on this occasion prior to his last sickness which commenced on the 12th of July?

A. Yes, sir; it was.

Q. Did this occur when you and Eveline would try and

get him up, on more than one occasion prior to his last sickness?

A. Yes, sir, on several occasions.

Q. Can you give any other instances of singularity of conduct in the old man prior to the twelfth of July, than those you have already given; if you can, please state any that occurs to you?

A. Yes, sir; I remember one; of his going to the barn to 10 see if the house was on fire.

Q. When was that, and what are the circumstances about it?

A. It was in June, 1882; I heard a noise which awakened me up in the night; the second time I heard the noise distinctly, I knew it was that part of the house, grandfather's. I went down stairs and opened their door; the door that opened between our part and theirs. Eveline was standing in their room. She said she had called to me, to go out with her after grandpap, for he had got out into the lane and 20 she was so frightened for fear he had got one of those bad spells in his head again, and would get into the canal. We both went out in the yard and through the gate to go to him as he was about half way between the wagon house and the house. I says to him grandpap where are you going? He says is everything all right? He said, I thought the house was on fire, and I was going to the barn to see. We helped him back to the door; Eveline went in home with him.

Q. What time was this in the day or night?

A. Somewhere near midnight.

Q. Can you tell about what time in the month of June it was? 30

A. It was about the time of full moon; it was moonlight nights

Q. Any other occasion of anything singular in his conduct that you can relate, prior to the 12th day of July?

A. His sleeping with his clothes on; he usually slept with all his clothes on, with the exception of his shoes and hat; all the clothes that he usually would wear during the day, not all he had.

And being cross-examined, says—

Q. As far as you know, Harry went on foot to Brookville when Eveline sent him on the twenty-first day of July 1882, and came back a-foot?

A. I do not know how he went; so far as I know he did; I did not see him go or come back.

10 Q. How far is it from your place to Brookville?

A. Somewhere near a mile, more or less; I don't know the exact distance.

Q. Did you tell your mother about the talk between Eveline and Mr. Wilson on the 21st of July, when you were in your grandfather's bed room?

A. No, sir; not at that time. she was not at home.

Q. When she came home, how long after was it and what did you tell her?

A. She came home on the twenty-fourth of July 1882. I
20 do not remember when I told her anything about it

Q. Has it ever been put down that you know of, this conversation?

A. I don't remember of it being, if it has been, I had forgotten all about it.

Q. You are sure you told your mother about this conversation?

A. I must have been the one that told her as she knows of it. I do not know of any one else that heard it.

Q. Did you tell your counsel about this conversation this
30 morning, before the examination commenced?

A. I think I was talking to him about it this morning, as I had told him before.

Q. Where were you when you told him this morning?

A. In lawyer Holcomb's office.

Q. When before this morning did you tell him about it?

A. It has been quite some time since I told him.

Q. Eveline knew you were in the bed room, didn't, she?

A. She certainly must have known it, there was nothing to hinder her.

Q. Did you stay with your grandfather that day all the

time Harry was gone without leaving him ?

A. No, sir, not all the time.

Q. State just what time you went, how long you stayed, when you left him, for how long, and how often during that morning?

A. Some where near eight o'clock when I went, when I went into the room to stay with him some where near eight o'clock ; I could not say how often I left him ; I left long enough to go to the door that opened into our kitchen to speak to whoever was there.

Q. Do you say that you did not go out of your grandfather's part into your own that morning?

A. I was not into our own part until near nine o'clock I think, and then I think I did step out into our part.

Q. Eveline was in the adjoining room from your grandfather's bed room all that morning was she not, with the door open?

A. I don't think she stayed in the kitchen all the time, 20 as she was busy about her house work.

Q. Do you know of any one except you and Eveline who saw your grandfather out in the moonlight?

A. Yes, sir, my mother-in-law Mary A. Mathews.

Q. Did this happen before or after you had gone to bed?

A. After we had gone to bed.

Q. Did you call your mother-in law?

A. The noise awakened us both.

Q. Did she come down?

A. No, sir, not that I saw.

Q. Do you know of anybody else that saw it?

A. No, sir, I don't know that there was.

Q. You and your husband were sleeping together that night?

A. Yes, sir.

Q. In which room?

A. In the room that my father had for his bed room. In the back room up stairs.

Q. Where did Mrs. Mathews sleep?

A. In the front room up stairs.

Q. I suppose she looked out of the window?

A. I suppose she must as she could not see through the wall.

MRS. REBECCA F. MATHEWS.

Sworn and subscribed before me, this 21st day of June
A. D., 1883.

CHARLES A. SKILLMAN,

10

M. C. C.

Mary A. Mathews, a witness produced on the part of the complainants, being duly sworn saith :

I am the mother of James B. Mathews and the mother-in-law of Rebecca Mathews ; my husband is deceased ; he died ten years ago last August ; my age is sixty-seven ; I was acquainted with John C. Holcombe since my son lived in the family about twenty years ago ; I have been with my son off and on for the past year, a year from last January.

Q. State from the time you went there in January 1882 up to the twelfth day of July 1882, you saw any change in the body and mind of this old man John C. Holcombe?

A. I think he failed gradually along.

Q. State if between those periods you saw any particular thing in his conduct which called your attention particularly to him, if so state them?

A. When he come into our part where we was, he was a little deaf, and it was very hard to make him understand ; we could not make him understand, he would have his own way.

Q. Is that all you can say to that question?

A. He would not know us when we went that way ; when we went around that way ; he would sit on the porch ; he would ask who we were.

Q. Whom do you mean by us, when you say he did not know us?

A. When Rebecca or I would go around that way.

Q. How about your son ; do you know of any occasion between the dates I have already given when he did not

know your son?

A. One time when he was watering the horses he would ask who he was.

Q. How far would he be off from him?

A. Right by the yard fence that went down from the barn, down to the canal.

Q. Did he attend to any business in the months of May and June prior to his death? 10

A. Not that I know of.

Q. Was he, in your judgment, fit to attend to any business during those two month or during the months of July prior to his death?

A. I should not think he was.

Q. Did you hear him talk on any occasion about his will prior to the 12th day of July, 1882?

A. Yes, sir.

Q. Where?

A. He came into Burrough's part, I mean my son's. *20

Q. When was it?

A. It was in June; in May I think, I think the twenty-fourth.

Q. What did he first say when he first came in?

A. He said he had so much trouble.

Q. Well, did he make any inquiries about Eveline, where she was?

A. He said she had gone to Lambertville.

Q. Well now go on?

A. He said she was mad again, she had gone to Lambert-30 ville.

Q. Go on and relate all he said in the conversation while you were present as nearly as you can recollect it?

A. He said Eveline said he must mind her and do as she said.

Q. Go on?

A. He said he knowed damned well that there was something going on that they did not want him to know anything about.

Q. Go on?

A. He said Eveline and the boys wanted him to destroy his will; he said John C. Jr. wanted him to divide his farm so as to leave a part of it in the John C. Holcombe name; Mrs. Ellen Holcombe asked him if his will was one that Nelson Young had made for him; he said yes; he said Nelson Young and Samuel Hoppock were the witnesses, and Richard Wilson has it; and Mrs. Holcombe asked him why 10 they were dissatisfied, and he said they wanted him to destroy his will and he'd be damned if he would do it; that is all the conversation I heard at that time on that.

And being cross-examined, says—

Q. How do you fix the 24th day of May as the date of this last conversation?

A. We were talking about it then, about its being the 24th.

20 Q. While the old man was in there?

A. No, after he went out.

Q. Who talked about it?

A. Mrs. Eleanor Holcombe and Rebecca.

Q. Did they do anything that you saw with reference to it?

A. No, not that I saw; we were washing up the dinner dishes.

Q. Didn't some one of you write it down?

A. Not to my knowledge.

30 Q. When did you first learn, if you know, that it had been written down; I mean the talk on the 24th.

A. I told you I did not know to my knowledge, I did not know that it was written down.

Q. How long after the 24th of May did you go away from your son's.

A. I think about the first of June, and about two weeks after that I went back to Burrough's.

Q. Did you ever hear this talk spoken of after May 24, 1882?

A. No, sir.

Q. State just what was said after the old man went out on May 24th between you three, Eleanor, Rebecca and yourself, about what the old man had said and about its being the 24th of May?

A. I don't recollect what was said about the old man, what he said; I often perused the almanac to see what day it was.

Q. Did you consult the almanac this day? 10

A. Yes, sir.

Q. As soon as the old man went out?

A. I don't recollect; I did some time during that day; don't recollect whether it was just after the old man went out or not.

Q. What was your object in consulting the almanac?

A. I consulted it often; the moon's changes.

Q. Did your looking at the almanac have any connection with the talk of the old man?

A. No, sir. 20

Q. How then are you able to say that it took place on the 24th of May?

A. I recollect of looking at the almanac.

Q. Did you ever hear anybody say it was on the 24th of May?

A. I don't know that I did.

Q. Haven't you heard Eleanor or Rebecca or Burrough's say so?

A. No, sir.

Q. Heard none of them say a word about it? 30

A. Don't know that I have ever heard them say anything about its being the 24th of May.

Q. How long was the old man in your part the 24th of May?

A. I could not say, he did not stay a great while at any time.

Q. How long on May 24th as near as you can tell?

A. About a half an hour, I suppose

Q. Can you give us anything that anybody said to the old man or that he said to anybody during that talk except

what you have already stated?

A. No, sir.

MARY A. MATHEWS.

Sworn and subscribed this 21st day of June, A. D. 1883,
before me.

CHARLES A. SKILLMAN,
M. C. C.

10

James B. Mathews, a witness produced on the part of the complainant, being duly sworn on his oath saith—

I am the husband of Rebecca Mathews; I am 42 years old or will be in a few days; my health is not very good for some time back; I am worked down, have a bad cold, bad cough; have been married 21 years the coming 13th day of September; I have known old John C. Holcombe, deceased, something like 23 years; I have lived on the farm where I
20 now live, it will be 21 years next spring since I first went there; have not lived there all the while since; I have lived on the farm only 12 years; continuously the last 5 years; the first was 4 years; went away, went back and lived there 3 years; went away and then went back and have now lived there continuously it will be 5 years next spring.

Q. You got well acquainted during these periods with old Mr. Holcombe, did you?

A. Yes, sir; I think I did.

Q. State whether you have observed any decay in his
30 mental powers or physical strength. say from the 1st of January, 1882, to the 12th of July, 1882?

A. Yes, sir.

Q. State what you saw between those periods as to the decay of his mind?

A. In the first place if he went anywhere to pay anybody, to get his change right; then he did not know me if I was home, when I passed down the lane 20 feet from him, nor he didn't know his own team, and I have been in his house when his other grandchildren came in when he asked who they were.

Q. State what he said when he led you to understand when he did not know his own horses?

A. He has asked me after I went back what horse I took back or the horses.

Q. Had he seen you go by with the horses?

A. Yes; he would be sitting on the porch and sometimes he would holler at me.

Q. Were they horses you had on hand for some time, that 10 the old gentleman had been accustomed to see?

A. One of the horses had been on the farm 2 years before I went there and the other one 1 year before I went there the last time.

Q. When were there occasions when he asked about the horses as you have stated; state the time as near as you can?

A. Very frequent between I think the middle of April and the time he was taken sick, the 12th of July.

Q. What would you reply to him when he would ask you about the horses? 20

A. Mostly went on and made no reply.

Adjourned to 9 o'clock A. M., June 22d.

June 22, 1883. The parties met pursuant to adjournment. Present as before.

The examination of *James B. Mathews*, the witness, being resumed, he saith—

30

Q. Was his mind variable at different times?

A. I think it was.

Q. State what you saw in the spring, say of 1882?

A. I brought him to Lambertville about the middle of April, as he said he wanted to pay some bills. It was a very hard matter to get him to understand anything about it after I got him down here. Up at Mr. Holcombe's, the coal man, I don't remember his initials, he gave me some money to pay the bill, and it was two dollars short—went to the wagon, told him that I wanted two dollars more.

He had a two-dollar bill in his fingers and a five; I told him, here grandpap this one will pay it; it was the two-dollar bill; he says it won't for it 'taut enough; I told him it was; he said it wasn't; after a little bit he says, take this; it was the five-dollar bill; I took it in to Mr. Holcombe, the coal merchant, and I brought him his change back, three dollars, and gave it to him; he says, 10 what's this for; I told him it was his change; he says you brought me back a damned sight more than you took; I told him that was right; he says, no I'll be damned if it is, and I had to go and call Mr. Holcombe, the coal merchant, to the wagon to satisfy him, because I couldn't make him understand. I believe that is all of that.

Q. State what you understand about his mind being variable, from the spring of 1882 up to the 12th of July?

A. Sometimes it was impossible to make him understand anything; even there on the farm where every-day 20 work was going on, what you was going to do, and how you was going to do it; some days it was no trouble to made him understand.

Q. From and after the twelfth of July to the day of his death was he conscious at all, or competent to do any business?

A. I don't think he was.

Q. Sometime before his last illness had you a conversation with him about his will?

A. I had.

30 *Q.* When?

A. Sunday morning, July 2, 1882.

Q. Where was it?

A. In his house.

Q. Now tell the conversation?

A. He says to me, he says I have got so much trouble; I says to him why; he said they are at me to destroy my will; I says to him are you satisfied with it; he says I am; I then asked him who had it; he said "Dick," and that was the way he always called Richard Wilson to us.

Q. Is that all of that conversation?

A. Yes, sir.

Q. Did he say anything to you about his will shortly after the death of his son Edwin?

Objected to because leading as to the time of the conversation.

A. He did.

10

Q. How soon after Edwin's death?

A. The following Sunday after his burial on Monday.

Q. What did he say about it?

A. I was on the porch talking to him, and he says to me you are not going to leave me now; I says I hadn't laid out to; he says I don't want you to; he says when I am gone the farm and everything that is here will be her's, meaning my wife; I want you to keep up the place, fix it up, he says, as it will be yours after I am gone.

Q. How far does Richard Wilson live from Mr. Hol-
combe's—from where Mr. Holcombe lived?

A. About a mile.

Q. And lived in the same place in July, 1882?

A. I think he does.

Q. Do you know Harry Holcombe?

A. Yes, sir.

Q. Whose son is he?

A. Martin V. B. Holcombe's.

Q. Did you see Richard H. Wilson at the house of old
John C. Holcombe shortly before his death in 1882?

30

A. I did.

Q. How shortly before his death was it?

A. Two days.

Q. Was it the same occasion that your wife mentioned
in her testimony yesterday?

A. Yes, sir.

Q. Where did you see him on that occasion?

A. I saw him on the porch, in the down yard, in front
of the porch, and in the lane; he was talking to Dr.
George Larison there for about an hour I think; it might

not have been an hour ; it was a good long while.

Q. What time did he go away on that day?

A. I couldn't say.

And being cross-examined by Mr. Kuhl says—

Q. Did you occupy John C. Holcombe's farm up to the
10 time of his death and for five years previous thereto?

A. No sir. I did not occupy it for that length of time previous to his death

Q. How long before, then?

A. Three years and a half before his death.

Q. Did you farm it on shares?

A. I did.

Q. Did you have a team of horses of your own there
as well as Mr. Holcombe's team you have spoken of?

A. Yes, sir.

20 *Q.* With whom did you make your bargain for the farm?

A. Why, I don't know as I can hardly answer that at present. There were three bargains made.

Question repeated.

A. Well, oh. The first year my father-in-law; I made
the bargain with him ; he and grandpap had made the
bargain between them ; had made the bargain before ;
the second year the bargain was made by all three, grand-
pap, Edwin and I ; that stood for two years ; then I bar-
30 gained with the old gentleman, grandpap.

Q. This last bargain, when was it made; give the year and month?

A. It was made the latter part of December, but I can't give the day.

Q. In what year?

A. In 1880.

Q. When did that lease commence?

A. I never had no lease, only a verbal bargain; it commenced on the first day of April, 1881 ; for one year.

Q. What was done in the spring of 1882?

A. I didn't know as anything was done.

Q. Your lease ran out then ; how did you come to keep on, living on the farm?

A. No one notified me to move?

Q. Do you swear that there was no agreement made for the farm for the year beginning April 1, 1882, the spring that Edwin died ; is not that the year you bargained for, for it? 10

A. That is the year; I have got the years wrong; I was thinking about this being 1882.

Q. The bargain made two years prior, between you and Edwin and the old man—you and Edwin both had an interest in that bargain did you not?

A. Yes, sir.

Q. So then in 1882, in the spring of 1882, you and John C. Holcombe made an entire new bargain between you two for the farm did you not?

A. Yes, sir. 20

Q. Did John C. Holcombe use glasses?

A. Not for several years.

Q. Was his eye-sight good or bad, the last two years of his life?

Q. I may say his eye-sight failed all the time for the last two years.

Q. Was it good or bad?

A. He could see right close by ; could not see at a distance ; he always said there were two objects at a distance. 30

Q. Do you remember when the bill in this cause was being prepared by your counsel?

A. I don't know as I do.

Q. Do you remember that a bill was drawn and filed by Eleanor Holcombe, your wife, and yourself?

A. I do.

Q. Where and who met your counsel when the facts of the case were submitted to him?

A. I think my mother-in-law and wife first.

Q. Went to Belvidere?

A. Yes, sir.

Q. When did you first go up there, on this business?

A. I couldn't hardly say; I think it was the latter part of the week as they went up the first part of the week.

Q. Did you see your counsel, and did he question you as to the facts within your knowledge relating thereto?

10

Objected to as irrelevant.

A. I saw him and he questioned me some; he asked me some questions.

Q. Did you give him the facts within your knowledge at that time relating to the matter of conversations you had had with John C. Holcombe?

A. I did.

Q. Were those facts embodied in an affidavit which you
20 made before John Simerson for the purpose and which were filed with the bill?

A. I think they were.

Q. How much money and what kind did John C. Holcombe first give you to pay the coal bill?

A. I don't know that I could tell.

Q. State the amount of the bill—the coal bill?

A. I don't know now but I think it was about seventeen dollars.

Q. Have you any knowledge on that subject?

30 A. I am not positive.

Q. Was not John C. Holcombe what you would call a headstrong person; didn't he usually like to have his own way?

A. He liked to have.

Q. How do you fix the date of July 2d, 1882, you had your talk with him?

A. It was so near the time of his sickness and death.

Q. Have you any other reasons?

A. I bought a reaper; it is all right; I would have answered a little different; my reaper came on Friday.

Q. Has that any connection with your talk on the 2nd of July?

A. I don't know that it has only that helped me remember it.

Q. You usually shaved him every Sunday morning didn't you?

A. Yes, sir.

Q. State your conversation, if you had any, the Sunday 10 previous to the 2d of July, giving it the same as you have of your talk on the 2d?

Objected to, no cross-examination and irrelevant.

A. I don't recollect that we had any particular talk only such as we ordinarily had when I shaved him.

Q. Well state that?

A. It was generally about the crops, how they looked and so on, such things. 20

Q. About the farming business generally I suppose?

A. Yes, sir.

Q. What I want is that you should tell us the exact words you or he used in this talk on the Sunday previous to the 2d of July?

Objected to.

A. I couldn't.

Q. Give us the exact words you or he used the Sunday 30 following the 2d of July, or any other Sunday you were there—just the words?

Objected to.

A. There is no man living can give his exact words on Sunday following July 2d.

Q. Are you wholly unable to give them?

A. He was in a tantrum, he was mad and damned us that were there, cursed everybody that come there, us and all

over.

Q. I asked you if you were unable to give the words of your talk the Sunday following the 2d?

A. I am.

Q. How is it that you have such a distinct recollection of not only the date of July 2d but the words he used and don't remember the other Sundays?

10 A. I answer as I said before, it was so close to his taken sick.

Q. You had no apprehension of trouble then had you?

A. I don't know that I can say I had.

J. B. MATHEWS.

Sworn and subscribed before me, this 22d day of June
A. D., 1883.

CHARLES A. SKILLMAN,

M. C. C.

20 *Mrs. Margaret K Frankenfield*, a witness produced on the part of the complainants, being duly sworn on her oath, saith—

I live in Philadelphia; I have lived there some 17 years; I am a sister to Edwin Holcombe's wife, Eleanor C. Holcombe; I was acquainted with Edwin Holcombe, I lived with him 10 years; I was living there as my home from the time I was 14 years old until I was 25; I was 52 years old the 17th day of June; I knew John C. Holcombe, the old
30 gentleman, in his life time; I knew him from the time I went to live with my sister; I was there at the funeral of Edwin Holcombe; I saw John C. Holcombe, the old man, on that day in the afternoon.

Q. Did you hear any conversation between him, and any other person on that day?

A. Yes, sir, George B. Holcombe.

Q. Where was the conversation?

A. In the back room of John C. Holcombe's house.

Q. State what that conversation was?

A. The first was what have you done with your papers; John

C. Holcombe says, whose papers ; George B. Holcombe says, your papers; John C. Holcombe says, I have them locked in my drawer ; George B. Holcombe, I have a sentence before that, my sister and I went to John C. Holcombe's room as he was not well enough to go out ; George B. Holcombe asked John C. Holcombe, you are not satisfied with your will now Edwin is gone ; John C. Holcombe says, yes I am ; George B. Holcombe says I thought you would want to make some change in your will ; John C. Holcombe says I am satisfied with it as it is ; George B. Holcombe said to John C. Holcombe I thought you would want to sell your farm now ; his answer was no I don't ; a short time after that the same afternoon ; that is all of that conversation.

And being cross-examined, saith—

I was married at twenty-five ; I have my home at my brother-in-law's, but I was at that time in Doylestown ; I was married in December as I was twenty-five in June ; after I was married I had my home in Doylestown ; can't tell the year I went to live at Doylestown ; lived there several years ; it might be seven years ; I have a family ; I went from Doylestown to Philadelphia, about seventeen years ago ; it might have been sixteen years ago ; my family at present consists of my husband and four children.

Q. On the day of Edwin's funeral did the friends return to the house after the burial for dinner ?

A. Yes, sir.

30

Q. A good many of them ?

A. I could not say how many of them, a goodly number of them.

Q. Did John C. Holcombe go to the grave ?

A. No, sir.

Q. Why not ?

A. Because he was not able

Q. What was the matter with him ?

A. I suppose his feebleness.

Q. Don't you know that he was complaining that day

more than usual?

A. Yes, sir, he was.

Q. Were there a number of persons in his part of the house that day after the burial, as well as in Edwin's part?

A. Yes, sir, I saw them going out and in from one part to the other.

Q. Who besides George B. Holcombe and you did you
10 see in the room, at the time they had this talk?

A. George B. Holcombe, John C. Holcombe, Eleanor Holcombe and myself.

Q. Nobody else?

A. No, sir.

Q. Where were all the people that you saw were passing in and out?

A. Some were in back kitchen going out on the porch; some were in the middle room; there might not have been any one in the middle room; I could not say positive; there
20 were some in the kitchen; some one taking dinner.

Q. State the hour of the day the talk took place?

A. I couldn't say positive, I think it was about three or a little after.

Q. How long were you and Eleanor in the room?

A. It might have been ten minutes, it might have been longer, a half hour perhaps.

Q. Did any one come in during the time?

A. Not while he was speaking.

Q. What else did you hear any one say during the time
30 you and Eleanor were in the room?

A. In regard to that subject? No, sir, not on that subject.

Q. Any other subject?

A. I asked grandpap, of his health.

Q. Did John C. and George B. know that you and Eleanor were in the room?

A. I don't know that they did, I did not interrupt them in their conversation.

Q. Were you inside the room or by the door?

A. I was just inside the room by the door.

Q. Of John C's. bed room.

A. Yes, sir.

Q. As you and Eleanor came in the door were John C. and George B. sitting down.

A. Yes, sir.

Q. Facing you as you came in?

A. No, not decidedly, they weren't.

Q. Did you and Eleanor stop by the door?

10

A. Yes, sir, we stopped just inside of the door.

Q. How long did you stand there?

A. I couldn't say how many minutes.

Q. Until the conversation ended?

A. No, sir.

Q. Did George or John notice you and Eleanor as far as you know, until they got through with their talk about the papers, and changing the will?

A. They might have been disturbed by our presence, or they might have finished their conversation, I can't say. 20

Q. What did you and Eleanor go to the room for on this occasion?

A. I went expressly to see the old gentleman, as I had not spoken to him since I came there; I asked my sister Eleanor to go in with me.

Adjourned to one o'clock P. M.

At one o'clock P. M. met. Present as before.

30

Q. Where were you when you asked Eleanor to go in with you, in which room and what were you each doing?

A. We were in the kitchen in their part of the house; we were not doing anything; we had just been to dinner.

Q. At what hour was the funeral?

A. It was in the morning, indeed I can not tell the hour, ten or half past ten.

Q. Now state fully what you said to Eleanor, just what you each did, and all you heard in the order it occurred from the time you got done your dinner until you asked old Mr.

Holcombe after his health as you have stated?

A. I couldn't do that every word.

Q. As near as you can, be particular and state the facts in the order they occurred?

A. Well I asked her to go in with me, that is wrong; I said I am going in to see grandpap, will you go in with me. Witness says, do you wish me to repeat every thing that
10 was said? Counsel says yes every thing that was said or done. Witness resumes. When I went into John C. Holcombe's room I saw George B. Holcombe there, I heard him ask John C. Holcombe where is the papers; he made reply and said whose papers; George B. Holcombe says your papers; John C. Holcombe said they are locked in my drawer; George B. Holcombe asked John C. Holcombe if he did not wish to change his will now Edwin was gone; he said no I don't; George B. Holcombe said to John C. Holcombe, I thought you would want to make some change now; his
20 reply was I am satisfied with it as it is; George B. Holcombe said to John C. Holcombe do you want to sell your farm now; no I don't he said, that is all.

Q. Go on?

A. Go on? there is nothing more to say.

Q. Go on and state where you and Eleanor stood when John said no, I don't want to sell my farm, and what followed, what each did and said?

A. We stood inside the room door; when they were done speaking I went across and spoke to John C. Holcombe,
30 asking him how he did, how his health was; it is all the same, I said health before I think.

Q. Go on and state what occurred after you asked him about his health?

A. I spoke to Mr. George B. Holcombe; I asked him how he did; I don't know what he replied; he said the same to me, I think; he says it is a long time since I saw you I hardly know you any more; that is all; it might have been a few more words said, I don't recollect any more; after that we went out.

Q. You and Eleanor?

A. Yes, sir.

Q. Did you leave George B. in there?

A. I can't say; I think he was.

Q. George B. spoke in a loud tone, did he not?

A. Loud enough for the deaf to hear.

Q. Who was deaf?

A. John C. Holcombe.

Q. How was your hearing?

10

A. Generally good.

Q. How was your hearing at that time?

A. It was good.

Q. How was Eleanor's?

A. Sometimes, well I might say good for all I know.

Q. What did you stop by the door for?

A. I did not wish to interrupt the conversation; I did not stop by the door; I stopped inside the door.

Q. Did you not think that Mr. George B. and John C. were talking privately when you and Eleanor saw them there alone?

A. No, sir; I have no reason to think so.

Q. You said you did not think either of them knew you and Eleanor were there until you went across and spoke to John; did you say that?

A. No, sir; I did not say that.

Q. When, do you swear of your own knowledge John C. first knew you and Eleanor were in the room?

A. I think when he looked up; then I went across the room and spoke.

30

Q. Did he look up before they got through their talk?

A. I couldn't say that he did or did not.

Q. My question is as to what you know; not what you think, or what might be, but do you know that either you or Eleanor were seen by George or John before they got through their talk?

A. I don't know.

Q. Did you hear other people than John and George talking together that day?

A. I might; I couldn't be positive and certain just

what they said.

Q. Did you talk with others besides George and John that day?

A. Yes; I talked, but not on any particular subject.

Q. Can you detail any talk between you and others, or between other people that occurred that day, with the same precision you do the talk between George and John?

10 *A.* No, sir.

Q. Are you able to give any conversation in detail as you have the one between John and George that occurred that day; leave out all talk about your health or the weather?

A. No.

Q. How is it that you can give the one between John and George, which you and Eleanor stopped by the door or inside the door and hear, when you are unable to give a single other one; why do you remember this and forget
20 all the others?

A. Because it was so surprising to me to hear such questions asked in regards to my brother-in-law; it being such a short time after he was buried.

Q. Were either you or Eleanor at all surprised with yourselves for stopping by the door to listen?

Objected to.

A. We did not stop to listen; that was not the purpose
30 we went for; not what I went for.

Q. It was what you did, was it not?

A. What I did? stop to listen, no sir.

Q. You stopped by the door didn't you?

A. Inside of the door.

Q. Well, inside of the door then?

A. Yes, I was inside of the door.

Q. Did you and Eleanor not stop inside of the door?

A. Yes, we were inside of the door.

Q. Did you not stop inside the door?

A. Yes, we stopped inside the door.

Q. You listened didn't you?

A. We heard the conversation.

Q. You couldn't hear unless you listened could you?

A. Well, there is two different bearings to that.

Q. Well, explain?

A. I have explained to you all I know; I told you the truth and nothing else.

Q. Can you tell me why you and Eleanor, when you 10 reached the door and saw that George and John were talking, that you did not retire from the room until they were through, instead of stopping by the door?

A. I did not say by the door; I said inside the door.

Q. Well, inside the door then?

A. The reason why, I did not suppose it was a private conversation, or they would not have held it so publicly in such a short time after his death.

Q. Then the talk was not private at all?

A. There were no one present except us four. 20

Q. Could the folks hear in the next room?

A. I don't know that they did hear; I did not speak to them about it.

Q. You have no idea but that it could be heard in the next room have you; George talking so the deaf could hear?

A. No, sir.

Q. You say it was the surprising fact that this talk should have occurred so soon after Edwin's death; did you and Eleanor talk about it afterward? 30

A. No, sir; not at that time.

Q. When did you talk it over?

A. I could not mention any particular time.

Q. Not one?

A. No, sir; I could not tell one; I know that we spoke of it but could not tell what time.

Q. What was said?

A. I don't think I am compelled at all to tell everything that was said; anything that was said between us.

Q. Have you any idea of the number of persons who took

dinner at Edwin's the day of the funeral?

A. Some 80 I believe, I did not count them myself.

Being examined re-direct says—

Q. Who was this George B. Holcombe of whom you have been speaking?

10 A. It was John C. Holcombe's son-in-law.

Q. The father of the defendants in this suit?

A. Yes, sir.

Being again cross-examined says—

Q. Who is this Eleanor Holcombe of which you have been speaking?

A. She is my sister, the wife of Edwin Holcombe.

Q. And daughter-in-law of John C. Holcombe?

20 A. Yes, sir.

Q. So Eleanor and George B. were the same relation to John C. exactly were they not?

A. Yes, sir; she is a daughter-in-law and he is a son-in-law.

MARGARET H. FRANKENFIELD.

Sworn and subscribed this 22d day of June, A. D. 1883,
before me.

CHARLES A. SKILLMAN,

M. C. C.

30

Samuel C. Hoppock, a witness produced on the part of the complainant, being duly sworn on his oath saith—

I live in Lambertville, in York street; I have resided here in the town 9 years I think in August; I knew Nelson V. Young; I knew John C. Holcombe.

Q. Was you requested at any time to witness a paper purporting to be the last will and testament of John C. Holcombe, if so who requested you in the first instance?

A. I was; Nelson V. Young requested me in the first

instance; he requested me to go to his office with him to witness Mr. Holcombe sign his name to his will.

Q. Did you go?

A. Yes, sir; I went to Mr. Young's house on Main street.

Q. Who did you find there?

A. Mr. Holcombe; John C. Holcombe was there.

Q. What did Mr. Young then produce?

A. There was a paper laid on the table there and he spoke¹⁰ to uncle John and asked him I think to sign his name; he signed his name, Major and me both signed it; there was very little passed.

Q. Did you and Mr. Young see Mr. John C. Holcombe sign his name to the paper?

A. I saw him and I suppose that Mr. Young did too; he stood right by.

Q. After Mr. Holcombe had signed the paper did he put his finger on the seal and did Mr. Young ask him if that was his last will and testament and what reply did Mr. Hol-²⁰combe make to that if any?

A. I am not positive about that; I can't say whether he did or not, put his finger on the seal.

Q. Was there a seal on the paper?

A. Yes, sir.

Q. Did Mr. Young ask him what that paper was that he had signed?

A. I don't remember of his asking.

Q. Did you not, Mr. Hoppock, tell me a few moments ago out in the hall that Mr. Young did ask him if that was³⁰ not his will?

A. Well, I have been thinking about it since; I can't remember; it has been so long ago that I cannot remember that Mr. Holcombe said it.

Q. Did Mr. Holcombe say anything while you was in the room that day?

A. Well, he said very little while I was there; he said good morning.

Q. After he had signed that paper did he say anything about what it was?

A. I don't remember that he did.

Q. Did Mr. Young say anything about it after Mr. Holcombe signed it?

A. I don't know that he did about that, signing name; asking I suppose usual questions; I can't remember what it was now.

Q. Did you hear the word will mentioned after you got
10 in the room that day?

A. I don't know that I did.

Q. Did you and Mr. Young sign your names as witnesses to that paper after John C. Holcombe had signed it?

A. Yes, sir.

Q. Who signed first?

A. I think I did after Mr. Holcombe.

Q. Did Mr. Holcombe see you and Mr. Young sign your names?

A. He sat right by at the time, I suppose he saw it.

20 Q. Did Mr. Young see you sign?

A. I think he did, he stood right by me.

Q. Did you see Mr. Young sign?

A. Yes, sir.

Q. Were you and Mr. Young both together when you signed, and signed in each other's presence?

A. Yes, sir.

Q. And also in the presence of the testator, John C. Holcombe?

A. Yes, sir.

30 Q. And he saw you both sign?

A. I suppose he did, he was sitting at the table.

Q. The same table where you and Mr. Young were sitting?

A. Yes, sir.

Q. Now after Mr. Holcombe signed and before you signed did he or Mr. Young say anything about the paper you were about to witness?

A. I don't remember that there was anything said about the paper.

Q. What did you go there for that day Mr. Hoppock?

A. I went at Major Young's request.

Q. What to do?

A. He said he wanted me to witness uncle John C. Holcombe sign his will.

Q. Well did you witness uncle John C. Holcombe sign his will?

A. The paper I supposed was his will; Major Young asked me to go for that purpose. 10

Q. You were introduced to me in the hall here a few moments ago were you not?

A. Yes, sir.

Q. I asked you did I not whether after Mr. Holcombe had signed his name to that paper he did not put his finger on the seal and whether Major Young did not ask him whether that was his last will and testament, and whether Mr. Holcombe had replied that it was his last will and testament, and you told me did you not that all that took place; that Major Young did ask him that and that Mr. 20 Holcombe did reply that that was his last will and testament?

A. It was not all in those words; I can't remember now whether uncle John did or not; I did not charge my mind with it; it was so long ago I did not expect to be called on.

Q. I am just now calling your attention to what passed between you and myself and I want you to tell me whether anybody was by when I talked to you?

A. I think there was some in the hall but I cannot call to mind now who it was. 30

Q. Was not this lady at my right hand, Mrs. Rebecca Mathews by?

A. I can't say; there was someone by; Mr. Mathews introduced me to Mr. Shipman; I did not notice who was by particularly.

Q. You told me didn't you that Mr. Holcombe did say after he had signed his name to the paper that that was his will or words like that?

A. Something like that but I didn't think at the time; I hadn't called to mind anything about it; I got to thinking

afterward; you asked me on the spur of the moment; I couldn't remember whether uncle John put his finger to the seal or not.

Q. How long did you and I talk together?

A. A very few minutes, I don't know how many it was.

Q. I asked you all about what took place in the room after you went in and you told me did you not?

10 *A.* I said there was but very little passed I think.

Q. Is that all you said to me about it?

A. I think you have it pretty much all now, all that passed.

Q. You mean to say do you not under your oath there now that you told me in the interview I had with you that old Mr. Holcombe after he had signed his name to that paper said in substance that was his last will and testament?

A. I told Mr. Shipman so but I got to thinking; he asked me the question; well I did not think at the time any-
20 thing about it; I did not call it to mind when he asked me; I got to thinking about it afterward; I can't remember that uncle John said anything about it; I want to tell the truth as near as I can.

Q. How long was it after the interview between you and myself ceased was it before you were sworn as a witness here?

A. I don't know how many minutes; not a great many.

Q. Did you not come right in from our interview and be sworn and examined?

30 *A.* In a very few minutes after.

Q. How old are you?

A. Fifty-seven.

Q. What is your business?

A. Keeping a livery stable.

Q. How long have you been at that business?

A. I did a little seven or eight years ago; not much until the last five years.

Q. How long ago is it since you signed your name to that paper?

A. I can't tell what year it was in; I think it was in

1875 or '76; I can't tell positive.

Q. Well, you have spoken to Esq. Horn now, what time do you say it was when you signed that will?

A. I still think it was in seventy-five or six; I am not positive.

Q. When did you change your mind as to the truth of what you told me about Mr. Holcombe saying that was his will after he had signed his name to it? 10

A. I got to thinking it over afterward; I answered Mr. Shipman too soon.

Q. Why did you not tell Mr. Shipman then after you had got to thinking you had answered him too soon?

A. I don't know why I didn't.

Q. Do you not believe in your heart now that you told Mr. Shipman the truth, and that John C. Holcombe did say on that day in your presence, after he had signed that paper, that it was his will?

A. I can't remember Mr. Holcombe's saying it was his will; I suppose it was at the time; Major Young said it was. 20

Q. Had you ever witnessed a will before?

A. No, sir.

Q. Have you ever witnessed one since?

A. No, sir.

Q. Did Mr. Mathews, Mr. James B. Mathews, ever speak to you anything about this thing?

A. Is this Mr. James B? Burroughs I call him; it was but very little; he was up to my place the other evening and asked if I was going to be at home. 30

Q. Did he not ask you up by the tobacco store, right below Coryell street, whether you witnessed Mr. John C. Holcombe's will?

A. Some such conversation passed between us; I think I told him I witnessed Mr. Holcombe's will.

Q. Did he not ask you whether Mr. Holcombe, in your presence, acknowledged it to be his last will and testament?

A. I don't remember of his asking me in those words.

Q And did you not tell him that he did acknowledge it, or words to that effect?

A. I don't remember his asking me in those words; I don't think I told him that Uncle John acknowledged it as his will.

Adjourned to Thursday, July 5th, at 9 o'clock A. M., at 10 my office.

By further consent adjourned to Tuesday, July 10th, at same hour and place.

On Thursday, July 10th, the witness, Samuel C. Hop-
pock, being too unwell to be further examined at this
time, it was agreed between Mr. J. G. Shipman and
Richard S. Kuhl, the respective counsel, that the further
examination of this witness be waived on account of his
20 ill health, and that the witness could sign his examination
before the Master upon another day, and he accordingly
so signs the same.

S. C. HOPPOCK

Sworn June 22, 1883, and subscribed July 13, 1883,
before me.

CHARLES A. SKILLMAN,

M. C. C.

John H. Horn, a witness produced on the part of the
30 complainants, being duly sworn on his oath, saith—

I reside in Lambertville; have resided here fifty-five
years; I am sixty-two years old; I knew Nelson V. Young
in his life-time; he lived here in Lambertville some time
before he died, perhaps some seven or eight years; he for-
merly lived in Mt. Airy, in this county; he is now de-
ceased, six years ago last May; I knew John C. Holcombe;
I can recollect him pretty near as long as I can recollect
anybody; I recollect him before my father moved to
Lambertville.

Q. Did you have a conversation with him about taking charge of his will shortly after the death of Nelson V. Young?

A. Yes.

Q. Where was it?

A. It was in front of Major Young's house, Nelson V. Young's; it was, I think, the day after the sale at Nelson V. Young's. 10

Q. Now please to tell all that took place between you and John C. Holcombe?

A. I was up there; the windows in front of the house were up; Mr. Holcombe called to me to come out to him; he was in the wagon in front of the house; I went out to him; he said he had a will in the house there somewhere, and he would like to have it; I went into the house and told Mrs. Young that Mr. Holcombe said he had a will in there and he wanted it; she said, yes, it is here; she opened the bureau drawer and got it out and handed it to me; I carried it out and handed it to Mr. Holcombe as he was sitting in his wagon; he took a hold of it, and then handed it back to me; he told me to take it, to take care of it until he wanted it; I took it, put it in my pocket, brought it to my office and put it in my safe; I had it, I can't tell exactly, suppose a year or two years; I know I had it a year or more; he came down to the office in his wagon and called to me; I went out to him; he said he wanted that will, or his will; wanted his will anyway; I went in and got it out of the safe, carried it out and gave it to him; he said he wanted to look over it, and bring it back some of these days; he never did bring it back; it was the last I knew of it. 20

Q. Now, Esquire Horn, I want you to fix the date as nearly as you can when he took the will away?

A. It is impossible to fix the date at all; I know it is a year or more that I had the will.

Q. Now then can you fix the date of Nelson V. Young's vendue?

A. I can if you let me go to the office; I think he died

on the twelfth day of May, A. D. 1887, and the vendue I think was the fourteenth day of June, 1877; have looked; these are the correct dates.

Q. You were helping about the sale?

A. I was clerk of the sale.

Q. Was Mrs. Young the administratrix?

A. No; Charles M. Young and Abraham Williamson
10 were the administrators.

Q. Was this will which Mrs. Young handed you in anything, just describe?

A. It was not; it was written on legal cap paper; it was not in anything; not sealed; not in anything; not put in an envelope; not sealed up.

Q. Had it any indorsement on the back of it, and if so what?

A. Yes, sir; I do not know exactly how it was indorsed; it was indorsed John C. Holcombe's will, or the
20 last will and testament of John C. Holcombe; at any rate it amounted to John C. Holcombe's will.

Q. In whose handwriting was the indorsement on the back of that will?

A. Nelson V. Young's.

Q. Did you read over that will?

A. I did.

Q. How soon after it came in your hands?

A. I don't know that I can tell; some time while I had
30 it; I don't know as I can tell the date.

Q. In whose handwriting was the body of that will?

A. Nelson V. Young's.

Q. You are well acquainted with Nelson V. Young's handwriting?

A. Yes, sir.

Q. Was the name John C. Holcombe signed to that paper when you got it from John C. Holcombe?

A. I suppose it was; his name was there when I looked at it.

Q. Was there a seal right opposite his name?

A. I think—yes, sir.

Q. Was there witnesses' names to it?

A. Yes, sir.

Q. What were the names of those witnesses?

A. J. C. Hoppock, N. V. Young.

Q. Were those names to the bottom of the will?

A. Yes, sir.

Q. Were the words signed, sealed, published and declared by the said John C. Holcombe as his last will and testament¹⁰ in our presence at the same time and we at his request and in his presence and in the presence of each other have subscribed our names as witnesses written at the end of the will and immediately above the names of the witnesses you have given?

A. It was just as you find it in Aitken's revision of Nixon's forms; I referred to it at the time; I was just starting in business and I wanted to see if it was right; I think the language given is correct; I have no doubt of it.

Q. Did you recognize the handwriting of N. V. Young,²⁰ a witness there, to be in his own proper handwriting?

A. Yes, sir.

Q. Did you know the handwriting of S. C. Hoppock?

A. No, sir.

Q. Do you know Mr. Hoppock personally?

A. Yes, sir.

Q. Can you give the contents of that will, Esq. Horn?

A. I don't know that I can give it all word for word.

Q. Have you read over the paper purporting to be a copy of that will as contained in what was stated to you to be a³⁰ copy of the defendants' answer in this case?

A. I have.

Q. Will you please to look at that answer from the beginning of figures "55" in the margin down to end of the name N. V. Young between figures designating pages 57 and 58 and state whether copy there given is a correct copy of the original will you once had in your possession as you have stated?

A. There is one item in here that I don't think is a true copy; it is in the third item; it reads, "I give and bequeath

unto my four children;" I am pretty well satisfied that the original was, "to my four grandchildren."

Q. Please now give us the contents of the will of which you have spoken, using the paper before you to refresh your memory?

A. Do you want me to give it all to you?

Q. Yes, sir.

10 A. Must I read it?

Q. I want you to give it all, and you can use that paper as describing it and can give it from that paper except where your recollection differs, then give your recollection?

A. In the name of God, amen. I, John C. Holcombe, of the township of Delaware, county of Hunterdon and State of New Jersey, being of sound mind, memory and understanding, but knowing the uncertainty of life and of earthly things, do make and publish this my last will and testament in manner and form following, that is to say.

20 1st. First, it is my will and I hereby order and direct my executors, whom I shall hereafter appoint, to pay all my just debts and funeral expenses as soon as conveniently can be after my decease.

2d. Second, I give and bequeath unto my son Edwin Holcombe all my messuages of lands and tenements situated in the township of Delaware, in the county of Hunterdon, and elsewhere, to have and to hold the same in fee forever.

31. Third, I give and bequeath unto my four grandchildren eight thousand and one hundred dollars, to be paid
30 within one year after my decease, as follows, viz: To Levi Holcombe, two thousand dollars; to John C. Holcombe, Jr. two thousand, one hundred dollars; to Martin Holcombe, two thousand dollars; to Eveline Holcombe, two thousand dollars—the said Levi, John C., Martin and Eveline being the children of my deceased daughter, the wife of George B. Holcombe.

4th. Fourth item, I give and bequeath unto my son Edwin Holcombe all my farming utensils and stock that I may own at the time of my decease, also I give unto him one-half of all my household goods and kitchen furniture,

and the remaining one-half of my household goods and kitchen furniture, my will is, shall be equally divided among my four grandchildren share and share alike, and in case either of my said grandchildren should die leaving no child or children, then the survivor or survivors of them or their heirs shall receive the share of the one or more without issue deceased, but if any die leaving issue then the child or children of the one deceased to take the deceased parent's¹⁰ share.

5th. Fifth item, I give and bequeath unto my son Edwin Holcombe all the residue of my estate of every kind and to his heirs and assigns in fee forever.

6th. Sixth, and lastly, I hereby nominate and appoint my son Edwin Holcombe and my grandson John C. Holcombe, Jr., executors of this my last will and testament.

In testimony whereof I have hereunto set my hand and seal this third day of January, A. D., eighteen hundred and seventy-six. 20

JOHN C. HOLCOMBE. [L. s.]

Signed, sealed, published and declared by the said John C. Holcombe as his last will and testament in our presence at the same time, and we at his request and in his presence and in the presence of each other have subscribed our names as witnesses.

S. C. HOPPOCK,
N. V. YOUNG,

Witnesses.

30

Q. Did you deliver to Mr. John C. Holcombe, the testator, the will, a copy of which you have now given in the same form and condition it was when he placed it in your hands?

A. Why, yes; I delivered it to him just as I received it; I made no alterations.

And being cross-examined by Mr. Kuhl says—

Q. Was your attention attracted to any particular part or

clause in the will when you read it or not?

A. Yes.

Q. State what it was?

A. In item second reads the last of it, "to have and to hold the same in fee forever;" my impression was at time, that ought to have been, "to him and his heirs;" that is all I thought of in particular that I remember now.

10 Q. Do you mean to say then that you did notice that item 2 of the will did not contain the word heirs when you read it over?

A. Yes; when I read it over I thought it strange that it was not there; I also got down Aitken's revision of Nixon's forms to see if the word heirs ought not to be there.

Q. Nelson V. Young was a man who did a large business in the settlement of estates, drafting of wills, was he not?

A. He did a considerable business, Nelson Young did.

JOHN H. HORN.

20 Sworn and subscribed this 10th day of July, A. D. 1883, before me.

CHARLES A. SKILLMAN,

M. C. C.

Jackson B. Sherman, a witness produced on the part of the complainants being duly sworn on his oath saith—

I live between here and Stockton, the next buildings above where John C. Holcombe lived.

30 Q. Did you know John C. Holcombe in his life time and if so how long did you know him?

A. Yes, sir; I knew him; I was personally acquainted with him 3 years perhaps, not quite as long as that, from 2 to 3 years.

Q. Was you called upon by any one to be a witness to a codicil to the will of John C. Holcombe?

A. I was.

Q. Who called on you?

A. Richard H. Wilson.

Q. When?

A. I cannot give the exact date; it was in '81, about the latter part of September, I think.

Q. Where was it?

A. At my house.

Q. What did Mr. Wilson say to you that he wanted you to do?

A. He asked me if I would do a neighbor a favor; I told him I would; he said uncle John C. had been making some¹⁰ alteration in his will and wished me to go down as a witness; I told him I would.

Q. Did you go and where?

A. I went after dinner, this was before dinner, down to uncle John C.'s house.

Q. Whom did you find there when you went?

A. I found Eveline and uncle John C.; we always call him uncle John C.; no one else except Richard.

Q. State now what was done while you were there?

A. The papers was produced; it had been prepared before; on second thought I say paper; Mr. Wilson asked uncle John C. if he acknowledged in the presence of Mr. Sherman here and myself that this is a codicil to your last will and testament; uncle John C. answered yes or nodded his head in the affirmative; the paper was then signed first by uncle John C.; I think Richard signed next; I signed last according to my recollection.

Q. Before Mr. Wilson asked Mr. Holcombe what you have above stated, had Mr. Holcombe signed his name to the codicil?

30

A. I don't think he had.

Q. Did he sign it immediately after Mr. Wilson asked him if that was a codicil, &c., as you have above stated?

A. My recollection is not positive about that, whether he did after or before.

Q. Did you and Mr. Wilson see Mr. Holcombe sign his name to the codicil?

A. We did.

Q. Did you and Mr. Wilson sign as witnesses in his presence?

A. We did.

Q. Were you both present at the same time and did you see each other sign?

A. We were present and saw each other sign.

Q. Were the contents of the codicil read over in your hearing?

A. No, sir.

10 Q. Did old Mr. Holcombe tell you anything about the contents of the codicil at that time?

A. No, sir.

JACKSON B. SHERMAN.

Sworn and subscribed before me, this 10th day of July,
A. D., 1883.

CHARLES A. SKILLMAN,

M. C. C.

Adjourned to 1.30 o'clock, P. M.

20

At 1 30 P. M. the parties met and agreed to adjourn to some future time to be mutually agreed upon.

CHARLES A. SKILLMAN,

M. C. C.

Pursuant to agreement the parties met in my office this 12th day of September, A. D. 1883, represented by their respective counsel as before.

30 *Alexander H. Holcombe*, a witness produced on the part of the complainants, being duly sworn on his oath, says—

I reside in Lambertville, and have always resided there; I am sixty-two years old; my profession is an Attorney at Law; I knew John C. Holcombe in his life time; have known him since I was ten years old, may say always; he was a second cousin of mine.

Q. Did he ever bring to you and leave in your possession his last will and testament?

A. Yes.

Q. When.

A. I don't know as I can say how long before his death.

Q. How long before his death?

A. Two years or more before the old gentleman's death.

Q. How came he to bring it to you, tell what he said about it?

A. I don't think there was any reason assigned; I was doing other business for him. 10

Q. Do you know where he got the will when he brought it to you?

A. I may have known then; I am not sure about it; Horn had it; don't know whether it was before or after that.

Q. Do you know who drew this will that was left in your care?

A. No, I don't.

Q. Did you know Nelson Young?

A. I did.

Q. Was he dead when this will was brought to you? 20

A. I presume he must have been dead; I don't know whether he was dead or not.

Q. Did not Mr. Holcombe bring the will to you from John Horn's?

A. That is my impression, but I don't think Mr. Holcombe said so.

Q. Did you see the will after it came into your possession?

A. I did not see the will, I only saw the package which he said was his will; it was labeled John C. Holcombe's 30 will on the package.

Q. Do you know in whose handwriting that indorsement John C. Holcombe's will was?

A. I don't, but it looked like Nelson V. Young's.

Q. How long did you keep the will in your possession?

A. Perhaps a year or more; can't tell exactly.

Q. Who took it away from you?

A. I believe I don't know who came with him; I don't know that he got out of his wagon; I know that he got it.

Q. Did he give you any reason why he was going to take

it away.

A. No; I don't think he did; I don't remember.

Q. Do you know what he did with it afterwards?

A. No, I don't of my own knowledge.

Q. Do you know Richard H. Wilson?

A. Yes, sir.

Q. How long have you known him?

10 A. From boyhood.

Q. Did you have a conversation with Richard H. Wilson in the month of September, 1882, about John C. Holcombe's will?

A. I had a conversation with him; I think that was the month.

Q. State what he said about it—about the will, and what he had done with it?

Objected to by Mr. Kuhl because it is irrelevant and
20 hear-say.

A. I don't remember all he said; I think the main point was that he had written a codicil, and that he had given it back to Mr. J. C. Holcombe.

Q. Please to state all that Mr. Wilson told you in this conversation as nearly as you can recollect it?

A. I think I asked him how long before his death—before Mr. Holcombe's death; he replied either two or three days, or a few days; I don't remember which; my
30 impression was that it was just a few days before his death.

Q. Did he tell you that he had carried the will himself down to Mr. Holcombe's house?

A. So I understood it; he made use of the word taken I think—took it.

Q. Did Wilson say to whom he delivered it when he took it to Mr. Holcombe's house?

A. My impression is that he said he gave it to the old gentleman, Mr. John C. Holcombe; he was well enough to receive it; I don't know that Mr. Wilson said he was

well enough to receive it.

Q. Did Mr. Wilson say that they had sent to him to bring the will down?

A. To bring the will to him? yes, I think so.

Q. Did Mr. Wilson tell you that he had drawn a codicil to the will?

A. Yes, sir.

Q. Did he tell you that he had kept both the will and 10
codicil in his possession until within a few days, or two
or three days before the old man's death, when he took
them down to the old man's house and delivered them to
the woman in charge, Eveline R. Holcombe?

Objected to by Mr. Kuhl because leading and irrelevant.

A. Yes; I think so, as I could not have gotten it in
any other way than from him.

Q. This conversation that you had with Richard H. 20
Wilson, where was it?

A. I believe I could not say positive whether in front
of my office or not; it may have been at post-office; I can't
tell; I accosted him on the subject when I met him.

Q. And what he said was in answer to your question
to him about the will, was it?

A. It was.

Q. You asked him where the will was, did you?

Objected to by Mr. Kuhl.

30

A. You had better say had asked him; my answer is I
had asked him, and what he said was in reply to it.

Q. Did Wilson say that the will had been sent for, be-
fore he took it down?

A. He did.

Q. Did he say how soon after it had been sent for that
he took it down?

A. I don't remember; I think it was immediately, as
soon as he could.

Q. Do you know, or did he say how long he had had that will in his possession?

A. I don't think he mentioned the time; I got the impression that he had had it since he had written the codicil; I don't know how long that was.

And being cross-examined by Mr. Kuhl saith—

10

Q. Counsel says he has no question to ask.

A. H. HOLCOMBE.

Sworn and subscribed this 12th day of September, A. D. 1883, before me.

CHARLES A. SKILLMAN,

M. C. C.

Reading Holcombe, a witness produced on the part of the complainants, being duly sworn saith—

20

I live near Brookville, in this county; I know Richard H. Wilson and John C. Holcombe, deceased.

Q. Did Mr. Wilson ever tell you that he carried the will and codicil of John C. Holcombe down to John C. Holcombe's house shortly before his death; if he did, tell all he said about it?

Objected to by Mr. Kuhl as leading and irrelevant.

30 *A.* He told me he took the will down; he did not say anything about the codicil at that time, I don't think.

Q. What else did he say, go on?

A. I don't know that there was much more said about it; he said that they had sent up for it and he took it down.

Q. Did he say how long before the old man's death it was before he took it down?

A. I understood him to say some 2 or 3 weeks.

Q. When was this conversation between you and Mr. Wilson?

A. I could not say exactly but I think it was the next

week after the old gentleman died.

Q. Did he say anything about the codicil at any time?

A. He did before that.

Q. What did he say about it?

Objected to by Mr. Kuhl.

A. He said that had nothing to do with the will, it was only to give the widow what she would have got if her husband had lived until after the old man's death.

And being cross-examined by Mr. Kuhl, saith—

My age is 69 or near.

Q. You have always lived in the same neighborhood?

A. I have near 40 years.

Q. How far from where John C. Holcombe died?

A. Something over a mile, I can't tell exactly. 20

Q. You knew the deceased all this time?

A. Yes

Q. You saw him frequently?

A. Yes.

Q. And talked with him?

A. Yes, often-times.

Q. How shortly before his death did you last see him and talk to him?

A. It had been a good spell, I can't say exactly; I had not been in there for some time; I was in there the night before he died, but he was not conscious. 30

Q. What is your business, Mr. Holcombe?

A. I work on a farm; I live with my son-in-law; I work for him.

Q. State as near as you can when you last saw the deceased to talk with him before his death?

A. Well, now, I couldn't do that as it has been quite a spell.

Q. As near as you can?

A. It might be a month or six weeks, I could not say,

may be longer.

Q. Did you attend his funeral?

A. I did.

Q. Did you go to the house after the burial and take dinner?

A. Yes, sir.

Q. State as near as you can when you left for home the 10 day of the funeral?

A. It was some time during the course of the afternoon; I could not say what time, pretty well in the afternoon.

Q. There were a good many people there to dinner and in the afternoon?

A. Yes, sir.

Q. Were you and the others who were there in the part of the house which Mr. Holcombe had occupied before his death?

A. I don't think I was in there much after dinner during 20 the course of the afternoon.

Q. Other people?

A. There were other people in there.

HIS
READING $\bowtie$ HOLCOMBE.
MARK.

Sworn and subscribed this 12th day of September, A. D., 1883, before me.

CHARLES A. SKILLMAN,
M. C. C.

30 Adjourned to 1.40 P. M.

At 1.40 P. M. the parties met. Present same as before.

It was agreed between counsel that all exhibits heretofore marked for identification are offered in evidence by mutual consent for the benefit of either party.

It was agreed between the counsel of the respective parties that the further taking of testimony on the part of the complainants be adjourned to the 17th day of September instant, at ten o'clock A. M. at my office, with the under-

standing that if the complainants offered no testimony at that time the defendants were to proceed with the taking of testimony on their part at my office at 9 o'clock A. M. on the 28th day of September instant.

Sept. 17, 1883—The counsel of complainants did not appear or offer any testimony and the further taking of testimony pursuant to aforesaid agreement adjourned to September 28, 1883, at 9 o'clock A. M. at my office, pursuant to above agreement.

CHARLES A. SKILLMAN,
M. C. C.

September 28th, 1883. The counsel of the respective parties met at 9 o'clock A. M., pursuant to adjournment.—The counsel for complainant stated that the testimony for complainant was closed.

CHARLES A. SKILLMAN, M. C. C. 20

Mr. Kuhl, counsel for defendants proceeded with the testimony on their part.

John C. Holcombe, jr., a witness produced on the part of the defendants being duly sworn on his oath saith :

My age is forty ; I am one of the defendants in this suit ; I am a son of George B. Holcombe and a grand-son of John C. Holcombe, deceased, the person over whose will this controversy has arisen ; my mother was a daughter of the deceased and a sister of Edwin Holcombe, deceased ; I reside in Bucks county, Pennsylvania, Solebury township ; my business is that of miller ; my place of business is on the bank of the Delaware river, on the west bank, nearly opposite the place where my grandfather died ; my grandfather's farm where he died is on the east bank of the Delaware river ; I have lived where I do now about two years and a half the last time ; I was away three years, two years in Philadelphia, one year in West Amwell township, New Jer-

sey, in part of the house with my brother Martin, prior to that I had lived where I do now for eighteen years; I lived about half a mile from my grandfather's in a direct line across the river; my means of going to and from my grandfather's was in a row boat; I am a married man; my family consists of a wife and three children.

Q. State if you know anything about your grandfather's
10 will being brought from Richard Wilson's at Brookville to your grandfather's house; how it came to be brought there; if you heard your grandfather say anything on that subject, you may state that, together with the facts within your own knowledge?

A. Well, about the first of March, eighteen hundred and eighty-two, my grandfather said he wished that he had his will there, so that he could look over it, for he was not satisfied to leave his property the way the will was made, as we were all grandchildren, he did not think one ought to
20 have more than the other; and he asked me if I could get it for him, but I did not get it at that time, and he frequently kept talking about it, and I think it was about the second Sunday in June that he told me to get it for him that week; I told him that I would; my sister being in the same room with us, heard what he had told me; she sent a note with Harry Holcombe; this I only know from what Eveline told me; the next Sunday after the old man told me to get it, I went over to my grandpap's; she handed the will to me (I mean Eveline), and I gave it to him; he opened it and com-
30 menced to read it right away, and frequently said while reading it that it was all wrong, and that he did not want it that way; well, he said, he thought he only left his farm to his son, Edwin, but that as there had been the word "elsewhere" added to it, he thought that word covered all his real estate, which he did not intend that he should have; he said it should not be that way, that he would destroy it; he handed the will to me and asked me to read it over, and explain it to him as I understood it; I did so, and he said he understood it the same way; I gave the will back again to him, then asked him if I should send it back to Richard

Wilson; he said no, that he would take charge of it; I told him that if there was no will found after his death, that that would cut aunt Ellen off; he said he knew that, but that her daughter would get more than any of the rest of us, and she would be able to take care of her mother; the next Sunday after reading the will, having it there, he said he told Burroughs in the morning—that is, James B. Mathews, one of the complainants, that he had destroyed the 10 will; he said that Burroughs said that if the will was not found after he was gone, that he would make a time around there.

Q. After you had read the will and told your grandfather what you thought about it did you see what he did with it?

A. I saw him put it in his pocket, that is all; his coat pocket, inside breast pocket.

Q. Did you ever see the will after that time?

A. No, sir.

20

Q. Have you any knowledge of it since then either of your own or upon information from anyone?

A. I have not.

Q. Did you ever ask your grandfather to change his will or destroy it, or try in any way to influence him in the disposition of his estate?

A. No, sir, I did not.

Q. Do you know or have you heard anyone talk anything to him about his will except what you have related?

A. No, I never have.

30

Q. What was the condition of your grandfather's mind at the time the will was brought from Richard Wilson's, and after that?

A. Well at that time I thought his mind was all right and didn't notice any change until he was taken sick, until after he was taken sick.

Q. How was he after he was taken sick?

A. For the last few days before his death he did not seem to know anyone or conscious of anything that was going on.

Q. State if you know whether your grandfather attended

to business affairs up until the time he was stricken with palsy?

A. He did.

Q. Had he been complaining the fall and winter previous with malaria?

A. Yes, he had the ma'aria.

Q. Who attended him, what physician?

10 A. Dr. George Larison.

Q. Did you take your grandfather's papers from his desk on the day of the burial, if you did, state how you come to do so and all the circumstance?

A. I did, as I held a power of attorney; I thought it was my duty to take charge of them until some one else was appointed to do so; in the afternoon after the funeral I requested the people that were in the room to leave it as we wanted to look over the papers; I called all the heirs together, Levi and Rebecca Mathews, Martin and Eveline, and told
20 them what I was going to do.

Q. State here just what persons were in the room at this point?

A. There was James B. Mathews, Rebecca F. Mathews, Mary Holcombe, wife of Levi, Mary Holcombe, Martin's wife, and Amanda C. Holcombe, that is my wife, Reuben P. Ely and George B. Holcombe, Levi Holcombe, Martin Holcombe and Eveline R. Holcombe.

Q. State what was done and said by any one at that time?

30 A. Well I told them I was going to look over the papers and if any of them wished to make a memorandum of any or all of them they could do so; I unlocked the secretary and called them all up around it and commenced looking over them and all that I thought was of any value put them together and tied them up, and then put them in my pocket and took them home with me.

Q. State what further if anything you did with the papers you took?

A. After Levi Holcombe and Rebecca F. Mathews were appointed administrators I handed them over to them.

Q. Were these papers that you took examined by the persons in the room with you at the time you took them?

Objected to by Mr. Shipman—too leading.

A. Yes, sir.

Q. State what was said, if anything, about any will of your grandfather's by any of the persons present at this time?

A. Don't remember that there was anything said about the will.

Q. Was any objection made by anyone to your taking the papers at that time?

A. Not to my knowledge.

And being cross-examined saith—

Q. Did you often go across the river to your grandfather's shortly prior to his last illness?

A. I did.

Q. About how often in a month?

A. Well I was there almost every Sunday, sometimes through the week in the evenings.

Q. State how often you had been to your grandfather's from the first of January prior to his last sickness, up to the day of the commencement of his last sickness, and on what days of the week you made your visits?

A. Well on an average it would be about twice a week.

Q. State the days of the week?

A. It would be on Sundays, but as to the other days of the week I can't tell, I have no memorandum.

Q. When did your grandfather first speak to you about his will?

A. About the first of March.

Q. What day of the week was that?

A. It was on Sunday, I don't know what day of the month.

Q. What did he say about it then?

A. He said he was not satisfied with it and he wished he had it there that he might look over it; asked me if I would get it for him. He said he did not want to leave his property the way the will was made, as we were all grandchildren, and he would like us to share alike as one was as near to him as another.

Q. Go on?

10 A. That was all that was said at that time I believe.

Q. You can't think of anything else said at that time?

A. Don't remember of anything else that was said at that time.

Q. Now this was the first of March?

A. About the first of March 1882.

Q. Was it the first Sunday in March?

A. I think it was.

Q. Who was present during the whole conversation?

A. I don't think anyone was but grandpap and myself.

20 Q. Where was Eveline?

A. I don't remember, I suppose she was around some part of the house.

Q. Wasn't she present at any part of the conversation?

A. I think not.

Q. In what room was the conversation?

A. In his kitchen.

Q. What time in the day?

A. In the afternoon.

Q. After dinner?

30 A. Yes, sir.

Q. How long?

A. An hour or two, I don't know.

Q. Did you eat dinner there?

A. Don't think I did.

Q. Did you see Eveline when you first went there that day?

A. Don't know, I am not positive whether I did or not.

Q. Did you and Eveline have any conversation about the will on that day?

A. Don't know that we did.

Q. Can't you remember whether you did or did not have any conversation about it?

A. I don't think we did.

Q. Was that the first time your grandfather had ever spoken to you about his will?

A. Well he had told me that he had made a codicil to it.

Q. When did he tell you that?

A. I think that was in the fall before, I don't know what 10 time.

Q. Where was it?

A. At his house.

Q. On Sunday?

A. Yes, sir.

Q. How came he to speak of it?

A. I don't know.

Q. What did he say?

A. I don't remember that he said anything else about it; I did not ask him any questions. 20

Q. Then all he said was, I have made a codicil to my will?

A. That is all I remember of being said.

Q. You made no reply to it?

A. I did not.

Q. Did he tell you who drew the codicil?

A. I don't know that he did say anything about that.

Q. Was Eveline present at this conversation?

A. I think not.

Q. Where was she?

A. I don't know. 30

Q. Where did it occur?

A. In his kitchen.

Q. Was this all that ever passed between you and your grandfather about his will and codicil, prior to this first Sunday in March; or between him and anybody else in your presence and hearing?

A. I believe that is all, all I remember about.

Q. What month in the fall was this, if in the fall?

A. I don't know.

Q. Tell as near as you can?

A. Well I suppose in October or November, not certain.

Q. When did you first know that your grandfather had made a will and who told you?

A. I don't know that I had heard anyone say anything about it before that time or rather him.

Q. Please explain your last answer?

A. All I had heard was some of the rest of the family
10 had said he had made a will.

Q. Please answer my former question as accurately as you can; when you first knew that your grandfather had made a will, and who told you?

A. The way I got it was from two or three; that is my aunt Ellen; Ellen Holcombe told my wife and she told me; that was in the Fall, I don't know the time; October or November; along the Fall of 1882.

Q. What did your wife tell you?

A. She said aunt Ellen told her that grandpap had left
20 me executor to his will, that was all that was said about it.

Q. Up to this time, October or November, 1882, this was all you knew about your grandfather's will, was it?

A. Yes, sir.

Q. Had you never heard before that Nelson Young had drawn a will for your grandfather?

A. No, sir.

Q. When did your Uncle Edwin Holcomb die?

A. Some time in August 1881.

Q. Did you not ascertain about the time of his death that
30 your grandfather had made a will?

A. Not until sometime after in the fall.

Q. Well was it in the fall of 1881 or 1882 that you first heard of the will in the manner you have described through your wife?

A. In the fall of 1881. I think I got my date wrong in saying 1882, I meant in 1881.

Q. After your wife told you this, told you what you have above stated, did you hear anything more about the will until the time when your grandfather told you he had made a codicil to his will, as you have before told us?

A. Not to my recollection.

Q. Have you and Eveline ever talked about the will prior to your grandfather's death?

A. We have often talked, wondering how the property was left.

Q. When did you and Eveline first begin to talk about the will?

A. I don't remember.

10

Q. Did Eveline ever tell you what was in the will?

A. No, sir, I think not.

Q. No part of it?

A. I don't remember her telling me anything.

Q. Didn't she tell you that grandpap had made a codicil to his will?

A. I don't remember that she did.

Q. When you would go over to your grandfather's on Sundays as you have described, would not you and Eveline go out on the back porch and hold private conversation between yourselves?

A. We often went out there and talked together.

Q. Did you not always talk about the disposition of your grandfather's property?

A. No, sir, not always.

Q. Well nearly always?

A. We may have sometime.

Q. Was it not arranged between you and Eveline, that Eveline was to try and find out from your grandfather whether he had left a will, and if he had what was in it?

30

A. No, sir.

Q. Never at all, eh?

A. No, sir.

Q. Did Eveline never complain that the old gentleman had not left her enough in his will; that she was afraid that he would cut her off entirely or anything like that?

A. Don't know that she ever did.

Q. Are you sure she never did?

A. She often wondered if she would ever get pay for keeping house for him.

Q. When did she first say that?

A. I don't know.

Q. Can you give any idea of the time?

A. I couldn't, only on guess work.

Q. Was it before or after the death of your Uncle Edwin?

A. After his death.

Q. How long after when she first spoke about it?

10 A. I don't know.

Q. Eveline is your sister, is she?

A. Yes, sir.

Q. Where is she now?

A. At Ringoes, at our brother's, Levi.

Q. Is she able to be out now?

A. No, sir.

Q. How long has she been complaining?

A. Since last January.

Q. What is her age?

20 A. I think 35.

Q. How many brothers and sisters have you?

A. Two brothers and one sister.

Q. Levi, where Miss Eveline is now, is your brother is he?

A. Yes, sir.

Q. When was that power of attorney that you have spoken of executed?

A. In June—I don't remember the date—June 1882.

Q. Who drew it?

30 A. Richard H. Wilson.

Q. Who asked him to draw it?

A. Well I asked him; grandpap told me that he wished me to get a written authority so that I could transact business for him sometimes; that it hurt him to ride about; that is all, I believe.

Q. When did your grandfather tell you this?

A. I think it was a week before I got it; it was in June sometime.

Adjourned to 1 o'clock P. M.

At 1 o'clock P. M. the parties met.

The cross-examination of *John C. Holcombe, Jr.* resumed by Mr. Shipman.

Q. Who was the subscribing witness to the power of attorney?

A. George M. Holcombe.

10

Q. Where was it executed or signed by the old gentleman?

A. At his own home; my grandfather's.

Q. On what day of the week?

A. I think it was on Sunday.

Q. The same day that it was drawn?

A. No, sir.

Q. How long was it drawn before it was signed?

A. One day I think.

Q. Did Richard Wilson draw it while you was by, and did you bring it away with you?

A. No, sir; I was not present when he drew it up.

Q. What did Richard Wilson do with it when he drew it?

A. He sent it to me by mail.

Q. Did you read the power of attorney to your grandfather before he signed it?

A. I did, and he read it over himself.

Q. Who was by when he signed the power of attorney besides yourself and George M. Holcombe when he signed it?

A. My sister Eveline.

Q. What was done with the power of attorney after the old man signed it?

A. I took charge of it.

Q. Did you do any business under the power of attorney and if so what?

A. I did not.

Q. Then the first time you pretended to exercise any authority under the power of attorney was after the death of your grandfather when you took charge of his effects as you

have described in your principal examination, was it?

A. It was.

Q. How often did your grandfather ask you to get the will of Richard H. Wilson?

A. He talked about it some 3 or 4 times.

Q. State when those times were and what passed between you on each time?

10 A. Well I don't know the times between March and June; I don't know that there was anything said about it.

Q. Did you ever apply to Richard Wilson for it?

A. No, sir.

Q. When did Eveline tell you that she had sent word to Wilson for it?

A. On the Sunday that she gave it to me.

Q. When was that?

A. I think it was the 2d Sunday in June.

Q. Are you pretty sure?

20 A. I think so.

Q. Where was she when she told you?

A. In grandpap's bedroom.

Q. Was grandpap abed?

A. No, sir.

Q. What was he doing?

A. Setting out in his kitchen.

Q. You and Eveline were alone in the bed room, were you?

A. Yes, sir.

30 Q. Did she call you in there?

A. Yes, sir.

Q. Was anybody else in but you and she?

A. No, sir.

Q. What did she say when she called you in there?

A. She said she had sent a note up with Harry—Harry Holcombe—to Richard to send it down as grandpap wanted it, and save me the trouble of walking up after it.

Q. Was the will in an envelope when she handed it to you?

A. Yes, sir.

Q. Sealed or unsealed?

A. Sealed.

Q. Did she tell you what was in the will?

A. No, sir.

Q. How soon after she handed it to you did you hand it to your grandfather?

A. About 15 or 20 minutes.

Q. Was the envelope sealed up or unsealed when you handed it to him?

A. It was sealed up.

Q. Who broke open the envelope?

A. He commenced to and then handed it to me and told me to cut it open, and I did so.

Q. Did you then immediately hand the will back to him?

A. I did.

Q. Did he then read it over?

A. He did.

Q. To himself or aloud?

A. To himself.

Q. Was there a codicil to the will that day?

A. Yes, sir.

Q. Did you read that?

A. I did.

Q. Did he read it?

A. Yes, sir.

Q. What was in the codicil?

A. I don't know that I can tell now what was in it.

Q. Was there anything left to Eveline in it?

A. Yes, he left her a home there.

Q. A home where?

A. In the part of the house where grandpap lived; the kitchen and his bed room and the room over his bed room.

Q. Anything else that he left Eveline in the codicil?

A. The right of way up and down in the stairway and the use of the water at the well.

Q. Did Eveline tell you of this codicil that morning when you were talking—when she told you she had the will?

A. No, she did not speak anything about the codicil.

20

30

Q. Did your grandfather read the codicil aloud or not that day?

A. He read it to himself.

Q. How do you know he read it?

A. I suppose he did, he was going over it, I suppose he read it.

Q. Did he say anything about the codicil on that day
10 when he read it?

A. He said that he thought the codicil made provision for his house and lot here in Lambertville; he thought he had left it to us four grandchildren, Levi, Martin, Eveline and myself.

Q. That he said about the codicil, did he?

A. He said Nelson Young had added the word elsewhere and that would leave that property to Mrs. Mathews.

This answer is objected to because not responsive to the
20 question.

Witness resumes his answer—and not to us four grandchildren as he thought he had in the codicil.

Q. What real estate had your grandfather?

A. A farm in Delaware township and a house and lot in Lambertville.

Q. When did he get the house and lot in Lambertville?

A. I think in 1878 although I am not positive of it.

Q. Have you got the deed of it?

30 A. No, sir.

Q. Who has?

A. I don't know.

Q. Did you not find it among the old man's papers when he died?

A. I don't remember.

Q. Did you find a deed for the farm among his papers after his death?

A. Don't remember whether I did or not.

Q. Have you seen that deed for the farm since his death?

A. No, sir.

Q. Did he complain then that Wilson had not drawn the codicil as he wanted him to or what did he say about it?

A. He said it wasn't right.

Q. He said what was not right, the will or the codicil?

A. The codicil.

Q. He said the codicil was not right because it did not leave the Lambertville house and lot to you four grandchildren you have named, did he? 10

A. I don't know as he said particular to the codicil; his words were, it is all wrong.

Q. Now were these words, it is all wrong, all he said on that occasion about the will or codicil?

A. He said that he would not have it that way; that he would destroy it.

Q. Was that all he said about the will or codicil on that day?

A. He said he would take charge of it himself.

Q. Was that all he said? 20

A. That is all I remember.

Q. Now just repeat in one continuous answer all your grandfather said about the will or codicil on this Sunday when you handed him the will?

A. He frequently said while reading it that it was all wrong, and that he would not have it that way; he thought he had only left the farm to Edwin, his son, and that us four grandchildren would get the balance; he said that he would destroy it, for the law would make a better one; I don't know as anything more. 30

Q. Have you now given all he said on that subject?

A. I don't remember of anything more.

Q. Are you quite sure now that he said everything you have related in your last answer, as you have stated things in that answer which you have not stated before, either in your principal or cross-examination?

A. Yes, sir.

Q. Was Evaline present during the whole of this talk on the part of your grandfather which you have just above detailed?

A. No sir, she was not.

Q. During what part of it?

A. She was not present during any part of it.

Q. How long was the old man in saying all this?

A. In reading and saying, nearly an hour.

Q. Did Evaline come into the room before he put the will away in his pocket?

10 A. No sir; I think not.

Q. Did the old man make all these remarks which you have given above before you read the will over?

A. Don't know that he did all of them.

Q. State what part of these remarks he made after you read the will?

A. The part, he said he would destroy it and that the law would make a better one.

Q. Did you read the will aloud over to him?

A. No, sir.

20 Q. What did you say to him about the will and codicil?

A. I don't remember what was said then.

Question repeated.

A. I told him that if there was no will found after his death that would cut Aunt Ellen off; he said that he knew it would; that her daughter would get more than any of the rest of us, and she would be able to take care of her mother; don't know as anything else.

Q. Was that all you said to him about the will or codicil on that day?

30 A. That is all that I remember.

Q. You expressed no opinion, eh, to him on that day as to the justice or injustice of the will?

A. No, sir; some one came in; there was nothing more said about it.

Q. Did Evaline express any opinion about it in your hearing on that day, as to the justice or injustice of the will or codicil?

A. No, sir; I think not.

Q. Did she ever express any opinion in your hearing as to the justice or injustice of the will or codicil?

A. She said that she did not think it was right the way the will had been made.

Q. When did she say that?

A. Some few days after he had had it there; I don't know how long.

Q. Whom did she say it to?

A. To me.

Q. How long was it after this Sunday you have been¹⁰ speaking of when she said this?

A. A week or two.

Q. What else did she say on this occasion?

A. Don't remember of her saying anything more about it.

Q. Did you say anything to her about it?

A. Don't know as I did.

Q. What day of the week was this?

A. I think it was on Sunday.

Q. Did Evaline say she had read the will and codicil²⁰ over since the former Sunday when you gave it to the old man?

A. No, sir.

Q. How did she know anything about it; you say she was not present when you and the old gentleman were together on the previous Sabbath?

A. I suppose I told her something about it.

Q. Well, when did you tell her?

A. I don't know; I suppose it must have been the same Sunday she spoke about it. 30

Q. Now, which Sunday do you mean; the Sunday she gave you the will or the Sunday you say she said it was unjust, etc., as you have stated above?

A. The Sunday she said it was unjust.

Q. Did she ask you what was in the will and codicil, or did you voluntarily tell her, and what did you tell her?

A. I don't know whether she asked me or whether I told her; I don't remember; don't remember what I told her.

Q. Were you and she alone in this conversation?

A. Yes, sir.

Q. Where did you hold it?

A. On the porch—the back porch.

Q. Did she say that the will ought to be destroyed?

A. No, sir.

Q. Did you say so to her?

A. No, sir.

10 Q. Did she say that day that she knew where the will was?

A. No, sir.

Q. Did you know where the will was that day?

A. No, sir.

Q. Did you see it that day?

A. No, sir.

Q. Did Evaline see it that day?

A. Not that I know of.

20 Q. Did you ever see the will after this Sabbath when you gave it to your grandfather.

A. No, sir.

Q. Did you know where it was anytime after that?

A. No, sir.

Q. Did your grandfather put it into the envelope on that day?

A. Yes, sir.

Q. What did he do with it after he put it in the envelope?

30 A. Put it into his inside coat pocket.

Q. Was that the last you ever saw of it?

A. Yes, sir.

Q. Was that the last you ever heard of it?

A. The next Sunday said he had told Burroughs that he had destroyed the will.

Q. Tell all that he said on that Sunday about it; tell all he said, and all Burroughs said?

A. He said he had told Burroughs that he had destroyed the will; he said Burroughs said that if that will was not found after his death he would make a time about it; that is all I remember being said.

Q. How came you and he to be talking about the will on that Sunday?

A. We were not talking about it, only what he had told me there.

Q. Who began this conversation, you or the grandfather?

A. He did.

Q. How did he begin it? 10

A. By telling me just what I have told you.

Q. Was that all that passed?

A. Yes, sir; some one came in and nothing more was said about it.

Q. Who came in?

A. Don't remember.

Q. Have you at any time since this first Sunday in June up to the present time seen this will and codicil or either of them?

A. No, sir. 20

Q. Do you know where they are now?

A. No, sir.

Q. Has anybody since your grandfather's death told you where the will and codicil, or either of them, was?

A. No, sir.

Q. Have you searched for the will since the old man's death?

A. Yes, sir.

Q. When and where?

A. The day of his funeral, after the burial, at his own³⁰ house—my grandfather's own home.

Q. Who helped you hunt?

A. All five of us grandchildren.

Q. Whom do you mean by all five of us grandchildren?

A. Rebecca Mathews, Levi Holcombe, Martin Holcombe, Evaline R. Holcombe, and myself.

Q. Where did you hunt for the bill?

A. In his secretary and bureau and his stand drawer.

Q. Did you find any of his papers in these places where you searched?

A. I think we found them all in the secretary.

Q. Who found them?

A. We all did, I suppose; we were all looking for them together.

Q. Did you find his deeds?

A. Don't remember.

Q. What time of day was it that you made this search?

10 A. I think about three or four o'clock in the afternoon.

Q. How came you to hunt for a will?

A. We thought we would look and see if there was any.

Q. Who suggested anything about it?

A. I don't know of anyone.

Q. Are you sure Mrs. Mathews was with you (Mrs. Rebecca Mathews) in your search?

A. She was there when we first commenced but don't know whether she was with us all the time or not?

20 Q. Was this after you had requested the people to withdraw?

A. Yes, sir.

Q. Did Evaline ever tell you she knew where the will was?

A. No, sir.

Q. Has never told you that?

A. No, sir.

Q. Well, you know that Evaline knows where it is, don't you?

30 A. No, sir; I do not.

Q. Don't you know where it is?

A. No, sir.

Q. Have you ever looked more than this once for it?

A. No, sir.

Q. You only searched, you say, in the bureau, secretary and stand-drawer; were there not other places about the house where he might have placed the will?

A. There were other places.

Q. May not that will be still in existence for aught you know?

A. It might be, but I don't think so.

Q. You never spoke with your grandfather about the will, as I understand you, after this Sabbath when you say he told you he had told Mathews he had destroyed it; am I correct about this?

A. Yes, sir.

Q. How long was that before he was taken sick?

A. About three or four weeks. 10

Q. Before you searched for papers on the day after the funeral had you four grandchildren had a consultation among yourselves?

A. We had often talked together; not about the will.

Question repeated.

Objected to by Mr. Kuhl because the question ought to state the subject on which the alleged conversation was had, and when so, that the witness might be able to answer it upon the subject the counsel may have in his²⁰ mind, which nobody else knows anything about.

A. No, sir.

Q. Was Mrs. Rebecca Mathews present all the time you were examining the papers?

A. I think she was.

Q. Had you grandchildren except Mrs. Mathews had any consultation about your grandfather's affairs shortly prior to his death?

A. No, sir. 30

Q. Had any of you talked about it?

A. Don't know that we had.

Q. Did any of you ever meet at the house of Martin and talk about it?

A. No, sir.

Q. Did you never have any consultation about the old man's will, whether there was one or not?

A. We might have talked about it sometime, I don't remember.

Q. You all understood very well, did you not, at the

death of your Uncle Edwin, that your grandfather had made a will and left the farm to your Uncle Edwin?

A. I supposed that he had.

Question repeated.

A. I did not know; he had never told me so; I don't know what the rest understood about it.

Q. Was it not a matter of common conversation among
10 you that he had made such a disposition?

A. No, sir.

Q. Was nothing said about it after Edwin's death?

A. There might have been; I don't remember.

Q. Did you request Eveline to send to Wilson's after the will?

A. I asked her if she would send a note up with Harry?

Q. I thought awhile ago you said that Evaline heard
your grandfather tell you to get it, and that she sent word
to you that she had sent a note by Harry and had got the
20 will or told you so; didn't you swear to that?

Q. Yes she was present when he told me to get it, then I told her she might as well send a note; did not know until I saw her the next Sunday that she had done so.

Question repeated.

A. I did. I thought I had stated in my evidence that I told her to send a note.

Q. That is your answer, is it, to that question?

A. Yes, sir.

Q. When did your grandfather have malarial fever?

30 A. In the Winter of 1882; I don't remember what time.

Q. What papers did you take over to Pennsylvania after the funeral?

A. Took his bonds and mortgages, and all I thought was of any value,

Q. Did you make any inventory or memorandum of them before you took them away?

A. I did not.

Q. Did anybody?

A. Don't know whether they did or not.

Q. What did you do with the papers after you took them

to Pennsylvania. Where did you put them.

A. Put them in a box and locked them up.

Q. Did you have the box open at any time?

A. Don't know that I did.

Q. Who kept the key of it?

A. I did.

Q. Did anyone else have access to the key?

A. No, sir.

10

Q. Where did you carry it?

A. On a key ring in my pocket.

Q. Who found the deeds; state, do you know?

A. Don't know.

Q. Do you know whether they were found?

A. Don't remember now.

Q. Was your grandfather quite deaf?

A. Yes, sir; he was pretty hard of hearing.

Q. Have to speak loud to him to make him hear?

A. Yes, had to speak out pretty loud.

20

Q. How long had he been so deaf?

A. Some two or three years; perhaps longer; I don't remember.

Q. Had he not grown much more deaf within the last year?

A. I didn't know that he had.

Q. Hadn't you noticed a difference in his hearing during the last year?

A. No, sir; I had not.

Q. Had you not noticed that it was much more difficult to make him understand a thing than it had been previously?

A. No, sir.

Q. Noticed no difference at all?

A. No, sir.

Q. Are we to understand you then as saying that you considered him as sound in mind and body as he had been ten years previous?

A. Yes, sir.

Q. After the death of your Uncle Edwin did you hear

anything said about his making a codicil to make some provision for your aunt Ellen?

A. I don't remember that I did.

Q. Did the codicil make any provision for Mrs. Eleanor Holcombe; if so what?

A. I think it did. Yes, sir. I think it left her one third of the income of the farm during her life time.

10 Q. What else was contained in the codicil?

A. It left my sister a home there during her life time. There was some money to be divided among us grandchildren, that is us five grandchildren, the way I understood the codicil.

Q. What money was that?

A. The money that was to have went to his son; that was the way I understood it.

Q. Who were the subscribing witnesses to that codicil?

A. Richard H. Wilson and Mr. Sherman I think were
20 the subscribing witnesses. I don't know Mr. Sherman's first name.

Q. How old was this boy by whom Eveline sent the note if she did send it?

A. Ten or eleven, I don't remember.

Q. Whose child was he?

A. Martin Holcombe's.

Q. Did he live there then?

A. Yes.

Q. How long had he lived there?

30 A. Some two or three years.

Q. What was the matter with your grandfather when he was sick of the disease of which he died?

A. I think it was palsy.

Q. When was he taken with it?

A. I think about the 12th of July.

Q. Bad?

A. Not for the first week, he was so that he was up and about.

Q. When did he get worse?

A. I think it was on Tuesday or Wednesday of the week

that he died the Saturday night, or rather Sunday morning.

And being again examined re-direct, saith—

Q. You have stated that from the 1st of January, 1882, to the time your grandfather was stricken with palsy you were in the habit of going across to his place every Sunday, and sometimes during the week, averaging, you thought, 10 twice a week; now had that been your custom only during the few months prior to his death or what are the facts about your custom in going to his house?

A. I went over there almost every week, almost every Sunday when I could, and sometimes through the week; always tried to get over there as often as I could.

Q. Well was it confined only to the last few weeks or had it always been your custom?

A. It had always been my custom ever since I lived in Pennsylvania in the county where I live now. 20

Q. Did either Rebecca Mathews or her husband make any objections to taking out letters of administration on your grandfather's estate?

A. No, sir, not that I know of.

Adjourned to Saturday morning, Sept. 29, 1883, at the same place.

CHARLES A. SKILLMAN,
M. C. C.

30

September 29, 1883—Parties met pursuant to adjournment, the complainants being represented by George M. Shipman, Esq.

The further re-direct examination of *John C. Holcombe, Jr.* being resumed by Mr. Kuhl.

Q. Did you ever hear your grandfather say anything to anybody about building Eveline, your sister, a house or anything on that subject, if you have state it?

A. No, sir, I never heard anything about it.

Q. Did you ever say anything of that kind to him yourself or hear anyone else talk about it to him?

A. No, sir.

Q. Did you ever ask your grandfather to divide his farm and give you a part of it in order to keep it in the family name or have you ever heard anyone talk to him about that?

10 A. No, sir.

Q. Did you go to your grandfather's any oftener after January 1st, 1882, and up until he was stricken with palsy than you had during all the time you had lived over the river in Pennsylvania opposite his farm?

A. Don't know that I did.

Q. Do you mean to be understood as saying that your grandfather was up and about after he was stricken with palsy?

A. I think he was up and about the first week after he
20 was taken sick.

Q. Was your grandfather a man of strong will?

A. He was.

Q. Unusually so?

A. I think he was.

Q. Don't you know he was?

Objected to, because leading.

A. I do.

30 Q. In searching for the papers on the day of the funeral of your grandfather did you look in all the places that you thought it likely that he would leave any of his papers?

Objected, because too leading.

A. I did.

Q. Did you examine all the papers you tied up and took
to Pennsylvania?

A. Yes, sir.

Q. So that you are satisfied in your own mind as to the

nature of the papers you took?

Objected to, because leading.

A. Yes, sir.

Q. After your grandfather's burial who remained in the house and for how long?

A. My sister Eveline remained there, and Harry Holcombe, that is all I remember of.

Q. How long?

A. She stayed there I think about 2 months.

Q. Where was Rebecca F. Mathews and husband and her mother?

A. Mr. Mathews and his wife were living in the other part of the house; don't know whether Mrs. Mathews mother was there or not.

Q. How long—are they living there now?

A. Yes they are.

20

Q. When were your grandfather's household goods sold?

A. I don't remember, somewhere in the spring, about the 1st of April.

Q. Where had they been from the date of his death until they were sold?

A. His own home there where he lived.

Q. Was there always free access from part of the house where Mrs. Mathews lived and the part where your grandfather lived by communicating doors; was there or not?

30

Objected to, because answer suggested.

A. Yes, sir.

And being again cross-examined by Mr. George M. Shipman saith—

Q. Did you ever take any list of the papers that you carried over to Pennsylvania from your grandfather's house after his death?

Objected to because question has been asked and answered before.

A. No, sir.

Q. State how you are satisfied as to the nature in your own mind of the papers that you took?

A. I gathered up all that I thought was of any value?

10 Q. Is that all?

A. That is all.

Q. When did you next visit the house where your grandfather died after you took the papers away the day of the funeral?

A. I think I was over there the next evening.

Q. See Eveline then?

A. Yes, sir.

Q. Did you tell her what papers you had carried over to Pennsylvania?

20 A. I don't think I did.

Q. Did you tell her or speak to her about the will?

A. Don't remember that anything was said.

Q. What did you do with the papers that you took over to Pennsylvania after you put them into the box and where are they now?

Objected to because question has been asked and answered before.

30 A. I handed them over to the administrators; I don't know where they are now.

Q. Is there more than one door communicating between the part of the house where your grandfather died and the part where Mr. and Mrs. Mathews lived?

A. One door is all.

Q. Do you know whether this door was fastened by Eveline or not on the side of the grandfather's before she went away from the house?

A. I think it was.

Q. Did she lock and close up the part where your grand-

father died and take the key with her?

A. She did.

Q. How do you know that your grandfather was a man of strong will?

A. Because if he had made up his mind to do anything he done it if it could be done.

And being again examined re direct by Mr. Kuhl saith: 10

Q. Did or did not Eveline leave some of her goods in the house when she left it?

A. She did.

Q. Were you at your grandfather's house after Eveline left, if you were state when, how often?

A. I don't remember of being there before the sale; I might have been; I don't think so.

JOHN C. HOLCOMBE, JR.

Sworn and subscribed this 29th day of September, A. D., 20 1883, before me.

CHARLES A. SKILLMAN,

M. C. C.

George H. Larison, a witness produced on the part of the defendants, being duly sworn, saith—

I am a physician and have been a practicing physician and surgeon in Lambertville since 1859; about two miles from where John C. Holcombe lived and died; I knew the 30 deceased, have always known him to my recollection; I treated him professionally for the last 6 months of his life, I think, or near that, since the death of Doctor Studdiford, who was his physician; I was the family physician for the rest of the family; I attended Mr Mathews' family; John C. Holcombe died right after the middle of July 1882, about or near the 20th, on Sunday morning, as near as my recollection; he died of palsy, apoplexy more particularly as we called it; he had been complaining a day or two before I was sent for; I was called about the 12th; I have a book ac-

count of it; that is as near as I can remember; I had a copy of it when examined before; I gave a correct copy of it then.

Q. In your affidavit to the answer in this cause you say he was stricken on the twelfth day of July, 1882, and died on the twenty-third of the same month, is that correct?

10 *A.* I saw him, I believe, on the twelfth; he was complaining, I think, before then; he grew worse to his death; I believe that the time of his death was correctly stated in my affidavit.

Q. When had you seen the deceased last prior to July 12th?

A. I believe the last day of June.

Q. Where did you see him?

A. I believe at his home.

Q. How did you come to be at his house?

20 *A.* Went to see Evaline; she was complaining.

Q. What was the physical and mental condition of deceased at that time?

A. As well as usual.

Q. Was there any evidence then of palsy?

A. No, sir.

Q. When before June 30th did you see him?

A. Saw him at times when I passed the house.

Q. Frequently?

A. Occasionally.

30 *Q.* Had you at the time of his death ever transacted any business with him?

A. Yes, sir.

Q. Please state when it was and what passed, as fully as you can?

A. I had a last settlement with him the twelfth day of April, 1882; it was at his house; he held a note against me of about forty dollars; he owed me near two hundred; paid me all but about twenty-five dollars; I took his note for the balance due me.

Q. Please give us the transaction of your settlement in

detail; state just what was done and said by each?

A. He said he would like to pay me the whole amount, but he wanted to use a little money; I told him it would make no difference.

Q. Where did you find him on the day you settled?

A. I found him in the front sitting-room or kitchen.

Q. State what you first said to him or he to you; all that was said or done; did he have your due-bill; did he 10 have money; where did he get it from?

A. On going into the house he asked me if I had my bill with me; I said yes; I produced it, also Edwin's bill; I says have you the note you hold against me of forty dollars; he said he had if he hadn't mislaid it; he hunted over his papers; in his pocket-book or portfolio that he had there when he was sitting, or in his clothes somewhere about him; did not find it; then went into another room among papers, somewhere I suppose, as he said he would go and look for it; after hunting twenty minutes 20 or so came back without finding it; I says, suppose you give me a paper to show that I have paid it, and if found this will offset it, so he gave me a paper for the amount of the note and interest; I took this; we completed the settlement, with the understanding that if the note ever appeared my paper that he gave me would cover the ground; we exchanged pleasant words, and it was satisfactory to both of us, for he said he thought he had lost it, as he had looked for it lately before.

Q. Was any calculation of interest made that day? 30

A. Yes, sir.

Q. Who made it?

A. I did and he looked over it.

Q. Was any money paid?

A. Yes, sir.

Q. By whom; to whom; who counted it; where did the money come from?

A. He paid it to me; he went into another room and brought the money out, or brought out something that had the money in; he counted it and handed it to me for

so much; mentioned the sum; I counted and found it correct.

Q. Who drew the paper he gave you to cover the lost note he held against you?

A. I drew the paper I believe.

Q. Did he read it?

A. Yes, sir.

10 *Q.* Did he understand it.

A. Yes, sir.

Q. Up until the twelfth day of July 1882, had you noticed any evidence of palsy, or failure of mental vigor in the deceased?

A. No, sir. He was as well as usual for an old man. You will all understand that; was capable of doing his own business I will add, put that in too.

Q. Was or was not the deceased John C. Holcombe a man of strong will?

20 *A.* Yes, sir.

Q. Unusually so?

A. Yes, sir.

Q. Was or was he not a man of unusual mental vigor for one so old?

Objected to because the answer is suggestive.

A. He was a man of unusual mental vigor.

Q. Did deceased look over and examine the items of your
30 account against him and Edwin's too.

A. Yes, I think very closely too.

Q. Did he settle Edwin's account?

A. Yes, sir.

Q. What if anything passed between you or had passed between you prior to this about Edwin's account?

A. Some few months before he had asked me about Edwin's bill and said that he hadn't the money by him then to settle it; I said sometime when it suits you.

Q. Well on the day of the settlement what passed about it?

A. Nothing to the contrary.

Q. You produced it and mentioned it did you not?

A. Yes, sir, and let me add and handed both bills together, each being separate accounts.

Q. What did he say if anything about Edwin's bill?

A. Nothing only I gave him a receipt without asking and he took it.

10

Adjourned to one o'clock P. M.

At one o'clock, P. M., the witness, George H. Larison, being cross-examined by George M. Shipman, Esq., says—

A. How long have you been a practicing physician?

A. Since March, 1858.

Q. To what school do you belong?

A. I graduated at the medical department of the University of Pennsylvania, Philadelphia; it is an allopathic school.

Q. You have practiced in and about Lambertville ever since you have been practicing as a physician?

A. No, sir; I was one year in Pennsylvania—the first year.

Q. Now will you please state just how long you knew John C. Holcombe before his death?

A. Over forty years.

Q. Did he always live where he lived when he died since you have known him?

30

A. Yes, sir.

Q. How long had you been practicing as a physician for members of his family before his death?

A. Some half a dozen years steady.

Q. Before the twelfth of July, 1882, had you ever been called upon as a physician to prescribe or do anything for John C. Holcombe?

A. Yes, sir.

Q. State when?

A. I gave him medicine the day I settled with him, the

twelfth of April.

Q. What was the matter with him then?

A. Indigestion; the bowels irregular.

Q. Did you ever give him any other medicine after April 12th up to July 12th, the time of his last sickness?

A. I believe I sent him some pills once from the office office during that time.

10 Q. When before April 12th had you had any extended talk with John C. Holcombe?

A. I think about three or four months before; I mean extended talk.

Q. When and where was that? give the circumstances of the conversation?

A. He mentioned, as I said before, about Edwin's bill at his place.

Q. Did you call on him then and there for the purpose of presenting Edwin's bill?

20 A. No, sir.

Q. Had you ever had any settlement with him prior to April 12th of your accounts for attending his family as a physician?

A. Yes, sir.

Q. When before then?

A. I think two years before, my books will show.

Q. When did you give him your note or due-bill which was settled for on this 12th of April?

A. Some eight months before.

30 Q. Was it given for borrowed money, and did you borrow the money of him at the time you gave him the due-bill?

A. Yes, sir.

Q. How old was John C. Holcombe when you had this last settlement with him?

A. I have been told that he was near ninety years, but it was only an outside report.

Q. When you borrowed this money of him and gave him the due-bill where were you and who counted the money over which you received?

A. We were in the same front room in which we settled; he counted it over carefully to me, and I counted it over carefully after him.

Q. How was his health at the time you borrowed the money of him and gave him this due bill?

A. Good as usual.

Q. What time of day?

A. About ten o'clock in the forenoon.

10

Q. Do you know whether he had been sick anywhere about this time?

A. Don't know that he had.

Q. What time in the day was it on this twelfth of April when you went to his house?

A. About nine o'clock in the forenoon.

Q. Was he sitting up when you got there?

A. Yes, sir.

Q. Did you have any difficulty in making him understand what you wanted that morning when you first saw him?

20

A. None whatever.

Q. Was anybody present?

A. Yes, sir.

Q. Who?

A. Evaline, the granddaughter.

Q. How long were you there at that time?

A. An hour at least.

Q. Did you have to speak in a loud tone of voice to the old man or not?

30

A. I made him hear by my usual ordinary loud speaking.

Q. Did you not have so much difficulty to make him understand, and to get him to settle, that you told him to look over your bills, and you would go on an errand and return and finish settlement when you came back.

A. No, sir; I want to explain something here; (counsel interrupting, says I will ask you the questions I want you to answer;) witness resuming, says, "I will do my own answering; I know all about this."

Q. You did go away and leave the old man that morning before you finished settling with him, did you not, and return and finish your settlement?

A. No, sir; now I ask to make an explanation.

Counsel of complainant says that he objects to any explanations except answers to his questions.

10

Q. Did you remain at the house with the old gentleman that morning from the time you came there until you got your money and left the due-bill for twenty-five dollars?

A. No, sir; these two last questions don't meet the case.

Q. Did you have any conversation with Evaline that morning in the presence of the old man?

A. Yes, sir; I asked her how she did and how the family was.

20 *Q.* Is that all you talked with Evaline?

A. No, sir.

Q. You talked with her about your bill, did you not?

A. Not in particular, but to the old man.

Q. Did the old man hear anything that you said to Evaline that morning?

A. He heard it all.

Q. Did you not speak and talk to Evaline in a lower tone than that in which you addressed the old man, and that for the purpose of keeping him from hearing what
30 you said?

A. No, sir; had no reason to do so.

Q. Who wrote the due-bill you left with the old man that morning?

A. I did.

Q. Did you read it to him before you left it with him?

A. I read it to him as I usually do such papers when I write them.

Q. Did he sign his name to the due-bill there that morning?

A. Yes, sir.

Q. Did he sign his name without any assistance from either you or Evaline?

A. Yes.

Q. Did he sign his name to the due-bill before or after you went away, and came back to his house that morning?

A. He signed the due bill just at the close of the settlement, just before I left the house finally.

Q. When did you draw this receipt for the note he held against you; was that when you first came to the house or when you came back the second time?

A. When I was there and settled with him.

Question repeated.

A. When I came back the second time when I settled with him; when I was there the first time I had an urgent call to Brookville, 2 miles above, and left my paper and said I will be back in an hour; this was the explanation I wanted to make awhile ago; it was about 8 o'clock when I first went there. 20

Q. How did you happen to take your bills and go there for a settlement that morning?

A. Went there for the purpose of settling; I called to see if he was in, and then went on my way to Brookville, leaving my bills, I believe I did.

Q. Did you not attempt to settle when you first called on him, and endeavor to settle your bills then and find him hard to understand and leave the bills, telling him you would come back, and he should look over them while you were gone? 30

A. No, sir, I left the bills, and he was very perceptible; he understood as well as I did; I wanted him to be fully satisfied; I left the bills for him to look over while I was gone.

Q. Are you and were you satisfied when you closed that settlement that he understood all that he had done fully?

A. Yes, for we talked it all over and repeated it mutually.

Q. Just repeat what you repeated to each other?

A. I explained each bill to him; he mentioned the amounts and went over the calculations; they were correct

and satisfactory to each.

Q. Did he express any dissatisfaction as to the amount of either of the bills?

A. No, sir, he seemed to be well satisfied.

Q. Was his eye right good?

A. Yes, sir.

Q. Was his hearing good?

10 *A.* Yes, sir.

Q. He could hear as well as you yourself, could he?

A. I could make him hear by speaking moderately aloud distinctly.

Q. Was he not very deaf and had he not been so for several years?

A. No, sir, a fair, loud tone in the way I speak, I could make him hear distinctly.

Q. Did he search for your note the first time you went to his house that morning, and before you left your bills?

20 *A.* I don't know that he did, I was not long enough there to know.

Q. Your due bill was spoken of, was it not, when you were first at his house, and before you left your bills?

A. Don't recollect; I knew that he knew all about that.

Q. Did he read over the receipt you took for your note that morning?

A. Yes, sir, for he made mention of it plainly.

Q. Did you not read it over to him and was not that the way and the only way he knew what you had written?

30 *A.* Not so; I read it over to him as I usually do such papers, and he took it and read it over and made mention of it plainly to me.

Q. Did he read it out aloud in your hearing, each and every word of it?

A. No, sir, but mentioned to me after reading it over what it contained.

Q. How do you know he read it to himself?

A. Because he mentioned the wording of the article—the wording of the paper.

Q. Did he mention anything that was in it before you

read it to him?

A. He made suggestions before it was written; we had mutually agreed.

Answer objected to as not responsive.

Question repeated.

A. He mentioned how it should be written or drawn up.¹⁰

Q. Do you know and can you swear that he read a single word of that receipt, or that he read a single word of any item in your bills shown there that morning?

A. Yes, sir, understood it perfectly well.

Q. You read everything to him, did you not; did he read a single word or figures aloud in your hearing that morning?

A. I read all over to him, and he read over some points to me that interested him.

Q. Can you give a single word or single item that he²⁰ read aloud to you from your bills or receipts that morning?

A. Yes, sir, he read over each bill distinctly, both his bill and Edwin's and made calculations.

Q. Do you think as a physician that he was just as capable of doing business that morning as he was 8 months before when you borrowed the money of him?

A. Yes, sir.

Q. Do you think he was just as capable on the 30th of June when you next saw him to do business as he was on the 12th of April when you saw him before?

30

A. Yes, sir.

Q. You think his powers had not failed him at all for a year before the 30th of June, is that so?

A. His powers had not failed only in proportion to age of which he was remarkably preserved.

Q. What do you mean by that last answer?

A. The regular proportion with age—well preserved, for he was a well preserved man.

Q. You said in your direct examination that up to the 12th of July, 1882, you had not noticed any evidence of

any failure of mental vigor in John C. Holcombe at all, is that so?

A. Yes, sir, infirmity of body brought decrepitude which retarded his locomotion, but still he had his full power of reason; I knew this by frequent conversation with him.

Q. How do you explain your answer a few minutes ago, that his powers had failed in proportion to his age?

10 A. Bodily powers.

Q. When you went to see him on July 12th was he abed?

A. No, sir.

Q. How long after was it that he was attacked with apoplexy?

A. He was attacked then; he had it on then, and was gradually increasing.

Q. How long had he been in that condition?

A. Eveline told me the morning before or the day before, partly so, but it was increasing on him.

20 Q. Do I understand you to say that his mental vigor was as strong on this day you were called to see him and on the 30th of June prior thereto, as it had been during all your knowledge of him?

A. No, sir, he was very much changed in mind and body too, mind particularly, that is the 12th of July; did not perceive any difference on the 30th of June from what it was previously; when I went there the 12th of July he was in a rage; some person came in to whom he owed a small amount; he began to rave and said you have come after 30 money; he was not in the bed yet; he threw his cane down on the floor and continued in a rage and we had to do all we could to pacify him; that person was John Worman.

Q. Had you not frequently seen him in just such a state of mind before?

A. I never saw anything like it of him before, for he seemed to be beside himself.

Q. Dr. Studdiford his attending physician died in March before the old man died, did he not, and was not that the first you had any intimate knowledge of the old man's condition after that?

A. Yes, Dr Studdiford died in March; I had long and frequent conversations with him and I had treated him a little at times before that although Dr. Studdiford was his physician.

Q. What relation are you to Martin V. B., John C., Levi and Eveline Holcombe?

A. We are cousins

Q. You have talked with them about this case and what 10 you intended to swear to, have you not, and frequently?

A. I told them that if I was called on I would tell the truth, the whole truth, and nothing but the truth.

And being examined re-direct by Mr. Kuhl saith—

Q. You state that prior to your becoming Mr. Holcombe's regular physician you had frequent and long talks with him from which you judge of his mental vigor; has that 20 been the case during a long number of years?

A. Six years, last past particularly.

Q. Have you any knowledge of Mr. Holcombe's habit of reading and understanding the papers of the day; state what you know on this subject, and how long it continued?

A. The last of 1875 and in 1876 he was a great reader in the politics of the day; the first that called my attention more forcibly to him as a reader and thinker was that he took hold of the idea and advanced it as it was advanced by Pomeroy's *Democrat*, then published in Illinois; 30 he early took ground of dissent against the Democratic party, because they allied themselves so closely with the Republican party; he was a Democrat.

Q. How long did his interest in the public questions of the day and his information concerning them continue?

A. As long as I knew him to have his mind—up to the 30th of June before he died; I know that he read three or four newspapers and marked pieces for me, and I marked pieces for him, to read, and gave me money to buy miscellaneous papers, and we would talk the matter

when we met; I believe we talked about it on the thirtieth of June.

And being again cross-examined saith—

Q. You are a good deal of a politician yourself, are you not?

10 A. Don't claim to be a politician, but I am a strong dissenter.

Q. You have run for Congress on the Greenback ticket, have you not, and how often?

A. Yes, sir; three times; I would like to know what that has to do with this?

Counsel of defendants objects to any such cross-examination of the witness upon matters entirely foreign to the case, and which from the manner in which the questions
20 are put is only done to ridicule the witness.

Q. You have been a preacher in your time, doctor, have you not?

A. I am a regular ordained minister of the Baptist church, and I am now the regular pastor of a church in good standing.

Q. What church?

A. Baptist church of Solebury, Bucks' county, Pennsylvania, four miles west of Lambertville, where I preach
30 every Sunday.

GEORGE H. LARISON.

Sworn and subscribed this 29th day of September, A. D. 1883, before me.

CHARLES A. SKILLMAN,
M. C. C.

John H. Wilson, a witness produced on the part of the defendants, being duly sworn, saith—

I am seventy-eight years of age, or close to it; I reside

in West Amwell township, about four and a half miles from where John C. Holcombe died; I knew him in his lifetime; I have always been acquainted with him since I was fifteen years old or younger.

Q What has been the relations of you and deceased during this time?

A Me and Mr. Holcombe always lived close together, some three or four years we joined farms; we very frequently had business together; I think, if I remember right, we were both in the same Town Committee for three years; one of my neighbors moved away out of the neighborhood and in the meantime while he was gone I had a power of attorney to act for him, and John C. had a mortgage on the place; I collected money and paid debts, and consequently I had business with Uncle Johnny in paying his interest.

Q Did you ever talk with him about the matter of loaning money and the securities therefor? 20

A Yes, sir; probably several times.

Q Was he a man who understood business?

A I think he understood business as well as the common run of people.

Q How lately before his death did you have any business transactions or talks with him, and what were they about, if you had any?

A I could not tell exactly how long, some three or four weeks before his death we had a talk.

Q Where? 30

A I was at his house.

Q State your talk at that time?

A We talked a great deal, but I can state but a mighty little of it.

Q What was your talk about; state any one subject you talked on?

A I recollect one subject we talked about; it was bonds and mortgages, and I can give the reason we talked about them; I held a mortgage against two properties; each one of us had mortgages on two different properties;

we was asking each other how we were getting along with them, as near as I can tell, cannot remember the words; there were some other matters that we talked about, but I don't remember them.

Q. Did you and he ever talk anything about the division of property after a person died?

A. We did.

10 *Q.* State when that was and what was said, as near as you can?

A. He and I often talked about those things, and I think that the last time we talked we talked about it—some three or four weeks before he died.

Q. Go on and state your talk on that subject?

A. I can't remember much that was said; we were talking something about wills and something about legacies, and then we were talking about such a one getting along—some starting poor and then getting rich; I recol-
20 lect my saying in my way of talking that some people had a big legacy left them; I told him that I was not one of the lucky kind; one of my grandparents, I said, was well off—had quite a sum to leave his children, and when he died part of his children was living and part dead, and he had left the grandchildren their parents' share, and consequently there was so many of us that there was but a small drop in the bucket for each one, and as near as what was said then, I says I thought at that time that it
30 would have been nearer right to have left each of his grandchildren alike; I think this reply was, as near as I can remember, that he could not see but what one grandchild should be as near as another.

Q. Was the deceased a man of strong will?

A. I think he was, if I am a judge.

Q. A little stubborn?

A. I don't know what you may call it; sometimes he would get into quite a passion, but it was soon over.

Q. He generally had his own views on a subject and expressed them, did he not?

A. Yes, sir.

Q. During all the time you knew John C. Holcombe was he, in your opinion, of sound mind and understanding and capable of transacting business intelligently?

A. I think he was; I don't think I ever see him any other ways.

Q. On the occasion of your last talk with him did you observe any failure of his mental powers that in your judgment impaired his ability to transact business, and to¹⁰ understand what he was doing?

A. All I could see that day that I was there last he was harder of hearing than I ever saw him.

Question repeated.

A. When I took my chair and set close by him and spoke a little loud so that he could hear me distinctly he appeared to talk and understand as distinctly as he had done for years, so far as I could see.

And being cross-examined saith—

20

Q. When was it that you and Mr. John C. Holcombe served on the Town Committee together—how long ago.

A. It must have been in the neighborhood of thirty years ago, twenty-five at least.

Q. How long ago was it that you had this business with him about your neighbor who was absent for three years?

A. I think it was seven years this spring since he moved back; he was absent eight or nine years before³⁰ that in Virginia; the business I did was in the latter part of his absence.

Q. What began this conversation with the old man that you had with the old man the last time you talked with him.

A. I think the first part of it was he asked how I got along in getting my interest of a certain person; I told him; I asked him how he was a making it with him; he told me, and we talked about both parties along about the same.

Q. What time of the day was it when you went to his house this last time?

A. About the middle of the forenoon.

Q. Was the old man up?

A. Yes, sir.

Q. Did he lie down while you were there?

A. No, sir, he said he felt well on that day.

10 Q. Did you notice in your intercourse with him whether as he grew older these fits of passion of which he spoke grew on him and were more violent as he grew older?

A. I see nothing of any fits of passion the last day I was there, and I hadn't formerly before that seen any difference in the way of passion.

Q. Can you tell us when you had seen him prior to this last time of which you speak?

A. No, sir, I can't; probably it might have been 6 or 8 months and it might be only 3 months; I would frequently
20 see him, when I was riding along, at the door, and I often saw him here in Lambertville.

Q. Don't you think he had failed the last time you saw him from what he was the time before that when you saw him and conversed with him?

A. I didn't discover any difference; if there was any difference I was not smart enough to see it.

Q. You say he was more hard of hearing than when you saw him before?

A. He was more hard of hearing, but as to his mind I
30 could not see any difference.

Q. How long was it since you had transacted any business with him before the time you last talked to him?

A. Never since I did business between him and Wilson about seven years ago I think. Nothing since.

Q. Had you talked frequently or otherwise with the old man since you ceased to do business with him?

A. Not very often.

Q. You are an uncle of Levi and Martin V. B. and Eveline Holcombe, are you not?

A. Yes, sir.

Q. Martin is indebted to you in a considerable sum of money, is he not?

A. He owes me some, yes.

Q. How much?

A. If that has anything to do with the case I can tell it, but I don't make a practice of telling through the country how much people owe me.

Q. You are the father of Richard H. Wilson? 10

A. Yes, sir.

And being again examined re-direct says—

Q. The counsel in speaking of Mr. Holcombe's anger uses the word fits, you used the words a little angry, which was right?

A. I said he was a man that would get in a passion; we all do sometimes.

Q. His passion was not ungovernable, was it? 20

A. I think not; it was a few words, soon over.

Q. You never saw him lose his reason or good sense through it, did you?

A. I never did; in my way of thinking some folks think it is not good sense to get in a passion.

Q. Was not John C. Holcombe a man of unusual mental and bodily vigor for one of his age?

Objected to because leading—answer suggested.

30

A. I think he was; he was of very clear perception for one of his age.

The further taking of testimony in this cause before me was adjourned by consent of counsel to the 2d day of October, A. D., 1883, at 9 o'clock A. M., at the same place.

Tuesday, the 2d day of October, A. D. 1883, at the request of R. S. Kuhl, Esq, solicitor of defendants through L. H. Sergeant, Esq., the further taking of testimony was post-

poned to the 4th day of October, A. D. 1883, at 9 o'clock A. M., at the same place.

On the 4th day of October, A. D. 1883, R. S. Kuhl, Esq. through L. H. Sergeant, Esq. asked for a further adjournment of the taking of testimony in this cause before me to the 9th day of October, A. D. 1883, at 9 o'clock A. M. at the 10 same place, and it was accordingly adjourned to that time.

CHARLES A. SKILLMAN,
M. C. C.

On this 20th day of December, A. D. 1883, the solicitors of the respective parties say that they have no further questions to ask the witness, John H. Wilson, and agree that the witness, who was present, sign his testimony aforesaid given.

JOHN H. WILSON.

20 Sworn and subscribed this 20th day of September, A. D., 1883, before me.

CHARLES A. SKILLMAN,
M. C. C.

30 Examination of Evaline R. Holcombe, one of the witnesses in the above stated cause depending in the Court of Chancery of the State of New Jersey, taken at the house of Levi Holcombe, in the village of Ringoes, Hunterdon county, New Jersey, by consent of counsel, on Friday, the twentieth day of July, in the year of our Lord one thousand eight hundred and eighty-three, before John L. Connet, one of the Masters and Examiners of said Court, in the presence of George M. Shipman, Esq., solicitor, and of counsel for the said complainants, and of R. S. Kuhl, Esq., solicitor, and of counsel for the said defendants.

J. L. CONNET,
Master in Chancery of New Jersey.

Evaline R. Holcombe, a witness produced on behalf of

the defendants in the above cause, being duly sworn according to law, deposes and says—

I am one of the defendants in this cause; I am sick and confined to my bed at this time; have been so confined since January 20th last about; I understand that I am seriously ill; John C. Holcombe, the testator, was my grandfather; I kept house for him at the time he died; 10 my grandmother, his wife, died ten years before my grandfather, and during that ten years I kept house for him; I did all the household work and took all the care of my grandfather.

Q. Did you ever say anything to your grandfather or did you ever hear him say anything about building a house for you?

A. No, sir.

Q. If you ever heard him say anything about building a house for any one state what it was and the circumstances 20 under which it was said?

A. I heard him say that Aunt Eleanor, one of the complainants, wanted him to build her a house; I asked him where and he said he did not know where.

Q. State, if you know, what the feeling was between the testator and Eleanor Holcombe, one of the complainants.

A. He never thought a great deal of her.

Q. Did he like her or not?

30

Objected to because leading.

A. He never thought anything much of her since I can remember.

Q. State your conversation with Rebecca while milking the evening of the testator's funeral, in the barn yard, about the will?

A. She said they thought the will would be read; I said I didn't know it would be read then.

Q. Did you know at that time whether there was a will

or not?

A. I did not; I knew he had had one, but did not know then.

Q. In that conversation did you use the words, "We had not intended to have read to-day," or anything like it?

A. I did not.

Q. Do you remember talking with Rebecca on the
10 back porch in August, 1882, about the will?

A. Yes; she asked me if there was a will, and I told her there was; that he had had one; I can't remember just exactly what she said.

Q. Rebecca says that you told her, when she asked you "if you knew what grandfather had done with his will," you replied, "I do; I know all about it;" is that true?

A. No, sir.

Q. Did she ask you who had sent for the will?

A. She asked me if it had been sent for.

20 Q. What did you tell her?

A. It had.

Q. State all you know about your grandfather sending for his will, when it was, and all you know about its being given to your grandfather.

A. It was in June; I could not tell the day of the month, about the middle, from the forepart to the middle; he wanted me to go after it at different times and I did not go; I told him that I would write a note and send it with Harry, and I did; Mr. Wilson sent it; after I had
30 written the note and sent it he said that Harry would lose it, may be, and after I had sent for it he said that he had sent John for it, and that I need not send for it, but I had done it then; I got it, and then I sent a note to John that I had got it; I wanted him to come over; grandfather asked him if he had got it; I have it to John, and he gave it to him.

Q. Did you see your grandfather examine it?

A. I did.

Q. Did you hear his talk and John's about it?

A. I could not tell anything they said about it; I was

about my work, and I didn't hear what they said about it?

Q. State if after that you heard your grandfather say anything about the will; what it was, and the circumstances under which it was said.

A. When Mr. Mathews was in there shaving him one, Sunday morning—I was in the other room—I heard them talking, and from what I heard, Mr Mathews said to grandfather if it was gone he would make a time, or there¹⁰ would be a time, around there; I don't know which he said; when I came out of the room grandfather asked me if I had said anything about that paper to them; I told him I hadn't; he said I mustn't.

Q. Did he give any reason for not wanting them or the Mathews to know it?

A. No more than they would make a fuss about it.

Q. On the Friday before the testator's death, or at any other time, did you send Harry after Mr. Wilson, and Mr. Wilson came to your house in response to your re-²⁰ quest?

A. I did not.

Q. Do you remember Mr. Wilson being there on that morning?

A. He was there on Friday morning; Rebecca was not staying with grandfather that morning; I don't remember talking to Wilson about the papers; I did not say anything about papers; my grandfather was in the habit of sleeping with his clothes on; it had been his habit for³⁰ nine or ten years; at the time of Uncle Edwin's death and afterwards he was very ill with chills and fever.

Q. State when the fever would come upon him; what you noticed in his conduct?

A. He would talk and go on; he had very hard chills and fever; he would often get up and lie in different places—on the floor and on the settee; he did not know what he was doing.

Q. When the fever would pass away would these actions cease?

A. He would be better then.

Q. During all the time you lived with him, except when the fever would be upon him, what was his mental condition up to the day he was stricken with palsy?

A. He was always so that he attended to his own business.

And being cross-examined, says :

10 *Q.* How long had you lived with your grandfather at the time of his death?

A. I think about twenty years or a little more, twenty or twenty-one.

Q. When did you begin to keep house for him?

A. After grandmother's death I was the main housekeeper.

Q. Can you fix the year of your grandmother's death?

A. Ten years last November I think.

Q. When did you first know that your grandfather had made and executed this last will?

20 *A.* It was after uncle Edwin's death ; he died about two years ago, in 1881 I think.

Q. How did you find out after your uncle Edwin's death that your grandfather had made a will?

A. He spoke about it.

Q. To whom did he speak about it?

A. To Richard Wilson.

Q. Were you present when he spoke to Richard Wilson, or how did you find out that he spoke to Richard Wilson about it?

30 *A.* I was around there and I heard him talking about it; I mean around the house where my grandfather lived, attending to my work.

Q. How long after your uncle Edwin's death, did you hear Richard Wilson talking with your grandfather about this will?

A. Not very long it wasn't, I would not say positively how long.

Q. Was anybody present when your grandfather and Mr. Wilson were talking?

A. No, sir.

Q. Did you tell anybody that you had heard your grandfather and Mr. Wilson talking about a will, after that conversation?

A. I don't know that I did until grandpap and John were talking about it, then I said something to John about there being a will.

Q. How long after you heard Mr. Wilson talking to your grandfather did you hear John and him talking about it, and how long was it after you heard the conversation that John was at your grandfather's house?

A. John was there so much, he was there every week or nearly every week; I think it was in the middle of the week when Richard Wilson was there, and I think John was there the next Sunday, so might have been the next time he was there that I heard them; I don't remember exactly when it was.

Q. Did you not tell or speak to John about the conversation you heard about the will, the very next time you saw him, and did you not tell him or speak to him about it before he spoke to his grandfather at all?

A. I don't remember, I would not say whether I did or not.

Q. When was the first time you spoke to your grandfather about the will.

A. I never said anything about it to him until he said something to me about going after it, in March I think it was.

Q. Can you tell how Mr. Wilson happened to be at your grandfather's house, the day you first heard there was a will in existence?

A. I don't know whether he had sent for him or whether he happened in.

Q. How long after you found out there was a will did your grandfather make a codicil to that will.

A. I don't know but not very long I guess.

Q. You knew what the codicil was when it was made did you not?

A. I did not.

Q. You knew it was for the benefit of your aunt Eleanor did you not?

A. I did not know anything about it.

Question repeated.

A. I did not.

Q. You were present when it was executed, weren't you?

A. I was around there, I would not say whether I was in
10 the room when it was executed, I don't think I was; I knew
Richard Wilson and Mr. Sherman were there.

Q. Do you know who took the will that day.

A. Mr. Richard Wilson.

Q. John Holcombe was not there the day the codicil was
executed?

A. I can't tell how soon after that he came.

Q. Did you hear any talk between your grandfather and
John Holcombe about this will and codicil the next time
John Holcombe came to the house, after the codicil was ex-
20 ecuted?

A. I don't know that I did.

Q. Did you tell John that a codicil had been executed to
the will, and that Wilson and Sherman had been at your
grandfather's house.

A. I don't know that I said anything about it, I don't
remember.

Q. Do you know how soon after the codicil was executed
that your grandfather said anything about the will?

A. I don't remember.

30 Q. Was it before or after the codicil was executed that
you heard your grandfather make this remark about build-
ing aunt Eleanor a house?

A. I don't remember.

Q. Do you know where your aunt Eleanor was the day
you heard this conversation about building a house?

A. She was home grandpap told me.

Q. Did not your grandfather visit her side of the house,
almost daily before his son Edwin's death?

A. I guess he did; he often went in there; I don't know
whether he went in every day.

Q. And after his death did he not go there as often, or nearly as often as he did before, and did he not keep this up as long as he was able to get about?

A. He did.

Q. And Mrs. Holcombe would come over to your side of the house to visit him, would she not?

A. Not very often.

Q. When was this that you heard your grandfather speak¹⁰ of building this house? Fix the time if you can?

A. I could not say when, but after uncle Edwin was gone.

Q. Was this all you ever heard him say, that made you think that your grandfather did not like your aunt Eleanor?

A. No, sir.

Q. When did you ever hear him say anything else?

A. I had often heard him talk about her when grandma was living, that she was so extravagant, that uncle would never get along; that that was the reason uncle Edwin could never get along.

20

Q. Is that all?

A. I don't know. He had often talked about it; he said she asked him for the deed for the lowland.

Q. Did you ever hear your grandfather say anything about his making this codicil to his will for your aunt Eleanor's benefit?

A. I don't know that I did; he never said much to me about his will?

Q. Can you tell us any other thing that your grandfather said, which led you to believe that he did not like your³⁰ aunt Eleanor?

A. I don't know as I can tell any particular thing; I have heard him say he did not want uncle Edwin to marry her in the first place.

Q. How long before his death did you hear him say that?

A. Oh, it has been talked about as long as I can remember, and longer too; strangers know it better than I do.

Question repeated.

A. I don't know; I don't remember; it has always been talked about.

Q. How long was your grandfather sick with chills and fever?

A. I don't know how long; he must have been sick a week or two or longer; I don't know how long the doctor did come.

Q. After the 15th of September was he afflicted at all with chills and fever?

10 *A.* I don't remember whether he had chills after that or not.

Q. When did he first speak to you about his will?

A. In March, before he died.

Q. Who was present when he spoke to you about it?

A. Nobody.

Q. Who was the last person you heard speak of that will before the day your grandfather spoke to you about it?

A. I don't know as anybody said anything to me about it; I don't remember.

20 *Q.* Had you heard your brothers speak about it prior to that time?

A. No; I don't know that I heard them say anything about it; not to know what it was, anyway.

Q. Did you tell anybody that your grandfather had spoken to you about his will, and if you did, whom?

A. I don't know that I did tell anybody, only that I knew he had one; I don't remember saying anything about it; I knew he had one from the talk when Richard Wilson was there.

30 *Q.* After your grandfather spoke to you about the will in March did you and John and your other brothers talk about this will and didn't your brothers talk about the will in your presence when you did not engage in the conversation?

A. No, sir.

Q. Was it in the forenoon or afternoon of the day that you say you sent Harry with a note to Richard Wilson to get the will of your grandfather?

A. In the morning when he went to school.

Q. Did you tell your grandfather that you would send for the will that day?

A. I told him that I would send a note to Richard Wilson and after I had sent it he told me I need not mind for he had told John to go and get it; maybe Harry would lose it.

Q. How long after you had sent it did he tell you that?

A. Right away after Harry had gone.

Q. Had Harry gone when he told you that?

A. Yes, sir.

10

Q. Had you written the note when he told you that?

A. Yes, sir, I had written the note and given it to Harry when he said John would get it, and Harry had gone.

Q. Did you go out to see if he had gone or not?

A. I did not go to see; I knew he had gone; it was past school time.

Q. Did Harry bring the will back and if so when?

A. Yes, sir, that night.

Q. Was it sealed up, if so, in what?

A. Yes, sir, in an envelope.

20

Q. Was anything written on the envelope?

A. No, sir, not anything on the outside.

Q. Did you tear the envelope open that night?

A. No, sir, I did not nor at any other time.

Q. Did you tell your grandfather that night that you had the will?

A. No, sir.

Q. What did you do with the paper that night?

A. I laid it in the bureau.

Q. Did you tell anybody that night that you had it? 30

A. No, sir, I wrote a note to John to come.

Q. By whom did you send that note?

A. By Charlie, John's son.

Q. Was he, Charlie, at your grandfather's that day?

A. I don't know whether he was there through the day, or whether I sent the note to John that night or the next day; I did not get the will till night, and I don't remember whether Charlie was over that night after school or not.

Q. Did John send any word by Charlie?

A. No; I don't think he did.

Q. Did you tell your grandfather during Saturday that you had the will in your possession?

A. No, sir.

Q. Did he know it?

A. No, sir.

Q. Was he in bed or up that Saturday?

10 A. He was up and down on the settee; he was not sick.

Q. Was he as well as ever on that day?

A. I don't know; I think he had head-ache; he would lie down on the settee.

Q. Was it not his habit at that time to lie down a great deal?

A. He would lie down almost every day; sometimes he would set up in a chair and sleep.

20 Q. Did he attempt to do any business at all about that time?

A. Yes, sir; he attended to his own affairs, that is, his papers, and he settled with people.

Q. Did he see you give the will to John?

A. I don't know that he did; I handed it to John; grandfather asked John if he had got it, and John told him he had.

Q. Did you see John tear the envelope open?

30 A. No, sir, for he did not do it; he handed it to grandpap and grandpap opened it.

Q. How did your grandfather open it?

A. He opened the end of it and took it out, or I think he commenced to tear the envelope and handed it up to John and told John to cut it; he always opened all his letters with a scissors unless there was some one to open them; he often handed them to me and I would cut them open.

The latter part of the answer of the witness objected to by the counsel of the complainants because he says it is not responsive to his question.

Q. What time in the day did all this happen?

A. It was afternoon, because I did not have dinner till afternoon; that makes me know; I was busy about my work.

Q. What makes you say it was in the month of June?

A. I know it was, because Henry went to school.

Q. Was the old man lying down or sitting up that afternoon? 10

A. He was sitting up out in the kitchen.

Q. Was that the same room in which you had kept the will?

A. No, sir.

Q. Where was the room in relation to the kitchen?

A. It was the adjoining room.

Q. Did the old man ask John whether he had the will before or after you gave it to John?

A. After I handed it to him.

Q. Do you know where Mrs. Holcombe and Mrs. Mathews were that day. 20

A. Mrs. Holcombe was in Belvidere, I guess; she was there a good bit; I think Mrs. Mathews was home; I don't remember.

Q. Had the old man been over on Mrs. Mathews' or Holcombe's side that day?

A. I don't know.

Q. Was he able to go over at all, or out of the house?

A. Yes, sir; he would have gone to Lambertville if anybody had taken him; he had been there on the ninth³⁰ of June, his birthday, I think.

Q. How long was that before this transaction about the will?

A. That happened from the first to the middle; I don't know the day of the month; it might have been a little later; I don't know these dates at all.

Q. Did he ever go to Lambertville after this will had been given to him by you and John?

A. I don't know that he did, he might but I don't know.

Q. When did he die?

A. The twenty-third of July.

Q. Did this transaction take place a month before his death?

A. It did.

Q. When did you first speak to Mrs. Mathews after his death about the will?

A. She said something about it that night; I mean the 10 night of the funeral.

Q. What did she say to you and you to her?

A. She said she thought the will was going to be read or something like that; I said I did not suppose it would be read then, or something like that; I don't remember the exact words.

Q. When was your next conversation with Mrs. Mathews about the will?

A. I don't know whether it was the next week or not; it was around by the back porch; nobody was there; that 20 was all the conversation I had with her about it; I had no other.

Q. Did you not tell her then that you knew all about that will?

A. No, sir, I did not.

Q. Did you not tell her that you knew what was done with it?

A. No, sir.

Q. State what you did tell her?

A. She asked me if there was a will; I told her yes; she 30 wanted to know if it had been sent for; I told her yes; she wanted to know how long; I told her I did not know; she never said anything more about it after that time.

Q. Did you tell her that you sent for the will; and that you had kept it in your possession for two days, that you had given it to John, and that you had seen John cutting it open with the scissors?

A. No, sir, I did not.

Q. Did you hear John say anything about reading that will at your grandfather's funeral, or at any other time after his death?

A. No, sir, I don't think I did.

Q. Did you ever see that will after your grandfather's death?

A. No, sir.

Q. Who was with the old gentleman when he died?

A. Mr. and Mrs. Mathews and their daughter, John and I was there and Mr. Barber.

Q. Who took the old man's papers after his death? 10

A. John.

Q. Did John ever tell you, or did you ever hear John say whether that will was in your grandfather's papers, when he first took them after his death?

A. No, sir.

Q. How long after the old man's death did you next see John?

A. I don't know whether he was there the next Sunday or not; he was there on Sunday for grandpap died Saturday night. 20

Q. How long before your grandfather's death was this Sunday when Mathews was in there shaving him and you heard this conversation?

A. Quite awhile, I don't remember how many weeks; it must have been in June some time.

Q. Had Harry brought you the will then yet?

A. Yes, sir, he brought it the fore part of June.

Q. What makes you say it was the fore part of June that he brought it to you?

A. Because I know it was; I know he went to school 30 several weeks after that.

Q. Was it before the middle of June or not?

A. Yes, sir, but I could not tell the day of the month, for I don't remember.

Q. Did Mathews know what was in that will?

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

Q. You knew what was in the will, didn't you?

A. No, sir, I only saw it when grandpap was reading it.

Q. Weren't you anxious and desirous to obtain that will and have it destroyed because you were afraid your grand-

father had done more for Edwin and his family than you thought he ought do do?

A. No, sir, I think I would have had more if there had been one.

Q. How long before your grandfather's death was Mr. Wilson in the house?

A. On Friday.

10 Q. Did you hear any conversation between your grandfather and Mr. Wilson?

A. No, sir, grandpap couldn't talk.

Q. Did you talk to Mr. Wilson that day?

A. He was only there a few minutes; he went in the room and right out, and asked me for a drink of water; I gave it to him; we had no more conversation than that.

Q. How did Wilson happen to come there that day?

A. He was going for the doctor for his wife or some of his family and the doctor was in at our place.

20 Q. Did you say anything to him about the will that day or he to you?

A. No, sir.

Q. Did he give you any paper or any envelope?

A. No, sir.

Q. Did he speak of your grandfather's condition?

A. He said he would have come to see him if he had known he was so sick.

Q. How long is it since you left the house where your grandfather died?

30 A. I left the 23d or 24th of August; I think it was on the 23d.

Q. Didn't you for over a month before your grandfather died, and before this will was delivered to you, sign his receipts for him and take care of him just as you would of a child?

A. I don't think I did; I don't remember ever signing any receipts.

Q. Do you know whether Mrs. Holcombe ever spoke to him about this will?

A. I don't know.

Q. Were you in the surrogate's office at Flemington when letters of administration were granted?

A. No, sir.

Q. Do you know whether this will had been destroyed then yet?

A. I know nothing about the will only what I have told you.

Q. Didn't you know where the will was when letters of administration were granted to your brother Levi?

A. No, sir.

Q. Didn't you know it had been destroyed since your grandfather's death?

A. No, sir.

Q. Don't you know that it was destroyed after your grandfather's death?

A. I don't know nothing about it only what I have told you.

Question repeated.

20

A. No, sir, I don't.

EVELINE R. HOLCOMBE.

Sworn and subscribed this 20th day of July, A. D. 1883,
before me.

J. L. CONNET,
M. C. C.

30

TESTIMONY BEFORE VICE CHANCELLOR.

———:O:———

Before his Honor, Abraham V. VanFleet, V. C. Mr. George M. Shipman for the complainants; Mr. R. S. Kuhl for the defendants.

Transcript of short hand report of testimony, etc., given in the above stated cause upon the trial thereof before the

Vice Chancellor, at Flemington, New Jersey, on Thursday, the 20th day of December, A. D. 1883.

Reuben P. Ely, a witness produced on the part of the aforesaid defendant, having been duly affirmed, deposeth and saith—

10 Direct Examination, by Mr. Kuhl.

Q. Where do you reside?

A. Lambertville.

Q. How long have you lived there?

A. Well, I have lived there this time since 1870; I moved there in 1870.

Q. You have lived there since 1870?

A. Yes, sir.

Q. Where did you live prior to that time?

20 A. New Hope, Pennsylvania.

Q. And for how long?

A. Four years.

Q. And prior to that time?

A. In Lambertville four years, and prior to that my home has been in Bucks county always.

Q. Then during all your life you have lived within about what distance of old Mr. Holcombe's residence where he died?

30 A. I have lived within two or three miles of his residence all my life, with the exception of one year when I lived at Hartville, fourteen miles away.

Q. What relation are you to him?

A. John C. Holcombe and my father were first cousins.

Q. You have known Mr. Holcombe during all this time?

A. Yes, sir.

Q. Do you remember the fact of his death?

A. I do.

Q. You may state when you saw him last before his death?

Q. Do you mean his last sickness?

Q. No, I mean before his death?

A. I think it was some time about last June, maybe the eighteenth.

Q. You saw him about the eighteenth of June?

A. That was the last time I saw him before I saw him sick.

Q. About the eighteenth of June?

A. Yes, sir.

10

Q. Where did you see him?

A. At his house.

Q. Did anything take place between you and Mr. Holcombe then of a business character?

A. No, sir.

Q. How did you find him at that time, what was his condition?

A. Pretty comfortable, so that he seemed to be enjoying himself as old people will. He talked about his friends.

20

Q. Did you talk with him that day?

A. Yes, sir; I was there an hour or two or more.

Q. State, if you remember, anything you talked about?

A. Well, his conversation was about his relations pretty much; much about his brother Charles and his brother Aaron; Aaron had moved farther West and such things as that he talked about; I don't know as any business transactions was talked about.

Q. Did you observe at this time anything peculiar about the old gentleman, with reference to his mental condition?

30

A. Nothing peculiar; I thought he seemed to be well; he was like old men; he was old and feeble in his body.

Q. I speak with reference to his mind?

A. His mind was quite good for a man of his age.

Q. Did he seem to understand what he talked about?

A. I thought he did pretty well.

Q. So far as you heard him express himself about any matter was it intelligently?

A. Quite so.

Q. And with an understanding of what he was talking about?

A. I think he had.

Q. On any other occasion did you see him at his house?

A. Well, previous to that time I saw him in Lambertville.

Q. State when that was?

10 A. On the ninth of June.

Q. Well, you may state about that now?

A. I know that to be the fact, particularly about him expressing himself that it was his birthday.

Q. Where did you see him?

A. I said in Lambertville.

Q. You may state what occurred between you and Mr. Holcombe at that time?

A. Very little occurred.

Q. Go on and state what it was?

20 A. I met him in the street and he told me it was his birthday, and that him and Mr. Burrows had come down to Lambertville to fix the cistern at his tenement house. He was then going down to see Alexander Holcombe, whom he had employed to collect rent for him.

Q. Alexander Holcombe is the man who is spoken of as counsel, lawyer at Lambertville?

A. Yes, sir, I went down with him to Alexander Holcombe's.

Q. Well?

30 A. He asked Alexander if he had collected any money for him; he said he hadn't; they were very busy cleaning his office, and he gave him a chair on the outside on his little porch, and he sat there a little while and then told Alick that he was pretty slow about collecting money; that he wanted some money.

Q. Yes?

A. He then left and I went with him up the street, and we met Squire Lyman on the street, and he spoke to him and asked him if he knew him; he said, yes, Squire Lyman, I know you, of course I do.

Q. Well?

A. Then we went up as far as Lozier's store; he was old and feeble and thought he had better rest a while, and he went in the store and got a chair, and sat down outside; Smith Ely was there and had known him early in life, and he talked to Smith; I went away from there; I didn't hear their conversation much; but he talked with Smith and after he got rested I went off with him to where Burrows was at the tenement house; Burrows was at work fixing the floor of the cistern.

Q. Well?

A. I then left him.

Q. Was there anything in his condition that day as far as you observed, indicating that he didn't understand what he was doing?

A. I thought he understood himself right well for a person of his age; it took him a little longer to think about things than it did in earlier times; but he would express²⁰ himself clearly about what he was talking about as far as I observed that day.

Q. On any other occasion do you remember seeing him shortly before his death at his house?

A. Well, the time his son Edwin was buried, I remember that time very well.

Q. After that time?

A. After that time?

Q. I might call your attention to that time; did you see Mr. Leach there?³⁰

A. Mr. Leach and I went there; I should think it was, maybe the middle of April.

Q. What year?

A. 1882.

Q. Well, you may state what took place at that time?

A. I had been sick all winter, and that was about the first time I had been out.

By the Court:

Q. What time was this?

4. The middle of April, or the last of April; I couldn't tell you exactly which; it was the first time I had been out after I had been sick; Mr. Leach stopped at my place and asked me to go up with him to see old Mr. Holcombe; and I went and after we had been there a while, Mr. Leach told him he had come to pay his interest money, and he went to 10 his secretary and got the note, and Mr. Leach paid him the money; and he told Mr. Leach to enter it on the note; he said he was old and his hand was stiff and he couldn't write very well; and then Mr. Leach wrote the receipt and he said I can't sign it; I can't write the receipt and sign it both, and John asked me to sign it for him, and I did sign it.

Q. Did any of the family, Burrows or Mrs. Holcombe, or Reuben or Eveline assist him?

A. Oh, yes; Eveline was there.

Q. Did anyone assist him with his papers, or count his 20 money, or did he do it himself?

A. He did it himself, and the note he gave to Eveline to put away; he got it and she put it away.

Q. Did you observe anything that day that indicated that the old man didn't know what he was about?

A. Oh, I think he knew what he was about; I think he knew what his rights were; of course he was feeble and hard of hearing and his eye-sight wasn't as good as it had been; but his memory of things was quite good for one of his age.

30 Q. Was it a promissory note?

A. Yes, sir.

Q. For what amount?

A. One hundred dollars; I saw a transaction two or three years before, but I couldn't give you the date, with the same note, and it was then two hundred dollars; but it was changed in amount by payment.

Q. Something has been said about your talking with old Mr. Holcombe in the parlor adjoining Burrows room, I think in May 1882, if I have not mistaken the date, in which he told you that his will was made to Edwin and his

heirs?

A. No, sir.

Q. Did any such conversation take place?

A. Not between he and me I don't think.

Q. Did you ever talk to him about his will or his business?

A. No, sir; I have never talked to him about his business or his will that I have any recollection of; he spoke to me about his affairs sometimes, but not a great deal; I never pried into his business; I thought he was competent to do his business without my advice.

Q. You may state what he ever said to you about it and when it was?

By the Court—

Q. Your present recollections of the date of that conversation was May, 1881?

20

A. It was in 1881 that the transactions took place; these conversations were in 1881.

Further Direct—

Q. After Edwin's death did you have any such conversation as this, that you asked him how the will was wrote, whether to Edwin, or to Edwin and his heirs, and he replied to Edwin and his heirs, and told you on that occasion he wouldn't change it, and you said something about changing it, and he said he wouldn't change it for the world?

A. He never told me any such thing I am certain.

Q. If you had a talk with the old gentleman about this time about his affairs, you may state about when it was with reference to Edwin's death, if you can, and all that passed?

A. I should think it might be in October, that's my recollection of it, that John C. Holcombe and I were in the parlor together.

Q. When?

A. In October; he said that he had been to John Horn'r and got his will; he said that he had thought about it a good deal, and Eleanor and Burrows' family was very much dissatisfied the way things were, and wanted him to make a change for the benefit of Eleanor, and that if things were left as they were she would be
10 without a home.

Q. Well?

A. He said he took his will after he came back from John Horn's, and said he was ashamed to think that anybody would see him read his own will, so he put it in his pocket and went out back of the barn to read it.

Q. Well?

A. He said there was something about that will that was not right; he said he knew he told Major Young that wrote it that Lucy—he always called Eveline Lucy—was
20 to have a home there, and that wasn't in the will.

Q. Well?

A. He said he made a codicil to it and left Lucy with a home and Edwin's wife a home there in the codicil—Edwin's widow.

Q. Proceed.

A. Well, I don't remember anything else particularly now; there might have been some little things said before Edwin's death that I have on my mind.

30 By the Court—

Q. He speaks of whether there was anything more in that particular conversation?

A. No, sir; I think that was all the conversation about those particular circumstances; I have no recollection of anything else.

Further Direct—

Q. Were you present on the day of the funeral when

the papers were examined?

A. I was.

Q. Will you state to His Honor what took place then?

A. Shall I commence by stating how I came to be present?

Q. You may.

A. Well, John C. Holcombe, Junior, came for me and asked me whether I would be present, and— 10

Objected to.

Q. State who were there?

A. Well, I think all the heirs were there and George B. Holcombe and myself.

Q. Who is he?

A. He is the father of these defendants.

Q. Well, you may state what took place?

A. They came into the room and John Holcombe says²⁰ to the persons present that he would ask them to leave the room for a little while, as they wished to open the secretary and examine the papers that were there; then the people went out, and I remained in there with George B. Holcombe and the heirs, and they opened the secretary and took out the papers one at a time; they were all present; Burrows was there and his wife, and I recollect John saying, "Any of you that wants to take an inventory of the things that are here had better do it, and the amount;"³⁰ the amount of money was small; I don't remember what it was; I am satisfied it was less than five dollars; then they went over the papers; they looked at them, and then John, I guess it was, said, "Who shall take charge of them?" and it was remarked by him, or somebody else, that he had a power of attorney to act for his grandfather during his life, and that he thought he would be the one to take them; they all looked over the papers and seemed to be satisfied that they had seen all the papers, and were satisfied that it was agreed that John should take the papers with him and take care of them until they were

called for; there was no will found among the papers; I supposed there was a will myself, but there was none found.

Q. Was anything said by anyone about the fact of no will being found?

A. I didn't hear anything said about that; they didn't seem to have that in view at all; they looked as if they were
10 satisfied; I don't know that anything was said about it; there was nothing that I heard.

Q. That's all?

Cross-examined by Mr. Shipman.

Q. How long were you in the room there, Mr. Ely?

A. Do you mean examining the paper?

Q. Yes?

A. Well, I should think we were there examining them
20 between a half hour and an hour.

Q. Was there any other stranger in there but yourself.

A. Not that I recollect except George B. Holcombe.

Q. Somebody spoke about John having a power of attorney; do you recollect whether that was you?

A. No, sir, I think John himself said that.

Q. Had you any knowledge prior to that time that there was a power of attorney?

A. No, sir.

Q. Had you any knowledge of it prior to going into the
30 room that day?

A. Yes, sir; I think John told me before we went into the room.

Q. You and he were quite intimate?

A. Not very; I always knew the family, but I don't think I ever paid interest to anybody on either side.

Q. This conversation that took place in October 1881; about what time was that as near as you can tell?

A. Well, that would be very hard for me to state the date; I suppose if I refer to the middle of the month it might be
a little one way or the other; it was somewheres about the

middle of October.

Q. Who was present at this conversation?

A. Nobody but me and the old gentleman.

Q. Anybody else but you?

A. Nobody else but me.

Q. John C., Jr., wasn't there?

A. No, sir; I was going there about every 2 weeks; some times longer than that to see how the old man was. 10

Q. And you paid him a visit on that occasion?

A. Yes, sir.

Q. You were rather a confidential friend of his?

A. He always seemed to be glad to see me come.

Q. How long were you there on that occasion?

A. Well I often stayed 2 or 3 hours maybe; and maybe I was there that long then.

Q. Did you have any meal with him on that occasion?

A. No, sir, I very seldom did.

Q. Was Eveline present? 20

A. Not in our conversation; but I saw her that day.

Q. You don't remember whether she was present at the talk?

A. I think any of the family in the other part of the house would hear him talking; he had no secrets.

Q. This conversation when Leach was there in the spring or early part of 1882; whereabouts did the old gentleman go and get that note?

A. From his secretary, which was in what they called the parlor. 30

Q. And he was in the same room?

A. Yes, sir.

Q. You were all in the same room together?

A. Yes, sir.

Q. And he got up himself and got it?

A. Yes, sir.

Q. Was Eveline in the room at the time, there?

A. I don't hardly think she was; she might have been, but I don't think she was.

Q. Did she come in afterwards?

A. Yes, sir, and he gave her the note to put away.

Q. Was she present during the transaction?

A. I couldn't say whether she was or not; I don't know particularly.

Q. Did he take the money or give the money to Eveline?

A. He gave the note and money both to her to put away; but Mr. Leach would be the better one to tell these stories.

10 Q. How long were you there on that occasion?

A. Well I don't think we stayed there a very great while; I wasn't very well and Mr. Leach wanted to get back pretty soon.

Q. Then on the 18th of June, what day of the week was that?

A. Well I should think it was on Sunday probably; that would be my impression.

Q. About what time of the day was it?

A. Pretty soon after noon; I went up after dinner to see
20 him and returned before tea time.

Q. It was pretty early in the day?

A. Pretty early in the afternoon.

Q. How was he that day?

A. Well he always seemed pretty well, unless he had the chills; and I saw him sometimes when he had the chills and then he complained; but he was pretty comfortable for a man of his age.

Q. Well the infirmities of age were upon him?

A. Yes, sir; he showed pretty much that he was old; his
30 eye-sight was dim and his hearing dull, and his memory wasn't as good as it had been; and it took him some time to think of a thing; but he was satisfied when he thought about it long enough and got it right; he was pretty accurate about those things.

Q. Did you have to speak pretty loud to him to make him hear?

A. Yes, sir, pretty loud.

Q. His memory of passing events wasn't very good?

A. Well, he remembered things he read in the paper, I think pretty well; he was fond of talking about things he

saw in the paper.

Q. You are an observing man, as you could see that the mind and body were both going down together ; he wasn't as quick-minded as he had been years before?

A. Oh, no, sir, his body failed faster than the mind, but I think he showed his age.

Q. Were you present at his funeral?

A. Yes, sir, and at Edwin's both.

10

Q. Do you recollect being there about August and hearing a conversation, or anybody talk to him about there being heirs—whether he used the word “heirs” in his will or anything like that?

A. No, sir; I heard nothing like that ; nor I have never given him any advice about his affairs.

Q. That's all.

James Wilson, a witness produced on the part of the aforesaid defendants, having been duly affirmed, deposeth and 20 saith :

Direct examination, by Mr. Kuhl.

Q. What is your age?

A. About sixty, sir.

Q. How far do you reside from where Mr. Holcombe died?

A. About two miles.

Q. Do you remember when he died?

A. Yes, sir.

30

Q. How shortly before his death which occurred in July 1882, did you see him and talk with him?

A. About the first of June was the last conversation I had with him ; it was in that neighborhood; it may be a few days before or afterwards, I won't say to a day exactly.

Q. June first you think?

A. Yes, sir.

Q. Where did you see him?

A. At his house.

Q. Well, what was your business there?

A. I hadn't any particular business; I called there at that time,—I frequently called as I went along; it was his request that I should call and see him occasionally; we didn't transact any particular business that day.

Q. You saw him at his home?

A. Yes, sir.

Q. And talked with him?

10 A. Yes, sir, a considerable time.

Q. Can you mention anything he talked about?

A. Well, we talked about business, and about transacting things.

Q. What?

A. We talked about some money matters between him and me; I owed him some money and I hadn't paid the interest this spring; and there was a perfect understanding between us, but we talked those matters over.

Q. Well?

20 A. I couldn't tell you now what we said particularly about it; but the year before had been a rather bad year for me; crops had been poor; I told him on the first of April under the circumstances I couldn't pay him, and we always talked about it more or less every time we met.

Q. You had talked before that, about not paying the interest?

A. Yes, sir. He had been at my house about a month before; him and Mr. Burrows came there and got some seed potatoes, about the first of May as near as I can recollect it;
30 I don't recollect exactly, but about that time.

Q. Was Burrows with him?

A. Yes, sir.

Q. You may state now what took place on that occasion?

A. There was nothing particular said in reference to it. He bought the potatoes and took them away.

Q. How many did he buy?

A. Three bushels for himself; and he said, said he, "I haven't got any money to-day." That's one thing I recollect particularly; and I said, that's all right, because as far as that is concerned, the money matters is on the other side,

that was my reply to him.

Q. Did he seem to understand that?

A. Yes, sir, perfectly.

Q. And went away with the potatoes?

A. Yes, sir, he seemed to understand everything I said to him.

Q. What did Burrows do?

A. He got three bushels of potatoes on the same day. 10

Q. Were they taken away separately?

A. They were put in the same wagon.

Q. But in separate quantities?

A. Yes, sir, it was understood that each one got their own portion, each one got three bushels.

Q. Each one made their own bargain?

A. Yes, sir, each one bought their potatoes.

Q. After the first of June did you see him until after he was dead?

A. No, sir, I never did to the best of my recollection. I 20 am positive I never saw him after that time until he was dead; I heard he was sick, I thought he was unconscious or I would have went up to see him.

Q. About the 1st of April when the interest came due you were not able to pay him?

A. Yes, sir; we had several talks.

Q. You may state what you talked about?

A. I told him how the circumstances were; that my crops were poor; and it was a very dry year, and I had no corn, and my timothy patch failed; said I, "uncle John, I cannot 30 pay you;" "well," he said, "never mind, let it go on, it will be all right."

Q. Your interest wasn't settled at the time of his death then?

A. No, sir.

Q. That's all.

Not cross-examined.

George M. Holcombe, a witness produced on the part of

the aforesaid defendants, having been duly affirmed, deposed and saith—

Q. You reside at Lambertville?

A. Yes, sir.

Q. Your age is what?

A. About 71 or 72.

10 *Q.* (Showing witness a paper.) Are you the subscribing witness to that paper?

A. Yes, sir, that's my signature; it was said to be a power of attorney which the old gentleman gave to his grandson.

Q. Where did you sign that?

A. In his kitchen in his own house.

Q. At what date?

A. Well the date is I suppose there; it was in the month of June, the day I cannot recollect; is there no date to the paper?

20 *Q.* Yes, that's dated the 24th?

A. Well I don't know that it was on that date precisely.

Q. That was a Sunday, I think?

A. Yes, sir.

Q. It was on Sunday then when you signed it as witness?

A. Yes, sir; I went up to his place on purpose to see him on Sunday morning, and I wasn't there a long while, but while I was there his grandson proposed to the old gentleman to sign that power of attorney and have me for a witness; and that was about the sum of it.

30 *Q.* Who produced this paper?

A. I think the old gentleman had it, and John, his grandson, had it too; I don't know which one fetched it out first.

Q. Was it read over at that time?

A. It was or I would not have signed it.

Q. Who read it?

A. I think young John, the grandson, read it.

Q. State now what the old gentleman said on that occasion?

A. He didn't say anything particular that I know of, only that he said he was willing to that arrangement; that this

power of attorney be signed, and that I be a witness to it, and it was brought out there on the table and I seen him sign it.

Q. Did he give you any reason for giving it?

A. Well, it was understood——

Objected to.

10

Q. State what was said?

A. It was for John to attend to his business in Pennsylvania; that is what I understood at the time.

Q. Did he say anything about being feeble and not being able to go around, and that he was giving it to John to attend to his outside affairs?

A. He said he didn't want to go over the river; he didn't want to go so far, and that John could do that for him.

Q. On that occasion did Mr. Holcombe seem to understand the purposes of the paper as far as you observed? 20

A. He appeared so to me; I didn't see anything different; he was a man I have been acquainted with over 50 years, and since I have lived in Lambertville occasionally I would go up on purpose to see him; and I went up on that morning on purpose to call; and I didn't stay but a short time.

Q. How did you find him that morning?

A. He seemed to be as well as usual; I didn't see anything different; he was not quite as talkative as he was sometimes when I went there; when he was alone he generally talked all the time steady; but when there was 2 or 3 there there30 wasn't as much talk as when we were alone.

Q. When before that had you seen him, Mr. Holcombe?

A. Well, I couldn't tell you exactly, it was some time in the winter toward spring; I came down one night from Stockton late and I seen a light there, and I stopped and I went in and sat with the old man and he kept me nearly an hour.

Q. How was he on that occasion?

A. He was very talkative at that time, but I couldn't tell you what time that was.

Q. You have seen him frequently during all your acquaintance with him?

A. Yes, sir.

Q. Did you ever see him in Lambertville?

A. Yes, sir, I seen him there oftener than I did at home; I didn't generally very often go to his house.

Q. Can you recall any time when you saw him at Lambertville shortly before his death?

A. No, sir, I don't think I can, not shortly before his death; but I did see him there with this son-in-law Mathews; he used to bring him down there; but I couldn't tell you how long before his death that was because I frequently saw him in Lambertville.

Q. Do you know whether he was a man that was a reader of the papers?

A. I think I have seen him reading the papers.

Q. Did you ever hear him express himself on the current
20 ideas of the day?

A. Yes, sir, he had a pretty good idea of politics and on certain subjects.

Q. He was an advocate of the greenback system, wasn't he?

A. Well, I never heard him talk particularly on that point.

Q. What was he?

A. Always a democrat; and he used to be pretty strenuous in his views.

30 Q. Did he hold those views conformed during his life as far as you have heard or observed?

A. Well, I think he did.

By Mr. Shipman—

Q. Not after he got to be a greenbacker?

A. I didn't hear that he did.

Re-direct.

Q. He voted for Dr. Larison?

A. Yes, sir, a great many voted for the doctor, who wouldn't vote for the whole ticket; I voted for the doctor myself.

Cross-examined by Mr. Shipman.

Q. What relation are you to the old gentleman? 10

A. Well that I cannot hardly tell; his name is Holcombe and so is mine; I didn't know his father or his grandmother.

Q. Then you don't know whether you are any relation or not?

A. I believe we are of some relation, their name being Holcombe.

Q. Well you would have to be quite an expert to decipher that out; what time in the day did you go there to sign this paper? 20

A. Between 10 and 11.

Q. You didn't go there for that purpose?

A. No, sir, I went simply to make a call.

Q. Did you go alone?

A. Yes, sir.

Q. Who was there when you got there?

A. His grandson.

Q. John C., Jr.?

A. Yes, sir.

Q. Anybody else? 30

A. Yes, sir, but I don't recollect who it was.

Q. Was there some other of the family; was it Eveline, the granddaughter?

A. Well I don't know, but I think she was in the room.

Q. How long were you there?

A. Well I don't think I was there half an hour.

Q. Now, cannot you tell which one produced that paper; didn't John take it out of his pocket, and wasn't it in an envelope?

A. I don't know as I can tell which one produced the pa-

per; I rather think John had the paper; but whether the old gentleman had it I cannot say; I know that both had it in their hands; but which one produced it in the first place I cannot tell.

Q. But John suggested to the old gentleman to sign it that morning?

A. Yes, sir, because I could be witness to it.

10 Q. And he consented to do so?

A. Yes, sir.

Q. Was he in bed or sitting up?

A. Sitting up.

Q. Was he asleep or awake when you got there?

A. He was sitting up and walking.

Q. Did he go to bed before you came away or lie down or anything?

A. No, sir.

Q. You have stated about all that took place?

20 A. Yes, sir.

Q. John wanted him to sign it and he said he was willing to sign it, and that he wanted John to attend to his business in Pennsylvania, because he couldn't do it?

A. That was the reason to this power of attorney.

Q. And that's what he said?

A. Yes, sir.

Mr. Kuhl offers in evidence the power of attorney above referred to, dated the 24th day of June 1882.

30 The same is marked exhibit I.

Richard H. Wilson, a witness produced on the part of the aforesaid defendants, having been duly affirmed, deposeth and saith—

Direct examination by Mr. Kuhl.

Q. You reside at Stockton?

A. Yes, sir.

Q. How far from John Holcombe's residence in his life

time?

A. Well, perhaps a mile and a half.

Q. You had known him I suppose a long time, I suppose, Mr. Wilson?

A. Yes, sir.

Q. Were you ever at this place?

A. Well, I was there occasionally; during the latter part of his years I wasn't there so often as when he lived there earlier and I was a neighbor; but of course I knew the while.

Q. You drew a codicil to his will?

A. Yes, sir.

Q. Which Mr. Sherman witnessed?

A. Jackson D. Sherman and myself.

Q. Now, you may state to his honor the first interview or talk you and Mr. Holcombe had about his will, and state when it was as near as you can tell and what passed between them.

20

A. It was some time after his son Edwin's death; I couldn't fix the date now; I should think it was sometime in September.

Q. 1881?

A. Yes, 1881.

Q. Well?

A. I called at his place by request; I don't recollect who it was that conveyed to me his request; but I was told that he wished to see me in reference to his will; and I think he produced his will and asked me to read it over, and signified his desire to make some changes; I think the first time that I called there was only a general conversation without me, perhaps, ever taking any points down; he wanted to talk to me a little about it, and see what I thought about the advisability of making changes.

30

Q. State what it was?

A. To the best of my recollection he signified that there was no provision now, according to his will, for Edwin's widow, Edwin being dead. My impression is—

Mr. Shipman—

Q. State what it was?

A. Well, I cannot tell you what he said in his language, of course.

Further Direct—

10

Q. Give us the substance of it, but not your impressions?

A. He wanted to make some provisions in his will for Edwin's widow, and he asked me how it could be done—whether there was any way in which it could be done; I said to him, if Edwin had lived to heir this property, and then had died, she surviving, she would have a life right to one-third of the property during her life-time; that is the way it would have gone as you made your will
20 in the first place; now, if you so desire, you can put a codicil to the will that will give her just that as it is; he consented to it; he thought that was practical and was the proper thing to be done; and as there was some other little points I think he talked about, and as I was on my way going down through to Lambertville, or to my father's, at the time, I said to him, I will call again and we will talk further about it, Uncle John; I think it is best not to hurry matters too much, and the next day I called to see I was on my way going to my father's.

30

Q. What date was that?

A. I couldn't give you the date; It was between the first conversation and the time the codicil was executed, and not very long after his son's death; I called and found him at that time in no condition to talk intelligently, which I attributed to his suffering from malarial fever, as I had been informed that he had been afflicted of late with that fever; I found his mind wasn't clear and consequently I didn't mention the will to him; I said, I have merely called to see how you are getting along this morning, and I am going on down to father's; the next time I

called, it was on my return from my father's, and I was down at father's two or three days helping him at his work, and when I stopped again I found him entirely clear in his mind; he wanted Evaline left a home there; to have three rooms—two down-stairs and one up-stairs' room, which I understood she occupied at that time as her bed-room, also the furniture that was in the room which she occupied up-stairs was to be her's; then he spoke about 10 having bequeathed in the will two thousand dollars apiece to the children of his daughter Eliza; that he said at the time I made that will, I thought should about absorb my property, but now, said he, it has accumulated somewhat and there is more to be divided, and he signified his desire that they should have the additional amount; after considering and reflecting upon the matter somewhat he said he would divide the residue, which under the original will went to his son Edwin, who was then dead, equally amongst the five grandchildren; after I had obtained all 20 the points from him I took the will home with me, and at my convenience, which was a short time afterwards, I drew the codicil, and then went down on the day that the codicil was executed; I went down to see him in the morning, because I thought I would go down and see whether he was well enough to execute the paper that day before I took it down, so that I could see what his condition was; I found him apparently well, and in order to test his capacity, as I thought, I asked him some questions; I asked him about his brother Aaron, who had 30 gone out west; I asked when he had heard from him, and where he was at that time; and I asked him some other questions about his sons to see whether his memory was clear, and so far as I was able to judge he seemed to relate everything with perfect clearness and intelligence, so that I was satisfied he was entirely in a condition to execute a paper of that kind, and then I said to him, I have that paper drawn, and if it is your pleasure I will come down this afternoon and bring a person along for a witness, because it will require another witness, and we will

have it signed; he consented to that; I don't remember whether I had already asked Mr. Sherman to go with me or whether I did it on my return back, but in the afternoon we went down there—Sherman and I—and the codicil was executed and witnessed by us.

Q. Well, you came down in the afternoon with Mr. Sherman?

10 *A.* Yes, sir, and the codicil was executed and witnessed by Mr. Sherman and myself.

Q. And you took the paper into your custody?

A. Yes, sir.

Q. How long did it remain in your custody?

A. It remained in my custody from that time until the 16th day of June, 1882.

Q. Well, state what you did that day?

A. Well, in order to make that entirely clear I would like to state a circumstance which took place some two or
20 three days before that.

Q. Very well?

A. Which was on Monday, I think, preceding the sixteenth of June, which was on Friday. I went to Lambertville and took my wife and daughter down there to do some shopping, and on their return passing immediately by the residence of John C. Holcombe, his granddaughter Eveline was in the garden, which lies right along the public road, and I stopped and had some conversation, and I inquired after her grandfather, how he was; and she said as well as
30 myself, as her health wasn't good, and in that conversation she said to me—(Interrupted.)

Objected to.

Q. Well, she spoke to you about the will, I suppose; I didn't ask you what she said, but as to the subject of her talk?

Objected to.

A. Well, on the morning of the sixteenth of June I received a note from Eveline R. Holcombe by the hands of her nephew Henry Holcombe, who went to school at Stockton; the boy went directly apast my residence, and the substance of the note was —

Objected to.

10

Q. Have you the note she sent you?

A. I have not.

Q. Have you looked for it?

A. I have.

Q. And cannot find it. When did you look for it?

A. Since this contest has commenced.

Q. At whose request?

A. Once at Mr. Shipman's request.

Q. Anybody else.

A. I don't remember anybody else's request.

20

Q. You don't remember my speaking about it?

A. Perhaps you did; but I naturally looked for it, and have been unable to find it.

Q. You believe it is lost?

A. Yes, sir, I am satisfied it is.

By the Court.

Q. Did the note ever pass out of your possession, did you ever give it to anybody?

30

A. No, sir, unless it accidentally passed into the waste basket, or the fire; I never gave it to anybody.

Q. After reading it do you remember what you did with it?

A. I do not.

Mr. Shipman.

Q. Where were you when you got it?

A. In my house, in my room.

Q. Did the boy come in the house?

A. Yes, sir.

Q. Did you read the note in his presence?

A. I read it in his presence.

Q. Did you throw it down after that, or have you any recollection at all of what you did with it?

A. I have no recollection at all of what I did with it; I
10 suppose undoubtedly I laid it down on the desk.

Q. You suppose so?

A. Well, I have no recollection.

Q. Do you usually destroy your letters in that way?

Q. Not when I think they are of peculiar importance.

Q. Well, this was a matter of a good deal of importance?

A. It so turned out.

Q. And you were requested by that note to give it up; didn't you consider that very important?

A. So it was.

20 Q. Don't you suppose you would hold such a paper as that or letter?

A. It seems I did not, I lost it some how.

Q. Are you sure you didn't give it to anybody?

A. Sure.

Q. Perfectly sure of that?

A. Yes, sir, there would be no motive for my giving it to anybody.

Mr. Kuhl: In Eveline's testimony this question was raised —
30 ed —

By the Court—Wait until Mr Shipman is through

Q. Have you any recollection about seeing the note at all after you read it there that morning?

A. I have not.

Q. None at all?

A. No, sir.

Q. It is an entire blank with you?

A. It is.

Q. Have you searched diligently since for it?

A. Yes, sir.

Q. Among all your papers?

A. Yes, sir, among them all.

Q. How large a note was it, was it doubled up in an envelope?

A. Yes, sir, certainly it was sealed up in an envelope; I think it was half a sheet of note paper written in pencil.

Q. Written in pencil?

10

A. Yes, sir.

Q. Do you know Eveline's signature?

A. I don't remember whether I had ever seen it on any other occasion or not.

Q. And yet under all those circumstances you let so important a paper as that get lost?

The Court—Foundation for the admission of secondary evidence has been laid.

At this point Mr. Kuhl read from the testimony of Eve-20 line in respect to the obtaining the will from Mr. Wilson.

The Court—I think you are entitled to the conversation between Mr. Wilson and Eveline in the garden, if it related to the delivery of the will by Mr. Wilson to the testator, or the returning of the will to the testator.

Mr. Kuhl—Yes, sir.

By the Court—At this point you had better have Mr. Wilson give the contents of the note first, otherwise the testimony will be in a very confused condition.

Mr. Kuhl—I will, sir.

30

Further direct.

Q. Proceed?

A. The contents of the note were, that her grandfather was still worrying; I think that was the word she made use of, about that paper; she didn't express it as a will, but that paper which I held of his; and that being the only paper I held of his I understood what it was; and she said if I thought it would be prudent or proper—I don't remember

the words she used—I might send it down by Harry, or if I thought that wouldn't be proper she requested that I would bring it down; after reflecting for a minute or two about my business and convenience in going down that day I said to the boy, just stop on your way home to-night, when you come back I may want to send something with you; then I dismissed him and he went away.

10 Q. State what you did from that time?

A. I don't recollect what I did during part of the day, only that I was engaged at work with business; but some time in the afternoon the thought occurred to my mind that the paper might accidentally get lost; although I considered the boy very competent; and in that case there ought to be a copy of it preserved; I will go in the house—I was out in the garden at that time—I will go in the house—and I was a little tired—and make a copy of it; I sat down and commenced copying the will; and had just quit the copying of
20 the original will when the lad called on his return from school; as I didn't want to keep him waiting whilst I copied the codicil, I just turned over to the back of the paper that I had been copying on and made a memorandum or two in pencil mark as to the contents of the codicil; and then took the will with the codicil annexed, put it in a plain envelope without any direction or superscription on it, sealed it up, examined the boy's coat pockets to see what place he had for carrying it, and I found he had an inside pocket in his coat, and I put it in there to see if it would go in, and
30 directed him to take it home, and I think I told him—

Q. Well I suppose your direction to him wouldn't be competent strictly; you say you put it in his pocket, and secured it there in the manner you have described?

A. Yes, sir.

Q. And he left?

A. Yes, sir.

Q. Did you retain a copy of the memorandum?

A. Yes, sir.

Q. Have you that paper with you?

A. Yes, sir.

Q. You may produce it, sir?

A. (Witness did so)

Q. This is the paper (handing witness a paper)?

A. That's the paper I made on that day.

Q. Is that a true copy of the original will, so far as the will itself is concerned?

A. It is a true copy of the original as far as the will is concerned. 10

Q. And a true copy of the codicil so far as that is copied—the beginning of the codicil is copied here too; you commenced to copy it?

A. I think not; (after looking) yes, I did; I see I did.

Q. The heading of the codicil you have copied?

A. Yes, sir.

Q. Why did you not continue and finish the copying of the codicil?

A. I told you it was because the boy returned and I didn't want to keep him waiting. 20

Q. You retained that paper?

A. Yes, sir.

Q. Did anyone know at that time that you had it?

A. Nobody but myself.

Q. Where did you first show that paper to anyone or tell about it?

A. The first I ever showed this paper to anyone or told anyone that I had such a paper was when I showed it to Richard S. Kuhl in his office.

Q. What was the occasion of your being at my office? 30

A. It was the occasion when these parties had met there; I don't know whether they had been taking testimony or whether it was for consultation or what.

Q. You had been requested to come there?

A. Yes, sir.

Q. To give what information you could in reference to the will?

Objected to.

Q. Now, Mr. Wilson, did you ever see the will after that?

A. No, sir.

Q. Did you see John Holcombe after that, the testator?

A. The old man?

Q. Yes?

A. Yes, sir; but not until after he was stricken with
10 paralysis on Saturday, as he died on Sunday morning.

Q. On Saturday?

A. On Saturday morning or forenoon as he died the day after on Sunday.

Q. Witnesses have stated that on Saturday prior to his death you were at his place?

Mr. Shipman: Friday.

A. If witnesses have so stated they were under a mis-
20 take; I was there on Saturday and not on Friday.

Q. Well, they stated Friday?

A. Well, it was simply a mistake.

Q. Well, on Saturday you were there, and no doubt they are the same occasions referred to?

A. It would have been the 22d day of June, if I understand the dates right.

Q. Well, did you see Evaline on that day?

A. Yes, sir; I did.

Q. Did you see the old gentleman?

30 A. Yes, sir.

Q. Wasn't he conscious?

A. I didn't speak to him; I suppose not; I just saw him lying on the bed.

Q. After that occasion, and in your talk with Evaline, did you say anything to her, or she to you, about the paper or papers in the kitchen, you and she being in the kitchen talking; did you talk about papers or a paper as the witnesses have stated?

A. I don't recollect anything particular about it; this being the first time I had seen Eveline since I sent the

paper down; I might have asked her some question as to whether she received it or not.

Q. Whether she received that paper?

A. Yes, sir; but I have no recollection about it.

Q. You don't recollect saying anything about it?

A. I have no particular recollection; I think I did ask her some such questions, what they were I don't remember now; I merely wanted to satisfy myself that it had gone to its proper destination.

Q. You had known the old gentleman a long time?

A. Yes, sir.

Q. During these interviews that you had with him at the time that you transacted this business with him, did you observe that he had lost his understanding of matters in any way at all?

A. Only in the one case that I spoke of; well, I thought he was under the influence of malarial fever, because that has that effect.

20

Q. Well, excluding that?

A. At other times he seemed to be quite intelligent, and talked intelligently as I understood it.

Q. Did he at those times talk of current events?

A. I don't recollect particularly what was said, as I called on this matter of business; I hadn't much time to spare and I didn't stay to talk with him, as I did at these other times.

Q. Then the memorandum was truly the contents of the codicil, as I understand you wrote it?

30

A. Well, perhaps it don't give all the contents, but so far as it gives them they are true.

Q. You didn't put in about Evaline having a home?

A. No, sir; I trusted my own memory in regard to that.

Q. That was in the codicil, was it?

A. Yes, sir.

Q. At that time the old gentleman understood that the farm was to go to Edwin, did he?

Objected to.

Q. Do you remember when he bought the Lambertville property?

A. No, sir.

Q. February 21, 1879, Snook to Holcombe is a memorandum from the clerk; I will put that in; now, you may
10 state the conversation between you and Evaline in the garden, she being in the garden on the occasion of your return from Lambertville?

A. Well, on that occasion she told me that her grandfather had asked for that; that he had asked her to go to my place and get that paper; that was the expression she made use of each time, "that paper which you hold of his;" but she had refused to do so, and I think she made some remark about the impropriety of her doing so, and requested me the first time I was coming down that way to
20 get it and bring it along, which I told her I should do.

Q. How long after that did you receive this note?

A. This conversation took place on Monday as I got the note Friday.

Mr. Shipman—I object to this testimony which has just been given.

The Witness—It occurred on Monday a little after 12 o'clock in the day, and on Friday morning I received the
30 note.

Q. On the Saturday you were there had you been sent for by anyone?

A. No, sir; but if you will allow me I will state—

Q. No; that's enough; do you remember who was with the old gentleman that morning?

A. Do you mean in the room present?

Q. Yes?

A. I remember when I went into the room Evaline was in there, and I think Mr. Mathews' daughter, but I

am not positive as to that, and perhaps another one or two.

Q. Was Rebecca there?

A. I don't remember, perhaps she was.

Q. Evaline was there?

A. She was in the room, I think, when I stepped in; I was only in the room a very few minutes; I stepped to the bed and saw the old gentleman and stepped out; I think Evaline was in the room. 10

Q. And you remember seeing Mr. Mathews' daughter there?

A. Yes, sir, I think so, or at least there was a young lady sitting there, which I took to be his daughter; I hardly know his daughter when I see her.

Cross-examined, by Mr. Shipman—

Q. This part is what you copied off the codicil, and is in these words: "And John C. Holcombe this codicil;" 20 that's the part of the codicil you copied verbatim?

A. Yes, sir.

Q. Then on the back of this in pencil mark you have written: "By the codicil the residue by the fifth item going to Edwin is given to the five grandchildren in equal shares, Edwin's widow to have the same as would have been her dower?"

A. Yes, sir.

Q. That's your handwriting?

A. Yes, sir. 30

Q. Now state what provision he made for Evaline in the codicil?

A. She was to have the part then occupied by—I hardly know what he did occupy, but that was my understanding of it; two rooms down stairs and one bed-room.

Q. Was she to have the part that the old man then occupied?

A. Yes; well, I won't say how much they occupied; maybe they occupied more than that, but she was to have two of the rooms which they did then occupy.

Q. Two rooms up-stairs or down?

A. Down-stairs, one being the kitchen.

Q. And one up-stairs?

A. Yes, sir.

Q. And passage-way up and down?

A. Yes, sir.

Q. And a part of the goods and chattels in the room?

10 *A.* Well, everything that was in the bed room up stairs was to be her's.

Q. What down stairs?

A. I don't recollect of anything down stairs in the way of furniture being mentioned.

Q. That was the provision made for Evaline?

A. Yes, sir; she was to have the use of that as long as she lived with access to the pump and the water; those details were attended to, and the use of the well.

20 *Q.* Now, just tell us what provision he made in the codicil for Eleanor Holcombe, Edwin's widow?

A. That she was to have the same rights and interest in the real estate which she would have had if Edwin Holcombe had died seized of the title to it, in fee-simple, she surviving him as his widow; that's the best of my recollection; that is the substance of it, because I supposed that was the way it would have gone if Edwin had survived the old man.

Q. Was that all the codicil contained?

30 *A.* I have no recollection of anything else; but there was one item in regard to the distribution of the residue of his estate.

Q. Are you sure that was in?

A. Yes, sir.

Q. What was that?

A. The original will provided that after paying a certain legacy of two thousand dollars then the residue went to Edwin.

Q. According to the fifth item?

A. Yes, sir; but under the codicil as between us now; but he changed that so that it might be divided equally

among the five grand-children.

Q. That included Mrs. Mathews?

A. Yes, sir, of course; I took particular notice of the number to see whether it was four or five, or what.

Q. You and Mr. Sherman were the witnesses to it?

A. Yes, sir.

Q. It was executed according to law?

A. We meant it should be.

10

Q. Now, when did this will first come into your possession, Mr. Wilson?

A. Well, I could not mention the date, but I say I think it was in the month of September.

Q. That the will came into your possession?

A. Yes, sir; he gave it to me before we drew the codicil.

Q. Where were you when he gave it to you?

A. In his house.

20

Recess.

Q. At his house in the month of September, 1881, you think you were when he gave you the will?

A. Yes, sir.

Q. Did he deliver it to you there?

A. Yes, sir.

Q. Now, had he sent for you to come down there that day—did you go that day by request?

A. Yes, sir, I went by request but I don't remember who³⁰ requested me to go; I don't think he requested me to go on that particular day.

Q. But to come down soon?

A. Yes, sir.

Q. According to that you went down?

A. Yes, sir.

Q. And then he had the conversation with you which you have given us here?

A. Yes, sir.

Q. You have told us all that took place that day?

A. Yes, sir.

Q. To the best of your recollection?

A. Yes, sir.

Q. Was anybody by besides you and the old gentleman?

A. The granddaughter, Eveline, may have passed in and out while we were conversing, but my intention was to have the conversation entirely private with him.

10 Q. Was it in his part of the house?

A. In the kitchen.

Q. Eveline was about her business there?

A. Yes, sir.

Q. And could hear what passed between you if she desired to hear it?

A. Yes, I suppose so because the old man spoke pretty loud.

Q. And you spoke pretty loud to him?

A. Yes, sir.

20 Q. He was rather thick of hearing?

A. Yes, sir, rather hard of hearing.

Q. How was his eye-sight?

A. He could see to read a paper or anything near by without glasses; I think—I don't think he could see very good at a distance off but near by he could see; I observed that and remarked it at the time.

Q. On that occasion in September you were there how long?

A. I don't recollect, but I think it was a short time, just 30 long enough to talk it over.

Q. And the next time was when?

A. Well, perhaps in September each of the times; I have no recollection as to dates.

Q. This time that you were over there, when he was out of his mind, when was that?

A. A few days afterwards I should think; that, perhaps was in September.

Q. Was he confined to his bed with this malarial fever?

A. I understood he had been but he was sitting up that morning, but his head and ideas seemed to be confused.

Q. In the kitchen part—that same place?

A. Yes, sir.

Q. Was his granddaughter Eveline there then?

A. Yes, sir.

Q. In and out?

A. Yes, sir.

Q. Same as before?

A. Yes, sir.

10

Q. How long were you there on that occasion?

A. I was only there a short time; seeing the condition he was in I excused myself.

Q. He was incoherent and could not talk business?

A. He wasn't rational.

Q. Did he talk anything about business matters that day?

A. Nothing in regard to his business at all; I didn't suggest the matter to him at all.

Q. Then when you went again was when?

A. I think the next time was probably two or three days afterwards; I was going down to my father's; I was there a day or two and stopped on my way back.

Q. Two or three days afterwards?

A. Yes, sir.

Q. When you got your instructions about drawing the codicil, when was that?

A. Sometime shortly afterward.

Q. Either in September or in October?

A. Well, I don't remember the date.

Q. Do you remember the date of the codicil?

30

A. No I don't remember from recollection.

Q. It was in October—I think you swear in your affidavit to the answer that it was in October?

A. The date of the codicil?

Q. Yes?

A. Well I am not certain; that is also in my diary.

Q. You can ascertain the date?

A. Yes, sir.

Q. Have you got your diary here—just refresh your memory that's all; I will go on; now, you drew the codicil

up at your own house?

A. Yes, sir.

Q. Then you requested Mr. Sherman to go with you?

A. Yes, sir.

Q. You and he went down together?

A. Yes, sir.

Q. What time of the day?

10 A. In the afternoon, just after we had our dinner.

Q. How long were you there?

A. Not very long because I had some other business engagement and I wanted to go up, or I wanted to and I did succeed in doing so, in getting back home to attend to it.

Q. You were in the kitchen?

A. Yes, sir.

Q. That is where the business was done?

A. Yes, sir.

Q. You read over the codicil to him?

20 A. Yes, sir, I went over the codicil to him, or I think perhaps he read it over himself. I read it over to him at first and then he read it himself.

Q. Who was by?

A. If anyone was by Mr. Sherman was but I don't think Mr. Sherman read it.

Q. No, he says he didn't?

A. No, I don't think he did.

Q. Was Eveline by?

A. No, sir, I don't think so.

30 Q. Was she in and out as before?

A. Well, I suppose she was somewhere about.

Q. You saw her that afternoon?

A. Well, I don't remember whether I did or not.

Q. I want you to remember if you can?

A. Well, I don't—maybe, I suppose she was because she wasn't often away, but I had no recollection about it

Q. Do you remember of her being in the room when you were there?

A. No, sir, I do not.

Q. Do you remember talking to her?

A. No, sir. I don't remember seeing her and I couldn't remember talking to her if I don't remember her being there.

Q. Now give me the date if you can by refreshing your memory?

A. (Witness consulted diary.)

Q. Well, never mind we can't stop for that?

A. Well, I am satisfied that whatever I gave you before¹⁰ was right because I gave it from my diary.

Q. You think the date you gave in the affidavit to the answer was right?

A. I am satisfied it is.

Q. Now you kept the will all the time in your possession?

A. Yes, sir.

Q. 'Till it was sent for as you have testified?

A. Yes, sir.

Q. You say you never had seen Eveline write?

A. Not to my recollection.

20

Q. Did you know this boy that came to the house?

A. Certainly I knew him.

Q. Whose son is he?

A. Martin V. Holcombe's.

Q. He brought a letter in the morning in an envelope to you?

A. Yes, sir.

Q. And you told us you didn't know whatever became of that letter. Now how do you know of your own personal knowledge that it was on the 16th of June that the letter³⁰ was dated?

A. I didn't say the letter was dated on that day; but that is the day on which the transaction took place, but whether the letter was dated that day or not I don't know.

Q. You don't know what the date of the letter was?

A. No, sir.

Q. How do you know of your own knowledge, personally, that it was the 16th day of June he brought it there.

A. I know that also from my diary.

Q. Did you put it down on that day—that very day—

that he came there with that letter, on the 16th of June 1882?

A. Put what down?

Q. Why, the date that he came for the will?

A. No, sir.

Q. You didn't?

A. No, sir.

10 Q. Then how can you state from the diary?

A. From a certain circumstance happening on that day, I find from my diary did not occur upon any other day about that time.

Q. You didn't put this down in your diary?

A. No, sir.

Q. Have you got any memorandum of it?

A. No; sir, no memorandum of that.

Q. Then you only give us the date as the sixteenth day of June from the happening on certain things that you think
20 could not have happened on any other day?

A. I know that could not have occurred on any other day and if you will allow me I can tell you how I know it.

Q. How do you know of your own knowledge that this took place on the same day?

A. If you will allow me I will explain how I know it of my own knowledge.

Q. How long will it take?

A. Not long.

Q. Well, let's have it?

30 A. Yes, sir. Well, that day, my own recollection is that I was home in the morning and in the afternoon both, because I could not have received the letter from the boy and deliver it to him on the same day, and that is the only day, from my diary, from the time that I spoke of when I saw Eveline in the garden that I have a memorandum of on my coming from Lambertville that day; that is the only time from that time on up till the 23rd, day of June, when school closed for the summer vacation—and it could not have been later than that. That was the only time I was at home during the whole day unless there was some other circumstance to

keep me there. One day I had some friends visiting and I know there was nobody present at the time this boy was there. There is no other day I was home all day without friends visiting me.

Q. Well, that is all argument and what has that got to do with school closing; you don't teach school?

A. No, sir.

Q. Then why do you refer to the school closing? 10

A. Because he went to school at the time.

Q. Therefore you argue that it must have been before the 23^d of June because the boy was going to school?

A. Yes, sir.

Q. Do you know that he went to school that same day?

A. Do I know?

Q. Yes, from your own knowledge?

A. I know that is what he said when he stopped in.

Q. Well, that is not your own knowledge?

A. Well, I don't know that he even said so; I was in the 20 habit of seeing him go there in the morning and back in the afternoon, and I have a daughter that goes to school there.

Q. I want to know what you know of your own personal knowledge?

A. Well, I do know these things of my own personal knowledge, sir; I know that he went to school that day.

Q. Do you generally keep a memorandum of those things?

A. Yes, sir, certain things. 30

Q. Now you told me that you kept nothing in your diary of that boy's being there that day?

A. I don't find anything in my diary about it.

Q. You don't find the letter either?

A. No, sir.

Q. And you haven't the mark of a pen to show that he was there that day?

A. No, sir.

Q. Very well; now you say you have some memorandum of a day when you met Eveline in the garden?

A. Yes, sir,

Q. What is that?

A. That I took my wife and daughter to Lambertville that day.

Q. Is that another?

A. Yes, sir.

Q. Is that all there is in the diary about that thing on
10 that day?

A. No, sir, I don't know as it is; I haven't examined it.

Q. You didn't enter in your diary that you saw Eveline that day?

A. No, sir.

Q. Nor that you had any conversation with her?

A. No, sir.

Q. You infer from what you have there that you did have a conversation with her because you went with your wife and daughter to Lambertville that day?

20 A. Yes, sir, and that is the only time that I took them to Lambertville in the carriage anywhere near that time.

Q. You go there once in a while don't you?

A. No, sir, not often in that way, because I don't keep a horse and wagon and my recollection is that I borrowed one and went that day.

Q. Have you got in your diary that you went with your wife and daughter to Lambertville in a carriage?

A. I put it down I think that I went to Lambertville and used a horse and carriage that day.

30 Q. And how much you paid for it I suppose?

A. Well, no, I didn't enter that.

Q. Now have you seen much of the parties since that time—you are a kind of advisor to them now?

A. No, sir, they have counsel I believe.

Q. Well, I know, but they generally have outside counsel too; now you were down there on the day before the old man died?

A. Saturday morning.

Q. You are sure it was Saturday?

A. Yes, sir.

Q. You happened to go there?

A. Yes, sir.

Q. Why?

A. I wanted to tell that before but you wouldn't let me; I started to Lambertville to see Dr. Larison; my wife was complaining some and he is my doctor; and just before I got to John C. Holcombe's I met a neighbor of mine and ascertained that the doctor had just gone into John C. Holcombe's, so I went in and found him as I explained.

Q. You did see Eve ine that day?

A. Yes, sir.

Q. And had some conversation with her?

A. Yes, sir.

(The part of the codicil written referred to in the above witness's testimony reads as follows: "I, John C. Holcombe, of the township of Delaware, in the county of Hunterdon and State of New Jersey, being the testator named in the foregoing will, do make, publish and declare this codicil.")

George B. Holcombe, a witness produced on the part of the aforesaid defendants, being duly sworn according to law testified as follows—

Direct examination.

Q. You are the father of these defendants?

A. Yes, sir.

Q. What is your age?

A. 68.

Q. You knew John C. Holcombe in his life time?

A. Yes, sir.

Q. You married his daughter Louisa?

A. Yes, sir.

Q. Were you at his funeral?

A. Yes, sir.

Q. Where did you go from?

A. Reaville, where I was living.

Q. Did you go to the grave?

A. I did.

Q. Did you return to the house for dinner?

A. Yes, sir.

Q. Were there few or many people there?

A. Quite a good number.

Q. Did old Mr. Holcombe go to the grave—uncle John
10—did he go to the grave of John C.?

By Mr. Shipman—You are confusing him; you mean John.

Q. Yes, I refer now to the time of Edwin's funeral?

A. Yes, sir, I was there too.

Q. After Edwin was buried you returned to the house
and ate your dinner?

A. Yes, sir.

20 Q. Mrs. Eleanor Holcombe and Mrs. Frankenfield, her sister state that shortly after they eat their dinner they were to the door of the old man's room and saw you and he in conversation together, and that they stopped by the door and heard you—I haven't the exact language—and heard you talking to the old man about changing his will, if he didn't want to change it since his son Edwin's death—if he didn't want to put some of the land in the name of the Holcombe family so as to keep it there; or words to that effect?

30 By the Court—You haven't stated that evidence just as it is.

By Mr. Kuhl—Then I will read it. Mrs. Eleanor Holcombe testified that George B. Holcombe said to John C. Holcombe "You are not satisfied with your will since Edwin is gone?" He says, "yes, I am." George B. Holcombe said "I thought you would want to make some change in it now." He said "I am satisfied with it as it is." George B. said "I thought you would want to sell your farm now" and he said "no I don't" that ends that conversation. What

have you to say to the truth or untruth of that statement?

A. I say it is untrue.

Q. Did you ever have any such conversation with the old gentleman?

A. Never.

Q. Now Mrs. Frankenfield testified that she heard that same conversation between you and the old man, Mr. Holcombe, what have you to say about that? You say no such conversation ever occurred?

A. No such conversation occurred; never in my life.

Q. Did you ever talk with him about disposing of this estate?

A. Never.

Q. Or advise him with reference to it?

A. Never, once.

Q. Did he say anything to you?

A. He never did.

Q. Did you know what disposition he made of it? 20

A. I didn't even know that he had a will.

Q. On the day of the funeral of John C. Holcombe you were present when his desk was opened?

A. Yes, sir.

Q. The witnesses testified that when it was suggested to open the desk and that John should take the papers you spoke up and said "yes, he has got authority to take them and has had it for a good while?"

A. I don't recollect it.

Q. Did you know that he had a power of attorney at that time? 30

A. I did not.

Q. You had no knowledge of it at all?

A. Not at all.

Q. So far as you observed that day was there any question or any dispute about opening the desk and examining the papers and John's taking them as he did?

A. I didn't hear any or see anything like it.

Cross-examination by Mr. Shipman.

Q. They all seemed to be satisfied while you were there on the day Edwin was buried?

A. Yes, sir.

Q. Did you talk any there that day at all?

A. I talked to different ones

Q. Did you talk with old Mr. Holcombe any?

A. I don't think I said but very little to him.

10 Q. Did you talk any to him?

A. Yes, sir.

Q. What did you say.

A. I don't recollect.

Q. Where were you when you said it?

A. He was about there and I spoke to him, and the like of that and asked him how he did.

Q. Where was he when you talked with him?

A. Right there about his own kitchen and in the room where he eat, &c.

20 Q. Well, did you go in his room—in the sitting room or bedroom, or anywhere at all?

A. I did not.

Q. Did you talk to him after you came back from the graveyard?

A. I don't think I talked with him any at all after that.

Q. You did talk to him some that day?

A. I never sat down to talk to him.

Q. You talked a good deal didn't you—are you much of a talker?

30 A. Well, some may think so.

Q. Well, don't you think so?

A. I don't know as I am a pretty good talker.

Q. You generally talk to people about their business a little now and then?

A. Some little like other men.

Q. You have a little interest in the children's welfare?

A. Well, I don't know.

Q. You did feel an interest in their welfare didn't you?

A. I may have felt an interest in it.

Q. You were a little anxious they should have a fair di-

vision of the property?

A. Yes, sir.

Q. And after Edwin died didn't you think there might be some little change in it?

A. I did not; I didn't think of it.

Q. You are sure of that?

A. Yes, sir; I am sure of that.

Q. Are you sure you didn't say anything about that? 10

A. Yes, sir.

Q. Didn't you say anything to anybody that now Edwin was dead it would make a difference in the property?

A. I don't think so.

Q. Hadn't you heard before that the old man had made a will?

A. No, sir.

Q. You say that you never heard that he had made a will?

A. No, sir. 20

Q. Did you often see the old man before that?

A. Every once in a while I went there and stayed all night.

Q. You were a son-in-law?

A. Yes, sir.

Q. And were friendly with him?

A. Yes, sir.

Q. But never talked about his business?

A. No, sir.

Q. Who was there by that day; do you remember seeing³⁰ E. Holcombe there that day?

A. I remember seeing her.

Q. Do you know Mrs. Frankenfield?

A. I wouldn't know her if I seen her.

Q. Don't you remember seeing her that day?

A. No, sir.

Q. Nor speaking to her?

A. No, sir.

Q. Do you remember two ladies coming in the room?

A. No, sir.

Q. Was he in the room that day, down stairs?

A. I expect likely he was but I wasn't.

Q. Were not you in the door?

A. No, sir.

Q. There were a good many people there that day?

A. Not such a great many.

Q. It is in evidence that seventy-five people took dinner
10 there that day?

A. Well, I suppose there was a couple of hundred there.

Q. You don't call that a great many; did they all take dinner?

A. I think not.

Q. You have no recollection about that? you would not swear you didn't say anything to the old man that day about the will?

A. Not one word in my life-time.

20 Q. Do you mean to say that what these ladies swear to is false?

A. I do.

Q. That's all.

Harry Holcombe, a witness called and sworn on behalf of the complainants, testified as follows—

Direct Examination, by Mr. Kuhl—

30 Q. How old are you, Harry?

A. Twelve years old.

Q. Martin Holcombe is your father?

A. Yes, sir.

Q. Where did you live this summer a year ago?

A. I lived a part of the time up to my grandfather's and part of the time up home on the Hill; I think I went up home in August.

Q. In August?

A. That is what I think.

Q. As long as school went on at Stockton where did

you live?

A. Up at grandfather's.

Q. And went to school at Stockton?

A. Yes, sir.

Q. In going to school at Stockton did you go by Richard Wilson's house?

A. Yes, sir.

Q. Do you know when school closed that year? 10

A. The latter part of June.

Q. Towards the first of July?

A. Yes, sir.

Q. While you were going up to school—before school closed—did you take a letter to Mr. Wilson from your Aunt Evaline?

A. Yes, sir, I took a note.

Q. Was it a note sealed up?

A. I think it was a note doubled up and I put it in my pocket. 20

Q. Did you give that to Mr. Wilson?

A. I think it was Mr. Wilson, if not it was Mrs. Wilson, and I don't know which.

Q. Did you stop there on your way from school that day?

A. Yes, sir.

Q. How did you come to stop on your way home?

A. He told me to stop.

Q. Mr. Wilson did?

A. Him or her, I don't know which now. 30

Q. And you stopped?

A. Yes, sir.

Q. Well, did they give you anything?

A. Yes, sir.

Q. What?

A. Well, Mr. Wilson told me to come up-stairs, and he had a big paper out there.

Q. Who told you so?

A. Mrs. Wilson; she was down-stairs.

Q. Then you went up-stairs?

A. Yes, sir.

Q. Who did you see up there?

A. Mr. Wilson.

Q. Richard Wilson?

A. Yes, sir.

Q. Tell what occurred?

10 A. He had a big paper there—written I think it was—
and he doubled it up and put it in a big envelope and
sealed it up, and I think he put it in my inside pocket,
right in here (illustrating); I think he put it in and Mrs.
Wilson pinned it up with two pins at the top, and told me
to take it down and give it to my Aunt.

Q. Your Aunt Evaline?

A. Yes, sir.

Q. Did you go on home then, down to your grand-
father's?

20 A. Yes, sir; I went on down and gave it to her; she
unpinned my pocket and took it out.

Q. Did you ever see that afterwards?

A. No, sir.

Q. Did you ever hear anything about it afterwards?

A. I never seen it and I never heard any talk about it.

Q. Till since this suit commenced?

A. Yes, sir.

Q. That's all?

30 Cross-examination by Mr. Shipman.

Q. You say you heard them talk about it; whom did you
hear talk about it?

A. Most of them I heard talk about it since they were—
I could not tell you what it was, but it was since they have
been taking evidence at Mr. Kuhl's office.

Q. Did you ever hear them talk anything about it before?

A. Not as I know of.

Q. After you delivered the letter to your aunt Evaline;
did you hear them talk about it after that, before the old
man died—your grandfather?

A. No, sir.

Q. You are sure of that?

A. I am.

Q. What kind of a paper was it you carried it in?

A. A big yellow envelope.

Q. Was there anything written on the envelope?

A. I don't think there was.

Q. Can you read writing?

10

A. I can some.

Q. You put it in the inside pocket of your coat?

A. Yes, sir.

Q. Where was it you gave it to your aunt Eveline?

A. In the kitchen.

Q. Was anybody by?

A. No, sir.

Q. Nobody was by?

A. No, sir.

Q. You and she were alone?

20

A. Yes, sir.

Q. What did she do with it?

A. She went off in her room.

Q. You didn't see where she put it?

A. No, sir.

Q. Have you ever seen that yellow envelope since?

A. Not that I know of.

Q. Where did you go to from there?

A. Well, I don't know, unless I went out doors.

Q. Did you go away from there before your grandfather³⁰ died?

A. You mean to live?

Q. Yes?

A. No, sir.

Q. You stayed until he died?

A. Yes, sir.

Q. You say you went away after school terminated?

A. I went away after, but it was after he died a week or so.

Q. How long after school terminated did he die?

A. Well, it was somewhere over a month, I guess.

Q. What makes you think it was about a month?

A. Because it was near about that time.

Q. As near as you can tell?

A. Yes, sir.

Q. Did you go to school all the time until school turned out?

10 A. I think I did unless it was stormy or something happened so that I could not go.

Q. Do you know you were there on the last day the school kept?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. You never saw that envelope after the day when you gave it to aunt Eveline?

A. Not to know of it; I may have seen it but not to know it.

20 Q. Have you ever seen papers around the house?

A. Yes, sir.

Q. What?

A. Well, I cannot tell you what it was; there was lots of papers around there.

Q. Did you ever see any yellow envelopes about there?

A. Yes, sir, I have seen yellow envelopes about there.

Q. When?

A. I could not tell you when.

Q. After that time?

30 A. I could not tell you.

Q. A large yellow envelope?

A. I don't know, there never was many of them about, I guess.

Q. Did you ever see anything of that one after that?

A. Not as I know of.

Q. Would you know it if you did?

A. I don't know as I would.

Q. Where have you seen these envelopes?

A. In the stores.

Q. But you said you had seen some around the house?

A. I guess they were small ones.

Q. Not large ones?

A. Not as I know of.

Q. What day of the week was this?

A. That is more than I can tell you.

Q. You can't tell that?

A. No, sir.

Q. Was it Saturday?

10

A. No, sir, we would not have school on Saturday.

Q. You don't have school Saturday?

A. No, sir.

Q. Are you sure you were going to school that day?

A. Yes, sir.

Q. What time of the day was it you went there?

A. Between 7 and 8 o'clock.

Q. Well, do you remember whether you saw Mr. Wilson or his wife there?

A. I saw them both in the morning.

20

Q. And you think this was not inclosed in an envelope then, but was just an open note folded over—I mean the one that your aunt Eveline wrote?

A. I think it was just a note doubled up.

Q. Folded over?

A. Yes, sir.

Q. Without any writing on the back of it?

A. I could not say about that.

Q. That is all?

30

Martin V. B. Holcombe, a witness produced on the part of the defendants, having been duly sworn according to law, deposeth and saith—

• Direct examination by Mr. Kuhl.

Q. You are one of the defendants in this suit?

A. Yes, sir.

Q. You live up on the hill near Lambertville?

A. Yes, sir.

Q. How far from your grandfather's residence where he died do you live ?

A. Two or three miles.

Q. How long have you lived there ?

A. Five years next April.

Q. You formerly lived on your grandfather's farm ?

A. I lived there nine years.

10 Q. Up to what date did you live there ?

A. 1878, I think it was.

Q. Up until that time did he transact and conduct his business altogether ?

A. Yes, sir.

Q. Without any assistance ?

A. He had no assistance that I know of, and I farmed there on shares.

Q. Did you have a settlement with him every year ?

A. Every time I took a load to Lambertville I came in
20 and we settled up ; he always got out his slate and figured out what his share was and what mine was, and it was settled right there.

Q. And that continued up to that time ?

A. Yes, sir.

Q. You saw him frequently from that time until he died, didn't you ?

A. Yes, sir.

Q. What have you to say in reference to his capabilities after you left there until he died ?

30 A. I saw him three different times ; I generally went over there every five or four or six weeks to see him while he was living there, and I think he was about as clear-minded as you generally see men of his age ; when he was talking to you if he didn't understand you right away he would understand you before you left.

Q. Were you there when he was sick with the malaria fever ?

A. What do you mean ?

Q. In the fall or winter before he died ?

A. He was complaining a little of malaria for a time

or two through that time.

Q. About malaria; now, Martin, take the last six months of your grandfather's life; did you have any knowledge of a meeting or any conference with your brothers and sisters up at your house, and consulting there together with reference to your grandfather's property?

A. I can prove that they never were at my house until after his death.

Q. Did you ever come down at your grandfather's house and hold any such conferences as that?

A. No, sir; never.

Q. Was the subject of your grandfather's property and its disposition ever discussed between you children?

A. I knew nothing about the will; I never saw it, and it was never discussed as I know of; of course it has been since this thing happened.

Q. I mean prior to his death; prior to his death did you know he had a will?

A. Hearsay is all that I know of.

Q. Do you know who you heard it from?

A. From different ones; I never said a word to him about it, but I heard from outside parties that he had a will.

Q. Did you ever know anything about its condition or terms?

A. I never did.

Q. Prior to his death?

30

A. No, sir.

Q. Did you have any knowledge at the time he died that there was any will in existence?

A. I didn't know anything about it; there might have been or there might not; I supposed there was, by hearsay.

Q. Do you have any now?

A. No, sir; I have no idea now; if there is any I don't know it; I never saw it; I never saw anything of the kind.

Q. Have you heard either of your brothers or your sis-

ters say anything about there being a will since he died?

A. No, sir.

Q. Did you ever hear them say anything about it?

A. Well, if there was one I would like to see it myself.

Q. Did you have any knowledge of the existence of this paper which Mr. Wilson produced until you came down to my office?

10 A. No, sir; that is the first time.

Q. What brought you to my office?

A. Why—(interrupted.)

Objected to.

A. Why they had served an injunction against us about settling the estate and I was called there to see about the business I suppose.

Q. And to see about your answer for this bill?

20 A. Yes, sir.

Cross-examined, by Mr. Shipman.

Q. When did you first hear there was a will?

A. I could not tell you that.

Q. How long before your grandfather's death?

A. Well, it might be a year or two before, I can't tell you that.

Q. Who told you first?

30 A. I don't know as I can tell you that.

Q. Well, as near as you can?

A. I ain't going to tell anybody when I don't know, but I heard people say he had a will.

Q. Whom did you hear say so?

A. I don't know but what it was Anderson Holcombe.

Q. Whom else?

A. Well, I don't know.

Q. Did Evaline tell you so?

A. No, sir.

Q. John C. your brother?

A. No, sir, John Horn said himself that there was a will.

Q. When did John Horn tell you?

A. Before the old gentleman's death.

Q. You understood always did you that Edwin was to have the farm?

A. I don't know anything about it.

Q. Wasn't that what you understood about the will, that Edwin was to have the farm? 10

A. I suppose he was to have it, I didn't know anything about it..

Q. Didn't you understand that that was in the will?

A. I won't say that.

Q. Then you didn't understand that he was to have the farm?

A. Well, I said that I supposed that he was to have it; that is all I know about it.

Q. Didn't you hear that by the will Edwin was to have the farm; wasn't it talked of, and told you? 20

A. It has been told me since.

Q. No, I mean before?

A. I knew about the will before.

Q. That is not what I am asking you. I asked you if it had not been told you before old man Holcombe died that by the terms of the will Edwin was to have the farm?

A. I suppose he was to have it and that is all I know about it.

Q. Didn't you suppose that he was to have it by the will?

A. I don't know anything about the will, I never seen it, 30 and there never has been a word said to me about it.

By the Court—

Q. Mr. Shipman's question to you is this, he asks you whether before your grandfather's death you didn't hear it said by somebody that by your grandfather's will, Edwin was to have the farm?

A. Only by hearsay. Some people say this thing, and some people say the other thing; one told me one story and

one another.

Q. Mr. Shipman wants to know what hearsay you have upon that subject?

A. We supposed so by what was told.

Q. Now answer the question whether you haven't heard somebody say, prior to your grandfather's death, that by his will Edwin was to have the farm?

10 A. I might have understood it, but I won't name anybody's name.

Q. It is very easy to answer according to your recollection, whether before your grandfather's death, you hadn't heard somebody say, no matter who it was, that by your grandfather's will Edwin was to have the farm?

A. I understand the question now.

Q. Very well, now answer whether you had heard it or not?

A. Well, I kind of understood it that way, but I ain't
20 going to give anybody's name.

Further cross-examination.

Q. Where did you live shortly before your grandfather's death?

A. Where I now live, at West Lambertville.

Q. This county?

A. Yes, sir.

Q. How far from your grandfather's?

30 A. It is two miles from Lambertville and one mile up to my place if you go around the ridge.

Q. After the old gentleman's death did any of your brother's come there?

A. I said that at one time they came to see me.

Q. At any time about the time of the old gentleman's death were your brothers at your house?

A. They were at my house one Sunday after his death.

Q. How long after?

A. I won't say positively whether it was the next Sunday or Sunday week.

Q. Who came then?

A. Two brothers.

Q. Sister also?

A. No, sir.

Q. How long did they stay there that day?

A. Twenty minutes; they met me outside between there and the barn.

Q. Is twenty minutes all they stayed?

10

A. Yes, sir.

Q. You were down there when your grandfather was buried?

A. Yes, sir.

Q. Didn't you and they have a little talk after the old man was buried; wasn't there a little private conversation between the boys before you went to the desk?

A. No, sir, not a word.

Q. Of any kind?

A. Well, there was no private conversation.

20

Q. You were not alone?

A. Well, I won't say that but we didn't get by ourselves and have any private conversation.

Q. Did you know that gentleman had a power of attorney?

A. I knew it that day.

Q. Was that the first?

A. Yes, sir.

Q. Where at that place did you first find out that he had it?

A. After we began to examine the papers.

30

Q. Not before?

A. Well, I don't think I did.

Q. Well, I want to get this down to the date square?

A. I won't be square.

Q. I want to know whether you knew it before that day?

A. There may have been something said about it, but I don't know.

Q. Don't you know that you knew John had that power of attorney?

A. I don't think I did, but I can't remember now.

Q. You thought you didn't know it that day until after the funeral; now are you sure that you and Levi and John didn't hold a private conversation in one part of the room?

A. No, sir.

Q. And didn't have the papers out?

A. No, sir.

Q. Didn't John have that power of attorney out and show
10 it around before you opened the desk?

A. I don't remember whether it was before or afterwards when they asked him to show the power of attorney; he showed it.

Q. What I am asking you about is whether or not it was before they examined the desk?

A. I don't think he showed me any paper at that time.

Q. Were not you three boys together and your sister Ev-
eline?

A. Do you mean to hold a conversation?

20 Q. Yes?

A. No, sir.

Q. Didn't John have the paper out there?

A. He might have had forty papers out and I not know
it.

Q. I am asking you whether you didn't see this particu-
lar paper?

A. Well I can't tell you what I don't know; I am trying to tell you the truth about it; I know what you want; you want to pry a little something out of me that ain't in there.

30 Q. Didn't John have that paper out?

A. He may have had the paper out and showed it to me for all I know.

Q. That is all?

Levi Holcombe, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith—

Direct examination by Mr. Kuhl.

Q. You are one of the defendants in this matter?

A. Yes, sir.

Q. And the co-administrator of Rebecca Mathews of your grandfather's estate?

A. Yes, sir.

Q. At the time letters of administration were taken out was there any objection made by anybody to letters being taken out? 10

A. I don't think there were.

Q. You heard none?

A. No objections.

Q. How did Rebecca come to administrate with you; just state what occurred after your grandfather's death, and how it came about that letters were taken out by you and Rebecca?

A. Well it went on for a week or eight or nine days and I went up there and I told Rebecca there would have to be something done, an appraisement made, and the proper 20
course taken, and have administrators appointed, and she said that she wanted to do what was right; I told her that was all I wanted, so that everything was done properly and I spoke to her about taking the appraisement and we talked about who would be a good man to do it, and I mentioned two or three or four and I told her I didn't want to have all to say and if she had any particular one to pick out to say so, and she said that she would think of it; she wanted to study about it; she said it was right on the spur of the moment and she said she wanted to study over it; and the same 30
day it was spoken of again and she spoke of one she thought would make a good one, and two others she spoke of; we agreed to see them and find out if they could make the appraisement; she asked me to go up and see them and notify them, and we went on with the appraisement and it was satisfactory to both.

Q. In reference to letters of administration state what occurred?

A. After we made the appraisement with the persons there Mr. Holcombe, that is the attorney, said Rebecca was

to be one of the administrators and I told him that I hadn't any objection, everything was satisfactory and I was speaking about John being one of the administrators or anyone; I didn't care who; they said no, I was the oldest and it was proper for me to be one of the administrators and asked me if I had any objections to join with her; I said not if everything would go smooth; so I thought about it and she said
10 that she wanted everything to go smooth as far as she was concerned, and we talked the matter over mutually and agreed to go on together as administrators and tried to get on with everything satisfactorily; then we came up to Flemington I think the next day after the appraisement; I think it was the next day, but I won't be positive; I think we came up the next day and came into the surrogate's office and talked the matter over and finally concluded to take the oaths and comply with the conditions; so we complied and took out the letters, and Mr. Alexander Holcombe who
20 spoke there said, I suppose if there is a will found this won't make any difference, and the surrogate said no; that is pretty much all the conversation as far as taking up the letters was concerned.

Q. The complainants say in their bill that you neglected to take charge of the estate and left the stock and grain and everything on the farm from the time of your grandfather's death until the next April?

Objected to.

30

Q. Going back to before your grandfather's death, how lately before he died had you been there?

A. I think between five and six months; I think it was along about the first of February; I think that was the last time I was there before he died.

Q. Did you reach there before he died?

A. No, sir; I reached there on Sunday morning at 10 o'clock, and he died that morning at 1 o'clock, or somewhere around there.

Q. During that six months prior to your grandfather's

death had you been up to Martin's and held conversation with your brothers and sisters in reference to your grandfather's property or will?

A. No, sir; I don't think I was at the house.

Q. At your grandfather's death were you at Martin's?

A. On Sunday after my grandfather's death I was down at my grandfather's, and someone came there and said that Martin got hurt very bad, and they said let's go¹⁰ up and see him, and me and John went up there to see him.

Q. Was that the occasion of your going?

A. Yes, sir.

Q. On that occasion did you talk to John and Martin, or did you and John and Martin have any talk about your grandfather's property or his will at all?

A. Nothing was said about the will or property in my presence; no, sir.

Q. Had you ever heard that your grandfather had a²⁰ will?

A. I never knew it of my own knowledge, but about the time my Uncle Edward was buried Mr. Horn, of Lambertville, told me there was a will somewhere but he didn't tell me anything about the contents of it.

Q. Was that all the information you ever had about it?

A. Yes, sir; until we met at your office when we were to give testimony.

Q. After Mr. Wilson produced this paper?

A. Yes, sir.

30

Q. Prior to the production of that paper in my office had you any knowledge or information of your grandfather's will?

A. No, sir.

Q. I wish you would state to his Honor what took place after your grandfather was buried and you came home to dinner, in reference to opening his secretary.

A. After dinner we were all sitting in the room—the parlor I suppose they term it down there, and I think it was John got up and requested all to leave the room ex-

cept the heirs, and said we wanted to examine the papers; I don't know who was in the room at the time, but there were some in there who were not interested in the matter, and they went out; then there was my father, Mr. Ely, Mr. Reuben Ely and their four children, and Rebecca and her mother, and whether anybody else stayed in I could not say; I know that we were in there when we went up
10 to the desk.

Q. Do you remember about Burrows?

A. Yes, sir; he was there; he was one of the heirs.

Q. Well, proceed?

A. Before we went up to the desk someone spoke about his having a power of attorney, and that was the first I knew of it.

Q. Do you know who spoke about the power of attorney?

A. I don't remember.

20 *Q.* Was the power of attorney shown?

A. Well, I could not say whether it was or not; I don't remember.

Q. Go on?

A. Then we went up to the desk and it was unlocked and opened.

Q. Who unlocked it?

30 *A.* John did, and he told us if there was any of us that wanted to keep a memorandum of the things in there why to do so; so I got a piece of paper and asked if they wanted a memorandum of it, and no one seemed to want any so I said I would keep a memorandum of the money; so while they were looking over the papers one by one I took a memorandum of the money and I gave Rebecca one copy and kept one myself, and then we searched through the papers and wrapped them up again, and John took them.

Q. As soon as you got through did you know that John was going to take the papers from the house that day?

A. Something was said about his being a proper person to take them?

Q. Did you understand that he was going to take the papers that day?

A. Not until after we had looked over them.

Q. Did you then understand that he was going to take the custody of the papers?

A. Yes, sir.

Cross-examined, by Mr. Shipman.

10

Q. You say you never heard, except from John Horn, that your grandfather made a will?

A. I don't think I remember any other person mentioning it to me prior to his death.

Q. Did you ever hear him talk about the contents of the will at all?

A. I never heard a word of that at any time until at your office; that was the first I ever heard of the contents.

Q. That is all?

20

Counsel offers in evidence deed from Sarah D. Snook and Thomas K. Snook to John C. Holcombe dated February 21st, 1879, recorded in April 1879, book 181 of deeds, page 521, and also a copy of the will produced by Mr. Wilson.

Defendants rest.

Richard Wilson, a witness produced on the part of the aforesaid complainants, having been duly sworn according to law is recalled for further cross-examination by Mr. Shipman.

Q. You know Alexander H. Holcombe, a lawyer at Lambertville?

A. No, sir, I know Alexander Holcombe.

Q. You do know him?

A. I do.

Q. Did you go to see him about this will?

A. I suppose he came to my office for the purpose of see-

ing me, but I was not at home and my wife told me he was there.

Q. At a time when you were not at home?

A. Yes, sir, he never came to see me when I was home.

Q. Did he never speak to you about it?

A. I don't say that.

Q. Well, don't let us quibble about words, sir?

10 A. Well, I want to have things down exact.

Q. Well, did he ever talk to you about it?

A. Yes, sir.

Q. When?

A. I had been up to Flemington; I don't recollect for what cause, and he had too, and we got into the same train together.

Q. Didn't you tell him that you carried the will down to the old man yourself.

A. No, sir.

20 Q. Or anything like that?

A. No, sir.

Q. Did you tell him you took it down two or three days before the death of the old man?

A. No, sir.

Q. Or anything like that?

A. No, sir.

Q. Do you say you had no such conversation with him?

A. No such conversation; I say I didn't tell him anything at all what he has set forth in his allegation.

30 Q. You didn't tell him that or anything like that?

A. I didn't tell him I took it down in two or three days?

Q. Did you tell him you took it down?

A. No, sir; I didn't tell him whether I did or did not, but he seemed to infer that from the question he asked me and I left him just as much in the dark as he was before, knowing that he was the counsel for one of the parties and was trying to draw something out of me.

Q. Did you have a conversation with Reading Holcombe?

A. I think I did.

Q. Do you remember telling him that you carried it down

there?

A. No, sir.

A. A short time before the old man's death?

A. No, sir.

Q. Or sent it down?

A. No, sir, I did not.

Q. Did you have a conversation with the surrogate here before his death—surrogate Johnson? 10

A. Perhaps I did

Q. Don't you remember telling him that you carried it down a few days before?

A. No, sir, nor anybody else because I didn't carry it down; I can explain if I am allowed how, I think, the discrepancy as occurred in their testimony.

Q. No, never mind; that is all?

James B. Mathews, a witness produced on the part of the aforesaid complainants, having been duly sworn according to law deposeth and saith—

Direct examination by Mr. Shipman—

Q. Did you ever have any conversation with the old gentleman, John C. Holcombe, in which he told you that he had destroyed his will?

A. No, sir.

Q. And in which you said to him that if the will didn't appear or wasn't found after his death there would be a big time about it? 30

A. No, sir.

Q. Or anything like that?

A. No, sir.

Q. Did you ever have any conversation with him about it except the two you have detailed in your principal evidence?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. He never intimated to you that he had destroyed his will or anything like that?

A. No, sir.

Q. Or you say anything to him about it?

A. No, sir, nor I never understood anything about it at any time.

10 Cross-examined by Mr. Kuhl.

Q. How frequently did you talk to him about his affairs?

A. Only when he commenced it.

Q. And you always talked with him when he commenced freely?

A. How could I help it.

Q. I didn't ask you that; I say when he did commence it you talked?

A. Yes, sir.

20 Q. Did he never say anything to you about the will except the two conversations you had detailed?

A. No, sir.

Q. You made no memorandum of those two conversations?

A. No, sir.

Q. How are you so positive?

A. Well one was on a Sunday following my father-in-law's death, and the second one was on the second day of July.

30 Q. Just after you bought the new machine?

A. Yes, sir.

Q. Outside of those two occasions he never spoke to you about his business?

A. No, not about the will.

Q. But about his business, I say?

A. About his taxes he spoke, etc.

Q. And about his property?

A. I don't think he ever did; I could not say now.

Q. It was your custom to shave him every Sunday morning, wasn't it?

A. I may have missed one or two, but I don't think I missed oftener than that.

Q. Well, it was your custom to shave him every Sunday morning?

A. Yes, sir.

David Holcombe, a witness produced on the part of the aforesaid complainants, having been duly sworn according¹⁰ to law, deposeth and saith—

Direct examination by Mr. Shipman.

Q. Where do you live?

A. In Pennsylvania.

Q. Are you any relation of the old gentleman we are talking about here?

A. Yes.

Q. What?

20

A. He was a brother of my father.

Q. Then you are a nephew of his?

A. Yes, sir.

Q. How long did you know him?

A. Always; ever since I was a little boy.

Q. Did you visit him?

A. Why, occasionally.

Q. Shortly before his death do you remember being on a visit to him?

A. Yes, sir, I was there just five weeks before he died. 30

Q. Was it on a Sunday or what day?

A. On Sunday, or at least that is what I think it was.

Q. Who was with you?

A. My wife.

Q. What time in the day did you get there?

A. Well, it was pretty soon in the morning, as soon as I could drive from our place to there.

Q. How long did you stay?

A. I stayed until about sundown.

Q. Did you take dinner there?

A. Yes, sir.

Q. Was your wife with you all day?

A. Yes, sir; she was there all day.

Q. Were you with the old man all day?

A. Yes, sir; pretty much all day; sometimes I was out and around.

10 Q. Did you see young John C. Holcombe there that day?

A. Yes, sir; he came there in the afternoon.

Q. What time?

A. A little late; it may have been two o'clock and it may have been later; I could not say about that.

Q. What time did he go away?

A. Well, he went away before I did.

Q. Were you with him there all the time?

A. Pretty much, I believe.

Q. In the house?

20 A. Why, pretty much; I went out and around some.

Q. Did he go with you out or did John stay in the house?

A. Well, I don't know exactly about that; he may have been along sometimes and sometimes he might not.

Q. Where was your wife?

A. She was there about the house.

Q. Did you see John C. Holcombe go away?

A. Well, I ain't right sure whether I went down to the canal with him or not.

30 Q. Do you know when he left the house?

A. Yes, sir; he left the house a little before night.

Q. Did you see him do anything that day with the old man?

A. No, sir.

Q. Hand any paper to him or anything of that kind?

A. No, sir.

Q. Or the old man hand anything to him?

A. No, sir.

Q. Did you hear any conversation that day between them?

A. No, sir; the old man wasn't in condition much for that.

Q. What was the condition of the old man that day?

A. Well, he could not get around a great deal that day.

Q. What was the matter with him?

A. Well, he had got pretty feeble.

Q. Could he walk about; was he in bed or sitting up?

A. He was in bed, and he laid down on the settee and I tried to get around a little.

Q. State how he talked; state what he said?

A. Well, he said a good bit that wasn't of much account.

Q. Well, tell us something he said, if you can?

A. Well, after I went out he would ask me who I was when I came back again; he didn't seem to know me when I came back.

Q. How often that day, if you can tell, did he ask you who you were? 20

A. Oh, I don't know, two or three times during the day; he was thinking that I was somebody else.

Q. Who did he think you were?

A. Why, sometimes he thought I was his brother; at one time he thought I was his twin brother.

Q. Did he have any brothers living?

A. No, I believe not.

Q. How long had he been dead?

A. Well, now that I can't say.

Q. As near as you can state? 30

A. Well, there was one died West who has been dead two or three years, and I could not tell you anything about the time only I heard he was dead.

Q. How intimate had you been with the old gentleman in his lifetime?

A. Not very intimate; I went there occasionally to see him; I hadn't been there for about a year before this time.

Q. He always knew you well?

A. Oh, yes; and I always knew him well.

Q. Did he tell you anything about the state of his

health that day?

A. No, sir; he only complained that he was very heavy.

Q. Complained that he was heavy that day?

A. Yes, sir.

Q. Did you notice anything else peculiar in his conversation that day that you can state now?

10 A. Not particularly.

Q. Can you tell us of any other conversation that he had engaged in?

A. No, sir; I don't know as I can.

Q. Do you remember Evaline?

A. Yes, sir.

Q. Was she there?

A. Yes, sir.

Q. Was she about there all day?

A. Why, I believe so.

20 Q. Did she make any remark about the peculiarity of his not knowing you or anything like that?

A. I don't know as she did; she might, but I don't recollect about that.

Q. Were you there when the old gentleman was buried.

A. Yes, sir.

Q. Were you at the funeral?

A. Yes, sir.

Q. Was your wife with you?

A. Yes, sir.

30 Q. Were you present when they went to open the desk.

A. No, sir.

Q. You were not there?

A. No, sir.

Q. That is all?

Cross-examined by Mr. Kuhl.

Q. How far do you live from Lambertville?

A. About 6 miles.

Q. You have lived there since March 14, 1883.

A. Yes, sir.

Q. Have you seen these complainants during that time?

A. I made it a rule to go there once a year; I was there some time ago.

Q. When were you there?

A. Well, now, I could not tell you right sure when I was there or how long ago it has been.

Q. Well, about five weeks ago wasn't it?

10

A. Oh, yes, it is longer ago than that.

Q. Tell me when it was?

A. Sometime during the summer.

Q. When during the summer?

A. I have forgotten.

Q. Tell me as near as you can?

A. It don't come to my mind just when I was there; it was in the summer and I can't think what they were doing.

Q. You went to Mrs. Rebecca Mathews?

A. Yes, sir.

20

Q. Now give me the best of your recollection about that?

A. Well, that has entirely left me; I can't say now exactly when it was; I may think of it afterwards; but I can't tell you now; I should think it would have been about—well, it was warm weather when I was there, and I could not say about it positively.

Q. Was it on Sunday?

A. Yes, sir, it was on Sunday.

Q. What time did you get there?

A. Well, I got there some time in the forenoon.

30

Q. Now can't you tell us when it was?

A. Somewhere about 11 o'clock I should think.

Q. What time in the summer?

A. Well, I can't tell you exactly.

Q. Did you and the complainants talk about this case on that day?

A. There was a little said about it.

Q. Had they been to see you before that to be a witness in this case?

A. No, sir.

Q. When did they tell you they wanted you to come?

A. They wrote to me.

Q. When?

A. A week or two ago.

Q. How did they know that you knew anything about the case?

A. They knew that I was there at this time.

10 Q. How did they know?

A. Well they knew I was there at the funeral and there before.

Q. But they didn't know that you knew anything about this?

A. No, sir, that is true.

Q. You haven't attended at all before the Vice Chancellor in this case until to-day?

A. No, sir, I was here yesterday.

Q. When did you get word to come?

20 A. I got word a week or two ago; I can't tell exactly the time, but it was when they expected to be here and they requested me to come.

Q. What month did John Holcombe die in?

A. I think it was in July.

Q. How do you know?

A. Well I have every reason to believe it was.

Q. What day in July?

A. I would not say what day in July it was he died because I wasn't there.

30 Q. Do you keep a diary of events?

A. No, sir.

Q. Nor of your going to this place or that at all—any written memorandum?

A. It was marked in my almanac.

Q. Do you keep a diary?

A. No, sir.

Q. Or any written memorandum?

A. Not particularly, I don't.

Q. Have you any memorandum of the day when he died?

A. Well, now, I could not say whether it is marked on

the almanac or not but I think it is.

Q. Are you sure it is?

A. Well, I am not right certain but I think it is.

Q. How is it marked?

A. Why, it is marked when he died, I suppose, with a stamp.

Q. Do you know anything about that at all?

A. Well I could not state unless I looked. 10

Q. You never have gone to the almanac to see when he died, have you?

A. No, sir, I don't think I have.

Q. Then you never consulted the almanac to see when he died?

A. No, sir, I don't think I have.

Q. Have you any memorandum of the time when you and your wife went to visit him before he died?

A. No, sir, I don't think I have.

Q. What day of the month was it that you paid him that 20 visit?

A. Well, it was the 2d Sunday in June and I take that to be the 18th.

Q. You take that to be Sunday the 18th; how do you tell that you were there just five weeks before he died?

A. I recollect it as well as can be that they spoke there at the funeral.

Q. How do you recollect you were there five weeks before he died?

A. I remember it and that is the reason I have given al-30 ready to remember it.

Q. You cannot tell now then when you visited Mathews this summer.

A. No, sir; I cannot tell exactly what Sunday that was, but I think that is marked down, too.

Q. When you were over there this Sunday you talked about this case?

A. There was a little said about it.

Q. Was anything said about a will having been brought from Richard Wilson to the old gentleman?

A. No, sir; I don't think there was anything said about a will to my recollection.

Q. Nothing about a will?

A. No, sir.

Q. What were you asked about the will?

A. Nothing.

Q. What did you tell them?

10 A. I don't think I told them anything.

Q. How did they know that you knew anything about it?

A. They knew nothing further than that I was there at those times.

Q. How did they know that?

A. They knew I was at the funeral and that I was there before.

Q. How do you know they knew that; did they tell you so?

20 A. No; I don't know as they did.

Q. Didn't you tell them that you were there five weeks before?

A. They knew that before.

Q. Well, you had talked with them before about that?

A. Yes, sir; we knew that before.

Q. Well, had you talked about that?

A. My wife and I talked about the matter when we were going there.

Q. And after you got there you talked about it with
30 these people?

A. No, sir; not to my knowledge, yet there may have been something said.

Q. Did you know yesterday morning what they wanted to prove by you?

A. They told me that I should come here so as to prove that I was there at the time.

Q. For what purpose?

A. To tell that I was there at that time.

Q. Five weeks before he died?

A. Yes, sir.

Q Then when you left home you understood that you were to come here to testify that you had been over to uncle's house just five weeks before he died?

A. Yes, sir.

Q. Very well; then you expected to testify to that before you came here?

A. Well, if I was asked the question I knew I would have to. 10

Q. Now, if you had never stated anything to these parties, and they never said anything to you, how did it come to get into your mind that you were to come here and testify to that fact?

A. Well, they sent me word to come.

Q. To come and do what?

A. Well, now, that was their business; it was not mine.

Q. What did you think they sent you word to come here for?

A. For nothing only to be a witness in their case. 20

Q. But how did you know that you were to testify that you were there five weeks before the old man died?

A. Well, I don't say that I did.

Q. Yes, you said you knew that when you left home?

A. Knew what?

Q. That you knew that you were going to testify to that fact?

A. I guess not.

Q. Well, haven't you said so to-day?

A. I don't think I did. 30

Q. Well, do you say that you did not say so to-day?

A. I don't think I did; I did not know it until after I came over here.

Q. Well, then what did you ascertain?

A. That I was there at that time.

Q. What time?

A. The 18th of June.

Q. They told you that?

A. No, sir; I knew that before I came.

Q. Well, did you meet these parties?

A. After I came to their place.

Q. When, on Monday night?

A. Yes, sir.

Q. Then did you talk this matter over?

A. Well, I wanted to know what they sent for me for?

Q. Yes; now what did they tell you?

A. That they wanted me to come here as a witness.

10 Q. What for?

A. To state what was going on there; I did not know exactly what they did want me for.

Q. Well, what did they tell you; go right on just as you commenced; what did they tell you they wanted you to come here for?

A. Well, I knew I was there at that time, and they wanted me to say so; that is about all there was of it.

Q. Well, now what did they want you to say?

A. Well, I don't know what they wanted me to say,
20 that is for you to find out.

Q. No, it ain't; it is for you to tell me?

A. Oh, yes; if you can find it out.

Q. What did they tell you they wanted you to come here for?

A. Well, I don't know as I can tell anything particularly about it.

Q. Then you don't say that they told you anything before you left that night?

A. Well, we talked about it a little, and I said that if
30 it was really necessary for me to come I would come.

Q. What for?

A. To state that I was there at them times.

Q. What times?

A. In June and at the funeral.

Q. What time in June?

A. Why, the 18th of June.

Q. And that is what they wanted you to testify to?

A. I suppose so.

Mercy Holcombe, a witness produced on the part of the

aforesaid complainants, having been duly sworn according to law depose and saith—

Direct examination by Mr. Shipman.

Q. Are you the wife of the last witness?

A. Yes, sir.

Q. You knew old Mr. Holcombe in his life time?

10

A. Yes, sir.

Q. Pretty well?

A. I was right well acquainted with him.

Q. Did you visit him?

A. Yes, sir.

Q. How frequently?

A. About once a year.

Q. For how many years?

A. 32 years.

Q. And you had known him all that time?

20

A. Yes, sir.

Q. Did you visit him as often as once a year during all that time?

A. Yes, sir, about once a year.

Q. Do you remember being there on an occasion in the month of June 1882, with your husband?

A. Yes, sir.

Q. Where did you go from?

A. Home.

Q. Where your husband says you live?

30

A. Yes, sir.

Q. How did you go?

A. In a carriage.

Q. What time did you get there about?

A. Pretty early in the forenoon.

Q. Did you dine there?

A. Yes, sir.

Q. How did you find the old gentleman that day?

A. Well he was not very well.

Q. And did he complain?

A. Well he seemed to be a-kind of weak and helpless and laid on the sofa most of the time.

Q. Did you dine?

A. Yes, sir, we had dinner and tea both.

Q. Was he at either meal sitting up at the table?

A. Yes, sir, both meals.

Q. Did he help himself or was he helped?

10 A. He helped himself as they handed it around.

Q. Were you in the room most of the day?

A. Yes, sir, sitting right beside of the sofa a good part of the time.

Q. Did you see John C. Holcombe there that day?

A. Yes, sir, he sat on one side and I sat on the other right in front of old John in the afternoon.

Q. How long was he there?

A. He was there to tea, from about 2 o'clock until after tea.

20 Q. Did you stay all the time in the room with him?

A. Pretty much all the time.

Q. Where was the old man, John C., was he lying down or sitting up?

A. Lying down on the sofa.

Q. Did he complain to John about his health?

A. Not much he did not complain; he just laid there and kind o' groaned and was not pretty well that day.

Q. How long was John in the room at any time when you were not in?

30 A. I don't know that he was in any time hardly when I was not in there; I don't remember it.

Q. I want to know whether you were in the room all the time he was?

A. I guess I was in there pretty much all the time he was there.

Q. Was Eveline there too?

A. Some of the time she was in there.

Q. Did she get the meals?

A. Yes, sir.

Q. And washed up the dishes?

A. Yes, sir.

Q. Did you see him give anything to John that day?

A. No, sir.

Q. Did you see whether John gave the old man anything?

A. No, sir, I did not see anything.

Q. Did you hear them talk about the will that day?

A. No, sir.

Q. Did you ever have the will?

10

A. No, sir.

Q. Did you hear anything about the will?

A. No, sir.

Q. That was on the Sabbath day; now do you know what date it was?

A. The 18th day of June.

Q. Did John C. Holcombe go away before you did?

A. Yes, sir.

Q. How long?

A. I can not say now.

20

Q. Did you notice anything about the old man's mind, about any peculiarity of his mind that day?

A. Why, I did not notice anything peculiar about it.

Q. State whether he knew you?

A. Oh, he did not know me five minutes at a time.

Q. When you first went there did he know you?

A. No, sir.

Q. Well, did you have to tell him who you were?

A. Eveline told him who we were.

Q. Well, what did he say to that?

30

A. Well, he just spoke to us.

Q. How long before that had you seen him?

A. When Edwin was buried; pretty near a year.

Q. That was the last time you had seen the old gentleman?

A. Yes, sir, until that day.

Q. Did he recognize you then?

A. No, sir.

Q. I mean when Edwin was buried?

A. No, sir, he did not know me then.

Q. This day, the 18th of June, how often did he ask you what your name was?

A. Three or four times, and maybe oftener; whenever he would open his eyes and look up he would say something, and then asked who I was.

Q. And you would tell him?

A. Yes, sir.

10 *Q.* Did he lay with his eyes closed most of the time that day?

A. Yes, sir.

Q. And groan and complain a good deal?

A. Yes, sir; he kind of complained and groaned.

Q. Now, were you there on the day of the old man's funeral?

A. Yes, sir.

Q. Do you know John C. Holcombe, Jr., very well?

A. Yes, sir.

20 *Q.* And Evaline?

A. Yes, sir.

Q. And Levi?

A. Yes, sir.

Q. And Martin?

A. Yes, sir.

Q. Did you see them together on that day?

A. Yes, sir.

Q. Where?

A. In his little bed-room.

30 *Q.* After the funeral or before?

A. After.

Q. How long?

A. Well, after dinner.

Q. Who was with him, anybody?

A. Leah Moore, Evaline and Maria Holcombe.

Q. And the three boys?

A. Yes, sir.

Q. They were where?

A. Standing there on the corner of his bed-room.

Q. Down stairs?

A. Yes, sir.

Q. Was anybody but those people you speak of there?

A. Yes, sir; Mrs. Wilson.

Q. Did you see what they were doing, or did you hear?

A. They were talking there to Leah Moore.

Q. Just state if you heard anything that passed among them?

A. One of them asked Leah Moore whether they¹⁰ should read it to day or not, and she said "Do just as you please about it," and Maria Holcombe spoke up and said, "If I were you I would not."

Q. Did you see any paper?

A. No, sir.

Q. You saw no paper?

A. No, sir.

Q. Who was Leah Moore?

A. A cousin of theirs.

Q. You did not see any paper at all I understand you²⁰ to say?

A. No, sir.

Q. Well, was there anything else you heard?

A. Then they asked us to go out of the room because they were going to do a little business, and Mrs Wilson said to John Holcombe, "I don't want to go out for I want to hear the will read," and he said, "Well, it won't be read to-day."

Q. Anything else?

A. No, sir.

30

Q. Did you get up and go out then?

A. Yes, sir.

Q. Mrs. Wilson go out?

A. She came out into the next room.

Q. Which Mrs. Wilson was that?

A. Mrs. Elizabeth Willson, my mother-in-law.

Q. Did you see where Mrs. Mathews went; did she go out of the room?

A. She was not in there at all.

Q. Was she in while the papers were gone over, as far

as you know.

A. She was called in; I went out, and she went in.

Q. I understand you that you went out?

A. Yes, sir.

Q. And you were in the next room?

A. Yes, sir.

Q. While they looked over the papers?

10 A. Yes, sir.

Q. That is all.

Cross examination, by Mr. Kuhl—

Q. Were you in the room when the people were invited to go out.

A. Yes, sir.

Q. Did you say that Lizzie Wilson said to John Holcombe that she would like to stay and hear it read, and
20 John said, "No, we are not going to read it to-day."

A. Yes, sir; he said, "It is not going to be read to-day."

Q. Where did Mrs. Wilson and John Holcombe stand that day?

A. He stood right close by the settee with his back to it, and mother Wilson sat on the settee.

Q. Who was by?

A. Those I have mentioned were there.

Q. Were these parties there?

A. No, sir.

30 Q. They were not there when the invitation was given to go out?

A. No, sir; Mrs. Mathews was out in the kitchen; they were not done dinner yet, and there was no one in the room except those I have mentioned.

Q. What day of the month did Edwin Holcombe die?

A. I don't know.

Q. What day of the month was his funeral?

A. I don't remember.

Q. You were at his funeral?

A. Yes, sir.

- Q. What month were you at Mathews this summer?
A. I cannot tell you.
Q. What day of the month?
A. We there there on one Sunday?
Q. What day of the month?
A. I don't remember.
Q. How do you fix the time of your visit to John C.
Holcombe in 1882? 10
A. Do you mean five weeks before his death?
Q. Yes?
A. I put it down, and I know it was then.
Q. Where did you put it down?
A. It was in the almanac.
Q. Have you that with you?
A. No, sir.
Q. When did you look at it last?
A. I don't know.
Q. Have you looked at it since you put it down? 20
A. No, sir.
Q. What time did you set it down?
A. All their funerals were down in the almanac.
Q. What did you put down?
A. Uncle John Holcombe died, and then that we went to
the funeral, and all such things as that are down.
Q. You have not that with you?
A. No, sir.
Q. How did you fix that it was prior to that date?
A. I don't know, sir, but we just went there five weeks³⁰
before he died.
Q. But you have got no memorandum of that?
A. Not with me.
Q. And nowhere else?
A. Only I know when we were there.
Q. Have you got down the date this summer when you
went to Mathews?
A. Yes, I guess it is.
Q. Well, do you know it is?
A. Yes, sir, I warrant you it is in the almanac.

Q. Well when was it you went there?

A. I don't know when.

Q. But you can give me some idea, can not you?

A. I cannot; it was warmish weather, but I can't tell you when we started to go to John Holcombe's; a person at Center Bridge said John Holcombe was not at home.

Q. When did you first talk with Rebecca or Elizabeth or
10 James about this matter.

A. I don't know that.

Q. Have you never talked with them about it?

A. Not of any account.

Q. Have you talked at all about it?

A. Not of any account; I don't remember it.

Q. You don't remember talking with them anything
about it?

A. No, I don't remember.

Q. What?

20 A. No, I don't remember that I said anything of any account.

Q. How did they find out what you know about this?

A. At the time uncle John died Rebecca and I went out in the orchard, and Rebecca says, "there is no will," and I said, "I guess there is one."

Q. Then on the day he was buried you and Rebecca went out in the orchard and Rebecca told you there was no will?

A. After they examined the papers she said to me there was no will.

30 Q. Well, what else did you say out there?

A. I don't remember.

Q. What did you go out there for?

A. It was very warm, and she asked me to take a walk out there.

Q. That was after the papers were examined?

A. Yes, sir, and there was no will found.

Q. And she said to you there was no will?

A. Yes, sir, this was after I was ordered out of the room and I went out.

Q. When did you talk to these people so that they knew

what you have testified to?

A. At the time we were in the orchard.

Q. When did you tell them what you have testified about to-day; when did you tell these parties that?

A. Oh, I don't remember that I told that.

Q. Never?

A. I don't remember but what I may have told, I don't remember anything about it, 10

Q. What did you come here for?

A. They sent for me to come over.

Q. What for?

A. I don't know what for.

Q. What did you expect?

A. I did not know, only to tell what they would ask me.

Q. You reached Mr. Mathews' Monday evening?

A. No, sir, I did not.

Q. When did you reach there, you were here yesterday?

A. No, sir, I have not been here before. 20

Q. You were here Tuesday?

A. No, sir, this is the first day.

Q. Did you come over this morning?

A. No, sir, last evening.

Q. To Mathews's?

A. Yes, sir.

Q. Tell us what you talked about last night?

A. They were not in the room to say much of anything.

Q. Was anything talked about this evidence and the testimony? 30

A. No, sir.

Q. So then you just came on here to-day?

A. Yes, sir.

Q. Did you see Mr. Shipman this morning?

A. I seen him in here.

Q. And you had a talk with him?

A. I have had no particular conversation with him at all.

Q. Just before you were sworn he spoke to you?

A. Yes, sir.

Q. Did he ask you then what you would testify to?

A. I guess not.

Q. Well, you told him what you would testify to when he spoke to you, didn't you?

A. He just shook hands with me and passed right by; he said nothing of any account, he just passed by.

Q. Did you convey any knowledge to these people of what you were going to testify to?

10 A. No, I don't suppose they knew—how would they know.

Q. They never asked you?

A. No, sir.

Q. They never said anything about the time when Uncle John died nor when you had been over there before he died?

A. I did not see them before he died; I don't recollect that I visited them at all then.

Q. They never said anything to you about the fact of
20 his death, or asked you when you were there before he died; they never asked you any such questions as that?

A. No, sir.

Q. Have they ever asked you any such questions of that kind?

A. Not as I recollect of.

Q. You did not examine your almanac when you came here?

A. No, sir; I knew that without examining.

Q. How do you know that this was just five weeks?

30 A. I knew he died five weeks after I was there.

Q. How did you know it?

A. Because I looked in the almanac to see how soon he died after we were there.

Q. When did you look?

A. When he died.

Q. But not since?

A. No, sir; because that almanac is not hanging there any more; we have laid it away.

Re-direct.

Q. You kept a diary and almanac of business?

A. Yes, sir.

Q. And then laid them away?

Q. Yes, sir.

Q. And then if you want them you can look at them?

A. Yes, sir.

Q. You have got them filed away safe, have you?

A. Yes, sir; there are several of them there. 10

John Warner, a witness produced on the part of the aforesaid complainants, having been duly sworn according to law, deposeth and saith—

Direct Examination, by Mr. Shipman—

Q. Did you know old Mr. Holcombe in his life-time—
John C. Holcombe?

A. Part of his life. 20

Q. Did you have any business to do with him?

A. A little once in awhile, not a great deal.

Q. What was the business?

A. I used to go and work for him once in awhile.

Q. Was there any transaction about a note of your wife?

A. My wife had a note against him.

Q. How much?

A. \$250.

Q. I want simply to call your attention to whether you³⁰
went there with the note in 1882 to get the interest on it?

A. My wife did, and I went with her.

Q. Now state who did the business for the old gentleman—whether he did it or anybody did it for him?

A. She signed the note.

Q. What?

A. She signed the old gentleman's note for \$150—for the interest on the money.

Q. You mean she endorsed it on the back of the note?

A. Yes, sir.

Q. Who paid the money over; who counted it out; did you?

A. Evaline had the money, and she said she would count it out for him.

Q. Who handed it over to you?

A. Mr. Holcombe did to my wife.

Q. Any other time did you notice that Evaline attended to business for him?

A. Well, the two last times he paid the interest?

Q. Evaline did the business?

Q. Yes, sir; that is, signed the name to the paper for the interest money, and she said she would go in the room and get the money, because she had the keys and knowed where to go.

Objected to.

20 Q. What became of those notes?

A. They have them.

Not cross-examined.

——— *Holcombe*, a witness produced on the part of the aforefaid complainants, having been duly sworn according to law, deposeth and saith—

Direct Examination, by Mr. Shipman—

30

Q. What relation was your mother-in-law to old John

C. Holcombe?

A. Sister-in-law.

Q. Her first husband was his brother?

A. Yes, sir.

Q. How old is she now?

A. I believe she is eighty years old in February.

Q. Where does she live?

A. In New Jersey.

Q. And Maria Holcombe was a niece of grandfather

Holcombe?

A. Yes, sir.

John C. Holcombe, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith—

Direct Examination, by Mr. Kuhl.

10

Q. On the eighteenth of June, on the day you gave this will to your grandfather, was Mr. D. Holcombe and his wife there at all?

A. No, sir.

Q. Do you remember their being there about that time, before or after?

A. I know it was somewhere about that time, but I don't remember whether it was before or after.

Q. You remember seeing them there?

20

A. Yes, sir.

Q. But on the day of the transaction of the will they were not there?

A. No, sir.

Q. You heard Mrs. Holcombe testify that on the day of your grandfather's burial, after dinner, that you invited the people to leave the room, and that Lizzie or Elizabeth Wilson spoke up and said, "I would like to stay in the room and hear it read," and that you said, "we don't intend to read it to-day;" had you any such conversation as that with Elizabeth Wilson?

A. I think she did say something about that she would like to hear the will read, but I said I did not know whether we would have it read that day because I supposed we would have to consult the others and get their consent.

Q. That is your recollection about it?

A. Yes, sir.

Q. When she said something to you about the will you said that?

A. Yes, sir, she said something about she would like to

hear it read or something of that kind, and I said I did not know whether we would read it that day.

Q. There had been nothing said between you and the other heirs about the will at all?

A. No, sir.

Cross-examination by Mr. Shipman.

10

Q. Now, John, you ain't a very good man as to dates are you, you are a poor man about dates, like myself?

A. I did not keep a memorandum or a diary about anything.

Q. You don't keep any almanac?

A. No, sir.

Q. It is a good thing for you you don't, and you do think that this party and his wife were over at your grandfather's on one occasion?

20 A. Yes, sir, I remember their being there.

Q. When was it?

A. I don't remember that.

Q. Can't you tell when it was?

A. No, sir.

Q. Whether it was six months before or after?

A. No, I don't think I can give the exact time and I cannot tell whether it was before or afterwards.

Q. Don't you know whether it was before or after that Sunday?

30 A. No, sir.

Q. Do you remember whether they stayed all day?

A. I don't know.

Q. Do you remember whether they stayed to tea?

A. I don't know.

Q. Or dinner?

A. I don't know, I did not go there until afternoon.

Q. You found them there when you got there?

A. Yes, sir.

Q. But you don't know when it was?

A. No, sir.

Q. It was not the 18th of June you are pretty sure?

A. I am certain of that; it was not on the day when I gave them the will.

Q. But you don't know whether that was the 18th of June when you gave the old man the will, you don't know that was the 18th of June?

A. I know it was the next Sunday after it was brought down. 10

Q. But you don't know when it was and they may be right and you wrong, probably they are right in saying they were there on the 18th of June, and it may have been some other day in June that you were there?

A. No, I know it was a week or more before the power of attorney.

By the Court—

Q. Do you know that the will was surrendered into your grandfather's possession a week or more before the power of attorney? 20

A. Yes, sir.

Further cross—

Q. When did you ask him for the power of attorney?

A. I don't know, but he wanted me to transact some business for him and I told him I ought to have some paper to show my authority. 30

Q. How long before you got it written was that?

A. Well I don't know, perhaps a week or two weeks, I don't remember.

Q. Did you take it down there that Sunday morning?

A. The power of attorney?

Q. Yes, the day it was signed?

A. Yes, sir.

Q. How long before that had it been written?

A. I don't know; a day or two.

Q. How long before that had you applied to Richard

Wilson to write it.

A. I don't remember, I think some time that week, but I am not positive about it.

Reuben P. Ely, a witness recalled on the part of the afore-said defendants, having been already sworn, deposes and saith—

10 Direct examination by Mr. Kuhl.

Q. You have testified that you were there on the 18th of June; did you see Mr. Holcombe or his wife or either of them on that day?

A. They were not there.

Q. What time in the day were you there?

A. In the afternoon.

Q. How do you fix the 18th as being the Sunday you were there?

20 A. On the 9th of June I am positive about that being his birthday I was home at Lambertville; I was not there on the next Sunday but the Sunday following.

Q. That makes it the 18th?

A. Yes, sir.

Q. And you say they were not there that day?

A. No, sir.

Q. Did you ever see them there?

A. No, sir; I never met there unless there was a funeral when I used to meet them there; I never saw David's
30 wife until to-day.

Cross-examination, by Mr. Shipman—

Q. You say you were home on the ninth of June?

A. Yes, sir; on his birthday.

Q. And you judge by your recollection that you were there on the next Sabbath?

A. No, sir; not until the Sabbath after that.

Q. What day of the week was the ninth of June?

A. Well, I can tell you with an almanac.

Q. What day was it the ninth came on?

A. I don't know.

Q. Was it Sunday?

A. I am not right certain what day of the week, but I think it was on a Friday.

Q. And as your reason that you were not there the next Sunday but the Sunday after that?

A. Yes, sir.

10

Q. What time did you go there on the next Sunday?

A. After dinner.

Q. How long after dinner?

A. I started from home after dinner and walked up there, which is something over a mile.

Q. You stayed there how long?

A. Well, maybe three hours; I could not tell you just how long.

Q. Who went away first, you or John Holcombe?

A. I did not see John C. Holcombe at all.

20

Q. You did not see him there on the eighteenth?

A. No, sir; I did not see anybody there that day.

Q. You did not?

A. I have no recollection of it.

Q. Give us the time of day you went there as near as you can tell?

A. I cannot do it.

Q. You got there in the afternoon?

A. Yes, sir; and I got home in time enough for tea.

Q. You live about a mile off.

30

A. It is a mile or a little over a mile to Lambertville.

Q. You got home about tea time, did you?

A. I cannot tell you exactly the time of day.

Q. Well, near tea time?

A. Yes, sir.

Q. And you took tea about five or six o'clock?

A. Yes, sir.

Defendants rest.

Rest all.

EXHIBITS.

- 10 Defendants—Copy of will of John C. Holcombe, same as printed to copy of defendants' answer, exhibit G.
Second portion of codicil, exhibit H.
Six small memorandum books and memorandum, marked exhibits A, B, C, D, E, F.
All the same were exhibits for complainants.
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20

OPINION.

The Vice Chancellor—

The evidence, viewed as a whole, leaves no doubt on my mind, that the testator up to the time he was stricken with paralysis was competent either to make or revoke a will. If he destroyed his will prior to July 12, 1882, 30 there can be no doubt that its destruction amounted in law to an effectual revocation. There is no direct proof of revocation. If the will was revoked at all, it was revoked by destroying it. No one saw it destroyed; at least, there is no proof of that kind in the case. The evidence of two witnesses puts the will into the possession of the testator about the middle of June, 1882, and there all further trace of it is lost. One of these witnesses swears that at the time the testator took possession of the will he said he intended to destroy it, and the same witness swears that the testator subsequently stated to him that

he (the testator) had told a third person that he had destroyed the will, but that third person testifies that the testator never told him so. If the evidence of these two witnesses is believed, the fact of revocation is fully proved, for the Courts of both the United States and England hold, as a well-established principle, that where a will is traced to the possession of the person who made it, and after his death it is found among his papers mutilated in¹⁰ such manner as to indicate that he intended to revoke it, or it is not found at all, the law presumes that the testator mutilated or destroyed the will *animo revocandi*.
1 *Red. on Wills* 307, ¶ 8; 330, ¶ 48.

The decision of the case turns upon the question whether the evidence of these two witnesses is believed or not. They are the only persons now living who saw the will pass into the possession of the testator, and heard what he said concerning it. For this reason it is not possible to contradict their evidence, in its most vital point,²⁰ by evidence drawn from other sources than themselves. The Court should, therefore, deal with their evidence with the utmost caution, and scan it very closely. I have tried to do so, and after very full and careful consideration, I am obliged to say that I find nothing in their evidence nor in the other evidence in the case, which leads me to doubt the substantial truth of their story. While they are deeply interested in the result of this contest, and subject to the bias naturally incident to their position as parties litigant, they seem, in testifying, to have been frank and candid,³⁰ and I have failed to find anything, either in their evidence or their conduct, which would justify a belief that they have deliberately stated anything that they knew to be untrue. There is nothing in their evidence so unnatural or improbable as to shock my credulity. The events they describe are just such as might naturally happen under the circumstances. Their conduct, in connection with the will, as they describe it, may not appear now to have been as cautious or as circumspect as that of a person of unusual foresight might have been; but we are bound to re-

member that we are looking at their conduct in the light of subsequent events, but when they acted they could not foresee what would occur in the future. I think their evidence is entitled to credit. It is in one particular, at least, strongly corroborated. It's effect on my mind has been, notwithstanding the most rigorous tests I was able to apply, to convince me that the will passed into the testator's possession while he possessed sufficient capacity to revoke it. The establishment of this fact entitles the defendants, under the rule of law above stated, to a dismissal.

10 But I do not think they are entitled to costs. The two, who knew all about the circumstances under which the will got into the possession of the testator, were not frank and open in disclosing to the complainants what they knew. Their utterances were certainly vague and somewhat mysterious, sufficiently so to justify suspicion. It is this part of their conduct which has created the strongest
20 doubts in my mind as to the degree of credit which their evidence should receive. Their conduct naturally provoked suspicion and invited investigation, and, I think, therefore, that the complainants' bill should be dismissed without costs, each party paying their own.

NOTICE OF APPEAL.

The Complainants hereby appeal from the final decree made in this Court in the above stated cause, purporting to have been made on the 26th day of December, A. D, 1883, and advised by A. V. VanFleet, Vice Chancellor, and filed in the office of the Clerk of the Court of Chancery on the 28th day of December, 1883, and from that part of said final decree by which it is ordered adjudged and decreed by

the Chancellor that the bill of complaint filed in said cause be and the same is hereby dismissed, and the injunction granted thereon be and the same is hereby dissolved to the Court of Errors and Appeals in the last resort in all causes.

J. G. SHIPMAN & SON,

Solicitors for and of Counsel with Complainants.

Dated January 23, 1884.

I conceive there is good ground for appeal in the above¹⁰ stated cause.

J. G. SHIPMAN,

Of Counsel.

PETITION OF APPEAL.

20

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

The humble petition of Eleanor Holcombe, Rebecca F. Mathews, wife of James B. Mathews, and James B. Mathews, husband of Rebecca F. Mathews, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the 26th day of December, A. D. 1883, and filed in the office of the Clerk of the Court of Chancery on the 28th day of December, A. D. 1883, said decree having been advised by the Honorable A. V. Van Fleet, Vice Chancellor, in a certain cause depending in the Court of Chancery in which your petitioners Eleanor Holcombe, Rebecca F. Mathews and James B. Mathews were complainants, and the said Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe and Eveline Holcombe, were defendants in this respect, to wit:—That the said de-

cree adjudges that the bill of complaint filed in said cause should be dismissed and that the injunction issued thereon should be dissolved.

And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said bill of complaint should not have been dismissed, and the said
10 injunction should not have been dissolved.

Your petitioners therefore pray that the said decree of the said Chancellor may, in the particulars aforesaid, be reversed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

J. G. SHIPMAN & SON,
Solicitors and of Counsel with the Appellants.

STATE OF NEW JERSEY, DEPARTMENT OF STATE:

20 I, Henry C. Kelsey, Secretary of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the Petition of Appeal in the above stated cause, as the same is taken from and compared with the original filed March 4, 1884, now remaining on file in my office.

In testimony whereof I have hereunto set my hand and
[SEAL OF STATE.] affixed my official seal at Trenton
this 6th day of March, A. D., 1884.

30

HENRY C. KELSEY,
Secretary of State.

ANSWER OF APPEAL.

Answer of Appeal filed in the usual form.

10

REPLICATION.

The Complainants joins issue on the answer of the defendants.

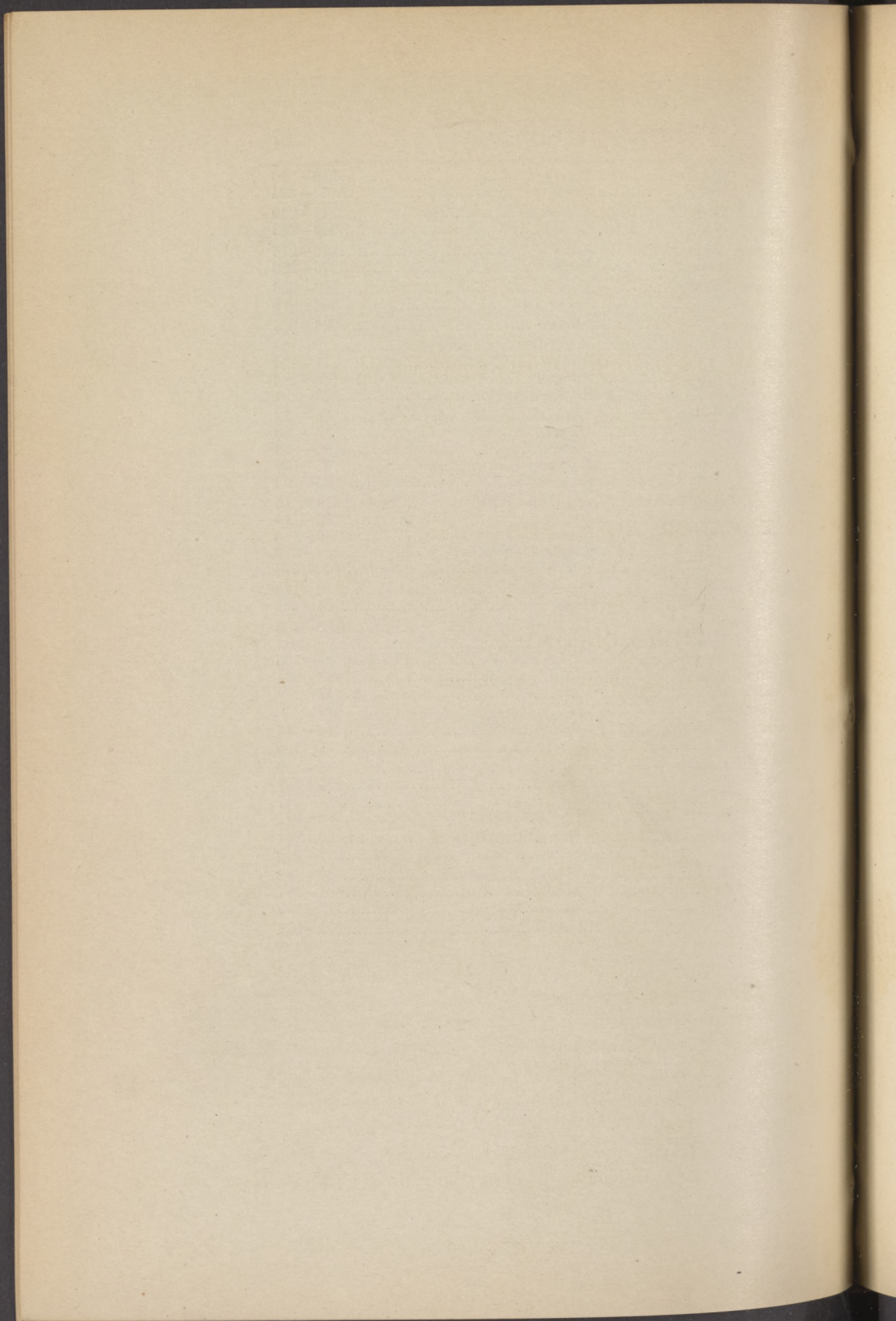
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J. G. SHIPMAN & SON,
Solicitor for and of Counsel with Complainants.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ELEANOR HOLCOMBE et als.,

Appellants,

AND

LEVI HOLCOMBE,

Appellee.

BRIEF.

The bill in this case was filed to establish the will of John C. Holcombe, late of the county of Hunterdon.

The complainants are Eleanor Holcombe, the widow of Edwin Holcombe, who was a son of the deceased John C. Holcombe; Rebecca F. Matthews, who is a daughter of Eleanor Holcombe and of Edwin Holcombe, and a granddaughter of the said John C. Holcombe; and James B. Matthews, her husband, dec'd.

The defendants are Levi Holcombe, Martin V. B. Holcombe, John C. Holcombe and Eveline R. Holcombe, children of Louisa Holcombe, who was a daughter of John C. Holcombe, and who intermarried with one George B. Holcombe. Louisa died during the life-time of her father Dec. 1, 1852, leaving the defendants, her children, surviving her, to wit: Levi Holcombe, 41 years old; John C. Holcombe,

40 years old ; Martin V. B. Holcombe, 38 years old ; and Eveline R. Holcombe, 34 years old. John C. Holcombe's wife died the 10th day of November, A. D. 1873 ; John C. Holcombe, the alleged testator, at the time of his death was in his 90th year.

He died on the 23d day of July, 1882. *See page 57.*

Edwin Holcombe, the father of Mrs. Matthews, and husband of Eleanor Holcombe, died on the 19th day of August, A. D. 1881, about 11 months before his father, the said John C. Holcombe, died. John C. Holcombe was the owner of a farm on which he had lived all his life-time ; Edwin Holcombe, his son, worked the farm until the year 1867, when his health gave way and he worked a part of the farm on the west side of the canal ; Levi Holcombe farmed the other part for 2 years ; Martin farmed a portion of it for 9 years. Twelve years before the death of the old man, Mr. Matthews, the son-in-law of Edwin Holcombe, moved on the homestead farm, and from that time till the death of the old gentleman they lived together in the farm house ; he and Mr. Matthews and the widow, Eleanor Holcombe, lived in one part of the house, and the old gentleman and his grand-daughter, Eveline R. Holcombe, occupied another portion of the house. The farm was estimated worth from \$6,000 to \$7,000. He owned a house and lot in Lambertville worth probably \$1,500.

I have been thus particular in stating the names and ages of the parties and their relations to each other, and the character of the property, in order that the Court may fairly understand their position. As they are all Holcombes, it is difficult to distinguish them.

Now the bill charges that on or about the year 1874 the said John C. Holcombe made a last will and testament, by which he gave to his son, Edwin Holcombe, all his lands and real estate, and to his four grand-children he gave \$8,100—\$2,000 to each, except to John C. Holcombe, Jr. \$2,100, and it alleged by the 4th item he gave to Edwin all the farming utensils and stock that he might own at his death, and one-half his household furniture, and to his

other four grand-children he gave the other half of his household goods and furniture.

By the 5th item it was alleged that he gave to his son, Edwin, all the residue of his estate, and that he appointed his son, Edwin, and his grandson, John C. Holcombe, Jr., executors of his last will and testament.

The bill also charges that upon the death of his son he made a codicil to his said will, by which he gave to Edwin's widow a life estate in the one-third of the real estate, and gave Eveline a home in the farm house—3 rooms—the same as she had had while the old man was living; the goods and furniture in the rooms he gave to her, &c. He also gave the residue of his estate to his 5 grand-children, which included Mrs. Matthews.

The bill charges that this will was placed by the testator in the hands of one Richard H. Wilson for safe keeping, and that it there remained until about the 19th day of July, 1882, a short time before his death (he died July 23, 1882) when the said Eveline R. Holcombe procured the said will and codicil from the said Richard H. Wilson and took it into her custody, and that she and her brother, John C. Holcombe Jr. kept the will and keep it yet. (See the bill and read it to the Court, page 5, &c). The bill further charges that the said John C. Holcombe was 90 years old, and for some time prior to his death was very feeble in body and mind, and for two weeks before his death was unfit to do any business at all.

There is no dispute about the substance of the will and codicil, nor about their due execution. The defendants produce copy of will and prove codicil. The only real question is whether the said John C. Holcombe left the said will and codicil in force at his death, or whether he destroyed them in his life-time while he was capable rationally of performing such an act, or whether the defendants or some or one of them withhold the will and refuse to produce it and allow it to go to probate.

The prayer of the bill asks that the will may be established.

As I have said, the real question is whether that will, with its codicil, is *really in existence*, or was at the death of the testator, and should be *admitted to probate*.

The Vice Chancellor, in his opinion, holds that the testator prior to the time when he was stricken with paralysis was competent either to make or revoke a will; that if he destroyed it prior to July 12, 1882, there can be no doubt that its destruction amounted in law to an effectual revocation. He says there is no direct proof of revocation, and that if the will was revoked at all it was revoked by destroying it.

The case, by the evidence, is really brought down to a very narrow point.

The evidence clearly establishes that the will, up to a certain date, was in the hands of Richard H. Wilson, in whose possession the testator had placed it for safe keeping, and that it had been taken out of his possession very shortly prior to the death of the testator by Eveline R. Holcombe and that it came into her custody and the custody of her brother, John C. Holcombe, Jr. About this there is no dispute. We trace this will (the codicil, of course, being a part thereof) into the hands of Eveline R. Holcombe and John C. Holcombe Jr. from the hands of Richard H. Wilson a short time prior to the death of the testator, and the will went into their hands by their procurement and at their special request. And we say that the will went into their hands about the 19th of July, 1882, four or five days before the old man's death and when he was lying prostrate, unconscious entirely of what was passing around him and almost *in articulo mortis*.

They admit that Eveline obtained the will from Richard H. Wilson upon *her written* request; that it came into her hands on a certain day, and that she kept it for two days and then delivered it into the hands of her brother, John C. Holcombe. And they insist that Eveline, on the 16th day of June, 1882, one month and seven days before testator's death, fearing that her brother, John C. Holcombe Jr. would not call on Mr. Wilson for the will as her grandfather had

requested him to do, wrote a note to Mr. Richard H. Wilson and sent it to him by Harry Holcombe, a son of Martin V. B. Holcombe, who was going to school near the residence of Mr. Wilson, and requested him to bring in person or send if he thought it safe, the will, by the lad, and that the lad on the same evening carried the will in a yellow envelope sealed up, and delivered it to his aunt Eveline R. Holcombe, who retained it in her possession until Sunday, the 18th day of June, 1882, when her brother, John C. Holcombe, Jr., came to her grandfather's house and she delivered the will to him and he delivered it to the testator, and that they had never seen the will from that time, and that the testator said he meant to destroy it, and they presume that he had destroyed it, as they did not find it after his death.

Now, we dispute first *the time* when they say the will came to their hands. Secondly, we insist that they fraudulently got possession of the said will and *never delivered* it into the hands of the testator, but retained it in their own possession until after the old man's death and still do retain it or else have illegally and improperly destroyed it.

Thirdly, we insist that if the will ever did come into the possession of the testator, it came there at a time when he was totally incapable of understanding anything about his business and incapable of either revoking or making a will, and that if it was then destroyed it was *their* fraudulent act and not his.

Fourthly, we insist that the testator *never intended* to destroy *that* will, but showed by all his conduct and conversation as long as he was capable of understanding anything that he meant that original will and the codicil thereto to stand as the final disposition of his property, and that he meant to leave it in full force at his death.

Fifthly, we insist that the evidence clearly proves that this will was in existence at the death of the testator, and that it ought (the codicil, of course, being a part) by the decree of this Court to be established.

Now, we start out with the admitted fact that this paper

was in the hands of two of these defendants, and by their own procurement at a very short period anterior to the death of the testator. We are in pursuit of the document and we find it in their hands, and we ask them to produce it, or else satisfactorily to account for its non production.

This is a plain proposition, a reasonable one; and one we are sure this Court will uphold. Well, they fail to produce the will. Do they satisfactorily account to the Court for its non production? We submit they do not.

The Vice Chancellor admits that they must account for the will, and satisfactorily. He admits that the whole thing turns in the evidence of these two implicated parties, John C. Holcombe, Jr. and Eveline R. Holcombe. He admits the very equivocal position in which they stand, the powerful interest they have in the case, the powerful motive they have to draw them away from the truth, and that their testimony calls for the closest scrutiny, and after such scrutiny he says he thinks they are worthy of credit, and he believes them; and yet, when he comes to conclude the case, he refuses to give them costs, because he says: "Their utterances were certainly vague and somewhat mysterious; sufficiently so to justify suspicion, etc. See his opinion, page 302, lines 13 to 25. And because of their conduct he would not allow them costs, feeling that the complainants were fully justified in investigating the case.

The Vice Chancellor clearly shows that his mind is in doubt on the subject, and that while he dismisses the complainants' bill, yet because of his grave doubts as to the *truthfulness* of the two defendants, he withholds from them the important right to costs, which in this case were very considerable.

I hope to be able to satisfy this Court that the Vice Chancellor in examining the evidence in this case to determine the credibility of these witnesses, overlooked one or two or more matters, which would seem to me to establish conclusively that the credibility of these two witnesses, John and Eveline, was overthrown, and that their evidence must be rejected, and *that rejected*, the whole defence fails and the

complainants' case prevails.

Now in order to test the consistency of their evidence and defence, let us examine the testimony in the first place of Eveline Holcombe and John C. Holcombe, Jr.

Eveline's account will be found on page 192, beginning with line 25.

She says, not tell the day of the month, about the middle, from the forepart to middle of June, he wanted her to go after it, and she would not go; and she told him she would write a note, and send it with Harry, and she did, and Mr. Wilson sent it. After she had written the note she says the old man told her that Harry would lose it maybe, and he had sent John for it, and she need not send for it, but I had done it then. She got it, she says, and then sent a note to John that she had it. I wanted him to come over. Grandfather asked him if he had got it and I gave it to John, and he gave it to him, and further on, pages 198 and 199, she tells you about the will coming to her. She fixes the time only about the middle of June. In her affidavit to her answer, page 32, line 8, she says she gave it to John the following Sunday morning, which she believes to be June 18, 1882. Now they next call Richard Wilson to prove the receipt of the note, and he fixes the time beyond a doubt. See Richard Wilson, page 228, line 16, to page 229. On the morning of the 16th of June, he received a note from Eveline by the hands of Harry Holcombe. Also page 243, line 30, etc., to 246. See also the affidavit of this witness to answer, page 38, line 30, as to time he received note from Eveline.

Now next John C. Holcombe, in his affidavit to his answer, page 34, he says in that affidavit that on the *Sunday preceding the time* he delivered the said will to his grandfather, his grandfather had requested him to get his will from Mr. Wilson, and he promised to do it, that upon going to see him the following Sunday, which he believes was the 18th day of June last past, he found that his sister Eveline had sent for it, and upon her giving it to him he gave it to his father.

Now in his evidence, page 144, he tells further about it as to the time. See his evidence, page 144, line 20, etc.

He is recalled at page 295 to contradict two other witnesses, and he was asked this question by his own counsel: "On the 18th day of June *on the day* you gave this will to your grandfather, was Mr. D. Holcombe and wife there at all?"

He answers, "No sir."

See page 295, lines 10 to 15.

See also his cross-examination, page 297, line 1 to 10, he fixes the time positively the 18th of June when he delivered the will to the testator, John C. Holcombe.

Answer, page 21, line 31, says will delivered Sunday following 16th of June 1882.

Also page 23, line 26, etc.

Now if any dates at all can be fixed these dates are fixed that it was the 16th of June, 1882, Eveline's note was sent to Richard H. Wilson, that it was the 18th it was delivered to the old man.

Now, we say that not only one of their witnesses, but also two witnesses whom we call, show beyond a doubt that the will was *not* delivered to the old man on the 18th of June, 1882, by John C. Holcombe, Jr. or by Eveline R. Holcombe.

We call David Holcombe, page 273, pages 281, 282, &c., lines 30 to 40.

He was there this very 18th of June, just five weeks before the death of the old man; the 18th of June he and his wife were there all day; saw John C. Holcombe, Jr. there; saw him come and go away, and he tells you nothing of the kind took place which John details.

Next we call Mercy Holcombe, page 285.

She fixes the date the same 18th of June. (See her evidence, pages 285, 286 and 287.) She was there; she saw John C. Holcombe, Jr. come there; saw him there all the time and saw all that he did; he gave the old man no will at all.

Well, now, the defendants felt the force of this and they called Reuben P. Ely to show that David and Mercy Hol-

combe were not there on the 18th of June, the day they fix as the day of their visit. (See his evidence, page 298.) He fixes the 18th as the day he was there, and then swears he did not see these two witnesses there, and that he had not seen the one of them till that day.

Well, now, on the cross-examination of this witness, page 299, he tells you he did *not* see John C. Holcombe, Jr. there at all that day.

Now, then, it is established that John C. Holcombe, Jr. and Eveline never did deliver the will to the old man on the 18th of June.

They did not deliver it on the 25th, because that was the day the power of attorney was delivered.

See George M. Holcombe, page 220, lines 20 to 40.

John C. Holcombe, Jr., page 153, lines 10 to 15. Page 297, lines 1 to 15.

See power of attorney, page 45, *dated June 24, 1882*, which would make it Saturday, one day before it was executed, Sunday being also the 25th of June.

See also the affidavit of George M. Holcombe to answer, page 44.

Now, then, it is conclusively established that this will was not delivered to the old man either on Sunday, the 18th of June, or on Sunday, the 25th of June. It was not possible to have delivered it before that time because Richard H. Wilson and all the rest, as we have seen, fix it that the will was not sent after till the 16th of June.

It could not have been delivered on the 11th of June preceding, because Reuben P. Ely, their witness, was there on the 11th of June and he saw nothing, and as he was a staunch friend, if any such thing occurred he would have been a witness. See his affidavit to answer, page 43.

All their evidence about the delivery of this will to the old man is completely overthrown and they are left defenceless. If you take any day but the 18th of June you overthrow their answer and all their evidence.

Notice when we say it was really delivered to Eveline R. Holcombe—Friday before his death. Eveline, page 193,

says Wilson was there ; Wilson says Saturday before he was there. See his evidence, page 234, line 10 to line 10 on the page 235. Mrs. Rebecca F. Matthhws, page 96, line 20, and page 97.

He contradicts Eveline. He shows that he and Eveline did talk about the will. Eveline denies that anything was said whatever. Mr. Wilson has to admit it. He overthrows Eveline in this as in everything.

Now see Mrs. Rebecca F. Mathews, page 96, line 20, and page 97, all the page, and page 98. Her testimony here is of the utmost importance. She tells of Mr. Wilson coming there, of Eveline asking her to stay by the old gentleman as she had sent Harry up to Mr. Wilson's, to Brookville, the residence of Mr. Richard H. Wilson. She tells you of Mr. Wilson coming there about 9 in the morning before Harry returned, and she on page 98 tells that she first saw Wilson that morning in the kitchen part of her grandfather's house, and that she heard a conversation on that day between Eveline Holcombe and Mr. Wilson, that she heard Eveline speaking to Mr. Wilson, that she said something about a paper or papers; she did not fully understand which. She told him that John, meaning her brother John, had been coming up to see him all the week, that he had not had time, so she sent Harry up. She at the time she heard this conversation was in her grandfather's bed-room, and Mr. Wilson and Eveline were alone down in the kitchen of her grandfather's side

Now this testimony is certainly of the last importance as I am sure it must have been overlooked by the Vice Chancellor. It certainly is very important evidence.

Now Eveline does not pretend to notice this most important piece of evidence. All she says she says on page 193, line 23: "I don't remember talking to Wilson about papers; I did not say anything about papers "

That is all she says about it.

Now Mr. Wilson, page 234, line 14 to bottom of page, and page 235, line 1 to 10, gives all that he remembers ; he says it was Saturday, 22d of July he saw Eveline ; has

no particular recollection about it ; thinks he did ask her some such questions ; what they were I don't remember ; he wanted to satisfy himself that it had gone to its proper destination.

Now this is all.

What did Mr. Wilson go there for that morning ?

He does not tell. Neither does Eveline. Why seek the kitchen where Eveline was alone ?

What did Harry go to his house at Brookville that morning for ? Did he go ? Mrs. Matthews says he did. Neither Eveline nor Mr. Wilson say he did not. Harry was on the stand and he never swore a word about it. See page 10, distance to Brookville about one mile.

Then we have further the important evidence of James B. Mathews, to which reference has already been made, on page 108, line 30, etc., that on the *2d of July, 1882*, the same month in which the old man died, and only twenty-one days before his death, the old man complained of his troubles, and that they were trying to induce him to destroy the will, and he then said that at that *time it was in the hands of "Dick."*

It seems certain that up to this 2d day of July, 1882, fifteen days after John and Eveline say that John had given *it to the old man, the old man had not had the will.*

But now this Mr. Richard H. Wilson has made statements inconsistent with his evidence. He told Reading Holcombe, page 140, line 30, that he had carried the will down himself ; that they had sent for it and he had carried it down himself ; told him this the next week after the old man had died.

He told A. H. Holcombe, page 138, that he had carried the will down himself, two or three days, or a few days before his death, and delivered it to Eveline R. Holcombe.

See page 138, line 20, page 139, whole page.

Mr. Wilson, it is true, denies that he ever had these conversations. But his testimony is peculiar. He admits that he had a conversation with A. H. Holcombe and Reading Holcombe. See his evidence, page 27C. *He says he misled them.*

It affects his credibility as a witness, and tends to show that this old man did not have the will in his possession *at all*.

He was greatly interested with these defendants. He was their friend and adviser on all occasions, and his father had a heavy mortgage on Martin's property.

Now we submit that this evidence shows conclusively that the will *never* went into the hands of John C. Holcombe.

Notice that it was only in the month of June they pretend that the old man was urgent for it. It is true, John says in March the old man spoke to him about it, but the main talk was in June. Three times in all he had spoken about it.

Now let us see Eveline's and John C. Holcombe, Jr's account of how the will was to be obtained and given to the old man.

Notice John's affidavit, page 34, lines 30 to 36, also about Burroughs, page 35, lines 20 to 25.

See further, page 144. About Burroughs, page 145.

Eveline was not in the room when he gave the old man the will, and he put it in his pocket.

About Burroughs, page 160, line 30.

About sending for it, page 164.

Notice John's story as to how he knew the will was there at the old man's.

Eveline had sent word to Wilson to bring the will, and he did not know till he got to the house on Sunday that he had done so.

See page 164, line 21, etc.

Now take Eveline's version.

And put her affidavit to answer, page 31, line 32, when she first heard her grandfather speak about the will to John and why she wrote for it.

Now take her evidence, page 192, line 21. He wanted her to go after it at different times, etc., and what she told him, and sending Harry, etc.

She sent a note to John that she had got it.

She saw John give it and saw him examine it.

About Mr. Burroughs Mathews; *heard* him and grandfather, *she says, talk.*

Page 199, line 30, wrote a note to John to come, and sent it by Charlie, John Holcombe's own son; page 199.

John contradicts it entirely.

Where is that note?

Where is Charlie, John's son, to tell us about it and produce it? A very important paper.

John contradicts all about conversation with Mathews; so does she.

In one place, says he told Burroughs he had destroyed it; in another, he says he thought Burroughs thought he had destroyed it, and not say anything in another conversation. Notice, power of attorney, 24th of June. John got that.

James B. Mathews says he never did have any conversation with the old gentleman, such as they detail.

See page 271.

Evidence upon a *matter so important and by witnesses so interested ought to be harmonious, consistent and reconcilable.*

This is not. It is inconsistent with the defence set up, inconsistent with itself, and the two witnesses contradict each other in most essential matters, and they contradict their affidavits to answer in their testimony.

Let us go a step further and show their conduct *after* the death of the old man.

We submit they virtually confessed that the will was in existence *after* the old man's death, and that they knew where it was.

Now let us take the evidence on the point.

The bill charges that as lately as the 7th of September, 1882, Eveline Holcombe told Rebecca F. Mathews she knew all about the will, and what was done with it, but refused to tell what was done with it. See bill, page 12, line 20.

See Rebecca F. Mathews' affidavit, page 13, line 10, etc.

Mrs. Mathews' evidence, page 75, line 36 to line 22 on page 76.

Mrs. Mercy F. Mathews, page 287, whole page, tells about it, and tells what John said. First they had a consultation after dinner, page 286, line 12 to bottom; page 287 line 1 to 20. Mrs. Eleanor Holcombe, page 57, lines 12 to 20. Not intended to have will read.

Mrs. Rebecca F. Mathews, page 75, line 33 to bottom of page; page 76, line 1 to 22.

Take Eveline Holcombe; see her affidavit, pages 32 to 35, page 33, lines 1 to 12; her evidence, page 202, lines 1 to 40. *Read it all.* It is remarkable evidence, certainly.

Nobody could read it without supposing and believing that will was in existence.

John C. Holcombe, Jr. makes no response in reply to Mrs. Rebecca Matthews' testimony, *that they did not intend to read the will that day.*

What inference would anybody have drawn from the language of these two persons?

What inference will the Court draw from it now? Will they not bind these people by their own declarations?

One thing in reference to this testimony I should have remarked upon before speaking of the last evidence. I will notice it here. It is in reference to John's remark that the old man was dissatisfied because the word "elsewhere" was in the will in reference to the real estate.

See John's evidence, page 144, line 30 to line 10 on page 145. Cross-examination, page 156.

Nothing proves more conclusively the falsity of this witness's evidence than this statement.

Notice how it contradicts itself. On the principal examination he refers to the body of the will, then on the cross-examination he undertakes to speak of the codicil. But see how he fails on page 167, line 10; he takes all that back.

Notice these words are just what John himself would have said. Notice about what he said old man said, that Mrs. Matthews got more than the rest. How did the old man know that?

Notice about Mrs. Eleanor Holcombe. Why was John so anxious about her? They did not love her.

Why did the old man just turn against her in this way?

He made the codicil in October for her benefit, and *just now discovers* that Mrs. Matthews will get so much more that she can keep her mother. And just before he says the old man says they were all grandchildren and should all share *alike*.

It is altogether false. The old man never said this.— Every act of his life was against it.

Now, we have the original will, made on the 3d day of January, 1876. The word "elsewhere" is in it. Mrs. Rebecca Mathews says so, and John H. Horn. See page 132. He corrects one word in 3d item and says in original it was "grandchildren" instead of, children.

No doubt correct.

Now he was presumed to know its contents.

By the 3d item of the will he gave to all his grandchildren specific legacies of \$2,000 each except that he gave John C. Holcombe, Jr. \$2,100, making \$8,100 in all. He divided it into two parts, really letting each class of children represent the ancestor.

By the 4th item he gave them certain goods and chattels, and by the 5th item he made Edwin his residuary devisee and legatee, so that by the original will and under this clause Edwin would have taken it whether the word "elsewhere" was in the will or not.

Notice he left the will in the hands of Nelson V. Young.

At his death, solicitous about it, went and got it about May, 1867, and gave it to John Horn to keep. He left it there a year or two years. It was open and not in an envelope; he could have read it at any time.

Horn says the old man called on him and said he wanted his will; he said he wanted to look over it and bring it back some of these days, but he never did bring it back.— Page 129, lines 10 to 35.

He then took the will to Alex. H. Holcombe about two years or more before his death, and he held it a year or more and then he took it from him and kept it in his own

possession.

Now Reuben P. Ely, their witness, is called, and he tells of a conversation in October, 1881, after Edwin's death.

He gives him a careful account, tells him he had read the will, what changes he had made and had made a codicil.

Reuben P. Ely's evidence, page 212.

Richard H. Wilson, their witness, pages 225, 226 and 227, tells all about interview about drawing codicil and to make provisions, and at 242 the will and codicil were read over.

He then made all the changes he desired.

And he never wished nor intended to make any other changes.

He had declared it so over and over.

His love for Edwin was unbounded, and he never meant to fight him, and he told him so on his death-bed, and he would do as well for his wife and child as he had done for him.

See Eleanor Holcombe, pages 51, 52, 53 and 54. Never destroyed his will. He talks to Edwin and tells him what he had done. He tells him where the will had been and that he was going to put it away because he had seen Eveline and others look into it; and he did put it away, August 1881. He asked her about rooms. She said she did not want these rooms; said they said they wanted him to build Eveline a house. Page 53, line 22.

See further conversation with this witness about talks with George B. Holcombe and Reuben P. Ely, and Eveline wanting him to destroy his will, and his giving it to Wilson to keep for fear they would destroy it, and his declaring with much emphasis he never would destroy it. See pages 54, 55, 56 and 57.

George B. Holcombe denies the conversation with him, but two witnesses prove it, and he was the father of the defendants. Mr. Ely contradicts, but slightly.

Mrs. Margaret Frankenfield's conversation; Mrs. Eleanor Holcombe's, page 115.

George B. Holcombe was interested for his children.

Rebecca Mathews. Conversation between her father and John C. Holcombe. See it, pages 71, 72, 73 and 74.

Mrs. Mary A. Mathews tells conversation with him, page 104.

Page 53 to bottom. She wanted him to destroy the will and give part of farm so as to leave part in John C. Holcombe's name, and they wanted him to destroy his will, and he "be damned if he would do it." This was May 24th, 1882.

Now July 2, 1882.

He had a conversation with James B. Mathews, page 108, line 30 to end of page. And the old man said I have so much trouble, and he asked him why; he said they wanted him to destroy it, and I said are you satisfied with it, and he said yes. I then asked him who had it. He said: "Dick," and that was the way he always called Richard Wilson to us.

This witness also had a conversation with him just after Edwin's death, page 109, line 10, etc.

He wanted to dispose of all his property and so divide the cemetery lots between Mrs. Mathews and Eleanor R. Holcombe.

Page 74.

Now he shows a purpose in all this, not to destroy the will in spite of these people who had all been seeking to get him to destroy it.

He showed that he *knew all about* the contents of the will; that he put it out of the way to keep these very people from destroying it.

Now is it possible that on June 1882, *just one month* and five days before his death he should discover this word "elsewhere" and should discover it was all wrong, and that "Becky" got more than the rest, and ought to keep her mother Eleanor, and that he was going to destroy the will? Not at all.

This is made up and false.

Notice John C. Holcombe's mental condition.

Let us now for a moment consider the condition of the old man's mind at this time. He was ninety years of age

and over at the time of his death and physically very feeble.

It is admitted by both sides that on the 12th of July, 1882, he was prostrated by an paralytic attack which utterly destroyed his mental and physical strength, and that he continued in that condition up to the time of his death.

Now we say that his mental vigor was almost entirely gone long before this time, and that he was in such a condition that he never would have thought of asking for his will. I shall not trace him far back.

Go back to the first of June, 1882. Take Mrs. Eleanor Holcombe, page 58, whole page. Talked about great hereafter, etc.

Mrs. Rebecca F. Mathews, page 79, line 30; page 80, line 1 to 30.

James B. Mathews, page 107, line 30; page 108, line 1 to 25.

Take Eveline R. Holcombe, page 193, line 30 to end shows that his mind and body were both affected. Take *their* witness, Reuben P. Ely, page 207, line 30. He saw the change, page 209, line 19 to 30.

It took him a great while to think up a thing, he says.

Take the evidence of this witness further in his cross-examination, page 216, line 20. On the 18th day of June, 1882, when he was there, he described his condition. "How was he that day?" he was asked. He answers, "Well, he always seemed pretty well unless he had the chills, and I saw him sometimes when he had the chills, and then he complained, but he was pretty comfortable for a man of his age." "Were the infirmities of old age upon him?" he was asked. He answers, "Yes, sir, he showed pretty much that he was old; his eye sight was dim and his hearing dull and his memory was not as good as it had been, and it took him some time to think of a thing, but he was satisfied when he thought about it long enough and got it right; he was pretty accurate about these things.

To further question page 217, line 4, he says, "Oh, no, sir, his body failed faster than his mind, but I think he showed his age.

Now this is the testimony of defendants' witness, very partial to their side, and an observing man. He describes the condition of this man on the 18th of June, 1882. What kind of a man does he hold up to you? Weak and wasted in body and mind.

In what condition was he to wrestle with these people who were after this will, and in what condition to judge of the propriety of making or destroying a will, or of determining what the word "elsewhere" meant?

Richard H. Wilson, page 226, line 30, went to see soon after Edwin's death, found him unfit *mentally* to do any business.

Take Martin V. B. Holcombe, one of the defendants, page 258.

He formerly lived with him, up to 1878. After he left he went to see him. "And I think," he says, "he was about as clear minded as you generally see men of his age. When he was talking to you, if he didn't understand you right away he would understand you before you left."

Now I take these witnesses, most of them the defendants', and do they not show the old man to be very weak mentally before the 12th day of July, 1882? Don't they all show that the old man was incapable of talking about the word "elsewhere" or of carrying on the conversation about the will John pretends he did? Does not this evidence clearly show that he was not in a condition of mind to think about his will, much less to think of destroying it.

Does it not show that it was incredible that a man in his condition would undertake at that time to overthrow the cherished purpose of his life for six years previous?

And does it not show that he was in the condition exactly to be imposed upon?

Notice their opportunities for controlling the old man, and their control over him.

They knew contents of will. It was in the house.

They had tried to get him to destroy it, and he refused over and over again.

If true he wanted it so badly why did Eveline keep it

from Friday till Sunday till John came and the old man asked for it?

How could the old man keep that will or destroy it and they not know it?

It was not possible.

He would not have privately destroyed it.

The whole case is incredible.

Notice how Eveline tries to show that the old man did not like Eleanor when all the evidence proves the reverse.

Notice Eveline told the old man that he must do what she told him.

Notice their opportunities to get the will.

Notice their meetings, which they deny.

They fail to show this will out of their hands by satisfactory evidence, and complainants are entitled to a decree.

J. G. SHIPMAN & SON,
Of Counsel with Complainants.

GEORGE C. HUGHES, Printer, Flemington, N. J.

Court of Errors and Appeals.

ELEANOR HOLCOMBE, <i>et. als.</i> ,	}	<i>On Appeal.</i>
<i>Appellants,</i>		
<i>and</i>		
LEVI HOLCOMBE, <i>et. als.</i> ,		
<i>Respondents.</i>		

Brief of Respondents.

The bill in this cause is filed to establish a last will and testament of one John C. Holcombe, which it is alleged the defendants, or some of them, had either destroyed or suppressed.

John C. Holcombe, the alleged testator, died, on the 23d day of July, 1882.

He was stricken with paralysis, on the 12th day of July, 1882, and from that time until he died was incapable of transacting any business.

The testator executed a last will and testament in January 1876, and a codicil in September, 1881.

This proof was supplied by the defendants in their answer, and will be found on page 45, 46 and 47.

- 10 At the time the will was made the testator's heirs were an only son, Edwin, the husband of the complainant, Eleanor Holcombe, and the father of Rebecca F. Matthews, another complainant, and the defendants, the children of a deceased daughter. *Defendants in this cause*

The will was evidently made in favor of the only son, Edwin.

- 20 The codicil was made subsequent to the son's death, and bears evidence that the testator was inclined to make all the grandchildren nearer equal in the distribution of his estate, than they were by the terms of his will.

Was this will and codicil ever revoked.

The testimony shows that the will and codicil were placed in the possession of the testator, on the 18th day of June, 1882, (Sunday) 24 days before he was stricken with paralysis.

- 30 The courts of both this country and England, hold upon the subject of revocation, as a well established principal, that where a will is traced into the testator's possession, and at his death, either cannot be found, or is found torn, or mutilated, the presumption is, in the absence of proof to a contrary conclusion, that he destroyed or tore it.

Animo revocandi.

1 Jarman on Wills, top 290, * 133.

Redfield on Wills (1864 Ed) 307 p. par. 8.

2 Greene's Ev. sec. 681.

* If a will be found cancelled, the law infers an intentional revocation, for it is *prima facie* evidence of it, and the inference stands good until it is rebutted.

The inference is the same, and it would require strong proof to rebut it if a will be traced to the party's possession, and be not forth coming at his death.

4 Kent's Com. * 532.

Lillie vs. Lillie, 3 Hagg Eccle Rep. 184.

In the present case there is no dispute respecting the existence of a will; nor the contents.

It has been traced to the possession of the party, and is not forth coming at his death.

Every presumption of law is that the testator destroyed it, and thereby revoked it, unless there shall be found strong proof to the contrary. 10

The complainants must overcome this presumption.

Richard H. Wilson, was the custodian of the will in question, and delivered it to one of the defendants, Evaline Holcombe, through Harry Holcombe, on the 16th of June, 1882. And which was delivered to the deceased on the 18th of June, two days later, by John S. Holcombe, one of the defendant's, in the presence of Evaline Holcombe, another defendant. 20

The manner of its delivery, and the circumstances which lead to its delivery, will be found in the testimony of John C. Holcombe, Jr., Evaline Holcombe and Richard H. Wilson.

As to the trustworthy character of their evidence, the learned Vice Chancellor expressed himself as satisfied, after a careful consideration of their testimony and the other evidence in the case, that their story was true.

See opinion.—

Page 301, line 15 to 40.

Page 302, line 1 to 15. 30

These three persons being the only ones who testify as to the will passing into the possession of the testator, their evidence should be closely scanned by the Court.

The full light of judicial scrutiny should be thrown upon it.

The bill charges that Evaline procured the will surreptitiously.

The tenor of Evaline's note to Mr. Wilson's requesting him to send or bring the will, proves that Evaline was only anxious to serve her grandfather, only so far as to commit no inpropriety, toward the matter of the will.

R. H. Wilson's testimony, page 231, line 30 and page 232.

Also, on page 236, line 10 to 20, Evaline's talk with Wilson, in the garden, on Monday, as she sent for the will, on Friday following, June 16.

- 10 These do not prove the conduct of a scheming person, bent upon the destruction of the will. But, rather the conduct of a conscientious woman, who had a sacred regard for the last will of her grandfather, and was anxious to preserve his will, and to avoid doing anything that had the appearance of wrong.

- 20 In both, he questions the propriety of her having anything to do with it, and had Wilson, the custodian, done as he strictly should, delivered it to the testator, Evaline would never have been subjected to the criticism of the bill in this cause, or the harsh comments of counsel upon her conduct, which it seems to me has been modest and worthy throughout, and cannot, with any degree of fairness, be construed to be any other than the expression of a grandchild, whose whole life had been devoted to the comfort of a feeble old grandfather.

The testimony of John C., and Evaline, in connection with the circumstances which surround the case, therefore, become of the greatest importance.

- 30 The testator had originally favored his only son, Edwin, in making his will.

After the son's death, he executed a codicil, in which greater favor is shown the other grandchildren.

See copy of will and codicil, page 45 to 47.

In a conversation with John H. Wilson.

Page 186, line 10 to 30.

Three or four weeks before his death, at his house, deceased thought one grandchild was as near as another.

In his talk with John, on the Sunday morning the will was given to him.

Page 145, top.

He mentions that Rebecca will get more and can take care of her mother.

And in the interview which the complainants give.

At page 71.

At the bed-side of Edwin, Rebecca is asked if she gets the share of her father, if she will take care of her mother.

These facts show that the deceased, after Edwin's death, considered it unequal to give one branch of his heirs the advantage of the others. 10

And that he contemplated doing just what the destruction of the will would bring about.

Is it any wonder then, that in March, as the time approached for the settling and arranging of business matters, that the old man's mind should turn to the subject of his estate, after his death, or, that he should insist upon seeing his will, to know just what was in the will. 20 Or, that he should decide to do away with the unequal division of his estate, which he had made in favoring his only son.

John C. Holcomb, Jr., who delivered the will in question to the deceased, testifies with reference to it.

Beginning on page 143 and running through to page 147. And to which I would respectfully call the especial attention of the Court.

These statements are nowhere denied, or in anyway impeached by lawful proof.

Counsel, in his argument before the Vice Chancellor, denounced, in extreme terms, this witness, as well as his sister, Evaline. 30

He drew startling pictures of the treacherous cunning of these two grandchildren, in procuring the possession of the will, and then, by the worst of influences, effected its destruction.

I anticipate this will be repeated here, and therefore ask the Court to read carefully all he says.

Please read in his cross-examination.

At page 148, line 1.

What was first said to him about getting the will.

Page 151.

As to John's talking with his sister about the will.

Pages 154, 155, 156 and 157.

As to what passed at the time the will was given to his grandfather, and he tore it open and read it.

10 As to knowledge of the existence of the will since it was handed to the deceased.

Page 161, line 17, and through pages 162 and 163.

John C. Holcombe, as a witness, stands unimpeached by lawful testimony. I admit that his conduct and speech are plain. There is an absence of preparation to make up a case that would secure himself against suspicion, which could have been easily done.

Richard H. Wilson could have brought the will down personally, and procured the proof of its delivery to the deceased.

20 But in all his connection with his grandfather's affairs, he gives proof of being a plain, modest man, unacquainted with any of the forms of speech, or conduct, which would seem to be so necessary in the estimation of counsel. His conduct toward his grandfather, throughout, was of the kindest nature.

The attention for years to his wants. The rowing across and back over the Delaware River, every Sunday, and often during the week.

30 His disinterested devotion won the confidence and love of this stern old man. To him he told his trouble. Of him he sought counsel and advice. Entrusted the management of his affairs to him, by virtue of a written power of attorney.

Trusted John C. Holcombe implicitly down to the day of his death. And leaves it for these defendants to first charge this witness with a single dishonest wish or unfaithful act.

Surely there must be protection for a character estab-

lished through years of faithful service, coming with the endorsement of the record of an upright life upon it, which neither the breath of suspicion, nor the loose talk of interested witnesses, can filch from a man.

It is the plain, fair manner, of this witness, which drew from the Honorable Vice Chancellor, the following approval :

"He seems to be frank and candid. And I have failed
 "to find anything in his evidence or conduct, which would
 "justify a belief of his untruthfulness. And although a 10
 "party litigant, the events he describes, are just such as
 "might naturally happen under the circumstances.

The testimony of Evaline Holcembe, is also of that plain, straightforward character, as to elicit the commendation of the Court, from whose decision this appeal is taken.

Her direct examination will be found on pages from 191 to 194.

In consequence of her sickness, the direct examination was much shorter than it should have been in justice to 20
 the witness. The bill charges the worst of conduct, and motives against her. But as no proof has been produced to verify a single unworthy act upon her part. Her failure through physical weakness, to deny as fully as she might have done, must not be taken too strongly against her. Ground may be found for holding a suspicion against her, arising mainly from her situation toward her grandfather, and her interest in the case. But no facts are proven which establish that she was instrumental in getting the will from Wilson's, or in securing its destruction. 30

I will read her testimony through.

The following facts are established by her testimony :

- 1st. The deceased asked her to go and get the will.
- 2d. It was delivered to him, at his request, sealed up, as Wilson had given it into the possession of Harry Holcombe, who had carried the note from Evaline.
- 3d. He was seen to open it, and to talk to John about it.

4th. That Mathews, one of the defendants, was told by the deceased, that he had destroyed it.

There is no proof that Evaline ever had the will in her possession, except as it remained sealed up, as Wilson had sent it, from Friday until Sunday.

Counsel, no doubt, will comment upon the fact that Evaline held the will secretly for two days.

That is true. But it was never opened. She kept it, no doubt, to satisfy her grandfather. That she had not
 10 risked Harry's carrying it, as he had objected to that, and no doubt, being well acquainted with her grandfather, she intended to have him believe that John had gone after it, as he requested.

At any rate, there is no proof that she kept it for any other purpose than to give it to John, on Sunday.

So far as the evidence shows, there was no improper use made of it.

And it was placed in the possession of the party to whom it belonged, precisely as it came from the hands of
 20 Wilson, the custodian.

If the fact was that she had placed it in the drawer, and there was no proof that it had been seen after that. The Court would not presume the deceased had destroyed it, simply because he had the opportunity of doing so.

Neither that it was preserved, because it passed into the possession of the deceased.

The rule, as I have before stated it is, that having traced the will into the possession of the party. The presumption is he destroyed it. *Animo revocandi*. If it is
 30 not forthcoming at his death, and the strongest proof must be produced to overcome this presumption.

The testimony of Richard H. Wilson, becomes of more than ordinary importance, from its close connection with the sworn statements of John and Evaline.

On page 225, he gives the circumstances attending the drawing of the codicil, by himself.

On page 236, line 10 to 30.

The conversation, with Evaline, in the garden, on the

Monday before the note was written on Friday.

On page 231, line 30 to 40.

The substance of Evaline's note to Wilson, is given.

On page 232, line 10.

Is described the delivery of the will, to Harry Holcombe, and its condition.

Harry Holcombe.—

On page 254.

Testifies to the manner of his receiving the will from Mr. Wilson.

10

Mr. Wilson's conduct, like that of John and Evaline, in connection with the delivery of the will to the deceased, seems to have been careful, straightforward and honest, and is not questioned, or in any way impeached, by any testimony in the cause.

Does there appear to have been any circumstances that might reasonably have induced the deceased to change his will, or destroy it.

I have mentioned the fact that at the time the will was made, the deceased owned his farm, where he lived, in Delaware township. At that time he owned no other real estate.

His daughter, Louisa, the mother of the defendants, was dead.

His only son, Edwin, was living with him on the farm.

His purpose was to give Edwin his farm, together with the stock and farming utensils.

Edwin died in 1881. The deceased at once, by the codicil to his will, made the distribution of his estate more favorable to his deceased daughter's children.

30

He seemed to think, now that Edwin was dead, grandchildren were all equal. As he expressed himself to John H. Wilson, whose testimony is found—

On page 184 to 190.

At line 30, on page 186.

And as is shown by the codical, in which he favors the other grandchildren.

After the will was made, he was compelled to buy a

house and lot, in Lambertville, upon which he held the mortgage, to save his mortgage.

Under the will, as Young had drawn it, this property, as well as the farm, would go to his grandchild, Edwin's daughter, subject to the dower of Eleanor Holcombe.

This he never intended, and when he read it over, and his attention was drawn to the word, *Elsewhere*, which Esquire Young had put in there, he at once declared "He had never understood it in that way," and declared,
10 "It must not be so, and that he would destroy it."

So it appears that there were good reasons for his dissatisfaction with the will.

And, as he told Mr. Wilson, no reason why one grand child should be nearer than another.

He intended the farm only for Edwin. It was the mistake of the scriviner. And those of us who knew Mr. Nelson V. Young, in his life time, do not wonder that the word elsewhere, which means so much, should have been wrongly employed by him. It was a fault of his to express what he intended, and then to impair or destroy the sence of what he had written, by an "elsewhere."
20

Mr. Wilson discovered the mistake before he died. Everybody ^{he} was not ^{being} so fortunate.

So I think the testimony shows that there were reasons which were good, if considered, for making a change, or, even destroying the instrument altogether, and allowing the law to distribute the estate.

The criticism, that an entirely just disposition of the estate, of the deceased, has been changed to one that is unjust, or less just, cannot be made.
30

Justice will be found in the law, rather than in the instrument which was executed under the strong incentive of the love of a parent, for an only son.

And right will be more fully done, if the respective lines of descent take their lawful share.

Might not the deceased have considered all this. The destruction of the will was not unnatural, to say the least.

effd's testimony
goes to show
deceased under
wood Edwin
as only to
use the farm

The bill also charges that the deceased was entirely out of his mind, for a week before his death. And during all the time from the day and hour when Evaline received the will from Wilson, until the moment of his death, the deceased was entirely out of his mind, and entirely incapable of doing any business, or performing any rational act, or understanding.

The complainants have failed so signally upon this part of their case, that I scarcely deem it necessary to refer to the evidence produced to support. 10

Eleanor Holcombe, Rebecca F. Mathews, James B. Mathews, the complainants, all testify to the failing condition of the deceased, from the time Edwin died, in both mind and body. But the Court will remember that Eleanor, Rebecca and James are the same witnesses, who have detailed the numerous conversations, which they had with the old man, beginning May 4, 1881, which was shortly after Edwin's death, and running through to the 24th of May, 1882, and who have been found to have taken particular memorandums, of just what deceased 20 said, on four different occasions.

I shall not stop to comment upon the improbability of their having ever taken any such memorandums. Nor do I care to disturb ^{any} slight credit any one may wish to give these two ^{men}, for conduct of this kind, in their weak attempt to get together testimony, to prove the contents of the will they were endeavoring to establish.

Of one thing I am sure, the memorandums were never written until after the bill was filed in this cause.

I make this statement, from the fact that the counsel of 30 the complainant never heard of them until they were mentioned at the examination of Eleanor Holcombe, before the Master.

If they had been in existence, would counsel not have known of them.

When he prepared the bill in this cause, has he not asked the question, when examining the case for proof of the will?

What did you ever hear John C. Holcombe say about it?

And when did you hear him speak of it?

And, if dates were given, which must have been, if this case is like other cases, or the lawyer who drew the bill, is like other lawyers, the question must have been asked, by counsel, "How do you remember the dates, and how do you remember the exact words."

See page 86, line 1 to 20.

- 10 Turn to these singular memorandums, and let us examine them as to their furnishing proof of their sanity, or insanity, strength or weakness of the old man's mind.

May 4, 1881, by Edwin's bedside.

Eleanor Holcombe, on page 51, line 40, and page 52.

Rebecca F. Mathews, page 71, line 3 to 30.

August 27th, 1881, in Eleanor's kitchen.

Page 53, line 24 to 30.

August 19th, the day of Edwin's death, the conversation with George B. Holcombe.

- 20 Page 54, line 9 to 20.

Page 115, line 1 to 18.

Margaret Frachenthal is a sister of Eleanor Holcombe.

August 30th, 1881.

Conversation overheard with Reuben P. Ely.

Page 54, line 28 to 40.

Page 72, line 16 to 27.

August 31st, 1881.

Eleanor Holcombe, page 55, line 16 to 23.

Rebecca Mathews, page 72, line 28 to 34.

September 2d, 1881.

- 30

Eleanor Holcombe, page 55, line 24 to 30.

Rebecca F. Mathews, page 72, line 30 to 40.

May 24th, 1882.

Eleanor Holcombe, page 56, line 1 to 40.

" " page 57, line 1 to 4.

Rebecca F. Mathews, page 74, line 1 to 23.

" " page 79, line 30 to 40.

Can there be anything more clear from this testimony

of the complainants, that all these people were dealing with an old man, with a vigorous mind and strong will, and who, if too much out of patience, would swear a little to have them understand he meant what he said.

This last conversation was only eighteen days before the will was placed in his hands.

Does any one hesitate to accept the story of John and Evaline, which details the facts as they occurred, the morning the deceased examined the will, and declared his dissatisfaction with it ? 10

The complainants call other witnesses, but none of them testify that the deceased, at any time, was incapable of transacting business.

Samuel C. Hoppock, the witness to his will, Jackson B. Sherman, the witness to the codicil, John H. Horn, a Justice of the Peace, who had the will in his custody at one time, and Alexander H. Holcombe, his counsel, and who had a business talk with him, on June 9, 1882, about rents. When he told Alexander he was pretty slow in collecting money, or in paying it over. 20

All of these are prominent business men, and well acquainted with the deceased.

They testify to nothing of the kind.

The testimony of David and Mercy Holcombe, was introduced to prove their presence at John Holcombe's, on the 18th of June, the day the will was given to him.

Their presence there that day is denied by John C. Holcombe and Reuben P. Ely.

The defendants have produced numerous witnesses, who testify to the well preserved condition of the mind of 30 the deceased, up until he was stricken with paralysis.

All of them detail various business transactions with him, as late as June 25, 1882.

George H. Larison, Physician.—

Page 171, line 30.

Page 172, 173, 174 and 175.

John H. Wilson.—

Page 185 and 186.

Reuben P. Ely.—

Page 206, 207, 208, 209 and 210.

James Wilson.—

Page 217, line 30 to 40.

George M. Holcombe.—

Page 220, 221 and 222.

Richard H. Wilson.—

Page 224.

George B. Holcombe.—

10 Page 247.

Martin V. B. Holcombe.—

Page 258.

In the Spring of 1882, James B. Mathews made a bargain with the deceased, to farm his farm. An entirely new bargain.

Page 111, line 17 to 20.

20 The rule governing the amount and sufficiency of proof necessary to establish a will which a person had destroyed, on the ground that the person destroying it, was not capable of doing so, because he did not understand what he did, is no different from that which governs the proof necessary to destroy a will, because the testator had not mental capacity to make it.

30 So I take it, the Court will have to find that the testimony shows old Mr. Holcombe to have been in such mental condition, that had he made a will at the time the present paper is presumed to have been destroyed, that will would be void for want of mental capacity to execute it, before it can decide that the will destroyed was destroyed without mental understanding on the part of the testator.

I respectfully submit that this Honorable Court should affirm the judgment of the Court of Chancery, from which this appeal is taken.

R. S. KUHLE,
Solicitor of Appellees.