

No 5
Clerks Table
1878

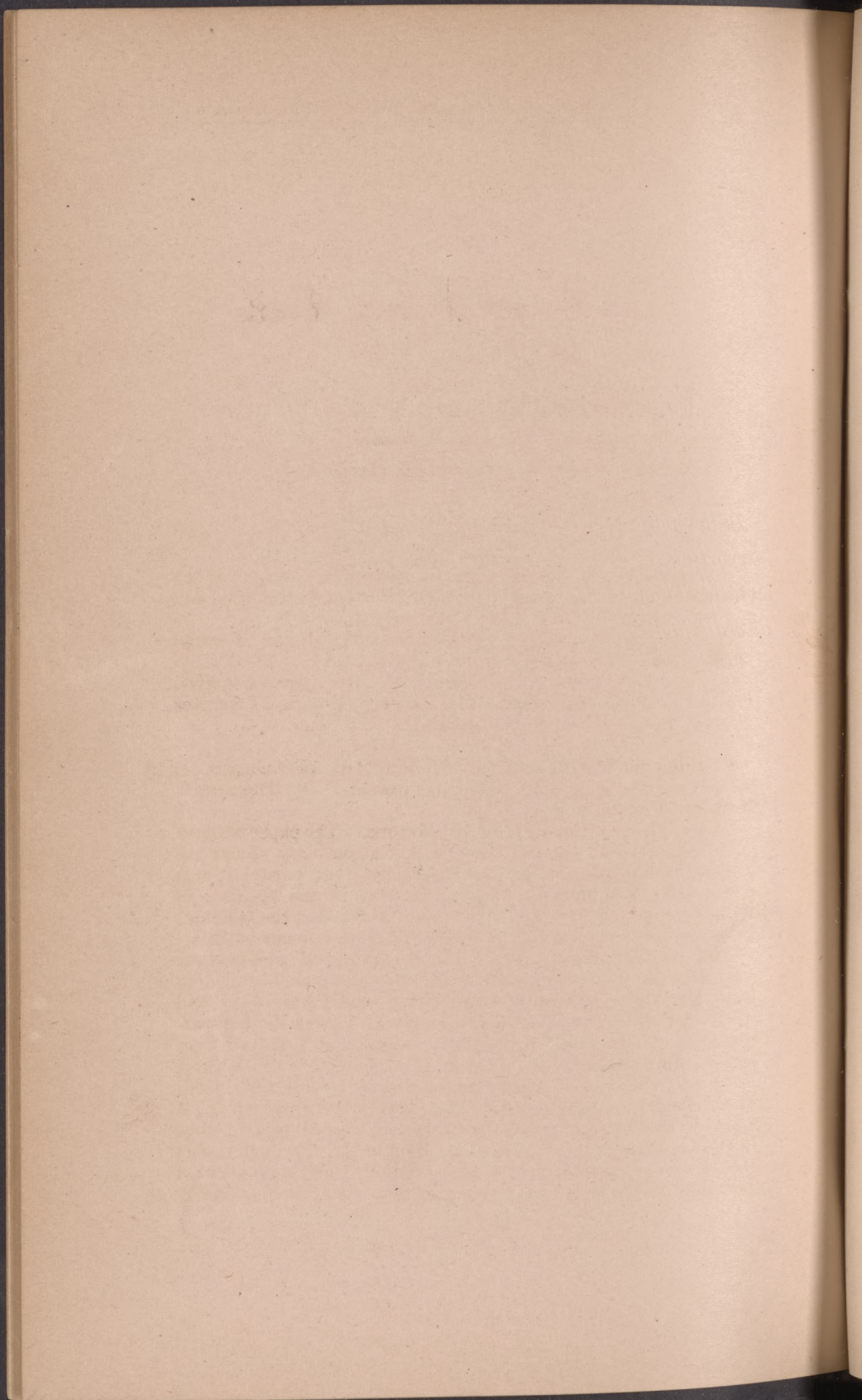
Essex County Orphans' Court.

*In the matter of the Probate of a Paper
purporting to be the last Will and Testa-
ment of Thomas Alexander, deceased, on
Caveats filed.*

Testimony
and
Exhibits.

Proponents' Proctors, ANDREW KIRKPATRICK,
THOMAS N. McCARTER.

Caveators' Proctors, F. W. LEONARD,
A. Q. KEASBEY.



Essex County Orphans' Court.

*In the matter of the Probate of a)
paper purporting to be the last Will and (*
Testament of Thomas Alexander, de-
ceased, on Caveats filed.

Evidence taken in the above matter before the Judges of the Orphans Court at the Court House, this Thursday, the 19th day of February, A. D., 1874.

Present, Hon. Charles L. C. Gifford, President Judge ; Herman Ise and Rufus F. Harrison, Esquires, Judges.

Andrew Kirkpatrick and Thomas N. McCarter, Esquires, Proctors for Proponants : and A. Q. Keasbey, Esq., and Frederick Leonard, Esq., Proctors for Caveators.

Charles S. Haines, a witness produced on the part of 10 the proponants, being duly sworn and examined by Thomas N. McCarter, Proctor for proponants.

I knew Thomas Alexander in his life time. The paper purporting to be the will of the said Thomas Alexander being shown the witness, he says : I saw Mr. Alexander sign that paper ; it was signed in Mr. Kirkpatrick's office in this city, in the presence of Mr. Frelinghuysen, Mr. Kirkpatrick, Mr. Alexander, the testator ; I don't recollect any one else ; I was in the office on some business ; I don't recollect what ; Mr. Kirkpatrick stopped writing long enough for me to get through with that business ; as I turned to leave, Mr. Alexander said, you are just the man I want, stay and witness my will ; I remained a few minutes ; I think Mr. Kirkpatrick said it would take but a few minutes, and I stayed long enough to witness it ; there was but a few lines to write when I was there ; after it was finished he came up to the desk and signed ; Mr. Frelinghuysen was called in I think from the front office ; I signed it, and Mr. Frelinghuysen signed ; we were all present when he signed ; I think Mr. Kirkpatrick called in Mr. Frelinghuysen ; Mr. Alexander signed it first, I next, and Mr. Frelinghuysen ; I don't think it was read over to him ; I remember his mentioning 30

one item, that was all ; he mentioned a chest of tools ; I thought it strange that a man brought up as he was, should have a chest of tools ; I don't remember who it was given to, only I heard the disposition of it mentioned ; I suppose Mr. Kirkpatrick was engaged writing the will when I went in ; Mr. Alexander was there when I went in.

Q. How long was it after he requested you to stay to sign his will, that you did sign it, long a time from that request ? A. Well, 5 or 10 minutes, I should think.

10 Q. Waiting for Mr. Kirkpatrick to finish writing the document ? A. Yes, sir.

Q. What occurred after the signing of the will ? A. I don't recollect anything further ; I left immediately.

Q. The will remained there when you left ? A. Yes, sir.

Q. What was the condition of Mr. Alexander's memory and understanding at the time of the transaction ? A. I had a very slight acquaintance with him, and I don't know that I could state that any more than other gentlemen ; I could not state.

20 Q. From what you observed of him, what opinion did you form, if any, upon the subject ? A. I had no reason to think he was anything but sound.

Cross-Examined :

Q. I understand you to say, that when you came in, Mr. Kirkpatrick was writing the will ? A. I suppose it was the will.

30 Q. Was he engaged in writing the paper which you afterwards signed, as far as you believe ? A. I think he was ; he had just laid it aside, and had a few moments' conversation with me ; then I undertook to leave, and Mr. Alexander requested me to remain ; then Mr. Kirkpatrick took up the paper which he had laid aside, and finished writing.

Q. When he got through with the paper—finished writing it, where was Mr. Alexander ? A. Setting on the settee, by the side of the office.

Q. What was then said to Mr. Alexander by any one present ? A. I have no recollection of anything, except that it was ready.

40 Q. Was it at that point of time that he mentioned about tools ? A. He mentioned about the tools shortly after requesting me to stay ; Mr. Kirkpatrick went on writing something about the tools, I think ; then he read over what he had written ; I have no recollection of the way he disposed of them.

Q. I understand you to say that you have no recollection of the will being read over while you were there ? A. Not the whole will ; it is possible these little items that were put in afterwards were read as written, that is the way I got that chest of tools on my mind ; I did not read the will, I only heard it read over ; I have no recollection of any other part of the will at all.

Q. Were you in the office on your own business ? A. Yes, sir.

Q. Had you known Mr. Alexander ? A. Slightly.

50 Q. State the whole extent of your acquaintance with him ? A.

Well, I had met him in Mr. Kinney's office once or twice, and afterwards on and about in the street.

Q. Had you ever had any conversation with him? A. No, sir.

Q. Had you no knowledge of him beyond that casual knowledge arising from meeting him, without conversing with him, in Mr. Kinney's office once or twice? A. That is all; nothing more.

Q. Had you ever exchanged a sentence with him? A. Well, I think I had exchanged sentences with him.

Q. Of what character? A. Simple subjects; I talked to Mr. Kinney and he made some remark and I replied to it—just a few 10 words.

Q. That is all your knowledge of his memory and understanding? A. That is all; I know nothing else.

Q. How long prior to the execution of the will had you seen him? A. I cannot say.

Q. Had you seen him since his father's death? A. Yes, once; I once met him in Mr. Kinney's office after his father's death; I don't think I ever saw him before to know him.

Q. Had you ever any business with him, or any kind of conversation directly with him on any subject relating to affairs? A. 20 Never.

Q. What was his personal appearance; was it ordinary or remarkable? A. Rather remarkable; he was tall, slender and gaunt, and I thought, consumptive.

Q. Complexion, how? A. Rather sallow, I think.

Q. Carriage? A. Stooped a little.

Q. Arms and limbs—legs? A. Long, slender.

Q. Hair? A. I cannot recollect.

Q. Was he not a very remarkable looking man? A. Well, he would be noticed; I know some others in the same way; I don't 30 think he was very remarkable.

Q. What was his expression, if you can describe it? A. If anything, rather innocent.

Q. Do you mean not wild looking? A. Not wild; harmless.

Q. Had he not an expression bearing to what we understand as imbecile? A. It did not strike me so, sir.

Q. What was said to him, while you were there, by Mr. Frelinghuysen? A. I don't know that I recollect anything at all.

Q. Did Mr. Frelinghuysen come in just before the signature was made? A. Just after the writing was accomplished. 40

Q. Can you be sure that the signature was made while you were both there? A. Yes, sir.

Q. Have you noticed the signature [handing witness a paper]; did his hand tremble when he signed it? A. Yes, sir.

Q. Are there indications of that in the signature? A. I think there are, sir.

Q. Can you remember any remark made about the will, except as to the disposition of the tools? A. No, sir.

Q. Were you ever introduced to him in any form or way? A. My impression is, I was introduced in Mr. Kinney's office. 50

Re-Examined :

Q. Did you converse with him while Mr. Kirkpatrick was finishing the document? A. I don't think I did.

Proponant's Proctor also called

Frederick Frelinghuysen, sworn :

Q. You are a lawyer, Mr. F.? A. Yes, sir.

Q. And partner of Mr. Kirkpatrick? A. Yes, sir.

10 Q. Where is your office? A. On Broad street, in Newark, the front room; Mr. Kirkpatrick has the middle room.

Q. Did you know Thomas Alexander, the testator, in his life time? A. I did.

Q. How long had you known him before his death? A. For a year, or two, or three; I saw him frequently in the office, and on the street.

Q. Was he in the habit of visiting your office? A. Yes; he came there quite frequently.

Q. Were you [showing witness paper propounded as will], present at the execution of that paper? A. I was, at the time this was witnessed; I saw Mr. Alexander sign it, and I signed it in his presence, and in the presence of Mr. Haines, at the request of Mr. Alexander, as a witness to his will.

Q. Mr. Haines also signed it, in your presence? A. He did, sir.

Q. When was it done? A. I don't know; it says here on the 2d of January, 1872; I cannot recall what day it was.

Q. You have no knowledge of the time except from the date named in the will? A. No, sir; I cannot recall the time.

30 Q. How did you come to be a participant in the execution of the will? A. I was in the adjoining room when the will was about to be executed—before it was executed—and I was asked to come in and witness it, and I did so.

Q. By whom were you asked? A. I was called in by Mr. Kirkpatrick, I think, and Mr. Kirkpatrick asked Mr. Alexander if we—Mr. Haines and myself—should sign as witnesses to his will, and he said that he wished we would sign as witnesses.

Q. Had you any knowledge of the preparation of that instrument before the occasion of its being signed? A. Yes, I had some 40 knowledge; I knew Mr. Kirkpatrick prepared his will; he gave Mr. Kirkpatrick his directions—the dispositions he wished to make of his property; and after Mr. Kirkpatrick had prepared it, and Mr. Alexander came to the office, I heard the will—I was in the adjoining room, and heard read over what I supposed to be the will.

Q. When did he give the directions of which you spoke? A. I don't know when he gave the directions.

Q. How long a time before the execution of the will? A. Well, it seems to me it was two or three days before.

Q. When was it read over to him? A. Before I went into the

room, when we signed it ; at least, I heard Mr. Kirkpatrick reading some paper, and I suppose it was the will.

Q. You heard him reading some paper to Mr. Alexander ? A. Yes, sir.

Q. Before, or after Mr. Haines came in ? A. I don't know.

Q. What was the condition of Mr. Alexander's mind and understanding at the time of the execution of the will ? A. I think that Mr. Alexander, while he, in my opinion, did not have a sound mind, had sufficient intellect to dispose of his property—he knew what he was doing—what disposition he was making of it, and to 10 whom he was giving it.

Q. Did you hear him give the directions to Mr. Kirkpatrick as to the manner in which he wished the will to be drawn ? A. I don't know where the directions were—

Q. I asked you if you heard him give the directions about it ? A. Well, I am not positive, but I have the impression that I did.

Q. Did you hear him converse with Mr. Kirkpatrick on the subject of the will ? A. Well, I did not know at the time, that he was conversing about the will, but when he went out I knew he wanted to make his will, and had given directions. 20

Q. Wel', did you know that from information, or from what you heard ? A. From information.

Q. In the conversation that took place about the will, two or three days before, or whatever it was, who took part in that conversation ? A. Nobody but Mr. Alexander and Mr. Kirkpatrick.

Q. Where did it take place ? A. In Mr. Kirkpatrick's office.

Q. Where were you ? A. I was in the adjoining room ; my office.

Q. So that you could hear that the conversation was going on ?

A. Mr. Alexander was in there talking with Mr. Kirkpatrick ; but 30 alone.

Q. I would ask this question : Whether the directions then given were with or without suggestions from Mr. Kirkpatrick ? A. I did not know what they were talking about until after he went out. The day the will was executed, Mr. Kirkpatrick, in reading this paper to him more carefully to explain everything to Mr. Alexander, asked him if that was as he wanted it.

Cross-Examined :

Q. Did I understand you to say, Mr. Frelinghuysen, that you 40 heard Mr. Kirkpatrick reading the paper which you thought to be the will—but you don't know that it was the will—on the day it was executed ? A. Well, I am not positive that it was the will he was reading to him, although I heard Mr. Kirkpatrick explaining the paper, and asking him if that was the way he wanted it made—(careful not to suggest anything to Mr. Alexander)

Q. You speak about what occurred in the front room when you were in the middle room ? A. When I was in the front room, and what occurred in the middle room.

Q. Had you any one with you ? A. No.

Q. Were you present when the first interview occurred in relation to the will, with Mr Kirkpatrick? A. I was in the adjoining room.

Q. How long before the will was executed, was that? A. A day or two.

Q. To the best of your knowledge? A. Well, I don't know exactly how long; a day or two, or three.

Q. Who came with him? A. Nobody.

Q. Did you never see anybody with him, with reference to the will, in the office? A. No, sir.

Q. When did you first see Mr. Alexander at all? A. Oh, I don't know; I saw him frequently. I have known him a great while; at least two or three years.

Q. How long from this time had you known him; from this time back? A. Well, I don't know; 3 or 4 years; he used to come in the office frequently.

Q. Did you know him in his father's lifetime? A. Yes.

Q. Did you know his father? A. Yes.

Q. Have you been in the habit of visiting at his father's house? A. No. I was in house once for about five minutes.

Q. Did you see Thomas there then? A. No. I saw Mr. Alexander and Miss Alexander.

Q. When did you first see Thomas? A. The first time he came in the office.

Q. Was that before his father's death? A. Yes.

Q. What did he come for? A. I don't know; I think he came to see Mr. Kirkpatrick, who was not in; he sat down and we had a long talk; he frequently came in the office.

Q. Prior to this time—prior to the execution of the will? A. Yes.

Q. How many times had you ever seen him when the will was executed? A. I don't know.

Q. Had you ever seen him more than once or twice? A. Yes, sir.

Q. Do you remember the day of his father's death? A. No, sir; but I have been informed.

Q. Do you remember how long it was before this will was executed? No; I think it was shortly before the execution of this will.

Q. It was the fourth of December, that was the day, and this was the second of January. Then this will was executed in less than a month from his father's death? A. Yes; I only know from information.

Q. Where did Thomas Alexander live? A. I don't know, sir.

Q. At the time? A. I don't know.

Q. Where did he live at his father's death? A. I don't know; I never saw him except along the street and in the office.

Q. Where did his sister, Miss Mary Alexander, live then? A. Before the death?

Q. After the death of the father, and at the time of the execution of the will? A. She lived at the house her father occupied

before his death for sometime; I don't know how long she lived there.

Q. More than a month? A. I don't think so.

Q. Did Thomas live there with her? A. I don't know.

Q. What was his appearance? A. It was not very prepossessing; he was tall and awkward; I think his appearance was the worst part of him.

Q. What was his complexion? A. Rather sallow complexion.

Q. Was not he a remarkable looking man? A. Yes, very peculiar looking; very tall, six feet four or five inches. 10

Q. Erect, or stooping? A. Stooping.

Q. Long or short arms and hands? A. Rather long arms.

Q. Did he not have the manner and look of an imbecile? A. Do you mean an idiot?

[Proponent's Proctor objected to form of question]

A. Well, he was very tall, with long arms; he had a sallow complexion; but I don't know of any other peculiarities.

Q. Did he have the appearance of a man of intelligence and self-possession? A. Of self-possession; but I don't think he looked like a remarkably intelligent man. 20

Q. Did not he look like the contrary? A. I don't think the expression of his face was to the contrary.

Q. I mean his whole appearance—the whole man as you saw him? A. Well, I don't know; I don't exactly understand what you mean; if you mean did he look like an idiot, I don't think he did.

Q. Don't you know the difference between an idiot and an imbecile? A. I don't know how to describe the difference in the appearance of the two

Q. Did he not have the appearance and manner of a man of 30 defective and limited understanding? A. He had that appearance; yes.

Q. Had he any violence of manner, or was he innocent or harmless in his way? A. He never had a violent manner that I am aware of, and I never saw him at all violent; he was always very gentlemanly and well behaved, and always talked very sensibly; he used to come in the office and talk a good deal.

Q. Do you know what his age was? A. No, sir. I have no idea what his age was.

Q. How is it you can form no idea of his age? A. I don't 40 know. I never heard his age, and I have no idea how old he was.

Q. Why is it you can form no idea of the man's age? A. Well, one reason; I don't know that it is exactly right for me to say I never heard his age, and I have no idea how old he was. I don't know whether he was twenty-five or thirty-five years old. I suppose that he was a full grown man, and was not fifty years old.

Q. I mean to ask whether there was something in his appearance which really made it difficult to tell whether he was thirty or fifty; is that so? A. There was nothing in his appearance that would lead me to suppose he was fifty. 50

Q. Had he any beard? A. I don't remember.

Q. Can you give me any idea—your judgment, as to what age his appearance would indicate him to be? A. I suppose he was between twenty-five or thirty-five years from his appearance; that is as near as I can get.

By the Court:

Q. Will you please state what occurred at the execution of the will; what was done and said? A. Mr. Haines and Mr. Kirkpatrick, with Mr. Alexander, were in the middle room, and I was
10 in the front room. I think Mr. Kirkpatrick asked me to come in and witness the will; then Kirkpatrick asked him, Mr. Alexander, if we should witness the will, and he said he wished we would; then he signed it, and we signed it in his presence.

Q. After he signed it, was anything said by Mr. Kirkpatrick or any person as to what he was doing? A. I don't remember.

Q. Do you know whether the attestation clause was read? A. I do not.

Re-Examined:

20 Q. Have you any recollection of any ceremony being gone through, or question asked him by Mr. Kirkpatrick? A. I know it is customary.

Q. I want your memory; what you recollect. A. I don't recollect that that clause was read to him.

Q. What is customary? A. It is customary in our office to read the attestation clause.

Q. Do you recollect whether it was observed in this instance? A. I don't recollect whether it was or not.

30 Q. But before this signature, Mr. Kirkpatrick asked him if he desired you and Mr. Haines to witness the execution of his will? A. Yes.

Q. And then he signed the will, and you signed it? A. Yes, sir

Proponent's Proctor also called

Andrew Kirkpatrick, sworn:

Q. You are a counsellor at law, Mr. Kirkpatrick? A. I am.

[Witness being shown the paper offered for probate.]

Q. Were you present at the execution of that paper? A. I was.

40 Q. It is in your handwriting? A. It is; yes.

Q. Please state all that you know respecting the preparation and execution of that paper, from the commencement to the end? A. Sometime prior to the drawing of this paper, Thomas Alexander came to my office and informed me that he wanted to make his will, and that he wanted me to draw it for him; and I asked him how he was going to dispose of his property, and reminded him that by his father's will it must be left to his brothers or sisters or niece or their representatives; and he gave
50 me the directions which I wrote upon a memorandum and afterwards put in this shape; after he had given me the items, and I had

made a memorandum of them, he went away, and I told him to come again in a day or two and the will would be ready; he came again and the will was ready for him to sign; I read the will over to him and he wanted to make some changes; my recollection is that he wanted to change the amount of the legacies left to his brother Reverdy, and also wished to insert the devise he makes of a chest of tools to Allen Griffith; I again reminded him that he must confine his gifts to the family; and he said that this chest of tools belonged to him before his father's death and that he might give them to whom he pleased; I told him I would 10 put it in so; and in order to change the amount of the legacies given to his brother Reverdy, and to insert this matter of the tools, I rewrote the will; after it was written, or rather during the progress of the writing, Mr. Haines came in and Tom engaged him to stay as witness; I finished the will and read it to him, and called Mr. Frelinghuysen from the front room to witness it, with Mr. Haines; Mr. Alexander then signed the will; I was present, and after he had signed it I asked him if he acknowledged that to be his last will and testament, and whether he requested those gentlemen to sign as witnesses; he said he did, 20 and they signed; I took the will—he left the will with me, and I put it in an envelope and sealed it and put in my safe, and it was there until he died, and then I brought it over to the Surrogate for probate.

Q. From whom did you receive the instructions by which you wrote the will? A. Thomas Alexander.

Q. How long had you known him? A. Prior to the making of this will?

Q. Yes? A. Perhaps a year or two; two years I think.

Q. What was the condition of his mind and understanding at 30 the time of the execution of the will? A. I think he perfectly understood the manner in which he disposed of his property, and he gave his directions clearly.

Q. Was the will drawn in accordance with the directions he gave? A. Entirely in accordance with the directions he gave; I think perhaps the phraseology was changed in some respects—the formal parts; but it was drawn entirely in accordance with his wishes.

Cross-Examined :

Q. Where did you meet Mr. Alexander first, Mr. Kirkpatrick? 40
A. I don't recollect, Mr. Keasbey, but I think probably at his father's house.

Q. Was he in the habit of being with the family, in his father's house, when you visited there? A. Sometimes—sometimes I met him when I went there, and sometimes not.

Q. Did you ever meet him in the parlor with the company of the family? A. Yes, sir.

Q. How many times? A. I cannot say—more than once; I have seen him sitting with his father in the library. 50

Q. Had you any communications with Miss Mary Alexander about the will, before it was executed? A. No, sir.

Q. Was he living with her at that time? A. He was.

Q. Who constituted the family? A. He and she.

Q. Only? A. And a servant; I don't know whether his brother was living there or not—I cannot say as to that.

Q. Had he been living there since his father's death? A. He had.

Q. Do you know of his having been examined by physicians prior to making his will, to see whether he was capable of making a will? A. Yes.

Q. What do you know about that?

[Proponent's proctor objected.]

Q. What is the nature of your knowledge; where did you hear about the physicians examining him?

[Proponent's proctor objected.]

Q. From whom did you hear it? A. It was not from Mr. Alexander.

Q. Did I understand you to say that you had had no conversation with Miss Mary Alexander, concerning the will prior to its execution? A. You did; that was the statement as to the provisions of the will I suppose you meant.

Q. No, I mean concerning the will; did you ever have any conversation with Miss Mary Alexander prior to the execution of the will, concerning the will in any way? A. Yes.

Q. Where had you had that? A. At her house, I think.

Q. How long before the execution of the will? A. A week or so.

Q. How many interviews? A. One.

30 Q. Did she send for you? A. No.

Q. Where did you hear about the physicians being called to examine him? A. When?

Q. Where? from whom? A. I said it was not from Mr. Alexander.

Q. Do you know what physicians were called to examine him?

[Proponent's proctor objected.]

A. It was merely hearsay.

[Caveat proctor waived question for present.]

40 Q. Have you ever seen him in the room in his father's house when invited company was there; guests there? A. I have no recollection of it.

Re-Examined:

Q. Did Mr. Alexander have another son; Thomas Alexander, Senior? A. He did.

Q. What was his name? A. Reverdy Alexander.

Q. Did he sometimes live at home with his father? A. I believe he did.

50 Q. Were you in the habit of seeing him in the parlor when guests were there? A. I have no recollection of it.

Testimony of Proponants closed.

It was agreed between counsel to have evidence taken in Baltimore before a Commissioner.

Adjourned till 28th March, 10 o'clock.

The Counsel for the Caveators then read the following testimony of witnesses taken in the city of Baltimore, before Hermon L. Emmons, Jr., Commissioner.

10

John Johnson, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say :

Q. 1. Were you acquainted with Thomas, deceased son of the late Thomas S. Alexander, of Newark, New Jersey, deceased? A. I was.

Q. 2. When, and how familiarly were you acquainted with him, and what opportunities, if any, have you had for knowing or judging of the mental character or capacity of the said Thomas? A. 20
I was acquainted with him ever since our childhood. During boyhood I used to see him frequently, as we both lived in Annapolis. After his father moved to Baltimore, I did not see him for several years, until after my father moved to Baltimore, when I met him occasionally, both at his and my own father's house. During our boyhood, at Annapolis, I used to see him almost every day; after his and my own removal from Annapolis, the only opportunities I had of seeing him was in occasionally meeting him at his and my own father's house. I was his third cousin.

Q. 3. What was the mental character or capacity of said 30
Thomas, in your and his boyhood, when you met him at Annapolis? A. In my judgment, of a very low grade.

Q. 4. When you knew him in Baltimore after your removal here, what mental development did you observe, or what increase of mental capacity did you notice? A. I noticed none.

Q. 5. To what extent was he mentally capable of attending to any business, or making deeds or contracts? A. In my judgment, after having stated my opportunities for knowing him, I considered him utterly incapable of making any business contract or engagement, and I would not have dealt with him in any matter alone. 40

Q. 6. What is your age and occupation? A. I am in my 39th year, and am by profession a lawyer.

Cross-Examined by George H. Williams, counsel for proponants.

xQ. 1. Please state the length of time since you saw the deceased, and had conversation with him? A. It must have been eight or ten years since I have seen him.

xQ. 2. What was the professional standing and mental capacity of his father? A. Of the very highest, both intellectually and professionally.

50

xQ. 3. Had the father sufficient mental intelligence to pronounce upon the testamentary capacity of his son? A. Undoubtedly.

JOHN JOHNSON.

Subscribed and sworn to before me, this first day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.*

I, Shaaff Stockett, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say :

10 Q. 1. Please state your age, residence and occupation? A. I am in my forty-eighth year; I reside in Annapolis, Maryland, and hold the office of State Reporter of the Court of Appeals.

Q. 2. Were you acquainted with Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I knew him intimately; he and I were second cousins.

Q. 3. What opportunities had you for becoming thus intimately acquainted with him? State particularly. A. From the time of his birth until he removed to Baltimore, in the fall of 1844, he resided in Annapolis, as also, I did. I became a student of law 20 in the office of his father in the fall of 1843, and doubtless, frequently saw him in the office, on the street, and occasionally at the house of my uncle, where I resided, and yet I cannot recall him to mind so as to enable me to speak of him.

I came to Baltimore to engage in the practice of the law in January, 1848, and visited intimately in the residence of Mr. Thomas S. Alexander, his father.

During this latter period, and from that time and until the beginning of the war, I frequently saw Thomas at his father's residence, on the street, and sometimes he came to my office on St. Paul street; 30 during a part of that time I had my office with Mr. Thomas S. Alexander, and occupied his front office in his house on Lexington street, and thus had ample opportunity of seeing Thomas, conversing with him, and forming a judgment as to his mental capacity, although during a part of that time he was away at school.

Q. 4. State, if you know, whether he was at any other place besides at school during any part of the time he was away from home, and if so, where? A. I can't say of my own knowledge where he was during that time other than at school; but I learned, either in the family, or from some relative of the family, that he 40 was confined in an asylum for the insane.

Q. 5. What was his mental character and capacity as you saw and knew it, at the time when you were intimate with him, or with his father's family, in the city of Baltimore, or at the time you were in the office of his father in Baltimore? A. I think it was of an inferior order.

Q. 6. To what extent was he capable of making contracts or transacting business; or to what extent would you have felt at liberty to contract with him in any matter of business? A. I think he was incapable of making valid or legal contracts; I think 50 he was capable of going an errand, or carrying a brief message,

but not too long a message ; I should not felt myself justified in entering into any business contract with him ; I should have felt myself discredited as a man of honor, to have had a business transaction with him involving five dollars.

Q. 7. Up to what time did your acquaintance with him and his father's family continue? A. My acquaintance with his father's family continued until he left Baltimore ; I do not remember when I last saw Thomas ; I think I saw him several times in the city of Baltimore, after his removal to Newark, either in the office of Mr. Linthicum and Alexander, on the street, or at Mr. Linthicum's residence. 10

Q. 8. Please state what mental development, improvement or progress you observed in him during the last ten years of your acquaintance with him, or on the occasion of the interviews which you had with him after he removed from Baltimore? A. I never observed any change in the mental development or any improvement to warrant me in modifying the opinion which I have already expressed as to his mental capacity.

Q. 9. Please state what was the measure of his capacity when at the age of twenty-five or thirty years as compared with that of an ordinary child? A. I scarce think that his mental capacity at that age would reach the standard of a boy of an ordinary mind of eight or nine years. 20

Q. 10. State, so far as you knew, how he was treated or regarded as to mental soundness or capacity in his father's family? A. I think he was regarded in the family as a poor unfortunate ; I think his younger sister, who was very much younger, regarded and treated him as a child ; I think his father regarded him somewhat in that light ; he would sometimes speak of him as "poor Tommy." 30

Q. 11. Please state what you mean by the term "a poor unfortunate," in your last answer? A. One lacking ordinary mental capacity.

Cross-Examined by Geo. H. Williams, Esq., counsel for proponents.

xQ. 1. At the time you heard Tom was in the asylum, was there in Maryland, to your knowledge, a hospital for the inebriate? A. Not that I am aware of.

xQ. 2. What was the cause for which he was sent to said asylum, and was it not because he was at that time much addicted to drinking? A. I cannot say, of my own knowledge, why he was sent to said asylum, but presume it was because he was considered unmanageable and intractable, and it was considered a very good home for him ; I don't think he was ever much addicted to drinking ; I think he got drunk occasionally ; by occasionally, I mean at infrequent intervals ; I have heard of his getting tight, but I don't know that I ever saw him drunk.

xQ. 3. For what cause was he placed upon a farm by his father, and why was his father obliged to remove him from thence? A. I think his father was very desirous of securing for his son em- 50

ployment which would occupy his time, amuse him and withdraw him from temptation; I think he had a hope that Tom would become interested in farming operations, and through his (the father's) superintendence would manage to get along comfortably and satisfactorily; I cannot answer from any knowledge, why his father was obliged to remove him from thence, but presume it was because the experiment proved a failure.

10 xQ. 4. Have you ever heard that he was removed from thence to the asylum by reason of his excessive drinking? A. I have not, to the best of my recollection; I have an impression just now, that I heard of his getting drunk while there, occasionally, there being some drinking establishments convenient and not far off.

xQ. 5. What was the professional and intellectual standing of his father? A. His father was gifted with a very high order of intellect, and ranked among the eminent lawyers of Maryland.

20 xQ. 6. Had the father sufficient intelligence and experience to be able to pronounce upon the testamentary capacity of those with whom he was brought in daily contact? A. In my judgment he certainly had.

Direct-Examination resumed by Henry Stockbridge, Esq., counsel for caveators.

30 Q. 12. Did you ever hear from Mr. Alexander an estimate of the mental capacity of his son Thomas; if so, state particularly what it was? A. No, I never did, further than I have stated, to the best of my recollection, except I may say this. I have sometimes heard Mr. Alexander, when his son Thomas had said or done something, which, if the same had been done or said by any of his sisters, his juniors, would scarce have been noticed, express his gratification, and seem to be very much pleased.

Q. 13. With whom was Thomas placed at the time of which you have spoken, when in the country? A. His cousin, Robert Ghieslin. He went there to reside at the same time. Mr. Ghieslin had some experience in farming, and I think Mr. Alexander thought the associations would be beneficial to his son.

40 Q. 14. Did Mr. Alexander, to your knowledge, ever attempt to educate, train or start his son Thomas in any profession or business requiring mental capacity? A. I don't think he ever contemplated that his son would ever embark in any business or profession other than the experiment of farming of which I have spoken.

And further deponent saith not.

I. SHAAFF STOCKETT.

Subscribed and sworn to before me this first day of April, 1874.
HERMON L. EMMONS, JR., *Commissioner*.

Francis H. Stockett, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

50 Q. 1. Please state your age, residence and occupation? A. I

am in the fifty-third year of my age. I reside in Annapolis, Maryland. Am a practising lawyer, and have been since March, 1844.

Q. 2. State the extent of your knowledge of Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey, and how acquired? A. I knew him from the time he was a baby. His father was my first cousin, and I always visited intimately in the family. I commenced reading law in Mr. Thomas S. Alexander's office in March 1841, and left there in March, 1844, nearly every day of which I saw Tom, the office being on the same lot with Mr. Alexander's private residence, and opening into the 10 yard where the children played. Mr. Alexander moved to Baltimore to reside, the last of November, or in December, 1844. After that my opportunities for seeing Tom were less frequent, and I would not see him probably more than a dozen times a year, when I came to Baltimore, or met him at other places. Up to the time when Mr. Alexander moved to Newark, to reside in Newark in 1866, since when I do not remember to have seen him at all. I may have met him once in Baltimore, but am not positive.

Q. 3. What was Thomas' mental character and capacity? A. He never, in my judgment, had sufficient mental capacity to execute any valid deed or contract, or to engage in any business or occupation requiring the exercise of judgment or reflection. 20

I think during all the time that I knew him, I am satisfied, that he could have been controlled or influenced by anybody who was intimate with him, or towards whom he was friendly to such an extent that his mind or will would have been entirely subordinate to theirs; I am confident I could have controlled him at any time to have done any act I persuaded him to do.

He had so little idea of value that I believe he would have sacrificed any means he might have had to gratify any impulse which 30 he felt; I do not think that his judgment and mental capacity were equal to those of an ordinary child ten years old.

Q. 4. State what mental development, growth, or progress he manifested during the last ten or fifteen years of your acquaintance with him? A. If he was not born imbecile, his imbecility commenced in very early infancy, and I have no recollection of him when he was not so; as he grew up he acquired some knowledge, and with great difficulty learned to read and write after a fashion.

It was a long time before he learned to talk or articulate distinctly, and I don't think he ever did; while he resided in Annapolis, I don't think Tom was ever sent to school, but I think he was 40 suffered to go whenever the whim served him.

He would occasionally come into the office and say his letters to me; he was about seven or eight, or perhaps nine years of age, but I don't think he learned all his letters while there; I am very certain he did not; as far I know, I think his mind never developed after he was twenty or twenty-five years of age; I never saw any improvement in him after that time; I did not see him that I recollect after 1866.

Q. 5. State so far as you know what was the estimate placed 50

upon his mental capacity by his father and the members of his family? A. As far as I know without exception he was regarded by every member of his father's family as imbecile; it was a conceded fact; I have heard his father speak of Tom a number of times; I believe Mr. Alexander for the last twenty-five years of his life talked to me about his private affairs with greater intimacy than with any relative or other person; he always spoke of Tom's mind to me as of conceded imbecility; he was aware I knew the fact, and always spoke of it in that way; and he has frequently said to me that he had not the capacity to engage in any business; in the last conversation I ever recollect to have had with Mr. Alexander in reference to Tom, and which was several years after they moved to Newark to live, he stated to me that he had induced a carpenter or cabinet maker to let Tom work in his shop, merely to give him employment to keep him out of mischief, and stated that Tom had shown some mechanical ingenuity.

10 Q. 6. What was Tom's personal appearance as indicative of intellect or otherwise? A. Why, I don't think any person of ordinary intelligence would hesitate from his appearance to say he was very weak minded, verging on idiocy.

Cross-Examined by George H. Williams, Esq., Counsel for proponents:

xQ. 1. Speaking positively, within how many years have you seen the said Thomas? A. I have no distinct recollection of having seen him since the family went to Newark; I am sure I have seen him within ten years. The last time that I recollect to have seen him, was in Mr. Alexander's office, and then when I went out, he went out with me.

30 xQ. 2. What was his father's professional and intellectual standing? A. The very best.

xQ. 3. Had the father, in your opinion, sufficient intelligence and experience to be able to pronounce upon the testamentary capacity of those with whom he was brought in daily contact? A. In my judgment he had to such an extent that if I had not known the person concerning whom he judged, his opinion would nearly be conclusive with me.

Direct-Examination resumed by Henry Stockbridge, Esq., counsel for caveators.

40 Q. 7. If you have any knowledge of Thomas having been at any time an inmate of an insane asylum, please state the same fully. A. I recollect having been told, I think by his father, but it may have been his uncle, that it was necessary to confine him in the insane asylum, I think in Baltimore, because he had become unruly and dangerous.

And further deponent saith not.

FRANK H. STOCKETT.

Subscribed and sworn to before me this 1st day of April, 1874.

50

HERMON L. EMMONS, JR., *Commissioner*.

Richard B. Battee, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say :

Q. 1. State your age, residence and occupation. A. I am in my fifty-second year; I reside in Baltimore City, Maryland; I am by occupation an attorney at law.

Q. 2. What opportunities did you ever have to know the mental character and capacity of Thomas (deceased), son of the late Thomas S. Alexander, deceased, of Newark, New Jersey? A. In the summer of 1845 I read law in Mr. Alexander's office in the city of Baltimore, and my first acquaintance with young Thomas began at that time; I saw much of him for several months of that year; he was frequently in the office in which I was reading; I went West in the fall of that year; I returned to Baltimore in the ensuing spring and opened a law office; my acquaintance with him extended over a period of some years, until 1866, when his father went to Newark. 10

In the early part of my acquaintance with him I saw him very frequently, and particularly, during the first few years after my return from the West say to 1853; after that period, I saw him less frequently, sometimes at intervals of months and perhaps a year; these circumstances above stated, with the conversations I had with him, constitutes the opportunities referred to in the interrogatory. 20

Q. 3. What was the mental character and capacity of Thomas as you saw and knew it? A. In my judgment it was exceedingly weak; I regarded him mentally very imbecile amounting almost if not up to idiocy.

Q. 4. How did his mental incapacity or imbecility manifest itself? A. In his conversation; in the earlier part of my acquaintance with him in both conversation and conduct; his conversation, when not confined to the simplest commonplace remarks, such as his health and that of the family, was incoherent and unintelligible; when I first directed my attention to his conduct at his father's office, when I was a student there, he would seem to be very much occupied at times in writing; the manuscript—[Mr. Williams objected to the witness speaking about any manuscript, unless he has it to produce, and Mr. Battee's attention, as a lawyer, is called to its known utter inadmissibility.] 30

I very early in our acquaintance became convinced in my own mind that he did not know how to write; his conduct was eccentric, impulsive, and tended to convince me that he was not responsible. At later periods, about 1853, his conduct was of the same character, very childish, more like that of a boy four or five years of age. 40

Q. 5. State whether the papers which you saw him engaged in writing contained words or letters, or were manuscripts at all?

[Objected to by Mr. Williams for same reasons as stated in answer to last question.]

A. The writing that I saw him engaged in would sometimes be 50

on a slate and sometimes on detached pieces of paper, and whenever submitted to my inspection contained no characters intelligible to me.

Q. 6. State what development or mental growth he manifested during the time of your acquaintance with him? A. There was very marked improvement in the last ten years of my acquaintance with him, in his conduct. It was quiet, whenever I had any opportunities of seeing him, and he was inoffensive. I was fond of him and a ways endeavored to treat him very kindly. I never
10 teased him, nor plied him with any remarks or conversation calling for any rude or violent demonstrations from him. I think he was fond of me. He used to come to my office sometimes in frequent succession. I saw no marked change in his mental condition, although, as I have stated, there was a marked improvement in his manners and conduct.

Q. 7. Had he at any time sufficient intellect, in your judgment, to make a valid contract, or to be responsible for crime? A. In my judgment he had not. Had I been on a jury in a Criminal Court, in which he had been put on trial, if compelled to serve on
20 that jury, from my judgment of his mental condition I would not have considered him accountable. If not a juror, I would have felt it my duty to volunteer my testimony to the effect that I did not consider him accountable.

Q. 8. State, if you know, what estimate of his mental capacity, was held by his father and the members of his father's family? A. I had scarcely any acquaintance with the members of Mr. Thomas S. Alexander's family, beyond that of an introduction and the ordinary salutations when we met, except with Reverdy,
30 the brother of Tom; delicacy would have prevented my volunteering any opinion or conversation with Mr. Thomas S. Alexander, his father, or with any of his family respecting his mental condition; I never heard it mentioned or alluded to in his family.

Q. 9. State, if you know, with what sort of persons Thomas associated, or how he was treated by boys of his own age? A. I have no recollection as to how he was treated by boys of any age; I have seen him associate with boys seemingly very much his junior; I have very little knowledge or recollection of his associates.

Q. 10. State, whether or not, he was the butt or sport of the
40 boys with whom you saw him, or they were accustomed to play tricks upon him as upon a person non compos mentis?

[Objected to by Mr. Williams as leading.]

A. When I was in the Marshall building on St. Paul street, and between the years 1848 and 1854 or 1855, I had frequent opportunities of noticing his playing with other boys, in the court or alley in the rear of Lexington street; I think the alley was also in the rear of his father's dwelling-house; I have seen him very much en dishabile for one of his age, and from that circumstance perhaps he seemed to be the object of sport and ridicule to the
50 boys; he at times used to annoy Mr. Howard Griffith and his

cousin Shaaff Stockett by his capers and tricks; I have known them to complain of him.

Cross-Examined by George H. Williams, Esq., Counsel for Proponents.

xQ. 1. How many years has it been since you last saw and conversed with Thomas Alexander? A. I have not seen him or conversed with him since his family left Baltimore for Newark, and probably not for a year before.

xQ. 2. What amount of intelligence and perception had his 10 father Mr. Thomas S. Alexander, and to what degree? A. A very large amount of both, and to a very great degree in my judgment.

xQ. 3. Do you think he had sufficient brains and perception to discern even in his own son, whether he was so imbecile as that his imbecility amounted almost if not quite to idiocy? A. I think he had sufficient to determine that for himself.

And further deponent saith not.

RICHARD R. BATTEE.

Subscribed and sworn to before me, this 1st day of April, 1874. 20
HERBERT L. EMMONS, JR., *Commissioner*.

Galena Jouett, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your residence and occupation? A. I reside in Elkridge, Maryland; am the wife of James E. Jouett, who is a captain in the U. S. Navy.

Q. 2. State what opportunities you ever had for acquaintance with Thomas (now deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I have known him since his childhood; I am a relative of the family; have met him at his father's house, and he has been at my father's house; I have been with him at his sister's house months at a time. 30

Q. 3. What was his mental character and capacity as you saw and knew it? A. I considered him entirely an irresponsible person—a complete child in mental capacity.

Q. 4. As he advanced in years, what mental development or growth did you observe in him? A. I do not think he improved with advancing years, but rather deteriorated. 40

Q. 5. What was his mental capacity at the best you ever knew it, as measured by that of an ordinary child of five, six, seven, or eight years? A. I think he was about equal, in mental development, to a very young child, but nothing beyond.

Q. 6. State how he was treated or regarded, or what was the estimate of his mental capacity on the part of his father, and the members of his father's family? A. He was always treated by them as a child. It was always considered that he was an incompetent person, both by his own family, my family, and all who knew him. 50

Q. 7. State how his mental imbecility or lack of capacity was manifested? A. By his conversation, his manner and his appearance.

Q. 8. Give the character of his conversation to which you have referred, and state whether his imbecility was manifested in the subjects which interested him, or in the manner in which he spoke of them, or in what way? A. He had no conversational power in a social point of view. He spoke as a child would speak about the ordinary things surrounding him.

10 *Cross-Examined* by George H. Williams, Esq., Counsel for Proponents.

xQ. 1. What was the father as to professional intelligence and experience? A. He was a man of great mental acquirements and intelligence.

xQ. 2. Had the father sufficient intelligence to pronounce upon the mental capacity of those with whom he was brought in daily contact? A. Yes; I think he had.

20 xQ. 3. What are your relations to Mrs. Mary A. Bingham, the devisee of said Tom; are they friendly, or otherwise? A. Her own father and I are second cousins. So far as our associations are concerned, we have always had friendly intercourse. I have not met her for a number of years, and I spoke to her when I came in.

Direct Examination resumed by Hon. Henry Stockbridge, Counsel for caveators.

Q. 9. Please explain a little more fully what you meant when you said that Thomas was always treated by the family as a child?

30 A. The family looked after his clothing and food as though he had no responsibility or judgment about him.

Q. 10. State whether on occasions of family or social gatherings of persons of age similar to his own, he was received or treated as one of them, and made one of the party and treated as a young gentleman, or was he excluded and treated as a child by his father, Mrs. Bingham, and the other members of the family?

[Objected to by counsel for proponents as very leading.]

Question waived

40 Q. 11. State how he was received or treated on occasions of family or social gatherings of persons of age similar to his own? A. He was always treated as a child, and came in merely as a looker on.

Cross-Examination resumed by Geo. H. Williams, Esq., counsel for proponents.

xQ. 4. Speaking positively, how long and how many years has it been since you last saw Thomas and conversed with him? A. I think it has been eight or nine years; but I have heard of him and seen his letters since then, so that I know that his condition
50 continued.

[Latter part of answer objected to as irresponsible, by Mr. Williams.]

And further deponent saith not.

GALENA JOUETT.

Subscribed and sworn to before me this first day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

The hour of five o'clock, p. m., having arrived, at the request of the counsel for the respective parties, I adjourned the commission to meet at the same place on to-morrow, the 2nd day of April, 1874, at 10 o'clock, a. m. 10

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the commission met at the same place, on the second day of April, 1874, at 10 o'clock, a. m.

Present: Henry Stockbridge, Esq., Counsel for Caveators, and Geo. H. Williams, Esq., Counsel for Proponents; when I proceeded to take the testimony of the following witnesses, upon interrogatories put by the said Stockbridge and Williams, to wit:

John D. Ball, a witness of lawful age produced on the part 20 of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your age, occupation and residence? A. Am in my forty-third year. Am by occupation a carpenter, and reside in Baltimore City, Maryland.

Q. 2. State what opportunity you have had for acquaintance with Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey. A. I worked for Thomas S. Alexander about from 1860 to the time he removed from Baltimore to Newark, about five or six years. Mr. Alexander's residence was 30 about two squares from my shop, and I had an opportunity of seeing his son Tommy almost every day.

Q. 3. What was the mental capacity of said Thomas as you saw and knew it during the time you were thus acquainted with him? A. I did not think he was altogether right, there was something wanting in him.

Q. 4. Please state as accurately and fully as you can how this mental deficiency manifested itself? A. In his conversation, actions, and his associates, by his seeking small children, and for his amusement playing marbles, spinning tops, &c., with children 40 nine or ten years of age.

Q. 5. State, if you know, how he was regarded, or by what name he was called among the small children with whom he associated? A. Generally, Crazy Tom Alexander, and he was so called by children and older persons. The children calling out "here Crazy Tom come and play with us," and when any child in the neighborhood heard another tell a strange thing he would remark, "Crazy Tom Alexander told you that."

Q. 6. What capacity for learning to do things or for transacting business did he manifest? A. I judge none of any stability. 50

Q. 7. What sense or capacity or judgment of the value or use of property did he manifest? A. He really had no business with me. He came into my shop and wanted lumber, stating he had work to do and had no idea of the value of lumber, as he would do it for a price less than the lumber would cost.

Q. 8. State whether his conversation was coherent, and such as indicated reflection and judgment, or how otherwise?

[Objected to by Mr. Williams as leading.]

A. It was not coherent.

10 Q. 9. What appreciation of right or judgment of value did he indicate in his manner of taking or using tools that belonged to you? A. If he wished to do a piece of work and had not the tools, and I would not loan them to him, he would help himself to them.

Q. 10. In the matter of making bargains or proposing to bargain, state what indications, if you ever saw any, he gave of a mature or business judgment?

[Mr. Williams objects to question as leading.]

A. None.

20 Q. 11. Did you ever hear him make any bargain or propose to make a bargain? A. He called on me and wanted me to furnish him lumber to put a floor in an express wagon for a Mr. Coffay; the price he stated he was to get for the job would not pay for the lumber. Whether I let him have the lumber or not I can't say, but think I did.

Q. 12. State what was his temper or disposition, whether obstinate and perverse, or susceptible to kindness, and liable to be influenced or controlled by importunity or flattery, or how otherwise?

30 [Mr. Williams objects to question as leading.]

A. At times he was very child like, at other times in his father's house, very quarrelsome; he could be influenced if he had an object to gain; if he wanted lumber, he was willing to make any sacrifice for it so he could get it.

And farther deponent saith not.

JOHN D. BALL.

Subscribed and sworn to before me, this 2d day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.*

40 **Dr. James A. Stewart**, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your age, occupation and residence? A. Am in my forty-sixth year; am by occupation a physician, and reside in Baltimore city, Maryland.

Q. 2. Have you ever been connected with the hospital for persons of unsound mind? if so, when, and how long? A. I have been from the year 1857 to 1861.

50 Q. 3. Were you acquainted with Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey; if so, state

the extent of your acquaintance, and where formed? A. I was ; at the Maryland hospital ; he was one of the inmates of the asylum ; he was an inmate of the asylum as well as my memory serves me, for seven or eight months ; I never knew him outside, except by sight.

Q. 4. Was there any special charge or modification of the mental character or condition of said Thomas, while he was an inmate of the asylum ? if so, state what it was, and how his mental condition differed at the time of his discharge from what it was at the time he was received therein ? A. The principal change that 10 was observable was his quietness of deportment, and having become more amenable to control ; the discipline to which he had been subjected seemed to have had a good effect upon him ; there had been no material change in his mental capacity beyond his having grown more grave and less like a boy.

Q. 5. State what degree of intelligence or mental capacity he possessed ? A. That is a very difficult question to answer for the reason that his intelligence was of such a complex character that it seemed impossible to those by whom he was surrounded, to measure with any degree of accuracy or certainty, the extent of 20 his mental capacity ; he would sometimes appear perfectly simple, and then display a degree of shrewdness and apparent reflection that was surprising.

Q. 6. Had he, in your judgment, sufficient intelligence or mental capacity to make contracts or engage in any business ? A. Not at that time.

Q. 7. State to what extent, if you know, he had the sense of the value of property or of moral responsibility ? A. I had no opportunity of forming an opinion as to his capacity for the care of property or moral responsibility. 30

I think his moral responsibility was limited to the fear of consequences ; for instance, of being deprived of privileges, or of punishments, the principal of which while in the hospital, was being deprived of his liberty, as it was the habit of the medical superintendent to allow him the liberty of the grounds, and sometimes the city upon his parole.

Q. 8. State from your observation or knowledge of his mental character to what extent he could be influenced or controlled by kindness, flattery, or promises of things which he fancied ? A. He was more amenable to kindness than to coercion, for the reason 40 that his limited mental capacity was most capable when he was in good humor.

Q. 9. State whether he was influenced or controlled more by caprice, whim, appetite, judgment or conscience ? A. I should think that he was most frequently controlled by appetite and a desire for pleasure, than from any other motives.

Q. 10. When, in answering the fifth question addressed to you, you say that he sometimes appeared perfectly simple, and then displayed a degree of shrewdness and apparent reflection, do you desire to be understood as saying that he acted with the judgment 50

and calculation of a mature intellect, or with the craft and cunning often displayed by persons of unsound mind?

[Objected to by Mr. Williams as very leading.]

Question withdrawn.

- Q. 11. Please explain more ful'y what you mean by the expression used by you in the last paragraph of your answer to the fifth question? A. I mean, simply, there were sometimes flashes of intelligence coming out of apparent simplicity which surprised every one, and made it exceedingly difficult to measure his degree
10 of intelligence.

Cross-Examined by George H. Williams, Esq., Counsel for Proponents.

xQ. 1. State how many years it is since you saw said Thomas Alexander? A. Not since he left the institution, which I think was in 1857 or 1858; I am not sure which.

- xQ. 2. What was the cause of his being sent to the institution, and were habits of drinking in any manner connected therewith?
20 A. I understood that there were habits of drinking, and that it was partly to break up this habit, that he was placed in the asylum.
xQ. 3. Apart from drinking was there any necessity to send him there? A. I think not.

Direct Examination resumed by Mr. Stockbridge.

Q. 12. Had you any personal knowledge of his drinking or of his habits of drinking? A. None; I never saw him intoxicated or indulge in drink.

- 30 Q. 13. Do you know whether there were not purposes of discipline or control inducing his commitment to the asylum and aimed at therein? A. I understood at the time that his temper had been somewhat irregular and excitable, and that owing to his father's engrossment in business he had not time to control him as he would have wished, and therefore, partly for purposes of discipline that he was placed in the asylum.

Q. 14. State whether, in your judgment, at the time he left the asylum he had sufficient mental soundness to be entrusted with the management or disposition of property? A. I should think not at that time.

- 40 Q. 15. State what was his temperament or organization as indicating mental character? A. I should think he was rather phlegmatic than nervo sanguineous; his emotions, arising principally from external causes, such as stimulants and being crossed; he had a certain mental capacity, and though not fond of reading, always managed to occupy himself in one way or another sometimes usefully, and sometimes in a trifling way.

- Q. 16. State what quality or quantity of brain he possessed, or what was his physical organization as affecting his mental character or development? A. His brain, though small, was symmetri-
50 cally formed; his figure not well proportioned, bones were too

long for development of breadth; this of course gave him an ungraceful appearance which often attracted attention.

And further deponent saith not.

JAMES A. STEWART, M. D.

Subscribed and sworn to before me this 2nd day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

Elizabeth M. Ghiselin, a witness of lawful age, produced on the part of the Caveators, being by me duly sworn according to law, doth depose and say:

Q. 1. Were you acquainted with Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I was, from my earliest infancy. 10

Q. 2. What connection had you, if any, with his family; and where and when did you become acquainted with him? A. I was his first cousin—his mother's niece; I became acquainted with him in Annapolis, Maryland, where his father resided; I knew him from his earliest childhood.

Q. 3. What was his age as compared with yours? A. As near as I can remember he was about four years younger than I. 20

Q. 4. Were you accustomed to visit in his father's family, or he in your father's family? A. I was; I have stayed in his father's family for months at a time; he generally spent the summers in father's family.

Q. 5. What was his mental condition or capacity when you knew him as a child? A. He was an idiot, as far as I was able to judge.

Q. 6. To what extent was there mental development or growth as he advanced in years? A. There was none, as it seemed to me; he always appeared the same. 30

Q. 7. How was he regarded or treated, and with whom was he accustomed to associate when he stayed in your father's family? A. He was regarded as an idiot and treated as such; he associated with children much younger than himself, or with servants when allowed to do so.

Q. 8. How was he regarded or treated, and with whom did he associate in his father's house, at the times when you visited there? A. He was treated in the same way as he was when in my own father's house; I never saw much of him while at his own father's house; he never was treated as one of the family; he never asso- 40 ciated with the children of the family.

Q. 9. As a youth or young man, either in the country or at his father's house, to what extent did he mingle with grown persons or persons of his years at the table or in social gatherings? A. I never saw him at table when there was any one except the family, and at my father's he was allowed at the table with the children; as a young man I was never with him at social gatherings.

Q. 10. State, if you know, to what extent he ever learned to deport himself at table or in social life according to the rules and customs of good society? A. He never could be taught to eat 50

properly at table ; I never saw him in society, and therefore cannot say how he deported himself there.

Q. 11. Were you ever accustomed to see his brothers or sisters, older and younger than himself, at table or in society? A. I was.

Q. 12. State, if you know, why said Thomas was not received, or did not go into society, as the other members of his father's family, older and younger than himself, did? A. Owing, I suppose, to his deficiency of mind.

Q. 13. State how he was accustomed to be spoken to, or of, or by 10 what name he was called, by his father, mother, and other members of the family? A. As poor Tommy.

Q. 14. To what extent was he accustomed to act from impulse, passion or caprice, or from judgment, reflection, or conscience? (Objected to as leading by Mr. Williams |

A. I never saw him show any judgment, or reason ; he was very violent when in a passion, and we were very much afraid of him when he was excited.

Cross-Examined by George H. Williams, Counsel for Proponents.

20 xQ. 1. Please specify the time and place when you last saw and conversed with him, said Thomas? A. At my father's residence, I think twenty-two years ago.

xQ. 2. Give the date of your last visit to the house of his father? A. I think nearly twenty-one years ago.

xQ. 3. What was the character of his father for intelligence? A. He was a man of superior mind and undoubted abilities.

xQ. 3. How would your opinion compare with his as to a person you had not seen and conversed with as to said person's idiocy or want of mental character, he, said father, having been in daily 30 association with said person, and if your opinion were in direct conflict with that of the father therein, to which should most weight be attached?

[Objected to generally by Hon. Henry Stockbridge.]

A. I think, so far as my knowledge went, I would be as competent to judge of that person's idiocy as Mr Alexander. I think his father might have been biased by his affection for his son.

xQ. 5. Does the fact of such conflict in any degree cause you to distrust your opinion therein? A. It does not.

And further deponent saith not

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ELIZABETH M. GHISELIN
Subscribed and sworn to before me, this 2d day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.*

Emma S. Linthicum, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say :

Q. 1. State your relationship to Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey, and what opportunities you had for his acquaintance? A. I was his sister, 50 and lived in the house with him all the while, except a few years

when he was at school, until I was married, in 1860, and after that he spent most of his time with me until my father moved from Baltimore.

Q. 2. What was your age as compared with his? A. He was thirty-nine this Winter, and I was three years younger.

Q. 3. State to what extent, if at all, you saw your brother Thomas, after your father moved to New Jersey? A. He spent ten days or two weeks with me one year after my father removed from Baltimore, and then I stayed at my father's twice before my father's death. The first time was from a Tuesday afternoon until 10 Thursday morning; the next time I spent a week there; and then about two weeks I spent there after father's death. I also met him about five weeks after my father's death, by appointment at Jersey City. I suppose on the last occasion I saw him about an hour.

Q. 4. How, in your childhood, was he regarded or treated in your father's family—state particularly? A. He was treated as an unfortunate child, you may say an idiot, and never was allowed the usual privileges of other children, and was always kept away from us, and never taken into company before strangers; even at the table he was treated as a child always, even, as long as I 20 knew him.

Q. 5. As he grew up, what mental development or progress, or improvement did he make? A. There was no improvement. As his health improved his mind weakened. He was never thought competent to take care of himself in any way. His clothes were always bought for him and selected for him; sometimes was not allowed pockets in his pants—even his collars and everything were given to him just right for him to put on. He never was able nor would wash himself, unless made to, and frequently had an aunt to come and attend to washing him. I have seen Mary, 30 his sister, go in the bathroom, fix his water, and see him wash himself—see that he would do it. I saw this last in Newark, just one year before my father's death. He complained very much, and said it was very hard that he should be compelled to wash in cold water right from the spigot. At the table he was always treated as a child; his food was selected for him, that is, from what was on the table. He drank, and was compelled to drink milk and water with a little coffee in it, until he complained so much that he was allowed just to take the milk and water. He was never allowed out at night except at certain times and on 40 certain occasions, until he went to Newark, and then I heard my father say he could keep the poor fellow in no longer.

Q. 6. To what extent was he able to take care of or to keep his own clothing? A. He was not allowed to keep his own clothing, but it was given out to him just what was proper to wear; sometimes they would be locked up or put away so that he should not go out of the house; he was compelled to have his hair cut in one style always.

Q. 7. To what extent did he appreciate the value of clothing, and the necessity of keeping it when in his possession? A. He 50

never appreciated it, and often gave his clothing away unless watched; one time he gave every shirt he had except what was on his back.

Q. 8. State what was the character of his associates with whom he would mingle, or who would associate with him? A. His chief companions in Baltimore were little boys or servants in the house, or sometimes with the police.

Q. 9. To what extent did he at any time attempt to learn anything, or to engage in any business or pursuit whereby to earn a livelihood? A. We all understood he could never learn anything by study; he could read and could write, but it was very difficult to make out his writing or understand it; I have heard my mother say he never could never speak a word until he was six or seven years of age, and was never able to hold his head up until quite a large boy, and never held it up as other persons could; his articulation was such that it was very hard to understand, or for a stranger to understand him when talking.

Q. 10. State if you know what was the estimate of his mental character or capacity held by your father, mother and other members of the family. A. He was always regarded as very deficient, and looked upon as very unfortunate.

Q. 11. State more particularly what you mean by the terms "deficient" and "unfortunate," in your last answer. A. He was perfectly void of mind; he could never recollect for two hours back; he was perfectly imbecile.

Q. 12. By what name or in what terms was he accustomed to be spoken of in the family? A. As "Poor Tommy;" and my father in speaking of his troubles and cares would say, "Poor Tommy; but we can't help him; we must bear with him."

Q. 13. To what extent did your father entrust him with the custody, use or expenditure of money? A. I never knew him to trust him with money beyond ten cents, and that was on Saturday for his tobacco. Sometimes and generally Christmas he would give him five dollars with the understanding he would buy Christmas gifts with it, and Sundays he would give him money to put in the plate at church.

Q. 14. How late did you have any conversation with your father as to the character or condition of Thomas? A. Just eight days before my father's death, I made the remark, "Pa! how is Tommy getting on?" He said, "Poor fellow, Mary treats him very badly, but his fear of her did control him a little, but he was afraid he would have to confine him. That as he grew stronger and in better health his mind seemed weaker, and it was harder for him to manage him."

The examination of the witness not being concluded, but the hour of four o'clock having arrived, at the request of the counsel for caveators and proponents, I adjourned the commission to meet at the same place to-morrow the third day of April, 1874, at 10 o'clock, A. M.

HERMON L. EMMONS, JR., *Commissioner.*

Pursuant to adjournment the commission met, at the same place, on the third day of April, 1874, at 10 o'clock, A. M., but neither the parties nor their counsel, nor any witnesses appearing at 11 o'clock, A. M., I adjourned the commission to meet at the same place to-morrow, the fourth day of April, 1874, at 1 o'clock, P. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the commission met at the same place on the fourth day of April, 1874, at 1 o'clock, P. M.

Present, Geo. H. Williams, Esq., Counsel for Proponents, Hon. 10
Henry Stockbridge, Counsel for Caveators and the witnesses, at which time and place the examination of the witness, EMMA S. LINTHICUM, was resumed as follows :

Q. 15. If you had not completed at the time of the adjournment, your statement of what passed at the interview of which you were speaking in your last answer, please complete it. A. My father then went on to speak of his many trials and troubles, and that Mary had been the cause of all he ever had. That she had hastened my mother's death and Priscilla, the baby he called her, would now be alive if it had not been for her conduct. He may 20
not have used exactly those words. He said his home would have been so much happier, and poor Tommy would have been so much happier and better if it had not been for her. I said, "Pa, why did you not say that much seventeen years ago. How much happier your family would have been ;" and he answered, "Suppose she had taken laudanum and killed herself, how would I feel? I did all I could do, and now I must put up with it." When I said he may not have used exactly those words as to the first part of what I have stated he said, I mean it was substantially what he said, but the latter part of the conversation I have detailed is 30
exactly what occurred.

Q. 16. State to what extent Thomas was controllable or could be induced to act in accordance with the wishes of a person who desired to influence him either by kindness and promises, or by harshness and threats.

[Objected to by Mr. Williams as leading.]

A. I think and know that he could be influenced by either kindness or harshness, but it was oftener through fear that he was influenced, and that I saw him influenced ; it was a common thing, that is, five days in every week for Mary to say to him if he did 40
anything to displease her, "Now Tommy, I will tell pa when he comes in, and he has said he will send you to the hospital if you did not behave yourself;" I would say sometimes Missy, ain't you ashamed to treat him so badly—that is Tommy—and would say Tommy don't you mind what she says, you know pa is not going to do it, if you mind him.

Q. 17. State if you know the reason of his being placed in the asylum in Baltimore? A. I always thought it was because pa could not control him and was advised to send him there ; I never heard anything about drink at the time as being the reason 50

for sending him there, but I have heard Mary say he did drink and get drunk ; by Mary I mean Mrs. Mary Bingham, but I never saw him drunk or under the influence of liquor, or even drink anything intoxicating ; at my house, he has refused to take sauce as it had liquor in it ; it was well understood by the family that the hospital was the proper place for Tommy, and I have heard pa say he could not bear the idea of confining the poor fellow, and would not do it unless compelled to.

- Q. 18. State what difference you observed, if any, in the treatment of said Thomas by the family after the removal to Newark as indicative of any change of mental condition on his part? A. Unless I had been familiar with the family I should not have supposed he was one of my father's children, either from behavior, treatment or clothing ; in the morning he was called up, sent to the bath room ; Mary saw him take his bath, then dress and go down, either stand over the passage flue or sit in the kitchen until breakfast, as my father breakfasted with Tommy alone, generally ; Tommy had a quiet breakfast ; after breakfast he either stayed up stairs or in the kitchen until he could get the daily paper to read, and that was after every one had finished reading it ; after reading it he would go out, come in to lunch, and ask is Missy (Mary Bingham) in ; if answered no, he would go in the dining-room, get his two biscuit, eat and go out ; if told Mary was in, he would go in the kitchen and sometimes cellar and eat his lunch ; then he would either go in the cellar or yard and work with his tools—carpenters' tools, or else go out until dinner ; then when no company or strangers were at the house he would dine at the table with the family ; he was helped to what Mary (Bingham) said was right for him to eat, out of the dish before her ; he only was helped to what the other members of the family would refuse ; and if he (Tommy) asked the second time to be helped she would refuse him ; my father would say " Missy (that is Mary Bingham), let the poor boy have enough to eat," and she would say, " Pa, he will be sick ; he has eaten enough ;" and my father would become so worried, and say, " Missy, devil ! Missy, let the poor boy have some peace ;" and sometimes he would leave the table without finishing his dinner ; after dinner he (Tommy) would go out ; he was not allowed to take tea, as my father dined between four and five ; sometimes he (Tommy) would come home early in the evening, and come to the library door and beckon to me to come out and then ask me to go into the dining-room and talk with him, and then again he would stay out until ten, sometimes later ; he then went to his room with a small piece of candle that was allowed him ; his room was in the attic, adjoining the servant's room ; there was no carpet on the floor and no fire in the room, and Tommy has told me his bedstead was either nailed or screwed to the floor so that he might not move it if he wished to, and that Mary (Bingham) had had it done, and for the reasons I have named ; I had every reason to suppose that his mind, if possible, was growing weaker as he was then thirty-five years of age.

Q. 19. Was he ever accustomed to sit with the family at church? A. He was not; before the old church of St. Paul was burned down, he was made to go to church every Sunday, and sit in the gallery; after the church was burned down, he was sent to the Charles Street Methodist Church, and in Newark he attended the Methodist Church, and I believe became a member of it.

Q. 20. Was he to any extent a user of tobacco? A. He used it to a great excess; we could never keep anything clean around him, nor his clothes clean; even his bed-clothes, and his bed-room were in a terrible condition from the use of it; we all thought it affected his nerves seriously; sometimes he could not hold his cup or anything in his hand, and sometimes we would have to cut his food for him. 10

Q. 21. State the extent and purpose of his schooling? A. He was sent to school, not for the purpose of learning, but to keep him from the streets and out of mischief; he was sent North for several years, hoping the discipline there might improve him; I always understood that that Northern school was a school for imbeciles or boys of weak mind; my father promised him when he was twenty-one years of age that he should leave school and be brought home; when he came home he seemed hardly to remember any of the family; my mother died that spring, and when we would speak to Tommy of her, he did not seem to know or remember anything about her; he had been absent two or three years, may be more; then my father purchased a farm in Baltimore County, as he said, for the purpose of putting poor Tommy there; my cousin, Mr. Ghiselin, was sent there with him; he (Robert Ghiselin) was in charge of it, when father was away, and had charge of Tom, but my father found it was impossible to leave Tom there without him, and therefore sold the place, having had it somewhere about two years. 20 30

Q. 22. Was he ever trained or designed for any profession or business, whereby he was expected to earn a livelihood? A. Such a thought was never entertained by those in the family or out of it, and I heard my father say that if he only had a hundred dollars to leave, poor Tommy should have it, as he should never suffer, or want, if he could help it.

Q. 23. How did your father address and treat him? A. He called him "Tommy, boy," and always tried to treat him very kindly, but as a child, but not as I would treat a child ten years old. 40

Q. 24. How would the intellect of said Thomas, at the age of thirty or thirty-five years, compare with that of an ordinary child of five or six years? A. Tommy could read and write, but with that exception, he did not have the intellect or mind of any ordinary child of five or six years.

Q. 25. How did the family treat him and address him, especially when there were others there? A. He was not present when there were strangers there, and his family never thought of talking to him, except as we would do with a child five or six years of age.

Q. 26. Please give more particularly what was said by him at 50.

the interview which you have said you had with him, at Jersey City. A. Almost the first thing he said was, "Emma, I have made my will" and he seemed very cold; I met him at Jersey City by appointment, and he seemed very cold, and said he was hungry; that Missy, (Mary Bingham) would not give him any coffee for breakfast; we then ordered his breakfast, and after eating he went directly into the cars, where we remained, I suppose between a half hour and an hour; he then remarked, as I said before, "Emma, I have made my will;" I said, "Tommy, why did you
 10 do it? I would not worry myself about that; pa has provided for your will; I should enjoy my money and have everything I want; and not worry about it;" he then said, "Oh, well, I had to do it; Missy (Mary Bingham) said, 'if I did not make my will I should not live in the house with her, and that she would give me over to Mr. Linthicum and Julian Alexander, and that they might do as they pleased with me; that they' (Julian and Mr. Linthicum) 'had said that they were going to put me in the hospital, and that she intended to give me up to them, and let them do as they pleased with me; that all they wanted was to get me to Baltimore,
 20 put me in the hospital and spend my money;" I said, "Tommy, don't you mind her; Mr. Linthicum and Julian are not going to do anything of the kind; they are going to let you live where you choose, and you need not be afraid of them;" Tommy then said, "I have left you a thousand dollars, and I have left Stewart" (my, the witness', little boy) "something; and I have left Peggy something, and Rev. something;" (the witness explains that by Peggy and Rev., was meant her sister Margaret and her brother Reverdy.) I said, "Oh, Tommy, I would not trouble about it; you just enjoy your money;" Tommy then said, "Well, I had to
 30 do it; she," (Mary Bingham) "wouldn't give me any peace until I done it;" he then said he must go home, for he did not want Missy (Mary Bingham) to know he had met me.

Q. 27. Was your sister Mary a favorite with said Thomas? A. She was not; on the contrary, he disliked and feared her, and my father knew it; and he (Tommy) has often said, if he could only get away from Missy, (Mary Bingham) he could have some peace; that she would tell the old gentleman, that is my father, everything he did, and ask him to send him to the hospital, and he (Tommy) has sometimes asked us if we thought pa would do it.

40 And further deponent saith not.

EMMA S. LINTHICUM.

Subscribed and sworn to before me, this 4th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

Anne E. Alexander, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your relationship to the late Thomas S. Alexander, of Newark, New Jersey? A. I was his sister.

50 Q. 2. State what opportunities you had for knowing his son

Thomas, now deceased? A. I lived in the house with my brother, Thomas S. Alexander, until 1840, and was frequently there afterwards. I lived in the city of Baltimore all the while that he did.

Q. 3. State the date of the birth of said Thomas Alexander, as near as you can? A. He was born in January, 1835; I cannot tell the day.

Q. 4. What was the mental character or capacity of the said Thomas Alexander? A. I should think he was what the Scotch people call "innocent"—not capable of self guidance, nor responsible; that is, he had no mind. 10

Q. 5. State, if you know, how he was regarded in that respect by your brother Thomas S. Alexander, and the members of his family? A. I was always under the impression that he took that view of it. I never heard him say so, but they always called him "Poor Tommy."

Q. 6. What was the character of the conversation of the said Thomas, if you have ever heard him converse? A. It was not a conversation. He never kept up a conversation; it was a simple statement of fact, as "A did so and so." I never heard him converse sensibly. 20

And further deponent saith not.

ANNE E. ALEXANDER.

Subscribed and sworn to before me this fourth day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.*

Robert M. Proud, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your age, residence and occupation? A. Am fifty-six years of age; I reside in Baltimore City, Maryland, and am by occupation the Collector of Internal Revenue, Third District of Maryland. 30

Q. 2. State what opportunities you ever had of knowing Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey. A. Many years ago, when he was a boy somewhere from 10 to 15 years of age, he was in a class at Sunday school of which I was a teacher, and since then I have met him occasionally, until the family removed from Baltimore.

Q. 3. State what was his mental character or capacity, as you have had an opportunity to observe it? A. I have always considered him very deficient in intelligence, and as a scholar I found him not susceptible of receiving any intellectual impressions. 40

Q. 4. State more particularly what you mean by the term "deficient," in your last answer? A. I mean that he was very weak in mind, and I always considered him imbecile.

Q. 5. State to what extent he was, in your opinion, capable of transacting business and fitted to have the custody and disposition of money? A. I have never thought him at all competent to transact any business or have charge of any monies or disposition of monies. 50

Cross-Examined by Geo. H. Williams, Esq., counsel for proponents.

xQ. 1. Please state the intellectual standing and mental ability of his father, if known to you? A. His father was a man of very high standing, and recognized as possessing a very high order of ability.

And further deponent saith not.

ROBT. M. PROUD.

Subscribed and sworn to before me this 4th day of April, 1874.

10 HERMON L. EMMONS, JR., *Commissioner*.

No other witnesses appearing, and the hour of 4.30 o'clock having arrived, at the request of the counsel of the respective parties, I adjourned the commission to meet at the same place day after to-morrow (Monday), the 6th day of April, 1874, at 1 o'clock, P. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the commission met at the same place on the 6th day of April, 1874, at 1 o'clock, P. M.

20 Present: G. H. Williams, Esq., Counsel for Proponents, Henry Stockbridge, Esq., Counsel for Caveators, but neither the parties nor any witnesses appearing, at the request of the counsel for the respective parties, I adjourned the commission to meet at the same place to-morrow, the 7th day of April, 1874, at 11 o'clock, A. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the commission met at the same place on the 7th day of April, 1874, at 11 o'clock, A. M.

30 Present: Geo. H. Williams, Esq., Counsel for Proponents, Hon. Henry Stockbridge, Counsel for Caveators, at which time and place the following witnesses were examined, to wit:

Randolph J. Bouldin, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say:

Q. 1. State your age, occupation and place of residence? A. I am over fifty years of age. Am by occupation an attorney at law, and I reside in Baltimore City, Maryland.

40 Q. 2. State what opportunities you ever enjoyed for knowing Thomas (now deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I knew Thomas S. Alexander from about the year 1845, and at times had a good deal of business with him. I was also a commissioner with Mr. T. A. Linthicum for several years. Mr. T. A. Linthicum being a son-in-law of Mr. Thomas S. Alexander. At the offices of those two gentlemen I very often saw young Thomas Alexander, and have also seen him frequently on the street.

50 Q. 3. State fully what was the mental character and capacity of said Thomas Alexander, as known to you? A. I always looked upon him as an imbecile, and he doubtless was an imbecile

and was so looked upon by all who knew him, as far as I have seen or known.

Q. 4. State whether he had, in your judgment, sufficient mental capacity to make a valid deed or contract, or to transact any business.

[Objected to by Mr. Williams as leading.]

Question waived.

Q. 5. State more particularly the degree of his mental capacity so far as ability to make contracts or do business was concerned. A. He certainly was incapable of transacting business, for he did not possess the intellect to attend to or transact business; I never saw him, or heard of his transacting business; I should never have attempted to transact business with him, or have any dealings with, or to bargain or contract with him; and furthermore, during all the time that I was co-commissioner with Mr. Linthicum, Mr. Linthicum always treated him as an imbecile—that is, treated him and conversed with him as an imbecile, and one not possessing the ordinary intellect or intelligence to conduct the common affairs of ordinary life. 10

Q. 6. At the time when you last knew him, how would his intellect compare with that of an ordinary child of five or six years? 20

A. In an ordinary child of five or six years you would certainly find that it possesses mind and intellect, and very frequently in some matters, a good deal of intelligence, but in his case he did not appear to have any of those faculties that pertained to an ordinary child; I, in fact, looked upon him as an idiot.

Cross-Examined by Geo. H. Williams, Esq., counsel for proponents.

xQ. 1. How many years is it since you last saw him to converse with him? A. I do not think I have seen him since 1865, or 1866. 30

xQ. 2. Had Thomas S. Alexander, his father, sufficient brains to discern idiocy in those with whom he was in daily contact? A. Mr. Thomas S. Alexander was a man of brains, education, and of bright intellect, and ought certainly to have been able to discern idiocy in those with whom he was in daily contact.

And further deponent saith not.

R. J. BOULDIN.

Subscribed and sworn to before me this 7th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

Sebastian Brown, a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say: 40

Q. 1. State your age, occupation, and place of residence? A. I am thirty-three years of age; am by occupation an attorney at law, and I reside in Baltimore city, Maryland.

Q. 2. State what opportunities you ever had of knowing Thomas, (deceased) son of the late Thomas S. Alexander, of Newark, New Jersey, and of observing his mental condition and capacity?

A. I was a student in the office of Thomas S. Alexander for the 50

period of about twenty months, commencing in the summer of '864; while in the office I frequently saw young Tom, as we called him, and had some opportunity in this way of forming a judgment as to his mental capacity.

Q. 3. State what was his mental condition so far as capacity to make a contract or will, or to transact business was concerned? A. I do not think that during the time I came in contact with him he had sufficient mental capacity to make a valid contract, a valid will, or to attend to business affairs.

10 Q. 4. Did you observe during that time any material mental growth, development or change of any kind? A. I never remarked any at the time; still, as my attention was never called to the matter, his mental condition may have improved during this time without my knowing it.

Q. 5. Were his employments and pursuits, his fancies and attention to matters around him most like those of a young man from thirty to thirty-five years of age, or like those of a child of six or eight, or how otherwise?

[Objected to by Mr. Williams as leading.]

20 A. His pursuits were not those of a man thirty or thirty-five years of age, nor were they altogether those of a child of seven or eight. His pursuit and affairs were analogous to those of a weak minded young man.

Q. 6. What was his father's treatment of him as indicative of his father's estimate of his capacity? A. I should rather think that Mr. Alexander treated him as a father would naturally treat a son of weak mind, though I never had my attention called particularly to his manner of treatment.

30 *Cross-Examined* by George H. Williams, Esq., Counsel for Proponents.

xQ. 1. How long has it been since you have seen Tom to converse with him? A. I did not see him after the family moved to Newark, and I cannot remember exactly how long before they moved that I had seen him, but not long before that I had seen him.

xQ. 2. Had the father sufficient brains himself to correctly pronounce upon the son's ability to make a valid will? A. He certainly had.

40 And further deponent saith not.

SEBASTIAN BROWN.

Subscribed and sworn to before me, this 7th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

No other witnesses appearing at one and a half o'clock, P. M., at the request of the counsel of the respective parties, I adjourned the commission to meet at the same place on to-morrow, the 8th day of April, 1874, at 1 o'clock, P. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the commission met at the same place, on the 8th day of April, 1874, at 1 o'clock, P. M.

Present: George H. Williams, Esq., Counsel for Proponents, and Hon. Henry Stockbridge, of Counsel for Caveators, at which time and place I proceeded to take the testimony of the following witnesses, to wit:

Archibald Stirling, Jr., a witness of lawful age, produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say: 10

Q. 1. State your age, residence and occupation? A. I am 42 years of age; I am an attorney-at-law, and reside in Baltimore City, Maryland.

Q. 2. Do you hold any official position, and if so, what? A. I am United States Attorney for the district of Maryland.

Q. 3. Were you acquainted with Thomas (deceased), son of the late Thomas S. Alexander, late of Newark, New Jersey? A. I knew Thomas Alexander since about the year 1846; the only time I think I ever spoke to him in a conversational way, was at his father's house in Newark, I think, in 1867, and then I was 20 introduced to, and merely shook hands with him; about the year 1846, I was attending school not far from his father's residence, and I used to see him at that time very frequently about the streets, and heard him talking to other people; and I frequently heard people make remarks about him; but at that time I don't think I ever spoke to him. In the year 1865, I think it was, I was one of the board of visitors of the Maryland hospital, and continued such until some time in 1867; I recollect seeing Mr. Thomas Alexander there as a patient at one time when I was there as a visitor, but had then no conversation with him. 30

Q. 4. State the mental character and condition of said Thomas Alexander as it was known to you, so far as his capacity to make a contract, or will, or to transact business was concerned, at the time you knew him and saw him? A. At the time I referred to in 1846, I think he was not of sane mind, and I derived that impression from his language, behavior and appearance; his mental qualities appeared to be of a lesser quality than those of a boy much younger than he was; after 1846 and 1847, I have no recollection of seeing him more than once or twice, until I saw him at the Maryland hospital as I have stated. 40

Q. 5. Do you know how he was called and treated by his associates when you knew him? A. As to his associates, I do not think I ever saw him have associates, but among the people and boys of the neighborhood he was called and treated as insane and idiotic.

And further deponent saith not.

ARCH'D STIRLING, JR.

Subscribed and sworn to before me, this 8th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.*

Pembroke M. Womble, a witness of lawful age produced on the part of the Caveators, being by me first duly sworn according to law, doth depose and say :

Q. 1. State your age, residence and occupation? A. I am forty-seven years of age; am by occupation a physician, and reside in Baltimore City, Maryland.

Q. 2. State what opportunities you had for knowing Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey A. I met him repeatedly at his sister's, Mrs. Linthicum's, 10 from about 1862 until about the time Mr. Alexander moved to Newark; I had seen him frequently at church before that time, but never met him.

Q. 3 State the mental condition and character of said Thomas Alexander as you saw it while you were acquainted with him? A. I regarded him more as an imbecile than an insane person; his mind exhibiting rather imbecility than insanity; his reasoning powers seemed to be rather those of a boy eight or ten years old than of a person of his years; so far as that went his reasoning powers were balanced but imbecile.

20 Q. 4. Had he at the time you knew him sufficient capacity to transact business, make a contract or will, or have the custody and disposition of property? A. I do not think that he had any more than a boy of eight or ten, and I would not regard a boy eight or ten competent to do so.

Cross-Examined by George H. Williams, Esq., counsel for Proponents.

xQ. 1. Did you know the father, Thomas S. Alexander; if so, how long and when? A. I did; I first met him in 1863, I believe, 30 and knew him until he removed to Newark and met him afterwards.

xQ. 2. Had the father sufficient intelligence to discern or pronounce upon the mental sufficiency of Tom to make a contract or valid will? A. Certainly.

And further deponent saith not.

PEMBROKE M. WOMBLE.

Subscribed and sworn to before me this 8th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

The hour of 3.30 o'clock having arrived, and no other witnesses 40 appearing, at the request of the counsel I adjourned the commission to meet at the same place to-morrow, the 9th day of April, 1874, at 11 o'clock, A. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment the commission met at the same place, on the 9th day of April, 1874, at 11 o'clock, A. M.

Present George H. Williams, Esq., counsel for Proponents.

Hon. Henry Stockbridge, counsel for Caveators, at which time 50 and place I proceeded to take the testimony of the following witnesses, to wit :

A. Robert May, a witness of lawful age produced on the part of the Caveators, being by me first sworn according to law, doth depose and say :

Q. 1. State your age, occupation and place of residence. A. I am thirty years of age ; am by occupation a merchant, and reside in Baltimore City, Mary'and.

Q. 2. Were you acquainted with Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I was.

Q. 3. State when, how long and how well you knew the said Thomas? A. I knew him from about the year 1860, until the 10 removal of the family to Newark ; he was in my store quite frequently.

Q. 4. What was the mental capacity of said Thomas as you observed it during the time you were acquainted with him? A. I did not consider his mental character very sound ; he was light and frivolous.

Q. 5. State to what extent he had, in your judgment, capacity to transact business, to make contracts, or to have the care and disposition of property? A. I do not think he had any capacity to have the care of much property or its disposition. I never saw 20 him have any money, except about a quarter, or sums like that ; I have heard him speak of private family matters without reserve in my store ; and he wore the badge of an army corps conspicuously about him, and did other things of that kind which made the impression upon me that he was idiotic.

Q. 6. How would his intelligence, at that time, compare, in your judgment, with that of an ordinary child of six or seven years? A. About the same.

Cross-Examined by Geo. H. Williams, Esq., counsel for Propo- 30
nents :

xQ. 1. Were you acquainted with the father, Thomas S. Alexander? A. I was.

xQ. 2. What was his father's intellectual standing and calibre? A. Very good.

xQ. 3. Had he sufficient himself to enable him to pronounce upon the mental capacity of Tom? A. That I don't know, because the father is likely to be prejudiced in favor of the son ; I mean might be prejudiced.

And further deponent saith not.

A. R. MAY.

40

Subscribed and sworn to before me this 9th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

William M. Busey, a witness of lawful age, produced on the part of the Caveators, being by me first sworn according to law, doth depose and say :

Q. 1. State your age, occupation, and place of residence. A. Am in my thirty-first year ; am by occupation an attorney at law, and reside in Baltimore City, Maryland

50

Q. 2. State what opportunity you ever had for knowing Thomas (deceased), son of the late Thomas S. Alexander, of Newark, New Jersey? A. I was a law student with Thales Linthicum for about one year, say from about December 1863, to December, 1864 and subsequently for about six months I occupied offices with Mr. Linthicum; during that time the said Thomas was frequently in the office of Mr. Linthicum, and in my office; after that frequently saw him on the streets.

Q. 3. What was the character and capacity of mind of said Thomas as you knew it? A. From my observation, I regarded the said Thomas as naturally deficient in the mental powers and faculties with which human beings are ordinarily endowed; I frequently considered as a matter of interest and curiosity the true status of his mental faculties, and after frequent conversations with him, and considerable observation, came to the conclusion that he was idiotic, meaning by that, that he was naturally deficient in intellect; I never considered that Tommy, as he was styled, was capable of transacting any of the ordinary transactions of life, with sufficient intelligence, either to make himself
20 responsible therefor or to protect himself.

Q. 4. State whether he had, in your judgment, sufficient capacity to engage in any business, make a valid deed, contract or will, or to have the care, management or disposition of property? A. Not at all.

Q. 5. How would his intellect compare with that of an ordinary child of six years? A. I don't think the comparison would be admissible. A child of six years is ordinarily possessed of reasoning qualities, susceptible of development and improvement. Tommy's reasoning faculties, if he ever had any, had been blighted
30 (although, in my opinion, he had never been endowed with the ordinary reasoning faculties), and at the time I knew him he appeared to be possessed of no greater reasoning faculties or mental powers than a child of two or three years of age. A penny whistle, or a stick of candy, or a paper kite pleased him and gave him as much gratification as those toys would do children of two or three years of age. When objects that would interest more mature minds were placed before him they only excited his interest, as toys or playthings.

40 *Cross-Examined by George H. Williams.*

xQ. 1. How many years since you last saw him to converse with him? A. Between eight and nine years.

xQ. 2. How would your opportunities for passing upon his mental capacity compare with those of his father, and assuming for the purpose of the question that the father conferred upon him testamentary powers, what have you to say about that? A. I can't say. I don't know how often his father saw him, or under what circumstances, or how much his judgment might have been biased by paternal affection. As to the last part of the question
50 I have not a word to say.

xQ. 3. What was the mental capacity of the father, and whether biased or otherwise, had he sufficient brains to discern idiocy in one with whom he was in daily contact? A. The father was a man of unquestionably strong and logical mind, and had sufficient brains to discern idiocy or anything else in one with whom he came in daily contact; provided he was not biased in the exercise of his judgment.

xQ. 4. Was he a man of sufficient brains to discern and detect idiocy when he was in daily contact with it, and would paternal relations on his part and in his case neutralize or destroy his 10 ability so to discern and detect? A. He was a man of sufficient brains to discern and detect idiocy when he was in daily contact with it; I only knew Thomas S. Alexander, the father, as a lawyer, and whether parental relations on his part and in his case would neutralize or destroy his ability so to discern and detect I am unable to say.

And further deponent saith not.

W. H. BUSEY

Subscribed and sworn to before me this 9th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*. 20

Ferdinand E. Chatau, a witness of lawful age, produced on the part of the proponents, being by me first sworn in due form of law, doth depose and say:

Q. 1. State your occupation and place of residence? A. Am a physician and reside in Baltimore City, Maryland.

Q. 2. Did you know the late Thomas S. Alexander and his family, and if yea, in what years did you visit them and in what capacity? A. I knew them; I attended them as their family physician from the time they moved to Baltimore until the time 30 they removed to Newark.

Q. 3. Did you know his son Tom, and if you have any opinion as to his mental capacity, please give it? A. Yes, I knew him; I can't say much about his mental capacity; I can't say he was a bright boy.

Q. 4. Please specify whether he would be rightly termed idiotic, imbecile or what? A. He was certainly not idiotic; I would say he had a mind of not much capacity.

Q. 5. Had he sufficient capacity to validly exercise a testamentary power over property if given him; and assuming that 40 his father conferred such power, had he in your opinion sufficient mental capacity to execute it?

[Objected to by Mr. Stockbridge as leading.]

A. I am of the opinion that he had sufficient mental capacity to make an intelligent distribution of property belonging to him.

Q. 6. Had he sufficient mental capacity to execute an ordinary valid deed or contract?

[Objected to as leading.]

A. I have no decided opinion upon that subject; I speak only of my knowledge as I saw him here; I never saw him after the 50 family removed to Newark in 1866.

Cross-Examined by Hon. Henry Stockbridge.

xQ. 1. Did you not at one time give a certificate with reference to the mental condition of said Thomas for the purpose of having him admitted to an asylum for persons of unsound mind? A. I can't say I have any recollection about it.

xQ. 2 Had he so much mental capacity that you would have trusted him to transact business for you, or have confided to him the custody of property of yours? A. No, I don't think I would have intrusted him with property of mine without reference to the amount of mental capacity he might have had.

Direct Examination resumed.

Q. 7. During any time he was in Baltimore was he given to habits of drinking or intoxication? A. It is my impression that he did drink, but I can't say when or where I ever saw him drunk; but I am confident he drank.

And further deponent saith not.

F. E. CHATAU, M. D.

20 Subscribed and sworn to before me this 9th day of April, 1874.
HERMON L. EMMONS, JR., *Commissioner*.

The hour of 3 P. M. arriving, and no other witnesses appearing, at the request of the counsel for the respective parties, I adjourned the Commission to meet at the same place on to-morrow, the 10th day of April, 1874, at 2 o'clock, P. M.

HERMON L. EMMONS, JR., *Commissioner*.

Pursuant to adjournment, the Commission met at the same place, on the 10th day of April, 1874, at two o'clock, P. M. Present,
30 George H. Williams, Esq., of Counsel for Proponents; and Hon. Henry Stockbridge, of Counsel for Caveators, at which time and place I proceeded to take the testimony of the following witnesses, that is to say,

George W. Dobbin, a witness of lawful age, produced on the part of the Proponents being by me first sworn in due form of law, doth depose and say:

Q. 1. State your occupation and place of residence? A. I am an attorney at law and Judge of the Superior Court of Baltimore
40 City, and reside in Baltimore City.

Q. 2. Did you know the late Thomas S. Alexander and his son Tom, and if so, how long, and when? A. I knew the said Thomas S. Alexander for more than thirty years, certainly, and I knew his son Tom from his boyhood.

Q. From your opportunities of knowledge of the mental capacity of said Tom, are you able to state anything in regard thereto, and, if so, please do so? A. I had only such opportunities for knowledge as would be enjoyed by an acquaintance not specially intimate in the family, though quite intimate with his father,
50 Thomas S. Alexander, and having had frequent conversations with

him with reference to his son, and specially in relation to his mental capacity, and temper and condition of mind. From these conversations and from other causes which would not ordinarily in other cases have drawn my attention to the condition of the boy's mind, I was led more particularly to notice his. From these sources of information I was led to form the opinion that Tom's mind, whilst not strong, was more influenced by self will and eccentricity than by mere weakness of mind.

Q. 4. Have you any opinion as to his mental ability validly to exercise a testamentary power? if so, please state it. A. My 10 opinion, as to his ability to exercise testamentary power, would be much influenced by the subject which was to be exercised upon. Whilst, therefore, I might doubt his power to dispose of an estate involving complicated details, I do not doubt that he had testamentary capacity sufficient to enable him to dispose understandingly any single question not involving such complication.

Q. 5. Assuming as a fact that his father gave him testamentary power in his will over a portion of his estate, limiting it to a distribution among his family, what is your opinion as to his mental sufficiency so to act under the power given? 20

[Objected to by H. Stockbridge, Esq.]

A. Upon this assumption, I should think and am of the opinion, that he had sufficient testamentary capacity for the end proposed, and this opinion is confirmed in my own mind that no one better than his father knew the extent of his capacity, and what degree of testamentary capacity was requisite to enable him to make such a disposition.

Cross-Examined by H. Stockbridge, Esq., for Caveators.

xQ. 1. Is your answer to the last direct interrogatory an opinion 30 based on your knowledge of the mental capacity of Tom, or upon your opinion of the intelligence of his father, Thomas S. Alexander? A. It is an opinion based upon my knowledge of the mental capacity of Tom, and would have been so expressed had I not known what his father had done; but it is an opinion, which, so far as my own confidence in it is concerned, is much strengthened by the act of his father.

xQ. 2. Did you ever have any conversation with Tom, on any matter of business, or upon any topic calculated to illustrate his mental development and capacity? A. I never had any conversa- 40 tion with Tom strictly upon a matter of business, but I had repeated conversations with him upon a matter akin to business, which I will now state: Owing to personal kindness which I had received from his father, I made Tom a present of a pair of young thoroughbred and broken Devon oxen, and whenever I met Tom for some time thereafter, the subject of his management of these oxen, his care of them, their growth, and power to labor, became the subject of conversation, and I always found in him such an amount of intelligence as justifies the opinions I have expressed; it is impossible for me to designate with any exactness, the time 50

to which I now refer, but if I could, I think it would be found to be not far from fifteen years ago ; I am reminded now of the time, and have no doubt it is correctly stated to be seventeen years ago.

xQ. 3. From your knowledge of Tom, would you have entrusted to him the transaction of business for you, or the custody or disposition of property of yours ? A. I do not think that I should have chosen him for such a trust, but if there had been sufficient reason to induce me to depart from my usual rule of choosing the best agents to be had, I think I should have trusted him to perform any duty coming within the measure of the capacity I have ascribed to him.

xQ. 4. State, if you know, whether his father destined or endeavored to train him for any business or profession, or confided to him any business or property, such as a man of his intelligence and engrossing cares might have been glad to have confided to his son of fair mind and capacity ? A. Upon the subjects inquired of in this interrogatory, I have very limited knowledge ; but I distinctly remember that when his father purchased the farm in Baltimore county, upon which he for a while resided, he told me that
20 one main object he had in view in acquiring such a property, was to interest his son Tom in the pursuit of farming, and I infer, therefore, that he intended to entrust him with all the property and management thereof, which would be necessary to carry that object into effect ; further than this, I know nothing.

xQ. 5. State, if you know, whether that object of Mr. Alexander's was accomplished, and how long he retained that property ? A. I do not know to what extent his object was accomplished ; I only know that he sold the farm within two or three years after he bought it.

30 xQ. 6. Was not Mr. Alexander's nephew, Robert Ghiselin, in actual charge of the farm, and Mr. Alexander himself a constant visitor or resident upon it a considerable portion of that time ? A. I did not know Mr. Ghiselin, and cannot therefore answer the question, but I have some recollection that Mr. Alexander mentioned Mr. Ghiselin's name to me in connection with his son Tom and the farm. How often Mr. Alexander visited the farm I don't know.

And further deponent saith not.

GEORGE W. DOBBIN.

40 Subscribed and sworn to before me this 10th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner*.

Alexander Randall, a witness of lawful age, produced on the part of the Caveators, being by me first sworn in due form of law, doth depose and say :

Q. 1. State your occupation and place of residence ? A. Am an attorney at law, and I reside in Annapolis, Maryland.

Q. 2. State the extent of your acquaintance with the late Thos. S. Alexander ? A. We were boys together. I knew him intimately all his life.
50

Q. 3. Did you ever have any conversations with him in reference to his family, especially to his son Thomas? A. Whenever I met Mr. Alexander after he had removed from Annapolis, which removal took place I think in 1844, I inquired about his family generally, feeling much interest in himself and them. I recollect in one of these conversations, Mr. Alexander informed me that he had sent his son Thomas to a special school in Massachusetts, I think, certainly in one of the Northern States, where a gentleman whom he said had been recommended highly to him, kept a private school for weak-minded boys. He anticipated from all he had heard favorable results from sending his son Thomas there. I do not know that I ever had further conversation with him on the subject. 10

Q. 4. What official positions have you heretofore held? A. I was for some years Attorney-General of Maryland, and represented Maryland in Congress, the 27th.

And further deponent saith not.

A. RANDALL.

Subscribed and sworn to before me this 10th day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.* 20

Emma S. Linthicum, being re-called as a witness for the Caveators, doth depose and say as follows:

Q. 28. Look at the paper writing now shown you, marked Exhibit No. 3, and state in whose hand-writing it is? A. It is in the hand-writing of my brother Thomas Alexander, and is addressed to myself.

Q. 29. Did you receive it in due course of mail, and about when? A. I did receive it in due course of mail about the first of February, 1872, shortly after my father's death. 30

Q. 30. I read you from the second page of this letter, commencing on the second line and ending on the twelfth line, "Missy took trouble to go up to Mr. Jellap and order a pine bedstead stain with walnut color, and huck mattress to sleep on, and since it has been up my room, I have not slept on it, and don't intend to do so; I been sleeping on the floor in my room, she also taking my sheeting away from me, and I only got my blanket and spread, and I use my old over-coat and inside-coat to cover myself over it, and says that you told her at the bedside in her room that I ought to be put in Lunatic Asylum." State who is meant by 40 "missy" in this paragraph, and whether you made any such statement to her as mentioned there? A. He meant by "missy," Mrs. Mary Bingham; I did not say that to her or anything similar, nor have I ever said anything to Mary Bingham since my father's death, about what ought to be done to Tom, or what would be done with him.

And further deponent saith not

EMMA S. LINTHICUM.

Subscribed and sworn to before me this tenth day of April, 1874.

HERMON L. EMMONS, JR., *Commissioner.* 50

Exhibit No. 1.

Stipulation as to postponement of Testimony before Commission.

Exhibit No. 2.

Stipulation as to postponement of Hearing.

Exhibit No. 3.

NEWARK, N. J., Jan. 31st, 1872.

10 DEAR EMMA,

I take this opportunity to write to you, And want to tell mr. Linthicum that we are out of coal & missy says she dont intend to get any more coal, Be cause she cannot afford it, she haves already had three tons of furnace coal And I want you asked Julian if I can get two ton of furnace coal, it only cost \$13.00. The price of coal is \$6.50 a ton. Send me word by telegraph as soon as you read this letter of mine. I had to turn the water off
 20 of it this afternoon to keep it from freezing It is very cold up here and also in the house I had one of my ear frozen bitten last night and have been suffering with it all day long, And also I want you to mention to Julean about a mattress I can get a hair mattress made for 30 dollars at mr Jellap furniture store on Broad str I mention it to Mr. Linthicum and he said he could not say any about till he saw Julian Missy took trouble to go up to mr Jellup and order a pine Bedstead stain with walnut color & huck mattress to sleep on & since it has been up my room, I have not slep on it, And dont intend to do so. I been sleeping on the floor in
 30 my room she also taking my sheeting away from me &, I only got my blanket and spread & I use my old overcoat & inside coat to cover myselve over it. And says that you told her at the bed side in her room that I ought to be put in Lunitic Asylum & that Julean and mrs Linthicum only want to get me to make my will & leave all my property to steward & then they would put me in the Lunitic Asylum & keep me their untill I die. They only want me to come to Baltimore and soon as I reach that city that Julean & mr Linthicum would put me Hospital I told her that
 40 mr Linthicum and Julean have not got no right to interfee with me whatever. And she said that mr. Linthicum told her that I should not board in Newark that he & Julian had no time to come to Newark to look after me that he intend to put me where mr Strong—son is and have a man to look after me. I told her that I was not crazy to be put in such place as that. That I am able enough to take care of myselve as well as she or Pegga or Rev more so than buck is. I would not down what Rev done in Newark & New York city some four year ago. If I had done what he did I would been sent to state prison long before now. As soon as Mr James R Sayre return from washington I know what
 50 I intend to do. I have not receive no answer from him yet about

that place which he promise to get for me at the centre str depot. Tell Steward that Ant Ann send her love to him and rest of the family & she intend to call to see them when she leave this city to go to New castle where her nece is stopped & then come on to Baltimore to see you all I must stop now, It is very cold in the house, I stop now It going on 12 oclock P.m. Write soon & let me here from you all & Please send me the Baltimore paper you can direct my Letter in this form
Thomas Alexander Jr Residence 1070 Broad Str Newark.

10

Wednesday, April 15, 1874.

Before his Honor Judge Titsworth, and associates.

Messrs. Carter & Kirkpatrick, for Proponents.

Messrs. Keasbey & Leonard, for Caveators.

Caveators' Proctor also called

George M. Johnson, sworn :

Q. Mr. Johnson, where do you live now? A. In the city of 20
New York.

Q. Did you formerly live in Baltimore? A. Yes, sir.

Q. Are you the brother of John Johnson, the first witness examined in Baltimore? A. I have a brother named John; but I have not heard of it.

Q. Were you acquainted with Thomas Alexander, son of Thos. S. Alexander? A. Yes, sir.

Q. When were you acquainted with him, and how familiarly; and what opportunities had you of knowing his mental capacity and character? A. Well, I was born in Annapolis, where he was 30
living at the time. I think he was born there also; but still we were brought up there together as children.

Q. What is your age? A. I am in my 37th year.

Q. How much older than you was he? A. Well, I am not quite sure; I think there may have been a year or two's difference.

Q. How long did you live in Annapolis? A. I lived there from the time I was born in 1837, up to 1850, or 1851, I think—when I went to boarding school.

Q. Did you live there after he and his father removed from Annapolis? A. Yes, sir; I think they moved before we did. 40

Q. Did you know him in Baltimore? A. Yes, sir.

Q. How intimately? A. Well, as intimately as two families could be—I was at their house, and they were at our house probably every day—probably two or three times a day.

Q. Were you familiar with the family of his father? A. Yes, sir.

Q. Are you a relative of the family? A. Yes, sir

Q. What relative? A. A cousin, sir.

By the Court :

Q. Cousin of his father? A. Yes.

50

Further Examined :

Q. How are you his cousin? A. Well, my father and Mrs. Alexander were first cousins—that is “Thomas’” mother.

Q. Did you know him, and continue that intimacy until the time of his father’s removal to Newark? A. When they moved to Baltimore, I went to boarding school. Then from boarding school I went to Princeton; from college I returned to Baltimore, in May, 1855, and then I knew him there until he moved.

Q. During those last eleven years of his life in Baltimore, were
10 you very intimate all that time? A. Yes, sir.

Q. Did you know him after he came to Newark—meet him? A. No; I never saw him after the family left Baltimore.

Q. What was the mental character or capacity of Thomas Alexander, his boyhood when you knew him in Annapolis? A. We all looked upon him as a simple boy.

[Proponents’ Proctor objected to that kind of evidence.]

Witness : Simple—almost an idiot, incapable of taking care of himself.

Q. What reason had you to consider him almost an idiot? A.
20 He never associated with boys of his size, and he was laughed at by the boys; they plagued him and tormented him at times. He never associated with boys of his size at all.

Q. What was there in his conduct and actions as indicating mental incapacity, to your knowledge? A. Well, it is so long ago now, as a boy, that I can hardly say what particular thing he did, except that he was a very simple child, and seemed altogether incapable of taking care of himself.

Q. The time you knew him in Baltimore after 1855, down to
30 1866, what was his mental character and capacity during those years? A. He had grown, but I don’t think his mind had grown at all with him. He was still about as a child.

Q. How was he treated in the family? A. Always as a child.

Q. Did he associate with members of the family, as others of his age—other children of his age—I mean in public society, when there was company there? A. In company, no; but in the family he was always there. In company or entertainment he was not there, that is, when I was there.

Q. What were his associates, if you know, outside of the house—outside the family? A. Well, that I don’t know, sir.

Q. To what extent was he capable of attending to business—
40 making contracts? A. Well, I should say, not at all.

Q. During those 10 years—11 years did you observe any growth or development in his intellectual character? A. No, sir.

Q. What was his appearance, physically? A. He was tall, thin, remarkably emaciated, and his expression was not very clear,—not very bright.

Q. How did he express himself, verbally? A. Well, he would ask you “How you were,” or something of that kind; he would ask you to give him a chew of tobacco; then he would probably
50 wander off to something else.

Q. How was he called in the family by his father and others?
A. Either "Thomas," or "Poor Thomas;" never anything else but Thomas.

Q. Or poor Thomas, you say? A. Or poor Thomas.

Q. What is your business and position now, Mr. Johnson? A. I am clerk in Comptroller's office in New York.

Q. Are you any relative of Mr. Reverdy Johnson in Baltimore?
A. Nephew.

Q. And son of Chancellor Johnson of Maryland? A. Yes, sir.

Q. From your knowledge of Thomas Alexander, up to 1866, 10 was he, in your judgment, of sufficient, sound and disposing mind and memory to execute a will? A. Well, I should say not; I should not think he was capable of disposing of property at any time, or of taking care of it.

Cross-Examined:

Q. Are you a lawyer, Mr. Johnson? A. No, sir.

Q. Do you know what mental capacity is required in New Jersey to make a valid will? A. No, sir; I don't.

Q. How long have you been employed in the Comptroller's 20 office? A. This last time since February. I was employed there some years ago.

Q. When were you employed there before? A. I was employed there before in 1871--'871 or 1872.

Q. Between 1855 and 1866, I did not exactly understand what you said as to what capacity or means you had of observing the capacity of "Thomas." A. I went to boarding school from Annapolis. I left boarding school and went to Princeton. I returned from Princeton and went to Baltimore in May, 1855.

Q. What opportunity had you of seeing him during that 11 30 years? A. Well, from 1855, when I went to live in Baltimore, up to the time of Alexander's death, I was very frequently at his house. He lived down Lexington street. I used to go in very frequently. I knew the girls very well, and was in there off and on quite often.

Q. When you were there, he was at the table? A. Always, when I was there.

Q. How did he conduct himself at the table? A. In a rather uncouth way. His father would help him to something occasionally; he would cut him some meat, and would give it to him, and 40 he would want something else that they thought not good for him.

Q. Otherwise his conduct and deportment were correct enough?
A. So far as I saw him.

Q. When you spoke to him he would know what you said; he would understand? A. Yes, sir.

Q. And if you asked him a question he understood? A. Yes, sir.

Q. And answered with propriety? A. Yes, sir; he would answer a question.

Q. You never saw him after his father removed from Baltimore?
A. No, sir.

Q. Did you know anything about his condition during that time? A. No, sir.

Q. Did you ever see him attempting to engage in any business? A. Never.

Q. You never had any actual observation of how well he could do business? A. I have occasionally seen him in his father's office, where he had paper and was scribbling.

Q. But you never saw him undertake any business? A. No, sir.

Q. You had no means from actual observation of ascertaining 10 with what ability and skill he could conduct it? A. None.

Q. Did you ever engage him in conversation? A. Very frequently.

Q. Well, was it rational? A. No.

Q. Give us an instance now, in which he conversed with you irrationally? A. I cannot do that very well, because it has been quite a number of years; I cannot remember now.

Q. You cannot recollect any instance then? A. No; not any particular talk with him.

Q. Cannot you give us any one instance now, in which he par- 20 took of a conversation in which you thought he was not rational; tell us what he did or said? A. I cannot recall any particular conversation.

Q. Can you give us any fact whatever to strengthen your opinion that he was not capable of undertaking business? A. I cannot remember any particular fact. It was his general conduct.

Q. Just from your general observation of his appearance and demeanor?

[No answer.]

Q. Could he read? A. I suppose so.

Q. Could he write? A. I have seen him scribbling. 30

Q. Do you know whether he could write? A. I have seen what was said to be a letter written by him.

Q. Have you any personal knowledge? A. No, sir.

Q. The letter that was said to be written by him, where did you see that? A. I saw a letter written by him, it was in Mr. Linthicum's possession.

Q. Said to be written by him? A. Yes, sir.

Q. You had no knowledge of the fact whether it was written by him or not? A. No sir.

Q. Are you acquainted with his handwriting? A. No, sir. 40

Caveators' Proctor also called

H. Eugene Alexander, sworn:

Q. Where do you live? A. At New Brighton, Staten Island.

Q. Have you lived in Baltimore? A. Yes, sir; I was born in Baltimore.

Q. Are you a relative of Mr. Thomas S. Alexander, formerly of Newark? A. I am his nephew, sir.

Q. And the brother of one of the executors of his will? A. 50 Yes, sir.

Q. Did you know Thomas, the son of Thomas S. Alexander?
A. Perfectly well.

Q. When did you first know him? A. I have known him—let me see—well, I have known him for 26, 27 or 28 years; I suppose he came to Baltimore in 1845, and I have known him ever since.

Q. What was your age in "45"? A. I was 6 years old in 1845; my age is 34.

Q. Did you know him then when he first came to Baltimore, and continuously until they removed from Baltimore? A. All the time I was in Baltimore—in 1862, I went into the service, and they removed to Newark in 1866; but prior to that time, all the time he was in Baltimore. 10

Q. Did you see him during the time you were in the service, from 1862 to 1866, occasionally? A. Yes, sir.

Q. Have you seen him since "66"? A. Yes, sir.

Q. How often and where have you seen him since 1866? A. At his father's house.

Q. How many times? A. Oh, 50 times.

Q. Frequently, then? A. Yes, frequently. 20

Q. How lately; up to within what time of his death did you see him? A. I saw him—I think the last time was the day of his father's funeral. I don't think I have seen him since then.

Q. What was his mental character and capacity in his childhood? A. Oh, a perfect idiot.

Q. How was he treated in regard to his domestic position and his intellectual and mental characteristics, in the family during all the time you lived in Baltimore? A. Always as a child and as a person whose feelings were not to be cared for; as one who was not considered a competent person. 30

Q. Was he ever engaged in business, or ever undertook any business or employment? A. None that I am aware of.

Q. Did you go to school with him? A. Yes, sir.

Q. Where? A. At Mr. Hamilton's training school in Baltimore.

Q. How was he treated at school, and how did he conduct himself? A. He was always with the boys smaller than himself; children I may say; and he was looked upon as one of them, and was treated as one of them.

Q. How was he called? A. "Tommy," and by outsiders, by boys of the—(interrupted.) 40

[Proponents' Proctor objected. Caveators' Proctor stated his question to the Court as follows: "How was he known and called by his associates and other boys by whom he was known at the time he was at school?" The Court allowed the question.]

Q. How was he called by his companions in childhood while he was at school? A. Crazy Tom Alexander.

Q. Did you observe any development or growth in his mental character during his after life? A. Yes; I was of the opinion that as he grew older, he grew worse; he grew more imbecile as he grew older. I was positively of that opinion. 50

Q. How was he treated in the family ; did he appear in society when visitors were present, as the other children, or was he treated differently ? A. As near as I can recollect, most generally he was not allowed to come in the parlor ; occasionally he did come in, but as a generality I am very certain he was not allowed.

Q. How was it here, so far as you observed in your visits to his father in Newark ? A. He was with us then in Uncle Thomas' library. I don't recollect ever being at any party or gathering in Newark during the time I was at my uncle's house ; therefore he
10 was with us in the library very frequently when we were there.

Q. What was his mental character and capacity, as you saw and knew him, during the latter part of his life, here ? A. Well, I considered him very, very weak, very unsound.

Q. To what extent was he capable of making a contract and transacting business ? A. I should not consider he could do anything at all.

Q. Would you have felt at liberty to deal with him in a business matter ? A. No, sir ; certainly not.

Q. Do you know what he did ; how he employed himself here ?
20 A. In a carpenter shop, I think.

Q. Do you know why he was employed there ? A. To keep him out of mischief. I think that was Uncle Thomas' idea ; to give him employment and keep him out of mischief.

Q. Was it done with your uncle's approbation and desire ? A. Yes.

Q. In whose shop was he placed ? A. I don't know.

Q. Do you know whether he knew the value of money ? A. Simple sums of money, such as 25 or 50 cents.

Q. Did he appreciate the difference between large sums of
30 money ? A. I never knew that he was ever trusted with anything over a dollar or 50 cents.

Q. From your knowledge of him, did you consider him capable of dealing with considerable sums of money, with understanding ? A. Certainly not.

Q. What was your intercourse with Thomas, principally, when you saw him ? A. "How do do, Thomas ?" "How do do, Eugene ?" "Give me 25 cents." He was always a man for small sums of money.

Q. Did you ever undertake to have any serious, sober business
40 transaction with him ? A. No, sir.

Q. Why not ? A. For no reason at all ; but I never had anything at all to do with him. I should have considered him incapable of doing anything.

Q. Did you consider him of a sound, and disposing mind and memory, the last time you saw him ; the last you knew of him ? A. No, sir.

Q. How was he called at home during the latter part of his life ? A. Always "Tommy."

Q. How did his father call him ? A. "Tommy," and "Tommy
50 boy."

Cross-Examined :

Q. You say, Mr. Alexander, that at the commencement of his life, in the early episode, he was a perfect idiot? A. I considered him so.

Q. That is, he had no mind at all? A. I think he had no more intellect—

Q. What do you understand by the term "Idiot?" A. I considered him an imbecile.

Q. What is your profession, Mr. Alexander? A. Banker, sir.

Q. I want to get just the idea you mean to express by the word "Idiot." Do you mean a person absolutely without understanding, or a person of weak mind? A. I consider an idiot as a person of very, very weak mind.

Q. Do you understand that an idiot can learn to read and write? A. Yes, sir.

Q. Then that includes your idea of an idiot? A. Yes, sir; an idiot can learn to read and write, but has very limited understanding

Q. You say that as he grew older his mental deficiencies grew more apparent, or his mind got worse? A. Yes, sir. 20

A. And he was incapable of judging about money matters? A. I think so, positively.

Q. Did you ever see him undertake a part in a business transaction? A. No, sir.

Q. Do you suppose he was capable of going into a store and making a judicious purchase of 40 or 50 dollars and paying for it? A. No, sir.

Q. Well, sir, if you were told he did conduct such a transaction successfully, would it make any difference in your judgment? A. Hardly any at all; I should be very doubtful, &c. 30

Q. Was he a member of the church? A. I think he was a member of the Methodist Church.

Q. Did he take part in the public service—worship—the exercises of the church? A. I don't know.

Q. Was he capable of an intelligent way of doing them? A. No, sir.

Q. For what reason? A. Simply because he could not express himself clearly.

Q. Not in a coherent and proper manner? A. No, sir.

Q. Did you ever hear him attempt anything of the kind? A. 10 No, sir.

Q. Then your opinion is from what you saw him do on other subjects? A. Yes, and other conversations.

Q. Did not Mr. Alexander have another son? A. Yes, sir.

Q. What was his name? A. Reverdy.

Q. What name was he commonly called in the house? A. "Red," and "Buck."

Q. Was it not a usual thing to bestow their names—nick names in the family? A. It is the case in all families, I believe.

Q. And it was the case in that family, was it not? A. Yes, sir. 50

Q. You never saw him deal with any large sum of money? A. No, sir.

Q. Never saw him attempt to make a contract? A. No, sir.

Q. Can you narrate any other conversation you had with him, than those you have already narrated? A. I cannot repeat any conversation I had with him; but the matter of them.

Q. I suppose you looked down upon him from his earliest youth as a person of very weak understanding? A. Decidedly, sir.

Q. Then having that opinion, you did not undertake any con-
10 nected conversation with him as you would with a person of full mind? A. I did not attempt to flatter him.

Q. You did not attempt to draw him out, and to see what extent of capacity he possessed? A. No, sir.

Q. But acted always on the assumption that your first opinion was a correct one? A. I acted on the supposition that he was a person of imbecile mind.

Re-Examined (Direct) :

Q. In any of your interviews with him, in all the last years of
20 his life, did you ever observe in his talk with you, or with others, any indications that he had grown strong in intellect, or mind? A. No, sir.

Q. Did you ever consider it worth while to attempt to draw him out as a person of ordinary intelligence? A. No, sir.

Q. How was he called by others outside the family; the colored servants, and others in among the family? A. He was called "Tommy," or "Boss Tommy."

Q. He was universally called "Tommy" by everybody? A. Yes.

30

By the Court :

Q. You were frequently, you say, in the family, and saw him there? A. Yes, sir.

Q. What was the testator's consciousness of the relationship existing between him and other members of the family; for instance, how did he look upon his father, and sister, and brother; did he seem to know them and regard them as relatives; did he understand that kinship which belongs to persons? A. Yes, sir; undoubtedly.

40 Q. And appreciate it? A. Yes, sir.

By Proponents' Proctor :

Q. When he was in his father's library, how did he employ his time? A. Lolling in a chair, or getting up and walking up and down occasionally, or reading to his father.

Q. And sometimes conversing with his father? A. Yes, sir.

Q. Did his father take part in the conversation and talk to him? A. Yes, sir.

Q. Was the conversation rational or pertinent, or incoherent
50 and irrational? A. Well, he would make a remark, and his father

would answer it; then he would make another remark, and his father would answer. I never heard any continuous pertinent conversation.

Q. Do you know whether he could read? A. Oh, yes; he could read.

Q. Did you ever see him spending his time reading? A. Yes, sir.

Q. Could he write? A. Yes, sir; I think he could; a very tremulous hand; not a firm hand.

By Caveators' Proctor:

10

Q. Did you ever see him reading a book? A. Yes, sir.

By Proponents' Proctor:

Q. He recognized, without difficulty, his relatives and the servants, and knew the various relations which the various persons have one to another in the family? A. Yes, sir.

(Witness) I would remark that the character of the books he read were very childish.

Q. Such as what? A. Such books as we had in boyhood.

Q. Will you name any one, sir? A. Yes, sir; let me see; "The Children's Own Book," and easy books. I cannot think of the names of them just now at this moment. Books telling easy little stories, easy lettered, and with easy words.

Adjourned until April 16, 1874, at 10 A. M.

W. J. KNIGHT, *Stenographer.*

Thursday, April 16, 1874.

Caveators' Proctor also called

Julian Alexander, sworn:

30

Q. Are you one of the executors of Thomas S. Alexander's will? A. I am, sir.

Q. And one of the trustees of the share of Thomas Alexander, his son, under that will? A. I am, sir.

Q. Are you connected—a relative of the family? A. I am a nephew of the late Thomas S. Alexander.

Q. Where have you lived? A. I was born in Baltimore and lived there all my life.

Q. What is your age? A. I am 35; I was born in 1838.

Q. Are you a lawyer, sir? A. I am a lawyer, sir.

40

Q. When did you first know Thomas Alexander, the son? A. I first knew him about the year '44 or '45, when the family came to reside in Baltimore from Annapolis. They came to our house before they took a house in Baltimore, and got settled.

Q. What was your age then? A. I was then about 6 or 7 years old.

Q. What was the mental character and capacity, and what were the habits of life of Thomas in those early years, from your knowledge of him, and onward until he moved from Baltimore?

A. Well, when the family first came to Baltimore, of course, I 50

was too young to know much about Thomas' intellectual character, but we always understood he was not—(interrupted)

[Proponents' Proctor objected.]

(Witness) I am not speaking of what was told me; I was going to say it was understood in the family—(interrupted)

[Proponents' Proctor objected. That is what you were told.]

(Witness) I can variate it in this way: that I thought he was not like other children. I am now speaking of the time when I was only 6 or 7 year old—

10 [Proponents' Proctor objects to such evidence, as incompetent.]

Q. Well, I will ask Mr. Alexander this question: State your knowledge, your observation from what you saw, what his mental character was, and then the result from that in your own mind?

A. Thomas was kept pretty much separate from the other children, and I used to see him every now and then from that time until I went to school. All that time I did not consider that Thomas was like other children at all, certainly not like other boys I had anything to do with. When he went to school he was put in the very lowest class, in the what is called the "Infant Department," and I don't think that at the time he was at that school he could either read or write; that is my recollection of it.

20 Q. What was his personal appearance, that is, his habit and dress? A. His personal appearance; he had an extraordinary figure, and in his after life, and with the exception of his not being quite so tall, he looked pretty much as he did then. He was rather filthy in his dress. I may say that at that school he was treated as boys do treat any person of incompetent mind—idiotic.

30 Q. How was he treated? A. As soon as school let out Thomas would start off and run around in a very playful way, and he would come home pursued by a whole lot of boys yelling at him and tormenting him. He was known to all the boys in the town; his appearance was such that they all knew him.

Q. What was he called? A. He was called crazy Thomas Alexander. I have had boys come up to me and my brother, when he was with me—

[Proponents' Proctor objected. Court sustained objection.]

40 Q. How was he treated at home? A. Well, he was treated at home, so far as my observation went, and I saw a good deal of his treatment there, he was treated as an idiotic child; he was always treated in the family as an idiotic. I went to school with Thomas about a year before, or more than a year, and I think I left school and went to boarding school; college afterwards, and I did not see much of him then; but it is my recollection that he generally spent the summer vacation in the country. I think he did. But I was home at Christmas. I came home for the Christmas vacation, and he would come up very frequently to our house, or I would be going down the street and I would stop in and see him at his home. He appeared to me then to be just the same as
50 he was when I first began to take notice of him.

Q. Was he received as a member of the family when visitors were present? A. No, sir.

Q. How was he treated as to his personal care, and the care of his physical—his body? A. Well, he was taken care of just the same as if he were a child or a baby; he was made to wash and put on his clothes. Of course, I cannot know much about the internal arrangement of the house, but that was what I observed.

Q. When did his mother die? A. In 1856, I think. He went to school in Massachusetts about the year 1852 or 1853, and did not return until after his mother's death.

Q. Do you know what school that was? A. It was a school kept by the Reverend Mr. Northrup.

By Proponents' Proctor :

Q. Do you know anything of your own knowledge about it? A. About the school; I know this; I happened to be in my uncle's office when Mr. Stockett was there, and I heard my uncle had received a letter from the Rev. Mr. Northrup, who kept a school.

Q. You have no personal knowledge about that school, have you? A. No, sir.

[Proponents' Proctor then objected.]

Further Examined :

Q. When he was brought home did you see him? A. I was home in 1856 when they brought him home.

Q. Were you then at his father's office? A. Yes, sir; I think I commenced to study law in 1857. I studied law with my uncle.

Q. Did you see any change or growth in his mental character or capacity, after he had come home from school? A. Not the slightest.

Q. Did you have frequent opportunities of observing them? A. I did; he used to come in perhaps every day, until his father bought a farm in the country and put him out there, and I was out at the farm very frequently.

Q. Could he read? A. He could read, I think; I know he could.

Q. Did you hear him? A. I never saw Tom read a book in his life; I never saw him read anything but a newspaper.

Q. Could he write? A. He could write in a very peculiar kind of a way. While I say I saw him read the newspaper, I never saw him read anything except the local matter.

Q. About the place in the country, did you know of that being bought? A. Yes, sir.

Q. Who was put in charge of it? A. Robert Beesley.

Q. Was Tom sent there? A. Tom was sent there with Robert.

Q. Was there a farmer employed? A. There was.

Q. Did Tom do any work? A. I never saw him do any.

Q. Were you out there? A. Frequently Tom was not physically capable of doing work.

Q. Was he not physically capable of doing ordinary farm work?

A. I think not, sir.

Q. How were his habits at that time as to cleanliness in his room? A. Oh, filthy; his bedroom was a sight. He occupied the bedroom adjoining the bedroom occupied by Robert, and there was tobacco juice all over the floor, and on the bed clothes. I remember Thomas proposing at one time that I should sleep with him out there, and I was shocked at the idea.

Q. How long did he stay on the farm? A. Well, he stayed 10 there I think, for a year and a half.

Q. Where was he put after that? A. In a Lunatic Asylum.

Q. Where was that? A. The Maryland Hospital.

Q. Did you ever know him to be in the habit of drinking? A. I never did; I never saw Tom drunk in my life, or affected by liquor. I would say that I have heard after 1863 or '64, that he he had been drunk on several occasions.

Q. When did he come out of the asylum? A. I think he came out in 1859.

Q. Did you observe any change in his mental state then? A. 20 I did not, sir

Q. Who were his associates after that time? A. Well, Tom never had any associates. It was impossible to converse with Tom; and in his youth when he had boys around him, all that took place was a kind of chaffing Tom; drawing him out and getting him to say something ridiculous. Then as he grew older he never had any other associates that I ever saw, except little children. I have seen Tom, who was tremendously tall—6 feet 6 inches—I have seen him surrounded by boys 8 or 9 years old; he going along with them; not leading them at all, but just going

30 along with them.

Q. He used tobacco freely? A. Very freely; and his hand trembled very much. I suppose from the use of tobacco.

Q. When the war broke out, did that produce any effect upon his mind? A. When the war broke out Tom became at first a violent secessionist; very violent; but afterwards, a very short time, he changed and became just as violent on the other side, and he used to carry on in a rather extraordinary way.

Q. How did he show it? A. From the first, his father was a very strong Union man, and his sister, Mrs. Bingham, was of the 40 same policy, and it was natural, therefore, for him to turn. Tom at one time, his father told me, enlisted; but his father had got him off. He was very indignant, and threatened to have the officer punished, but it turned out afterwards that he had not enlisted in fact, and nothing could be done. I have heard some extraordinary stories about Tom. At one time he showed me a paper containing the names of a great many gentlemen who lived round Mount Vernon place, near his father's house. He said they were the names of rebels, or rebers, as he called them, who he had spotted, and whom he intended to have arrested.

Q. After the war in 1866, his father removed to Newark? A. Yes, sir.

Q. How did he come to Newark? A. He was sent in the care of Ann, the colored woman sitting there [witness pointing to colored woman in attendance on Mrs. Bingham.]

Q. The colored cook of the family? A. Yes, sir.

Q. Did you see him after he moved to Newark? A. I did. I always used to go to his house.

Q. Did you frequently go to the house? A. Always, when I came to New York.

Q. Did you observe any change in him up to his father's death? A. I did not observe the slightest.

Q. How was he treated here during his father's life, in the family? A. He was treated in the same way that he always had been—as an idiotic child; everything had to be done for him; he was not allowed to choose in anything; not even allowed to choose his own clothing.

Q. What were his habits as to cleanliness, and taking care of himself? A. Always filthy; he never took care of himself; he had to be washed every day.

Q. What was his personal appearance—describe that? A. His personal appearance was very extraordinary. He was about six feet six inches—or he told me so—and he was very thin.

Q. Have you photographs of him? A. I have; which show him a great deal better than I could describe. This photograph [handing one to Judge], he gave me himself, to give to my mother.

Q. Which is that one? A. That is the one with the apron on. That was taken, I suppose, in 1873 or 1872.

Q. What is the other? A. These others are two photographs of him taken here in Newark, and which came to us enclosed in this paper.

By Proponents' Proctor:

Q. To us? To whom? A. To Mr. Linthicum and myself. He always addressed his letters to 'Linthicum and Alexander,' and these photos came enclosed in this paper.

By the Court:

Q. You say he gave you this photograph (alluding to one with apron), for what? A. To carry to my mother.

Further Examined:

Q. As a gift? A. Yes, sir. That is an admirable likeness of him.

Q. Is this his handwriting on the back? A. That is his handwriting on the back.

Q. Did this come in it? [showing witness a paper, afterwards marked as No. 7.] A. Yes, sir.

[Caveators' Proctor read the paper—"I feel very bad what I

have done, I got seven dollars from Lawer (lawyer) to pay for my trunk, and I have lost it, and that is the first time I have never (ever) lost money before in my life time, I wish you would send me some to pay for it. THOMAS ALEXANDER, 1070 Broad and Camp st., Newark.”]

Witness—We had deposited \$50 with Mr. Fitzgerald to give out to Thomas as he might need it, and that money that he lost was part of that \$50. With regard to Tommy's speech, he could not
10 talk; he could not pronounce every word. With regard to his walk, he rather staggered in his walk, and threw his legs about, and he always struck me, from what I have heard on the subject, that his walk and speech evidently pointed to some injury in his brain.

Q. Describe his physical structure now, as well as you can? A. Well, with regard to his head, he had a very low forehead, his hair coming down very low upon his forehead; he had a dull, staring face; he had an inarticulate kind of speech; had a very monotonous voice, and a perfectly lifeless look.

20 Q. What was the character of his complexion? A. Very sal-low; unhealthy.

Q. Any indication of blood; any flush about the face at all? A. No; very pale.

Q. Beard? A. He had none; he never had any.

Q. Did he shave at all? A. I don't know about his shaving.

Q. Do you know whether it was necessary for him to shave? A. There was nothing for him to shave. I don't know whether he used a razor or not.

Q. What was the character of his arms and limbs—legs? A.
30 His arms and limbs were very disproportionately long.

Q. Feet? A. The middle of his foot came down where the heel ought to be.

Q. In regard to his mental capacity, at the time this paper, this will was executed, what was his mental character and condition in reference to the making of valid contracts or agreements? A. Thomas was utterly incapable of doing anything of the sort; utterly incapable of entering into a contract or transacting any business, or of making a will or any disposition of any kind of property he might have. If he owned this Court House, and wanted \$10,
40 and somebody came and offered him \$10 for the Court House, he would have sold it. He had no conception of the value of money.

Q. Do you know anything about any instance of his want of knowledge in business, derived from himself, in reference to his going into business on his own account? A. Mr. Linthicum and myself happened to be here one day, I think in 1872, and he said to me that a friend of his—it came out after a great deal of scuffling—he did not tell it so connectedly as I do now—a friend of his had proposed to him to go into business, in which they could each make \$1,200 at least, a year. The friend told him that some
50 capital would be necessary to be invested in this business. He said

\$2,500 would be sufficient. He said we were his trustees and ought to give it up to him, and recommended that we should get him \$2,500 for this business. We inquired what this business was, and then it came out that it was the bill posting business. He wanted to go round posting bills. I suppose it would require a capital of perhaps a dollar and a-half for that. After his father's death, whenever he wanted any clothes, we gave him orders for the clothes on different persons—Messrs. Halsey, Hunter & Halsey, and on one or two occasions I myself and Mr. Linthicum have gone with him to Spencer Scott & Company, and to another man named Smalley, to order clothes for him. Then we allowed him \$12 a month for spending money. 10

Q. Have you heard his father speak of him? A. Well, Uncle Thomas never discussed Tommy's character with me, or Tommy's intellect, or anything of that sort, but whenever he spoke of him, he always spoke of him as "Poor Tommy," and assumed, I always thought—(interrupted).

[Proponents' Proctor objected.]

Witness—I will give an instance. Tommy was in the habit 20 whenever I came to the house, of always asking me for tobacco or money for tobacco. Whenever I came to Newark, he used to come to my room early in the morning and wake me up, and then shut the door, and would say, "Jule, I wish you would give me a dollar or two dollars." I would say, "What do you want the money for, Tommy?" and he would say, "Hush, hush! Missy will hear you."

Q. Who did he mean by Missy? A. Mrs. Bingham. I would say, "Oh, Tommy, I don't care if she does hear me;" then I would generally give him the money. I would generally give him one or two dollars. On one occasion I did not have any change 30 with me when he came there, but my brother was out there, and I got change from him. I think he was there. Tom joined me at the front door as I was going away with Uncle Thomas to New York. Tommy said, "I want to speak to you." I asked Uncle Thomas to walk ahead, and I would join him in a moment. I then gave Tommy a dollar or two dollars, and then I started off and joined Uncle Thomas, and I thought I ought to tell him about this, and I did tell him; and I told him I had been in the habit of giving Tom money in small sums, and I said I did not know whether he approved of it or not; but if he did not he could just 40 say so, and I would not give him any more. He said: "Poor boy, it is no use giving him money; he don't know what to do with it, but you may give him small sums; I don't suppose he will misuse it." He then went on to say that Tommy was a member of the Methodist Church, and one or two societies, and that his joining these societies assisted Uncle Thomas in keeping Tommy straight. And Uncle Thomas whenever he spoke of Tommy, he spoke with a forced cheerfulness, and he always addressed him as Tommy, and Tommy boy, which produced the impression on me that he wanted to persuade Tommy that he, at least, was on his 50 side, and that he did not consider him as bad as the others thought.

Q. You say that Tommy could write ; was not he in the habit of writing letters ? A. He was.

Q. Have you received any letters from him ? A. I have

Q. Look at that one (handing witness a letter dated January 15, 1872, marked No. 1). Was that written by him ? A. That is Thomas' handwriting.

Q. And this one, (handing witness a letter dated February 13, 1872, marked No. 2) ? A. And that is his handwriting.

Q. And this (handing witness letter dated May 16, 1872, marked 10 No. 3) ? A. That also.

Q. And this (handing witness letter dated June 2, 1872, marked No. 4) ? A. That also.

Q. This (handing witness letter dated July 13, 1872, marked No. 5) ? A. That also.

Q. And this (handing witness letter dated November 18, 1872, marked No. 6) ? A. And that also.

[Caveators' Proctor then read and offered the above letters in evidence, and also three photographs of Thomas Alexander, deceased, and the paper in which a photograph was inclosed to Messrs. Linthicum and Alexander, the paper being marked No. 7. Photographs marked as follows: Photo of Thos. Alexander, deceased, wearing regalia of Temperance Society, marked No. 8. The two others marked respectively 9 and 10.]

After the reading by Caveators' Proctor of letter marked No. 4, the witness said: I would say that I never made any of those statements which are referred to in that letter.

Q. There are statements made throughout these letters from Mr. T. Alexander as to what Missy told Tom, that you had told her in reference to taking him to a lunatic asylum. A. I never said anything of the sort to Missy, or anybody else.

Q. He speaks frequently of being sent to an asylum. Did you give him any cause to fear that you were going to send him to an asylum ? A. I never did. On the contrary, I always assured Tommy that he was safe from the asylum as far as I was concerned, and that I would never put him there. I thought he ought to be put there.

Q. What happened when he spoke to you about it ? A. Well, it happened in this way: Before I took out letters upon Mr. 40 Thomas S. Alexander's estate—I think it was a day or two before—I had almost resolved that I would not do it. I had made my mind up not to. We took out letters about the 19th or 20th of December, 1871. It was a day or two before we took out letters on the will of Mr. Alexander, that I had an interview with Mrs. Bingham, and she said something about what she intended to do ; she said she was taking a house in Newark—(interrupted).

[Proponents' Proctor objected, that conversations with Mrs. Bingham about Tom were incompetent.

50 Caveators' Proctor urged that it was competent, because she

(Mrs. Bingham), was the proponent to whom nearly the whole of the property left by the will of Thos. Alexander, deceased, went. And the evidence was competent to show undue influence, he (Thomas Alexander, deceased), having been weak minded and living alone with her.

Proponents' Proctor said Mrs. Bingham was not a party to the suit, in any way, and the statements alleged were not made in the presence of the testator, and therefore it was the evidence of a third person, not connected with the suit, and was consequently inadmissible. Further, that they had not paved the way for admission of such evidence; they had laid no prove that she (Mrs. Bingham), had coerced him (Thomas Alexander, deceased); that the only statement they had was one made by a person, who, if their theory was correct, was a lunatic. 10

Caveators' Proctor replied.

Proponents' Proctor still objected.

The Court. "Just what is hearsay, and what not, in investigations of this sort is sometimes difficult to define. The Court don't regard this altogether in the light of an ordinary suit between parties. The effort, of course, on the part of the executors is to establish this will, and on the part of the Caveators to reject it as a will. 20

"On the part of the Caveators it is urged that they resist this will on the ground that the testator had not sufficient mental capacity, and on the further ground that he had undue influence brought to bear on him to make him make his will; that the principal devisee under the will used undue influence to induce him to make the will.

"Now, while the Court don't mean to express a decided opinion as to the effect of these letters, it is clear that the letters, as far as are offered in evidence, are not evidence in themselves of the declaration contained in them. 30

"The letters were received by the Court on the ground that they tend to show the mental capacity of the testator, and they were competent on that ground.

"On the ground now on the proposition now, to receive the declaration made by the principal devisee to the witness upon a matter touching the threats which she made to the testator, or the promises which were made to the testator which induced him to make this will, appears unanimously in this testimony, and ought to be admitted, that it may tend to show undue influence on the part of the principal devisee, and we consider that anything which would show that to the Court ought to be received; that anything respecting undue influence brought to bear by the principal devisee should be received." The Court therefore admitted the evidence. 40

Witness—She said she was taking a house in Newark and would like Tommy to live with her, and that her income and Tommy's income together would enable them to manage and support the house. I did not exactly approve of that plan, but I 50

merely said that I did not think she could control Tommy, and I thought the proper place for Tom was in a lunatic asylum. To that she said that he could not be put in a lunatic asylum, because Buch would object to it, and so would she herself, so shortly after her father's death, she would not like it; besides that she said she was capable of managing Tom; then the conversation turned on something else. A day or so after that, when I had taken out letters on the estate, I had another conversation with Mrs. Bingham, and in that conversation she again repeated that she intended
 10 to take a house in Newark, and that she wanted Tom to live with her, and spoke of her having the care of him, and during the latter part of Tommy's life he required somebody to take care of him, he required to be watched over, and he had to be looked after like a child. She thought she could manage him, and she wanted me to agree that Tom should be given to her, and that his income should be paid over to her for the support of the establishment. In reply to that I said that I thought the proper place for Tommy would be in an asylum, and that if he was my brother I would put him there; I thought he would be a great deal happier there. He
 20 need not be strictly confined, but could receive proper medical treatment, and would be a great deal better and happier. Then I went on to say that I had no control over Thomas' person under the will, but that I was simply one of the trustees as to the property; that Tom could live just wherever he pleased, and that I was not going to interfere with him; it was a social matter. My advice had not been taken about putting Tommy in an asylum. On that she got very angry with me and accused me of being under the dominion and control of Mr. Linthicum and his wife, and said that I was conspiring with them to take Tommy off to Baltimore; but that was utterly untrue. Some time after that, I think
 30 it was after the sale which took place on the fifth of January, or before the sale, I again met Mrs. Bingham. I happened to be at the house there, I was in the passage, and Mrs. Bingham—I would state before I go further, that at the end of the last conversation I had with Mrs. Bingham, when she was speaking of me being in combination with Mr. Linthicum and his wife to take Tom to Baltimore, she added that it was also to get Tommy to make a will leaving the property to Mr. Linthicum and his children.

Q. She added, in that conversation to you, that the combination
 40 against her was by you? A. By me and Mr. Linthicum and his wife to get Tommy to Baltimore, and to put him in an asylum, and then get him to make a will, leaving the property to Mr. Linthicum and his wife and children. In reply to that I said, I did not think Mrs. Linthicum wanted Tom in Baltimore, and I could not conceive of any person who had young children growing up, having such a person as Tommy in the house; and as to making the will, I did not think Tommy could make a will. To that, she said that Tom could make a will, and that his father thought so. I said, I don't think uncle Thomas said so; but whether he said
 50 so or not, that don't give Tommy the power to make a will, and I

don't think he can make a will. This was about the time of the sale in December, 1871. Now I will go back to what I was saying took place in the passage. She said to me that she had had three doctors examine Tommy, and they said Tom could make a will, and that she had made Tommy make a will, so that if we took him to Baltimore we should be disappointed. To that I said that we had no intention to take him.

Q. That was the 5th of January? A. Somewhere about the 5th of January. It must have been before. Or at any rate, Tommy had himself told me that he had had doctors to examine him and, as he expressed it, they said he was not fit for a lunatic asylum. This is his expression. I supposed, as he was looking rather scared, that some communication had been made to him about my intention to put him in a lunatic asylum. I asked him if she had told him so, and he said "Yes." I said, if anybody said that to you it is a lie, and I used some strong expressions before it. I told him I had never expressed my intention of doing that, and I added, that if you never get into an asylum until I put you there, you never will.

Q. When was this? A. Before the sale, I think. I don't know whether he told me in the presence of Mr. Linticum or not. I think it was that we intended to take him to Baltimore and put him in a lunatic asylum. The evening after the sale, Tommy came into the library, and I took occasion to say that if anybody said I intended to take him to Baltimore and put him in an asylum, I said he was a liar, and I put in some strong language there, too, because I had no intention of doing anything of the sort. Five or six times after that, during the summer, I had occasion again and again, to say to him that I was not going to have anything to do with putting him in any lunatic asylum. He seemed to live in dread of being put in a lunatic asylum. I have nothing further to say about this. It was about June or the beginning of July, 1872, that she, Mrs. Bingham, was speaking about going to Richfield Springs, and she wrote us a letter to go on and make some arrangement about Tommy. I think you have the letter there. Anyhow, we went on to Richfield in response. When we got there we had some talk, and she wanted—the question came up about the disposition of Tommy. She said she had a few days before, gone down with the daughter of Mr. John Rutherford to Media, and while she was down there she had visited an asylum for feeble minded children, and feeble minded adults too. She thought that was just the place to put Tommy, and she produced a pamphlet of the Pennsylvania Training School for feeble minded children. I said I don't know; I thought Tom wanted medical treatment, and an asylum was the proper place, but I did not intend saying anything more about it.

Q. That was June? A. That was in June; sometime about the 18th or 19th or 20th of June; somewhere along there, in 1872.

[The Court. I would ask you how far you intend to prosecute

this examination? This is Mrs. Bingham's statement in relation to Thomas' condition and that is clearly hearsay.

Caveators' Proctor replied that this evidence was considered as evidence that she had used undue influence.

The Court. Then your point now is to show that Mrs. Bingham knew of his feeble condition.

Caveators' Proctor. Exactly, that is the point I am now making of this testimony, I don't care to press it now, I shall have occasion to offer more proof.]

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Q. You speak of a letter; I don't know which letter you refer to—(handing witness a letter). A. This is the letter. I observe the post mark is June 17th; to the best of my recollections that is the letter that brought us on, and the conversation occurred about that time.

Cross-Examined:

Q. You say that after Thomas grew up he was taken care of first as a baby, and that he had to be made to wash; did you ever
20 see him made to wash himself? A. It was told me so.

Q. Did you ever see him? A. No; I never saw him.

Q. What did you ever see which enabled you to say of your own knowledge, that he had to be taken care of just as a baby? A. Well, after his father's death, and after we became trustees of his estate, we were told how things had been conducted before.

Q. You were told? A. Yes; and we were urged to carry on business in the same way. It was represented to us that it was necessary to watch him. I have been at the table there, at Mr. Alexander's house; he took pretty much what his sister would
30 give him.

Q. Did he know how to eat? A. Yes; in a very uncouth way.

Q. His whole manner was that way, was it not? A. Yes, sir.

Q. Now your knowledge of him is from when you first knew him, to some 5 or 6 years back? A. Yes, sir.

Q. He went away in 1852? A. Yes, sir.

Q. You were then 14 or 15? A. Yes, sir.

Q. Where were you? A. At Boarding school—college, sir.

Q. From '52, to after his mother's death, did you see much of him? A. I did not see him at all.

40 Q. His mother died in 1856? A. I think so; yes, sir.

Q. In 1857, you commenced studying law with your uncle?
A. Yes, sir.

Q. Then you saw him occasionally? A. Yes, sir.

Q. And you did not discover the slightest change? A. Not the slightest.

Q. How old was he in '57? A. Well, he must have been about twenty-two.

Q. Had he learned to write? A. He had, I think.

Q. And had learned to read, of course? A. Yes, sir.

50 Q. Thomas had the same intellect then? A. Yes, sir.

Q. Not an absolute idiot ; without mind ? A. No, he had some glimmer of mind ; he had been at school, you know, ever since I suppose—well, I commenced going to school with him in 1847 or '48, and I presume he had been to school before that.

Q. Do you know anything about his having been to school before you went with him ? A. No, sir.

Q. You say you never saw him read anything but the newspaper, and then you always saw him reading the local matters. How did you find that out ? A. He would come down there in the office and take up a newspaper, and look at the part of the part where the local matters were, then he would read them, and put down the paper and go off. 10

Q. Well, did you notice every time he read the newspaper to see what part of it he read ? A. I did not. I have seen do this thing three or four times ; and when I see a man of the sort of mind Tommy had, do a thing three or four times, I take it as a usual thing for him to do.

Q. Well, do you suppose he understood about these local matters, and took an interest, and understood what the newspaper conveyed ? A. I suppose he did. 20

Q. His mind was capable of comprehending what it said ? A. Yes ; if a murder took place he would understand it, and he would understand if a fire took place. There was this difference : at the time we were growing up as boys, we all took an interest in fire matters, and every boy knew the names of the different fire companies and their numbers, but Tommy never knew them.

Q. What was the population of Baltimore at that time ? A. One hundred and two thousand.

Q. Were you acquainted with the population of Baltimore at that time ? A. No, sir. 30

Q. Do you mean to say that every boy knew the numbers of the fire companies in Baltimore ? A. Of course, I cannot say that ; I am just taking the average. I suppose that out of every one hundred boys, ninety-nine knew the numbers and names of every fire company in Baltimore.

Q. That is your supposition ; you did not know one-tenth of the boys in Baltimore ? A. No, sir. It was just as it is now. You will find boys in Baltimore of 10 or 11 years old, that know all the fire alarm stations, and when the alarm is given, they can tell where the fire is. 40

Q. Can you say of your own knowledge, that half the boys in Baltimore could do that ? A. Of course I cannot say that.

Q. Well, then there might be at least one-half the boys in Baltimore, that don't care any more about the fire boxes than Tom did ? A. Yes, sir ; but I say it is within the capacity of the average boy to know that.

Q. Where is this place in the country that Robert Beesley had charge of ? A. About 6 miles from Baltimore.

Q. In Baltimore County, about 6 miles from Baltimore ? A. Yes, sir. 50.

Q. Was it a farm? A. Yes; of 100 acres.

Q. While Thomas was up there, how much of your time did you spend there? A. I used to go there in the summer frequently.

Q. How much time did you spend there; on an average, how much in a year? A. I would go down in the summer time, I suppose, once or twice a week, and stay all night.

Q. Did you stay there a day or two together? A. Sometimes; not often.

Q. Then your general visits were for the evening and night?

10 A. Yes, sir.

Q. Could you observe—had you the means of observing of what he did in the day-time? A. No; I don't know how he employed himself about in the day-time on the farm. I don't think he could work about the farm.

Q. You think he was not physically capable of doing work? A. No, sir; he was very weak; in games of wrestling and so forth, Tommy had no power at all.

Q. Now, did he not fall into habits of intemperance, while on this place? A. I never knew it, sir.

20 Q. Did you not see it? A. I never saw him drunk in my life?

Q. Who went there beside you? A. My brothers used to go there, and the Johnsons.

Q. The Mr. Johnson who was here yesterday—did you ever see him there? A. No. There was a great many gentlemen used to go up there to see the family and Mrs. Bingham.

Q. Did the family live up on the farm? A. In the summer. There were a great many gentlemen came out there.

Q. When was Thomas put in the asylum? A. I think in '57 or '58.

30 Q. And from that time how often did you see him? A. When he came out of the asylum.

Q. How long was he in the asylum? A. He was in there a year and a half.

Q. Did you see him during that time? A. I don't remember whether I did or not. I think it likely that I saw him, but I cannot say.

Q. But during all this time you never noticed any change in him? A. No, sir.

40 Q. You say it was impossible to converse with him. What do you mean by that? A. Tom was not capable of carrying on a connected conversation. The conversation that the boys had with him when I first knew him consisted pretty much in chaffing him.

Q. Well, after he grew up? A. After he grew up I never had much to say to him, except he would come to me and ask me for money.

Q. Did you ever undertake to engage him in any connected conversation for the purpose of seeing how far he was capable of carrying on a connected conversation? A. No, sir.

50 Q. But you always acted on the assumption that your first opinion was correct; that he was not capable, and you never tried

to engage him in a connected conversation? A. It was not an assumption; I could see. I had evidence of it.

Q. That he was incapable; and so you did not make the attempt. A. No, sir; Tom and I were always good friends.

Q. Well, when the war broke out, he had the capacity to distinguish between the two sides in conflict, had he? A. I don't know; I don't think he had; I think probably he might from hearsay; I don't know how the impression came on my mind, my impression is that he changed from being secesh, and became a strong Union man.

Q. Did he know the difference? A. Did he know the principles?

Q. Yes. A. No, sir.

Q. Did he know the difference between secesh and Union? A. No, sir.

Q. What did you hear him say that leads you to that conclusion? A. I never heard him say anything about it.

Q. Then your opinion was not formed from what you heard him say? A. No, sir.

Q. But rests on the same opinion you had before, that he was incapable? A. Yes, sir.

Q. Was he capable of understanding the nature of the difference? A. Yes, sir; I was going on to say——(interrupted).

Q. I want the fact, Mr. Alexander? A. You see, Mr. McCarter, it was in this way: I knew Tommy very well, and I always assumed that Tommy was conceited and idiotic, and so I never charged my mind with any instance or anything of that kind that I can recollect.

Q. You say he carried about with him after he became a Union man, a paper containing the names of prominent rebels that he had reported and meant to have arrested? A. Yes, sir.

Q. Well, did he tell you that? A. Yes, sir.

Q. He had mind enough then to comprehend that there were persons who, in his opinion, should be arrested? A. He saw that being done almost every day.

Q. Well, when he saw it done he could understand that it was done? A. Yes, sir.

Q. His father was somewhat prominent as a Union man, was he not? A. Yes, sir.

Q. He was prominently engaged in litigation with the Police Commissioners, that brought him prominently before the public? A. He was a leading Union man.

Q. Do you suppose that Tommy was capable of going into a lawyer's office and intelligently directing the details in such a will as this? A. I do not, sir; I have taken hold of this matter and I am absolutely certain that Tommy could not comprehend the character of that will.

Q. But suppose it should be proved to your satisfaction that he did do that? A. Well, you could not prove that to my satisfaction.

Q. You say that he gave you a photograph and requested you

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to give it to your mother, did he comprehend the relation your mother bore to him? A. Do you mean—

Q. That she was his relative? A. Yes, sir.

Q. He was able to understand that? A. Yes, sir.

Q. He knew his father? A. Yes, sir.

Q. And his brothers and sisters? A. Yes, sir.

Q. And knew the relation they held to him? A. Yes, sir.

Q. Did he resemble his father? A. No, sir.

Q. There was no family resemblance? A. No, sir. His father
10 had a very intelligent look.

Q. His general resemblance was not a resemblance of his father?

A. Not at all.

Q. You speak of his being a member of a lodge, or some society, do you know what society he belonged to? A. I do not.

Q. Do you know if he had joined a temperance society? A. Yes, sir.

Q. And he became equally as ardent a temperance man as he had been in his use of intoxicating drinks? A. Yes, sir.

Q. He was capable, then, in your opinion, of understanding the
20 relations the various members of his family bore to him, his family relations, such as his father, brothers and sisters? A. Yes, sir.

Q. You say this lead pencil writing on the back is his (Propo-
nents' Proctor referred to a photograph, No. 8, having lead pencil writing on the back thereof)? A. Let me see it, please. (Photo-
graph above referred to handed to witness.) Yes, sir.

Q. Who is the Stewart referred to there? A. Mr. Linthicum's son, I presume.

Q. He has a son "Stewart," I believe, who is mentioned in the will? A. Yes, sir.

30 Q. Do you know of his working at the carpenter business? A. His father told me when he put him in the carpenter shop here, he had been sent out to drive a cart.

Q. Do you know whether he worked at the carpenter business? A. I don't know.

Q. Do you suppose he had ordinary intelligence enough to work at the carpenter business? A. I don't think he had. I suppose he could make boxes, but I don't think he could fit a drawer in a box.

40 Q. Don't you know he did make a box? A. I never saw a box he made, if I said so it would be from hearsay; I have heard he made boxes.

Q. Was he fit to and capable of using a hammer, and saw, and jack-plane, and the ordinary implements of a carpenter? A. Yes, sir; but I don't think he could fix a box very accurately.

Q. Well, would that be because of his mental incapacity, or his physical? A. I think his brain was affected in some way. Tommy had less mind than any person I ever saw.

Q. Where did you leave \$50 for him? A. With Mr. Fitzgerald.

50 Q. What is his first name? A. He was of the firm of Teese & Fitzgerald.

Q. He had an impediment and imperfection in his speech, had he not; so that sometimes it was difficult to understand his articulation? A. Yes, sir.

Q. Now, sir, you say he had no conception of the value of money; please state on what knowledge you base that opinion? A. In the first place Tommy was never allowed to have any money of any amount until after his father's death; and when we did give money to Tommy, he would ask us for a large sum, and would be perfectly satisfied if he got a small sum. For instance, he would want us to give him \$50, and if we gave him \$5 or \$10 he would do with that.

Q. Then he did not always get what he asked for, and would be content with what he got? A. Yes, sir.

Q. What facts have you to base your opinion on that he did not know the value of money? A. I think that whenever Tom wanted anything, he would give anything he had for it.

Q. Just give us your knowledge on that subject that leads you to that conclusion, if you have anything more than your general knowledge; if you have any fact upon which you base your opinion? A. He continually wanted to trade off a silver watch he had; and he asked me to trade it off on the best terms I could with an uncle of his, for another silver watch which he had. I would ask Tommy, "How much am I to take?" and Tommy would be perfectly at sea, and did not know what to say—

Q. Well, what did he say? A. He would say, "Do just as you please;" he would leave it to my judgment; but of course I would not bother myself with anything of that sort, and he would take it very hard that I did not. Well, I have heard Tommy talk about the value of things, but I cannot recollect exactly what they were just now. I know it struck me as being a very preposterous idea, this business about the bill posting.

Q. Did you ever know much about the bill posting business? A. I have seen it.

Q. What have you seen—people working at it? A. Yes; and I have employed people to post bills.

Q. Do you know if it requires any capital or not? A. No, sir. I should say it would require about \$3.00 or \$3.50, or so.

Q. How many letters have you received from him? A. I suppose about 40 or 50.

Q. And Mr. Linthicum a number also? A. They generally came addressed to the firm "Linthicum and Alexander."

Q. To the two? A. Yes.

Q. In some of the letters he refers to Peggy. Who does he refer to by that? A. To his sister Margaret.

Q. Familiarly called Peggy by the family? A. Yes, sir.

Q. Who does he refer to as Uncle Billy? A. Uncle William Alexander.

Q. When did the death of Tommy's father take place? A. 4th of September, 1871.

Q. And the sale of the personal effects was on the fifth of January? A. Yes, sir.

Q. During that time how much were you at the house? A. I was at the house nearly all the time.

Q. Where was Mary at that time? A. Living in the house.

Q. She was then unmarried? A. Yes, sir.

Q. Was anybody else staying there? A. I think there was Mr. Linthicum and Mrs. Linthicum part of the time, and Margaret was staying there all the time; and Reverdy was there too.

Q. Anybody else? A. I was staying there, and so was my brother.

10 Q. Was Mrs. Davis? A. She came on shortly after Mr. Alexander's death, and remained over until after the sale, I think.

Q. All these persons you have named were there more or less between the interval of the death of Mr. Alexander and the sale? A. Yes, sir.

Q. Was Mr. Kirkpatrick in the habit of coming there, to the family? A. Yes, sir. He was Mary's counsel.

Q. You have told us of a conversation that occurred in the passage. What was the date of that? A. I would say that I cannot fix it; but it was somewhere about the time of the sale.

20 Q. Before, or after? A. I cannot exactly say. It must have been after the second of January, because I saw the will was dated then. I cannot fix the date.

Q. Were you there all the time between the death of Mr. Alexander and the sale? A. No, sir; the day after the funeral I went to New York, and I was taken sick, at least I was sick for a day or two, and I stayed in New York.

Q. Well, your main residence was at this place? A. Yes; I came backwards and forwards.

30 Q. Now be good enough to state what passage that was? A. I cannot state whether it was the passage upstairs or down stairs.

Q. You cannot say at what part of the house; what do you mean by passage? A. In the hall. I was on the steps, I think.

Q. How long a time did the interview occupy? A. Not more than three or four minutes; she just came up and made the announcement to me, and then went off.

Q. During the time of the interval between the death of Mr. Alexander and the sale, there had been considerable ill feeling between the executors of the father's will and the heirs, had there not? A. Yes, sir; the fact is we were not on good terms.

40 Q. And she came out and told you that she had three doctors to make an examination of Tom; and she had made Tom make a will, and that if you got him to Baltimore, it would not do you any good? A. Yes, sir; something of that kind.

Q. What did you say? A. I think I said, I don't recollect clearly what I said, that we had no intention of taking him to Baltimore.

Q. Who was present and heard that conversation of yours? A. I don't think anybody was.

50 Q. Now, sir, can you tell us if it was up stairs or down stairs? A. I cannot exactly fix it.

Q. You said that somebody told you that Missy and Kirkpatrick wanted to put him in an asylum ; you had a conversation on the subject in the presence of Kirkpatrick ? A. The whole conversation ?

Q. Yes ; on that subject. A. Well, we were talking about things generally, but I really cannot recollect.

Q. Can you give us the language that you used ? A. Yes, I swore a little ; I will not repeat it now ; that possibly may not be right, but I said the words " liar " and " fool."

Q. Did you use such language to Mrs. Bingham ? A. I did 10 not ; I never swore before her in my life ; I was extremely indignant such a thing should be said of me, and that is why I expressed my views so strongly in opposition to it.

Q. But you had stated you thought he ought to be in an asylum ? A. Yes, sir.

Q. That was your opinion ? A. Yes, sir ; and if he had been my brother he should have been sent there.

Q. And you told that to Mrs. Bingham ? A. Yes, sir ; and I advised that a commission of lunacy should be got out against him.

Q. When was that ; before or after the father's death ? A 20 After the father's death.

Q. You never interfered in the business before the father's death ? A. No, sir.

Q. Whom did you advise to have this commission of lunacy got out, against him ? A. I suggested it to Mr. Linthicum, and I think to " Peggy."

Q. You and Mr. Linthicum had a talk about it ? A. Yes, sir. Mr. Linthicum was opposed to it, or I suppose it would have been ordered.

Re-Examined (Direct) :

30

Q. You spoke of ill feeling between yourself and Mrs. Bingham, I believe. A. The ill feeling was entirely on her side, towards me. I never had any ill feeling towards her in the slightest.

Q. Do you mean to say that you cherished no ill feelings towards her ? A. Not the slightest ; I never had any ill feeling against her. In this business I am impartial, and it is the most humiliating thing to me, in the world, that I have to come here.

Caveators' Proctor also called

40

James Hawkins, sworn :

Q. Mr. Hawkins, you live in Newark ? A. Yes, sir.

Q. Were you a police officer in 1872 ? A. Yes, sir.

Q. Are you now ? A. No, sir.

Q. In the latter part of 1871, and the first of 1872, were you on the police force ? A. Yes, sir.

Q. Were you at the house of the late Thomas S. Alexander, in Broad Street ? A. I was.

Q. About how long were you there ? A. I believe about 6 or 7 days and nights.

50

Q. For what purpose did you go? A. They were quarreling in the house.

Q. Who sent you there? A. Lieutenant Kirwin.

Q. Did you remain there in the house in charge for 6 or 7 days?
A. Yes, sir.

Q. Who was in the house while you were there? A. There was two of the daughters, one whose name was Missy and one named Peggy.

Q. What male persons were there? A. There was a boy named
10 "Tommy."

Q. A boy, was he? A. He looked like a boy of 22 or 23 years old—a young man. There was another one there, but I don't know what his name was.

Q. Buch? A. Yes; that's his name.

Q. Well, then, Buch, Tommy, Missy and Peggy were there—as they were called? A. Yes, sir.

Q. What was your duty about the house? A. Well, to keep them from fighting, and to keep them from breaking anything.

Q. These were the children of Mr. Alexander, were they not?
20 A. Yes, sir.

Q. Did you see any disposition or indications that they were going to break anything and fight there?

[Proponents' Proctor objected.]

Witness—That is what I was sent there for.

Q. Did you see anything of that kind? A. Well, Buch had a knife one night to stick Tommy with, but I told him that if he did not put up the knife I should take him up to the station house. Tommy went down to get a warrant, and he told him he could get
30 as many warrants as he liked. I was told to take no notice of him; this was told me by Mary ——. (Interrupted.)

[Proponents' Proctor objected.]

Caveators' Proctor, during his argument, asked the question of witness, as follows:

Q. How many days was this before you went away? A. This was on the first night I went there; they both had knives.

The Court admitted the evidence.]

Q. What did she say? A. When Tommy came back from the
40 station house, he told me he had a warrant for Buch, and that Judge Mills had not sent it to me. Then Missy, she told me, in the entry, "You need not mind him, for he has not got good sense." I went into the room where the library was and set down; and Buch went away from the house that night; he did not stay there at all. Then Tommy come in and he said that him and Missy did not want Buch in the house at all. Peggy, she lived in New York, and used to come out during the day and sometimes stayed there; she was generally there every day while I was there.

Q. Did you see Tommy during the day and talk with him?
50 A. He used to be with me all the time.

Q. How did he go with you? A. I used to walk out in the yard sometimes, and sometimes in the front way, and he used to go out with me. He talked about the garden and one thing and another, and he would take me down and show me some tools he had; he said he was a carpenter; this was done in the cellar.

Q. Where did he sleep? A. That I could not say. He slept up stairs. I stayed down stairs all the time.

Q. How did he dress? A. His clothes was very good.

Q. What was his constitution? His character as to his mental powers—mental capacity as far as you observed? A. Well, I 10 thought he was a man not capable hardly of knowing what he was saying.

Q. Did you consider him capable of making bargains, contracts, and dealing in business? A. Oh, no; oh, no! No, sir.

Q. In all your observation of him in the house during those seven days you were there, did you see any indications in Tom of a sound and disposing mind and memory? A. No, sir.

Cross-Examined:

Q. Are you a lawyer? A. No, sir. 20

Q. Do you know how much sense it takes to make a will in New Jersey? A. No, sir.

Q. And how much sense a man must have to make a legal bargain? A. No, sir.

Q. You talked with Tommy, did you? A. Yes, sir.

Q. Did he understand what you said to him? A. Yes.

Q. And you understood what he said to you? A. Yes; I understood what he said

Q. He showed you his tools, and said he was a carpenter? A. 30 Yes sir.

Q. Did he have the tools there? A. Yes, sir.

Q. A chest of tools? A. No. There was an old plane, an old saw, and chisels, and one thing and another, but I did not see any chest.

Q. Do you know who came after you; on whose application you were sent there? A. Yes.

Q. Who? A. A colored man came after me.

Q. Do you know who applied at the Police Office for you? A. I do not.

Q. Do you know whose colored man it was? A. I do; I think 40 he belonged to the house. I had seen him round a good deal.

Q. Was he employed there? A. I don't know.

Q. Was he Mr. Kinney's man? A. I don't know. I have seen him around there, but I don't know whose he was.

Q. You don't know at whose instance he was sent? A. No, sir; I do not.

Re-Examined (Direct.)

Q. Why did you pay so little attention to Tommy's talk? A. Well, his conversation that he had was talking about different 50

things that did not amount to anything, such as showing me where he was making a bird house.

Q. Then was that the reason you paid so little attention; because his conversations were trivial? A. That's all.

Re-Cross-Examined:

Q. Had you known him before you went there? A. No, sir. I have never seen him before, to the best of my knowledge.

Proponents' Proctor asked permission to call one of his witnesses
10 at this point, as she was in haste to get away from the city; and permission having been obtained, he called

Mary D. Davis, sworn:

Q. Where do you reside, Mrs. Davis? A. Part of the year in Baltimore, and part in Montgomery County

Q. Have you been acquainted with the family of Thomas S. Alexander, and how long? A. I have been acquainted with them for the past 12 years.

Q. You knew them then before they moved to Newark? A.
20 Yes, sir.

Q. And since? A. Yes, sir. My acquaintance began when I was a school girl.

Q. Did you visit the family after they came to Newark? A. Yes, sir; after the young Mr. Alexander's death. And before that Mr. Alexander and Miss Mary Alexander came and visited me, and I came and stayed there for eight weeks.

Q. In what year? A. In the Fall of 1867. They moved, I think, in 1866, and this was in the next Fall.

Q. Then after that date you visited the family here? A. I
30 was with them part of nearly every season. That Winter I was on and off here the whole Winter, back and forth.

Q. How much of every season about did you spend there? A. Well, sometimes—The next season, the whole Winter. I was at New York, and I would be backward and forward to and from their residence for two or three days at a time. The next Winter I spent three weeks there, and the next time I went there was on the day after Mr. Alexander's death, and then I stayed about eight weeks.

Q. When you were out there you were intimate with the family?
40 A. Yes, very intimate; I was treated as one of the family.

Q. Who composed the family when you first visited there, in Newark? A. Mr. Alexander, Mrs. Bingham, and the two sons.

Q. Reverdy and Thomas? A. Yes, sir.

Q. Did your acquaintance with Thomas commence about the time that your acquaintance began with the other members of the family? A. Yes, sir. I did not see so much of him in Baltimore as I saw of him afterwards.

Q. He was living at home when you made these visits, in Newark? A. Yes, sir.

50 Q. Did you see much of him during the last visit, when you

were there after Mr. Alexander's death? A. Yes, sir. I saw him every day.

Q. Did you, during these times, have opportunity to observe him and become acquainted with his mental capacity? A. Yes, sir.

Q. Will you be good enough to describe it, as well as you can; give your idea of what his mental capacity was? A. I think it was a medium capacity; he could converse sensibly. At table I saw him generally, or in the library; he joined in the conversation and on what topic was in the papers.

Q. When he did converse how was his conversation as to being 10 rational and intelligible, or otherwise? A. It was intelligent.

Q. Did you see him read? A. I have heard him reading the papers to the servants in the kitchen. I did not see him, but I would hear him.

Q. How was he treated by his father and family? A. Most kindly by his father. I never saw anything but kindness from any one.

Q. What was Mrs. Bingham's treatment of him? A. Always very kind; but, of course, she had to be firm.

Q. Where did Mrs. Bingham spend her time after her father's 20 death, when you were there? A. In her own room; she did not leave her room for sometime after his death.

Q. Who remained there with her? A. I was with her in her room all the time.

Q. What other persons in the family were in the house? A. All the members of the family were there.

Q. And some were there mostly all the time during the interval between the father's death and the sale? A. Yes, sir.

Q. Where was Tom during this time? A. He was always 30 there.

Q. Did he always remain in the house, or go out, about? A. He went about.

Q. Did you see him and Mrs. Bingham together during that time? A. Yes, sir.

Q. Where? A. In her room.

Q. How long after her father's death was she confined, or did she continue in her room before she went about the house? A. As long as the other members of the family were in the house; I could not say exactly how long.

Q. She took her meals in her room? A. Yes, sir. 40

Q. And you stayed with her? A. I did not dine with her; I slept with her constantly.

Q. Did you ever see Thomas with her, during that time together? A. Yes, sir.

Q. Did you hear any conversation between them on the subject of the will? A. He came in one day, and said he had made a will.

Q. Just state what you remember of that? A. He said he had made a will; he told us, Mrs. Bingham and myself, and also the way in which he had made his will. He said he wanted something to be given to me, but Mr. Kirkpatrick told him that his 50

father's will would not permit him to leave anything out of the family.

Q. Do you remember how he said he had disposed of the property? A. He said he had given the most to Mrs. Bingham, and had made some small legacies.

Q. Did he state at that time how lately he had made his will; did he say when he had done it? A. I cannot say whether he said so on that day; I think he did, but I cannot be positive.

Q. Well, Tom talked about it. What was the character of his conversation as to apparently understanding what he had done? A. He seemed to understand what he had done; I think he could appreciate it.

Q. How did he amuse himself when in the house? A. Well, I think he was making things; I have seen his work, and heard him speaking of his tools in the basement.

Q. Have you ever seen him play games? A. I have played chess with him.

Q. Could he play chess? A. Very well.

Q. You, yourself played with him? A. Yes, sir.

20 Q. Did you see him play chess or anything else with anybody else? A. I have heard his father speak of it; his father took considerable interest in it.

Q. You and he played together in his father's life time? A. Yes, sir.

Q. When did you first play chess with him? A. I could not say whether it was at my first or second visit.

Q. Have you ever seen him play cards? A. No, sir.

30 Q. Except the occasion that you have spoken of, when he came in Mrs. Bingham's room, and said he had made a will, did you ever hear any other conversation between him and Mary about, or on the subject of the will? A. No, sir; I have heard him say he was going to make a will; but I never heard any conversation about it; I never heard any conversation about the way of making it.

Q. How did he demean himself at the table? A. Very well; he would sit down and eat; of course all people don't eat so delicately as others do.

Q. Was he admitted to the table when you were there? A. Always.

40 Q. Were any other guests in the house while you were there? A. My father came on while I was there; he was a stranger to Thomas.

Q. Did he come to the table while your father was there? A. Yes, sir.

Q. State what you heard said about his making his will, in addition to what you have told us; did you hear the subject mentioned again at any other time? A. Well, Mr. Kirkpatrick was there making a statement about it; I don't know that I ever heard Mr. Thomas say anything more about it.

50 Q. Did you ever hear him say anything on the subject of the

will, besides what you have told us? A. I heard him say he should make his will, so that none of the property should go to Baltimore.

Q. When was that? A. At that time.

Q. On the same occasion? on the day when he came back, and said he had made a will? A. I don't know. I cannot be positive about that.

Q. Before the will was made, did you hear him say anything about making it? A. I understood him to say he was going to make his will. 10

Q. Just state what you heard him say about it, and who was present then? A. It was in Mrs. Bingham's room, and he was speaking of other matters. He said he was going to make his will.

Q. What was said by other parties, if you remember? A. Well, I cannot exactly repeat the conversation.

Q. What did Mrs. Bingham say to him, if anything, about the will; about influencing him; or anything? A. I never heard a word about influencing him.

Q. Can you remember anything at all that she said on the subject? A. No, sir. 20

Q. Who, during the father's life time, was the lady head of the house? A. Mrs. Bingham.

Q. What were the relations between her and her father? A. The relations between her and her father were very good. Mr. Alexander was a most devoted father.

Q. How was he to Tommy? A. Very kind, always.

Q. What was the character of his conversation with him? A. Very pleasant; I never heard him speak unkindly to him.

Q. What opportunities, as you know, had Mrs. Bingham during the interval between her father's death and the second of January 30—the day of the sale—of seeing Thomas alone, and having a conversation with him alone? A. Well, I was with her in her room most all the time. I went over to New York on the day of the reading of the father's will.

Q. Do you remember how soon that was after the father's death? A. Two or three days after, I think.

Q. After the funeral? A. Yes, sir.

Q. Did you come back from New York the same night? A. Yes, sir.

Q. With that exception, how much were you with her between 40 the death of her father and the day of the sale of the effects? A. Constantly, I believe, except that day of my going to New York. I was always with her in her room. I am sure that if she wished to have used any influence, she would not have hesitated to have done it before me.

Q. Did you ever hear anything of the kind? A. Nothing of the kind.

Cross-Examined :

Q. You say that you were there from the time of the father's 50 death, for eight weeks? A. Yes, sir.

Q. When did you arrive there? A. The afternoon after his death.

Q. How long did Mrs. Bingham keep her room? A. While the other members of the family were in the house. I don't know exactly how long they stayed.

Q. Can you tell how long she was in her room? A. Not to a day.

Q. Can you tell whether it was over two weeks? A. It was some time.

10 Q. Did she come out of her room as soon as the other members of the family left? A. Yes, sir.

Q. Did her stopping in the room have any connection with her being there, do you know? Q. I think she did not wish to meet them.

Q. Then, can you tell at all how long she was continuously in her room after the father's death? A. It was the fourth of December that Mr. Alexander died. I don't know exactly how long she stayed there, but it seems to me until nearly Christmas.

20 Q. Did you go to New York during your visit? A. I went over there on the day of the reading of the will.

Q. And how many other times? A. The day of the sale.

Q. Did you go there on New Year's Day? A. I think I did.

Q. You were not in Newark on New Year's Day? A. No, sir.

Q. Did you go away the evening before New Year's? A. I stayed away one evening, I don't know whether it was on New Year's evening or not, or before.

Q. When she was about the house did she attend to the household affairs, go round the house? A. Yes, sir.

Q. And after she left her room? A. Yes, sir.

30 Q. Did you assist her? A. There was not very much to do.

Q. Where was Tommy in the habit of being during the day? A. He went out, but I don't know where he went.

Q. Was he generally in the kitchen? A. Sometimes.

Q. Was he not generally in the kitchen? A. Sometimes; I often found him in his father's library.

Q. Was he not generally there? A. Not always so.

Q. Was he not generally there? A. He was often so.

40 Q. Now I will ask you the question again - Was he not more generally there than anywhere else about house? A. He was often in his father's library, I often found him there.

Q. You say you heard him reading the newspaper to the servants, was that a habit of his? A. I often heard him.

Q. Did he read to his sister? A. No, sir.

Q. Did he entertain you? A. No, sir. He once brought me his scrap-book.

Q. What kind of scraps? A. Anything in the paper he had cut out.

Q. Pictures? A. I don't know.

Q. He showed you them? A. Yes, sir.

50 Q. You never had any literary conversation with him, did you? A. No, sir.

Q. Or sat in the library with him in the ordinary pursuit of the family? A. Yes, sometimes, on Sunday afternoon.

Q. I mean after his father's death; while you were there did you spend the afternoon with Tommy and his sister in the library purely engaged in the ordinary pursuits of social life, after she left her room? A. I said so.

Q. Did you ever undertake to have any of the ordinary social literary or domestic intercourse with him, that you usually had with the gentlemen in whose house you were staying? A. I generally saw him at the table. 10

Q. Was that the only time you were in the habit of seeing him? A. Yes, sir.

Q. Do you know whether he was engaged in carpentering work in a neighboring shop? A. Yes, sir; he boasted to me that he was able to pay for his clothes.

Q. Did he speak to you of being at work at that business? A. Yes, sir.

Q. Were you there when he was sleeping at Mr. Sayre's stable? A. I don't know.

Q. Do you know his age? A. I don't. 20

Q. It would have been 39, now? A. I suppose it would.

Q. You say Mrs. Bingham was kind to him, but she had to be firm; why did she have to be firm? A. Well, sometimes he would come home and spit tobacco about; and his father never allowed him to do that in his library.

Q. What control had she over him; why had she to be firm and restrain him? A. Because no one else in the house could.

Q. But he was the gentleman of the house? A. You are speaking of after his father's death.

Q. Yes; if he was a man of ordinary capacity, and able to take 30 care of himself, and was a man of usual sense and sagacity, why should his sister have to be firm with him? A. She had the whole control of the house; when Reverdy was there too.

Q. I am merely trying to understand why this sister had to be firm with this grown-up brother? A. Well, he was of an obstinate disposition, and if he took a notion into his head, it was almost impossible to persuade him out of it.

Q. She had to persuade him pretty often? A. Yes, sir.

Q. Did she not have a difficulty in controlling him? A. Well he gave her no trouble while I was there. 40

Q. Did you say that you regarded him in your visits to the family, as one of average ordinary intelligence? A. I said he was of medium capacity.

Q. What do you mean by that? A. All people are not of the same degree of intelligence.

Q. As the ordinary run of people you meet? A. Every one is not of the same capacity.

Q. You mean to say he was not of the higher capacity? A. Certainly.

Q. Do you mean to say he was equally as intelligent as the 50

average run of people you meet in ordinary life? A. I don't think that; but still he could perfectly understand and explain what he wanted.

Q. I want to get at your idea of medium intelligence; I suppose you mean the ordinary average, the general run; do you mean that? A. Ordinary, with persons I have known, sir.

Q. He was a member of a family with which you were intimate? A. Yes, sir.

Q. Had he not a very much lower order of intelligence than 10 others in the family? A. Yes, sir.

Q. Very, very far below that of Mrs. Bingham? A. Yes, sir.

Q. Can you form any idea of the difference between his mental capacity and that of Mrs. Bingham? A. He was not at all cultivated.

Q. Was it not vast? A. Yes, sir.

Q. He was a child of the same parents? A. Yes, sir.

Q. Born in same house? A. Yes, sir.

Q. Lived in same society? A. Yes, sir.

Q. Taken care of by the same father and mother? A. Yes, sir.

20 Q. And yet there was, was there not, a vast difference in their mental organizations and capacity, in your judgment? A. Yes; there was a good deal of difference

Q. Did you ever hear him read; hear him yourself, in the room, read anything? A. No, sir; but I heard him reading in the next room.

Q. Did you ever hear him read except to the servants in the kitchen? A. No, sir.

Q. Did you ever hear him talk about books? A. No, sir.

30 Q. Did you ever hear him speak on any literary or scientific subject? A. No, sir; I often heard him speak on the subject of the church and the temperance society.

Q. Was not his conversation confined to his church, his temperance society and his carpenter work, and just ordinary palpable matters round the house? A. And whatever he was told by people.

Q. At table, with regard to his manner; did he eat and act at table as Mrs. Bingham did, for instance? A. He had not the grace and manner that she had.

Q. Had he the grace and manner that becomes a gentleman who was the brother of Mrs. Bingham, if he was sound in mind?

40 A. I don't think peoples' manners depend on their mind.

Q. In persons of one family, Mrs. Davis; what I mean to say is, what was the fact; did he go through the process of eating his meals with ordinary decency and grace? A. Yes, sir; generally.

Q. Did he not eat voraciously? A. Nothing struck me at all that way.

Q. How was his clothing—his person, as to cleanliness? A. Not very tidy.

Q. Was he not very unclean? A. He was; but I cannot say he was filthy at all.

50 Q. Did Mrs. Bingham have to watch him and take care of him

in that respect? A. I believe she gave his clothes out for him, as gentlemen are apt to have done.

Q. Did she not have to take care of his personal appearance, his manner, and his body and clothing have to be taken care of? A. I believe she selected his clothing.

Q. Did she remonstrate with him about bathing, and keeping himself clean? A. Yes, sir.

Q. Have you not often heard her speak to him about that? A. I have heard her speak of it.

Q. Have you not heard frequent controversies, disputes about 10 his bathing in cold water—heard her insisting on it? A. I know it was a general rule, and that he used to take his bath.

Q. Have you not heard her insist upon his keeping himself clean? A. Yes; if he would not come to the table clean and tidy, she might remonstrate.

Q. Have you not heard her speak to him about behaving himself nicely on account of your being there? A. No, sir; he always paid proper respect to my presence, sir.

Q. Can you remember the first time you heard him say anything about his going to make a will—about his being about to make a 20 will; when was it he said so? A. Not long before he made it.

Q. You speak of Mr. Kirkpatrick, did you hear him speak about it also? A. Yes, sir.

Q. Where was that? A. In Mrs. Bingham's room.

Q. Did Mr. Kirkpatrick come up there? A. Always; every one who came to see her came up there.

Q. And were he and Tom together in the room? A. I could not say positively whether they were there together or not.

Q. You cannot say that Thomas was there? A. No, sir.

Q. Then did Mr. Kirkpatrick talk to Mrs. Bingham about the 30 will? A. Nothing was said beyond the fact of the making—

Q. Yes, that he was going to make it, do you say? A. I don't know whether he spoke about it before the making or not.

Q. He said he did before; were you there on that day? A. Very likely I was.

Q. Did you hear him speaking about it—can you remember anything that was said about it? A. No, sir; not positively; there was so many things done at that time.

Q. There was a great deal said? A. Yes, a great deal said.

Q. Were you there when the policeman was there? A. Yes, sir. 40

Q. Do you know who sent for the policeman? A. Mrs. Bingham.

Q. Do you know why she sent? A. It was brought about by her brother Reverdy's conduct.

Q. Was the policeman kept there a long time? A. He stayed over nights.

Q. He says he stayed seven days; were you there all that time? A. Yes, sir; I stayed there all that time.

Q. He says he stayed there to keep them from fighting and breaking things, and such things going on? A. Well, Mr. Reverdy had taken some china vases from Mrs. Bingham, out of the house, 50 and said he would break them. (Not all heard.)

Q. Was there not a good deal of trouble and quarrelling among them? A. Yes.

Q. You cannot remember all that was said at that time? A. No, sir. I did not hear anything more than I could possibly help.

Q. Was it not the case that you tried to avoid being a listener to domestic disputes in that house, of an exciting nature? A. I was always out of the way, if I could get away, when anything unpleasant was going on.

Q. Have you played chess much? A. Yes, sir.

10 Q. Tommy knew the moves, could he play a good game of chess? A. Very good indeed.

Q. There is a wide difference in the games, is there not? A. Yes, sir.

Q. A good many of us cannot play a good game? A. I don't profess to be a good player.

Q. You don't profess to be an expert chess player, do you? A. No; but still I have beaten my father as many as five times out of seven.

20 Q. You speak of Mr. Thomas S. Alexander the father, dealing with Tommy very kindly. He always did, I understood you to say? A. Yes, sir.

Q. Where was Tommy in the habit of sitting in the evening when anybody was in the house—any strangers? A. He generally went out.

Q. In his father's lifetime, I mean? A. He generally went out; sometimes he would be in his father's library.

Q. How did his father talk to him; what was his manner towards him? A. He always spoke to him kindly.

Q. What did he term him—what name? A. Tommy.

30 Q. What did they talk about? A. A good many things.

Q. Was it anything more than just common affairs about him? A. It was ordinary conversation.

Q. Did he ever read with Tommy? A. I never saw him.

Q. Did he ever teach him anything—instruct him in any way? A. Not when I was present.

Q. Mrs. Davis, your father had known Tommy, had he not? A. Not at all, except for the three days when he came there.

40 Q. Was he not familiarly acquainted with the family in Baltimore? A. Very intimate with Mr. Alexander, but he never visited the house.

Q. He was aware of Mr. Alexander's domestic position; he knew his children, and all about it? A. His daughter visited our house.

Q. He was not a stranger to the family? A. To Mr. Tom Alexander he was a perfect stranger.

Q. But he was an intimate friend of Mr. Thomas S. Alexander? A. Yes, sir.

Q. Was he any connection—any relation? A. I believe there was a very distant connection on both sides.

50 Q. Who sent for you to come there after Mr. Alexander's death? A. Mrs. Bingham wrote me, before her father's death.

Q. When you got there who had the keys of the inner parts of the house? A. She had; but there was very little ever kept locked up.

Q. Did you not carry the keys yourself? A. I went once, I remember, to the sheet press.

Q. Was that locked? A. Oh, yes.

Q. Who had the key of that? A. Mrs. Bingham.

Q. She gave it to you? A. I went there once.

Q. Who attended to the giving out the silver, and the house-keeping affairs? A. They went to get out whatever they saw fit. 10

Q. Was there a dispute about the keys between the other daughter "Peggy," as you call her, and yourself and Mrs. Bingham?

[Proponents' Proctor objected.]

Q. Do you remember Mrs. Bingham having some trouble with a Priest, who came there shortly after the father's death to see Margaret? A. Mrs. Bingham having trouble with the Priest?

Q. Yes; Mrs. Bingham coming down and ordering him out? A. No, sir; I do not. I was not present. I don't know anything about it. I remember there was something of that sort, but I was not present. 20

Q. Did you see Miss Margaret with the Priest there? A. No, sir; I was not present.

Q. And Mrs. Bingham came down stairs and had some altercation? A. No, sir; I was not present.

Re-Examined. (Direct.)

Q. Do you know anything about Tommy's habits of temperance or intemperance at any time? A. I knew that he was very intemperate at Baltimore. I had seen him drunk on the street.

Q. After your return to Newark, had he changed in that respect? A. Very much changed. He had joined a temperance society, and was entirely reformed, and would not even touch sauce that had wine in it. 30

Q. What servant was this to whom you heard him reading? A. Ann, the cook; an old family servant.

Q. Could she read? A. I don't know, sir.

Q. Had she been in the family as long as you had been acquainted with them? A. Yes, sir.

Q. After the father's death Reverdy was there also, was he not? A. Yes, sir. 40

Q. Mrs. Bingham had the whole keeping and management and control of the household, although he was there? A. Entirely, sir.

Q. During your stay and your visits there did you hear Thomas express any opinion on politics or public affairs? A. He used to talk about our opinions being different.

Q. He used to talk to you about it. How far would he go? What would he say? A. I cannot tell that exactly. He laughed at me, and said we could not agree, because I was Secesh.

Q. He was otherwise in his views, was he? A. Decidedly so.

Q. Was Reverdy's threat to break the china vases the reason of 50

the policeman's being sent for? A. I think there was a dispute; something about some slippers.

Q. Why was he sent for? A. Tom had taken his father's slippers, and Mr. Reverdy accused Mrs. Bingham of having taken them; and he came up into her room and took up something off the table, right by the door. Mrs. Bingham would not tell him that Tom had taken the slippers, because she said it would make him angry at Tom. Then Reverdy threatened to take the vases down in the street, and said he would break them, and then
10 she got excited and frightened, and sent for a policeman.

Q. Who did she send; do you know? A. I think she sent; I did not go out of the room; I think Mr. Kinney sent down.

Q. Then the police officer was sent for? A. Yes, sir.

Re-Cross Examined:

Q. Was not Tommy a member of the Methodist Church in Baltimore? A. Not that I know of; I have heard that he joined after he came to Newark.

20 Caveators' Proctor then called

Rensselaer S. Stewart, sworn:

Q. Where do you live? A. In Newark, sir.

Q. What is your business? A. Carpenter.

Q. Are you employed by Mr. Ezra Reeves? A. Yes, sir.

Q. In Mulberry, near Pennington? A. Yes, sir.

Q. How far from Mr. Alexander's former residence? A. Two blocks, I believe, or thereabouts.

Q. Were you in the habit of seeing Thomas Alexander at your shop? A. Yes, sir.

30 Q. What was he doing there? A. He came there through his father. His father wanted him to come and busy himself about, and to keep out of mischief; in other words he came to amuse himself. He did what he could; he drove a horse and wagon around, and delivered lumber and loam with it. He was there quite a while.

Q. How long was he there? A. I cannot say.

Q. Can you give us some idea? A. Some months, I think.

Q. What was his occupation there; in the shop I mean? A. He did some little work. He made boxes principally, after they
40 were cut out by the foreman. He would nail them together at times.

Q. Was he there in any sense as a journeyman, for the benefit of Mr. Reeves? A. No, sir.

Q. Was he of any advantage or use about the shop? A. At times I might say that he was.

Q. In what way? A. Getting out a load of materials.

Q. I mean in working—in being a carpenter there? A. Well, he made some boxes after they had been cut out.

Q. What kind of work is that? A. Plain, rough work.

50 Q. Did he show any improvement or skill in learning the car-

penter work? A. In making boxes, it takes a person a very little time to learn, and he did what he had to do pretty fair—it was done pretty fair for him, otherwise it would not have been passed.

Q. What I mean is, whether he became at all a skilled workman, as to work at the trade to any advantage? A. No, sir.

Q. Did he do anything more than simplest kind of mechanical work in your shop? A. That was all, sir.

Q. What was his mental character and capacity, as you observed it there? A. He was not altogether gifted with a very high order of intellect, I don't suppose.

Q. What was his order of intellect? A. Well, possibly it was of the medium order—the medium class, that is, as far as he knew; he thought he knew pretty fair.

Q. The point is, how far he knew. Did you regard him as a man of sound sense, or the contrary? A. He was not altogether a man of sound judgment; no, sir.

Q. Did you regard him as a man of even average capacity? A. I think not, sir.

Q. Did you consider him capable of carrying on business, making contracts, or dealing in even the ordinary matters in business? 20
A. No, sir; I think not.

Q. What was your estimate and judgment of him, now, generally, from your knowledge of him in your shop? A. Well, at times, Tommy would be a little dull, and sometimes again he would be a little more bright.

Q. Did he ever read; did you know him to engage in pursuits of that kind? A. Yes, sir.

Q. What did he read? A. Occasionally he would read the "Daily," the small puffs. He would read the short items.

Q. Do you know of his sleeping in Mr. Sayre's stables? A. I 30
cannot say of my own knowledge that he did. I heard him talking about it.

Q. Did you hear him talking about it? A. Yes, sir.

Q. What did he say? A. He came to me and asked me to make him a slat to put some bedding on, to sleep in the stable, which I did make for him, and he took it away.

Q. What do you say he wanted it for? A. To sleep on in Mr. James R. Sayre's stable.

Q. Had he told you he was sleeping there; did he speak of it while he was there? A. I cannot say that he did say he slept 40
there, but the slat was made for that purpose.

Cross-Examined :

Q. When was this time, when he had the slat made to sleep on?

A. I cannot tell you, sir.

Q. Don't you know at what season of the year it was? A. I could not say, sir.

Q. Do you know whether it was before or after his father's death? A. I could not say.

Q. You heard of his father's death ; you knew it had occurred ?
A. Yes, sir.

Q. What was your employment there ? A. Journeyman carpenter.

Q. Were you mostly in the shop or working out ? A. Generally in the shop ; occasionally working outside.

Q. Did Tommy's mental condition appear more intelligent and bright at times than others ? A. I think so.

Q. Were there not times when in your judgment he manifested
10 ordinary intelligence on some subjects ? A. I think on any ordinary class of work he did very well.

Q. His conversation was rational was it not ? A. Yes, sir ; he was not altogether clear, but I always understood him ; what he said was to the purpose.

Q. You say he drove a horse and wagon ; for what purpose ?
A. To take out material, when we were getting it out, for the different parts of the work.

Q. Who would go with him ? A. He would sometimes go alone ; I think for a spell he went alone, until Mr. Reeves got a
20 horse that was quite vicious and wild.

Q. Did he have intelligence enough, if told, to take out lumber and deliver it ? A. Yes, sir ; he went quite a number of times alone.

Q. Did you ever see him do anything besides make a box ? A. Yes, sir ; he made wash benches, and a bird house.

Q. Well, he had some use of tools, then ? A. Yes, sir.

Re-Examined (Direct.)

Q. Are you sure that he was ever sent alone with a load of
30 lumber to a certain place ? A. I could not say for sure that he was, but still I am quite positive that he has a number of times been alone.

Q. Do you consider that it requires a high order of intellect to drive a horse with lumber to a given spot ? A. I think Tommy drove the horse until Mr. Reeves got a younger horse, which could not be so easily managed.

Q. Do you consider it is a thing which requires much intellect to do ? A. My experience is, in that, that the less I have to drive them the better I like them.

Q. You would be afraid to do that yourself ? A. Yes, sir ; I
40 have got kicked once or twice.

Q. Well, a dog will do that, won't they ? They will take lumber where you tell them to ? A. I don't know.

Q. You don't mean that it requires much intelligence to take a load of lumber from your shop to the builder ? A. Oh, no ; unless some special word is to go with it.

Q. Did you ever entrust him with any special, important order to go with the work ? A. I had not the charge of it.

Q. Did you ever know him to be so entrusted ? A. No, sir ; I
50 think not.

Q. When he made the work benches and bird houses, who got the work out for him? A. He generally got it out himself; sometimes he got me to get out the materials for him.

Caveators' Proctor also called

Charlotte Price, sworn :

Q. Where do you live? A. I live in Marshall street now.

Q. You are the wife of William P. Price? A. Yes, sir.

Q. Did Thomas Alexander board with you at one time? A. Yes. 10

Q. When was that? A. He came to board with me when his sister moved to Philadelphia.

Q. When was that? A. A little over a year ago.

Q. How long did he board with you? A. I think 10 months.

Q. Up to his death? A. Yes, sir.

Q. Did he die there? A. Yes, sir.

Q. Did he have a room? A. Yes, sir.

Q. Did he eat at your table? A. Yes, sir.

Q. What was his mental state and capacity during the time he boarded with you? A. Well, he was very feeble; his mind was very feeble; his health was also feeble. 20

Q. Was he capable of doing any business of any importance, or capable of doing any consecutive work? A. Not to my knowledge.

Q. How would work affect him? A. It made him a little crazy; his head would be very bad; he would not work but a few minutes, but he would have to come into the house and sit down, and I would ask him why he had left off, and he would say, "His head hurt him."

Q. Was he able to deal intelligently with money? A. No, sir; I don't think he knew the value of money. 30

Q. Did you ever know of any instance showing that? A. Well, when he got his money, he would come down and tell me what he would do it. I would say to him, I would not spend it foolishly, Tommy, if I was in your place. He would say he did not mean to. He would take \$5 and go and buy a wadcutter, a screw driver, and a pair of scissors, or something he did not need; even a spool of cotton. I have known him to come home with such things as that. He had a table in his room which he covered two or three times with oilcloth.

Q. What other instance can you recall, showing his weakness of mind, with respect to money particularly, and business? A. Well, if he thought he wanted anything, he wanted to get it, whether he had the money or not; he would say he would pay for it when he got the money. Then when the time would come to pay for it, he would say he had not the money, nor had he ordered it, and he would say he would not take it. He once subscribed for two books, and when the time came around for him to take them, he refused, and said he had not subscribed. 40

Q. How did he behave at the table? A. Sometimes very well, and sometimes very bad. 50

Q. How was he, as to his habit of cleanliness? A. He was very careless about it.

Q. How would he be at the table with regard to that? A. Very greedy at times; sometimes I would speak to him about it; I said I did not think he would be allowed to eat so at home, and I did not want him to do so in my house; sometimes he would answer me saucily, and sometimes not.

Q. Did he not eat in an extraordinary way, not as persons are accustomed to eat? A. [Witness showed how.]

10 Q. Fast, voraciously? A. Very fast.

Q. In an animal fashion?

[Proponents' Proctor objected.]

A. He would eat very fast, not like people generally eat, that I have seen.

Q. Did you ever hear him speak about his life being insured?

A. Oh, yes; several times.

Q. How did he talk about it? A. He said he had his life insured; I recollect he said, I think, at the Mutual Life Insurance Company, I think, is where he said; I asked him how he managed, as I had never seen him pay any money, and he said the executors paid it; I asked him how he got his life insured, and he said that 20 his sister "Missy" got it insured; he said he had gone to two or three places, and they had told him he was crazy, and that they would not insure him.

Q. Did he say Missy went with him? A. Yes, sir.

Q. Did he ever speak about the will? A. He said he had made a will.

Q. What did he say about it? A. Well, I asked him who he had left his money to; I just started the conversation in joking 30 with him, and he said he had left it in the family. Then he went on to say he had willed Mr Reverdy Alexander \$5,000, and Mr. Stewart Linthicum, he had given him something; but that he had changed his will, and had taken it from this young man, and had given it to Reverdy, his brother. I would often hear him speaking about the will. He said he had changed it three or four times while he was at my house. He said he had seen Mr. Kirkpatrick about it.

Q. When did he first come to your house? A. 11th of February, I think.

40 Q. How soon after he came there did he begin to talk about the will? A. Very soon.

Q. Did he state how he had changed the will, or how he had made the will? A. He said he had made a will and had been to Mr. Kirkpatrick on different occasions, and had changed his will.

Q. Did he ever give any reason for making a will? A. I asked him why. He said he had left it to Reverdy and Mr. Stewart; and to one of his sisters he said he had not left so much, and to his other sister he had left a great deal more. I asked him why he had left it so uneven, and he said that she had told him that if 50 he did not make his will in her favor, she would have him put in a lunatic asylum.

Q. Did he speak of what sister this was? A. It was Mary — “Missy,” as he called her; he never called her anything else in my presence.

Q. Did you ever hear him say anything else in regard to “Missy,” as he called her, expressive of any fear of her? A. Nothing, only that she did not treat him good.

Q. State what he did say expressive of his feeling concerning her, whatever it was, generally. I don’t ask you to repeat the very words, but what his general tone was in regard to her? A. He said she was unkind to him, and wanted to be “boss” over him, 10 and he thought he was capable of being boss himself. He said she did not want him to have anything but she wanted all herself; but that he had as much right to have as much as she had.

Q. Did you ever hear him express fear for her? A. No, sir; I never did.

Cross-Examined :

Q. Where did you live when he boarded with you? A. No. 85 Arlington street, formerly Catharine street.

Q. He was in feeble bodily health, was he? A. Yes, sir. 20

Q. How was he affected? A. His head was affected; I don’t know that he complained of anything else; he was always complaining all the time he was there.

Q. What work did he do? A. He would tinker around at anything almost; he never accomplished anything he undertook.

Q. He was with you ten months; how much of that time did he spend in the house? A. Quite a good deal.

Q. What did he do while he was there? A. Scribble on paper, &c., in his room.

Q. If he was in his own room, how would you know what he 30 was doing? A. Not unless I went into his room; he would sit around and scribble on paper, and then tear it up, and throw it on the floor.

Q. What did he do when about the house? A. I don’t know that he did anything particular; he would be down in the kitchen with me, or sitting in the front room, or lay down and go to sleep, or play with my children, and I don’t know anything else in particular.

Q. You spoke about him doing work, what was that? A. He 40 would try to make a bird house, and he could not.

Q. Did he have tools there? A. Yes, sir.

Q. Where did he keep them? A. Inside the lower hall door. He tried to make a bird house for a friend, named “Lyon,” and he got it partly sawed out, but he could not get it together. He never made one while he was with me.

Q. Did you ever hear him read? A. I never saw him read anything but the paper.

Q. Did you see him read that? A. Yes, sir.

Q. The dailies? A. Yes, sir.

Q. What paper? A. The “Advertiser.”

Q. What others? A. I don't know.

Q. Did you take any other? A. No, sir; but when he would read that, he only read the police news.

Q. Did you see what he read? A. He said he read that.

Q. You said that sometimes he would eat very well, and sometimes greedily; did he vary? A. He did; sometimes he would eat very little, then he would sit quietly.

Q. Did he vary at different times in his appearance and manner—sometimes be better than at other times? A. Sometimes he
10 would be very cross—very often.

Q. Where did the family eat? A. In the kitchen.

Q. Who composed the family? A. My husband, two children, Tommy and myself.

Q. Then he seemed to have an aversion to his sister, did he, to Mary, or Missy, as he called her? A. He did not seem to like very well.

Q. Well, I want to know what your conclusion was? A. No, sir; he did not.

Q. Did he express his feelings? A. He liked her better than
20 any of them; he would speak of one at one time, and like her, and at one time of his brother.

Q. Who did he send for when he was sick? A. He sent for his sister Missy.

Q. Do you know how many times he sent for her when he was sick? A. I don't know.

Q. More than once? A. He was so much out of his head that we did not know when he sent for anybody.

Q. When did he send for his sister? A. I don't know when he sent for her; we sent for her every time he told us; I guess it
30 was only once or twice. I heard him speaking about that he would like to see Missy. He would only say that for a moment and then wander off again.

Q. He would express the desire that he would like to see Missy, a good many more times than she was sent for? A. No. He was so much out of his mind that we did not know what he wanted. He would ask for one thing and when we would give it to him he did not want it.

Q. Did he send for his sister or have her sent for while he was sick? A. Yes; and once he wanted to see Ann, he wanted to see
40 Ann.

Q. Do you know whether Ann was his old nurse? A. I don't know.

Q. Did he say she was his old nurse? A. I have heard her spoken of as being his nurse, or something in the family.

Q. Did you not hear him say she had been his nurse? A. No, sir.

Q. Did he write letters? A. Yes, sir.

Q. To Mrs. Bingham? A. Yes; he said so.

Q. Did he write for her while he got sick? A. No, sir; he could not.

50 Q. Could not? A. Not while he was sick.

Q. How did she find out he was sick? A. Before he was sick he used to write, but after he was taken sick he did not write to anybody.

Q. I don't mean his last sickness? A. Oh, yes; before that he did.

Q. Did he not during his last sickness? A. Not that I know of.

Q. How long was he sick before he died? A. Sixteen days.

Q. What was the matter? A. Softening of the brain.

Q. Who was his doctor—attended him? A. Dr. Burnett.

Q. Did Dr. Burnett say so? A. He told me it was that, and inflammation of the lungs.

Q. He spoke very frequently about the will? A. Yes; very often. 10

Q. How did he come to speak of it? A. He would go out and come back and sit down, and say he had been to see Mr. Kirkpatrick. I would ask "what had he been to see him for." He would say, "Well, I have been to change my will." He spoke of several lawyers.

Q. What different lawyers did he speak about? A. He spoke of Mr. Fitzgerald, of Mr. Kirkpatrick, and of Judge Teese—I think he called him—and two or three others. Every day he 20 spoke of some lawyer.

Q. You have taken considerable interest in this thing? A. No, sir.

Q. You were acquainted with Reverdy, his brother? A. He came to our house while Tom was there

Q. Was your sister there? A. I have no sister. I never had.

Q. Was Mr. Reverdy Alexander paying his attention to any of your relatives? A. That is best known to himself. He used to call at the house to see a young lady. Her name was Miss Foster. She is no relation of mine. 30

Q. Where is Mr. Reverdy now? A. Mr. Reverdy lives in the country now, with my father.

Q. Is he one of the parties in this thing, engaged in opposing this will? A. I am not supposed to know anything about that. I don't know why I should be.

Q. Don't you know he is opposing the will?

[Caveators' Proctor said witness did not know it. It was not the fact.]

Q. He lives with your father? A. Yes, sir.

Q. In what capacity? A. He lives there. 40

Q. Where? A. At Pompton Plains.

Q. Have you talked about this thing with the family? A. What family?

Q. The family of Mr. Alexander, about Tom's condition. A. I don't know. I have said Tommy's was a miserable sort of family. I told them that.

Q. Did you never say Tom could make a will as well as you could? A. No, sir.

Q. Never said anything like that? A. No, sir.

Q. Did you not tell Mrs. Bingham that Tom was as capable of making a will as you or she was? A. I don't think I did.

Q. The day after Tom died, did you not tell Mrs. Bingham that he was capable of making a will? A. Not to my knowledge. I don't think I ever told her anything of that kind.

Q. Did you not tell anybody so? A. Why should I?

Q. Did you not tell Mrs. Bingham that Thomas was capable of making a will? A. No, sir.

Q. Did you say anything about it? A. I said he had made a will.

Q. Did you not say anything about his capacity for making a will? A. I have just answered you "No."

Q. Did you not express any opinion about it? A. I told several people he had made a will.

Q. And you told Mrs. Bingham so? A. Yes, sir.

Q. That was the day after he died? A. Yes, sir.

Re-Examined (Direct.)

Q. Where did you see Mrs. Bingham the day after Thomas died? A. At my house, in Arlington street.

Q. Did she come there to see about his remains? A. Yes, sir.

Q. Who started the conversation about the will between you and her? I don't recollect.

Q. Did she talk about his will? A. She said she knew he had made a will. She knew that he had made it.

Q. What else did she say? A. She said she knew just how Tommy had made it.

Q. Was the question of his capacity to make it started by her and talked about? A. I don't remember.

Q. Do you remember hearing her ask you whether you thought he could make a will? A. No; I don't remember.

Q. Did you hear Mrs. Bingham talking to Mr. Linthicum about the will the day after he died? A. I don't recollect. No, sir.

Q. You don't remember any conversation between them? A. Nothing, only that she said she had not been alone with Thomas. When she called on Thomas twice to see him while he was sick, she told me she had not been alone with him; but said it made no difference whether she had or not.

Q. When was that talked about; on which occasion? A. I don't know; but while we were talking she said, I was not alone with him while he was sick, for a moment.

Q. Do you remember anything that was said by her, as to three physicians having examined him? A. I do not.

Q. You were asked if you talked about this in the family; have you talked to Mrs. Bingham about it? A. No, sir.

Q. Did she ask you some question here? A. Yes; she asked me a question when I came here. She asked if I did not remember telling her that I thought that Tommy was capable of making a will.

Q. She asked you that when you came in? A. Yes, sir.

Q. Have you talked to either of these gentlemen (Messrs. Linthicum and Alexander,) about the making of the will, or about this case in any way? A. No, sir.

Q. Did you talk to me or the other counsel, or anybody? A. No, sir.

Q. When did you first see Mr. Linthicum? A. First, on the night of Tommy's death.

Q. When was the last time? A. I did not see him from that time until to-day.

Q. How about Mr. Alexander? A. On the night he died, and 10 I have not seen him since until to-day.

Q. Have you ever talked to Mr. Leonard at all? A. No, sir.

Q. You said that Tommy varied. Did you ever observe him to vary as to the degree of his intellect, as to him being brighter, or more capable at one time than another? A. No, sir. I don't think I ever did. Sometimes he was pleasant and sometimes he was very cross, and I did not know scarcely how to get along with him.

Q. Was it not his mood varied rather than the state of his mind? A. I don't know but what it was. 20

Q. Did Mrs. Bingham notify you to have her sent for if Tommy was sick? A. Sometimes before that when Tommy was sick; and he would send for her as soon as he felt anything the matter with him. We told her to come on when he was sick, but he was sick so much that she might be coming on all the time. She wrote him a letter and said if Mr. Price thought him ill enough to have her come on, he should write to her; but if she had come on all the times he was sick she would be coming all the time, for Tommy thought he was going to die as soon as he got sick.

30

Re-Cross Examined :

Q. You say you have not talked with Mr. Keasbey, or Linthicum, or Alexander, or Mr. Leonard about the will, but have you not talked to Miss Mary Alexander about the will? A. Why, no. I did not know anything, only that I did not think Tom was capable.

Q. Did you and her discuss the subject? A. No, sir.

Q. Not at all? A. About his being feeble; she said he was a great invalid.

Q. When was that? Most every time I saw her.

Q. Then most every time you met you used to have some con- 40 versation? A. No; not every time.

Q. Well, very often? A. Yes, sir.

Q. How long is it since you have met—how recently? A. I have not seen her for some time, some weeks, I cannot tell you just how long.

Q. What money transaction did you ever see Tommy have? A. I saw him trade a watch he had bought.

Q. To whom? A. Mr. Van Houten.

Q. Was it a silver watch? A. That is what it was supposed to be.

50

- Q. What did he sell it for? A. I don't know.
- Q. You saw the bargain? A. Yes; but I did not pay attention to it. I heard that he wanted so much, and Mr. Van Houten did not want to pay it, and Mr. Van Houten finally took the watch, but whether he paid for it or not I don't know.
- Q. Where did he go to church? A. Franklin Street.
- Q. Was he a member? A. Yes, sir.
- Q. Did you attend that church? A. Yes, sir.
- Q. Did you ever hear Tommy take part in the public worship?
- 10 A. I don't think I have ever heard that; I may have heard him pray once.
- Q. He did that sometimes, did he? A. I don't think I heard him but once.
- Q. What Temperance Society did he belong to? A. I know he belonged to a Temperance Society, but that is all.
- Q. Who furnished his room—the room he lived in? A. He did.
- Q. He had his own furniture? A. Yes, sir.
- Q. Where did he get it? A. I don't know.
- Q. Did he not buy some furniture of your husband? A. Yes, sir.
- 20 Q. When was that? A. Just a short time before he died.
- Q. What did he buy? A. Bedstead, wardrobe and bureau.
- Q. Where was that furniture when he died? A. At my house.
- Q. He used that? A. Yes, sir; the furniture what he had when he came there was there.
- Q. Then the furniture he bought sometime before his death?
- A. A very little before he died.
- Q. Your husband used to deal in furniture? A. Yes, sir.
- Q. Were you present when he bought it? A. No, sir.
- 30 *Re-Examined.* (Direct).
- Q. Were you present at his death? A. Not when he died.
- Q. Were you there a short time before? A. I was there all the time until within twenty minutes before he died; then I left the room.
- Q. Was he conscious up to the end? A. No.
- Q. The last time of his sickness, what was the character of his illness, as to body effect during his last days? A. He was very weak and seemingly in great distress.
- Q. Had he any physician; who was his physician? A. Dr.
- 40 Burnett.
- Q. Did he have any clergyman there? A. Yes, sir; twice.
- Q. Did he talk rationally during the last few days? A. No, sir; well, at times; he would say very little.
- Q. How long was he so very low, that he made but little exertion to speak? A. He made very little all the while he was sick.
- Q. How long was he sick? A. Sixteen days.

It was agreed between Counsel to adjourn the case until Saturday, May 2, 1874, at 10 a. m.; with the understanding that an

earlier day might be fixed on, to suit the convenience of the Court and Counsel.

WALTER J. KNIGHT, *Stenographer.*

Thursday, May 28, 1874.

Before Lay Judges Rufus F. Harrison and Frederick W. Ricord.

Caveators' Proctor called

William F. Lines, sworn :

10

Q. Where do you live? A. 123 Prospect street.

Q. What is your business? A. Saddling; I am a mechanic—saddler by trade.

Q. Did you know Mr. Thomas Alexander? A. Yes, sir.

Q. How long did you know him? A. Well, I think in the neighborhood of four or five years; in fact, I might say more than that, but more intimately during the last four or five years before his death.

Q. Are you a member of any church here? A. I am.

Q. What church? A. Franklin Street Methodist Church.

20

Q. Did Thomas Alexander go to that church? A. He did, sir.

Q. For how long? A. I think between three or four years; somewhere about three or four years.

Q. What was the character of your intercourse with him, in relation to church matters? A. Well, our relationship in church matters was always very pleasant.

Q. Had you any position in that church? A. I had.

Q. What? A. I had what is denominated in the Methodist Church as class leader

Q. Were you thrown into communication with Mr. Alexander with reference to your church matters? A. I was, sir.

30

Q. What was the character of his mind and understanding as far as your intercourse with him led you to know? A. Well, so far as I could judge in the intercourse I had with him, which was quite frequent, I judged it to be of rather a low grade.

Q. Can you give any reasons why you considered him of a low grade of intellect? A. Well, one particular thing was that I found that he was a man that never seemed to have mind enough to stick to any one thing.

Q. What instance can you give of that? A. Well, I think if I could think of them I might give you a hundred; but in regard to his conversation, and with regard to his promises, he never seemed to think they were of any account at all; he thought so little of his promises that it was a hard matter to keep him up to his work.

40

Q. Did you observe any improvement in his mind or mental operations during all the time you knew him? A. I don't think I did, sir.

Q. Was he a member of your church? A. Yes, sir.

Q. Used he to attend these pretty regularly? A. Yes, sir.

50

Q. Did he talk in the church? A. Yes, sir.

Q. What was the character of his public action in the church?
A. Well, his public action was rather wild, as you may say—wandering. He would get up and oftentimes make use of expressions that I considered of no import at all.

Q. Have you ever heard him talk about his own affairs—his will or his family? A. I have, sir.

Q. What have you heard him say? A. Well, he considered me, I suppose, one of his best friends, and he was running to me continually; sometimes two or three times a week; he would call at my house frequently; sometimes two or three times a week and take meals there, especially if he had any trouble. If he had any letter coming from Baltimore with regard to his getting some money, and he did not get it just at the time he wanted it, he would run to me and tell me all his private matters.

Q. Can you remember any definite language he used, in speaking to you about his property and the will? A. I don't remember that he ever said anything to me about the will, until the first Sabbath that he was taking the Sacrament. I called at his house to see him, as I heard he was sick. I went there and found he was quite sick, and I got him out of bed, washed him, combed his hair, and fixed things up a bit, and put him back in bed again; and at that time he made use of the expression, that he had in his will, (I had heard previous to that he had a will); he said that in his will he had given his watch and all that belonged to it to my son; the watch and chain and a few cent-pieces attached to it he had given to my son; if I remember right, he said he was going to give them to my son. I tried to get his mind away from such things as that, and told him there would be time enough hereafter to talk about such things. I wanted him to get quite composed.

Q. Did you hear him speak about his sister? A. I have heard him say a good deal about his sister.

Q. How did he speak in regard to Mrs. Bingham? A. He never spoke favorable only of one of them, and that sister he said was living at Philadelphia. He spoke very highly of her, and said she was the only sister he had.

Q. Which one was that? A. I could not tell the name; he said she was living at Philadelphia.

Q. How did he call her? A. I forget the name; "Missy," I think he called her; he frequently read letters to me which he received from her.

Q. Did he ever have occasion to read in the church. Have you ever heard him read or do any intellectual work at all? A. Nothing more than to lead in prayer.

Q. You say his manner when he undertook to read anything in public was incoherent or wild? A. You might say it was wild, for he would mix up everything.

Q. What was your opinion as to his capacity and understanding? A. Well, as I expressed at first, I think it was not of a high order.

Q. Well, was it of the average order at all? A. Well, I don't know; so far as my own opinion goes, from the manner in which he used to act and talk, I don't think it was of the average order.

Q. What was his appearance? A. Well, his appearance at times was very good, and at other times he would get rather what you might call "down low;" for instance, at one time here last (if I remember correctly)—somewheres about last Summer, he did not get the orders for his clothes that he expected, and he came to church on Sunday with the knees of his pantaloons out, and dressed very slouchy, and I told him then that he ought to have stayed at home. When he got anything new he looked brighter and smarter.

Q. You were much with him during his last sickness? A. I visited him some three times, I think.

Q. Did you know him during the lifetime of his father? A. Yes, sir.

Q. Have you ever been at the house? A. I have been there once, but I have never been in the house; I have been in the yard with him; I think that was a year ago last Fall, just about the time the fruit was coming on; he called me down there to select a pear tree which he was going to give me. 20

Q. Did he ever speak to you about the treatment he received in his family? A. Yes, sir; frequently.

Q. In what way? A. Well, he came to me on one occasion and spoke of the treatment he received in regard to his sleeping apartment; he said that he had on one occasion, on a very warm night, he had occasion, as he thought, to move his bed nearer to the window so that he might get a little more air; and in consequence of that, as it seemed to displease them so, the next day they took away his bed, and his clothes and things away, and made him sleep on the floor. 30

Q. Who did he complain of? A. I don't know that he named any particular one, unless it was his sister.

Q. Which sister? A. That I cannot tell.

Q. What time was it; when was it? A. That occasion, it seems to me, was in the fore part of last Summer.

Q. After his father's death, then? A. Yes, sir; and also, he said, they had taken his clothes away from him at the same time.

Q. How many times did he complain of the manner in which he was treated there? A. Oh! frequently. 40

Q. So that it was a common subject of his talk? A. Well, he was always bringing up these little matters; when he got little troubles he would always run to me and tell me of it; he told me about his sleeping in Mr. Sayre's barn, I think.

Q. Did he tell you why? A. Because there was no accommodation at home.

Cross-Examined:

Q. When was Thomas Alexander admitted into your church?

A. I think it is between three and four years ago; it might have been four years ago; I could tell if— 50

Q. That is near enough. By what process was he admitted?

A. Through the regular process of the Methodist Church.

Q. By examination? A. By probation.

Q. And examination? A. Well, yes, he was examined; you know that they are admitted into the Methodist Church on six months' trial; what we call probation.

Q. Did his admission require him to undergo an examination as to the grounds of his faith, or to make any explanation as to his beliefs? A. I think not.

10 Q. By what form are new members admitted to the church?

A. Well, they are first received as probationers in the church.

Q. Well, what do they have to do to be admitted as probationers? A. Well, they have to appear before the church and make a public profession of faith, and then they are received into the church as probationers.

Q. After that? A. After that, at the end of six months, if the class leader, under whose care he is placed, makes a favorable report of him, and they believe him to be trying to serve God, and to get to heaven, why then he is recommended and received into
20 the church.

Q. But your discipline or practice requires no personal examination of the applicant, or any public statement of his faith or doctrine? A. Well, it is a form; the doctrine of the church is read to him, and he subscribes to it.

Q. Then he is called upon publicly to assent to the certain doctrine of the Church? A. Yes, sir.

Q. Did he go through that form; that ceremony? A. Yes, sir.

Q. To whose class was he assigned? A. Mine.

Q. When we first went there? A. Yes, sir.

30 Q. After his probation of six months, did you recommend him as a proper person to be admitted? A. Yes, sir.

Q. Did you consider that he had intellect enough to understand the obligations of church membership, and to perform them according to his ability? A. Well, according to his manner of speaking, I did. He would talk upon the subject correctly, as I thought, and yet I never did myself think that he rightly understood the obligations that he had taken upon him.

Q. Then you recommended him with that opinion of him? A. Yes, sir. I done it from his deportment

40 Q. His deportment was consistent? A. Well, he always was regular in his class and at church, and was always ready to talk upon the subject of religion as best he knew how.

Q. Did you have conversation with him often? A. Yes, sir.

Q. He was capable of carrying on a conversation? A. Yes, sir.

Q. He would understand what you said to him? A. Yes, sir; on many matters. On some matters I do not think he did.

Q. On ordinary matters? A. Yes, sir.

Q. Did he frequently lead in prayer? A. Well, I have called
50 on him several times myself in our class meetings, but I did it merely to encourage him. I have seen him in the day-time previ-

ous to the meeting, and he had told me of his troubles, and I would call on him in the class to pray, to divert his mind.

Q. Did he sometimes relate his religious experience? A. Yes, sir,

Q. How often? A. Not very frequently. I think I may have heard him probably once or twice.

Q. Did he retain his membership in your church until his death? A. He did, sir.

Q. You said you thought he was changeable—fickle in his will. Just give us an illustration of what you mean by that? A. 10
Well, I said I did not know; only he spoke to me about his having a will.

Q. No, I don't mean that; you said you thought he was changeable and fickle in his will. State some instance as an illustration of what you meant by that. You said that he was not of the same mind long. I speak with reference to the general habit of his mind. I want you to give us an illustration of what led you to that conclusion. A. I could not state a better instance probably than this: He would come to me when he received a letter from the executors. 20

Q. Executors of his father? A. Yes, sir; Mr. Linthicum; and he would make mention to me that he had not got his money, and then he would go on and denounce them in the worst terms. I would talk with him a few moments and try and persuade him that that course was wrong, and try and instruct him to do things in a little different manner, and to make friends with them, and then would probably get along a great deal better. He would cool down, and in a minute or so afterwards would fly right up again.

Q. Then when you reasoned with him he would cool down, and then in a minute or two fly off again? A. Yes, sir. 30

Q. Did you ever have business transactions with him? A. Well, not as you may say of any amount.

Q. Any of any kind? A. Well, nothing more than he sometimes called on me to borrow money.

Q. Did you lend him money? A. Yes, sir; at different times.

Q. What sums—how large? A. Well, from ten cents and five cents up to a dollar. He would come sometimes and have a letter already written that he wanted to send to Baltimore, but he would have no money to buy postage stamps with, so he called on me to get some change to get the stamps with. 40

Q. Did he pay you back? A. Not always; he was owing me about a dollar when he died.

Q. Ordinarily in these little transactions he would return you your money? A. He has done so.

Q. By recalling it? A. By pressing it upon him—telling him to be a man of his word and pay back what he owed.

Q. Was it in that respect—in the respect of his not paying back borrowed money that you said he was not a man of his word? A. No, sir. 50

Q. Well, what? A. Well, he was not a man of his word in that, and if he would make promises he would forget them.

Q. Promises of what? A. Different kind of promises. He would make a promise to me and I would not see him again for a week afterwards, or two or three days, perhaps, and when I would mention this to him he would have some excuse. He would say he forgot it, and sometimes he would say he guessed he didn't say so. Well, then I would pin him down to it and he would say he forgot it.

10 Q. Well, it was that habit led you to say he was not a man of his word? A. Yes, sir.

Q. Could he read? A. Yes, sir.

Q. You say he had letters written sometimes with him. He could write then? A. Yes, sir.

Q. Did he read the letters to you when he received them? A. Yes, sir.

Q. Did he read correctly? A. Yes, sir; he stammered a little over it sometimes.

Q. Was there not an impediment in his speech sometimes? A. There was—a little.

Q. Well, he did not speak very plainly, did he? A. Not always.

Q. Did he continue to take part in the public exercises of the church as long as he lived and had his health? A. Not unless he was called on. I think sometimes the minister would call on him to lead in prayer.

Q. Who was the minister of the church, when he was taken in?

A. I think it was James O. Rogers.

Q. Who succeeded Mr. Rogers in the church? A. I rather think it was Mr. Atkinson next.

30 Q. Who followed him? A. The Rev. J. R. Daniels.

Q. Who was pastor of the church when Thomas died? A. The man we have now—Mr. Arndt.

Q. Well, sir; in these prayers that he made, were they intelligible? A. They were intelligible, but of no purport, sometimes.

Q. Sometimes he prayed a little wild, you said. Have you not heard other brethren of the Methodist Church pray a little wild sometimes? A. I think I have heard others pray enthusiastically, but not use such language as he did.

Q. Can you recollect any expression that he ever made use of, 40 or any form of speech that he ever adopted which will illustrate what you now say about him? A. Well, I cannot think of but one instance at the present moment, and that was, in his prayer he would mention, for instance, the words, "That when the Lord was about to take him from earth, that he might go to dwell with his glorified Father in heaven." That was one of the expressions.

Q. That was one of the expressions you allude to? A. That was one instance.

Q. Can you give any other? A. I don't think of any more just as this present moment.

50 Q. You went once, you say, to his house for the purpose of get-

ting a pear tree he had given to you? A. He called on me several times about that matter that year. He often spoke about it when he was at my house, examining my trees, &c. He was quite anxious that I should come down to his house and get one of his pear trees, as they had several in their yard. I went down and looked at them in the following Fall, and I told him it would not be proper to take it then, but in the Spring I would come down and get one. I had selected one out, but I never went for it.

Q. He used to take meals at your house sometimes; he would eat with the family? A. Yes, sir. 10

Q. How did he conduct himself at the table? A. Very properly; he was a great eater.

Q. He was a large eater? A. Yes, sir; especially when he got where they had such things as he liked. If my wife knew he was coming to the house, she would prepare such things as he liked; for instance, boiled rice. He was very fond of that.

Q. Did you and certain members of your class sometimes go to other places, as what is called, "a praying band?" A. Yes, sir.

Q. Did Tommy go along sometimes? A. He has; yes, sir.

Q. Did he make public prayer on such occasions? A. I never 20 knew him to do so but once.

Q. Where was that? A. At Rahway, I think.

Q. Did he not also at Irvington? A. How, sir?

Q. Did he not also at Irvington? A. I don't remember his ever doing so at Irvington; we went to Irvington once and found him up there, but we were surprised to see him there, because we had given him strict orders not to come with us anyway, but he was there getting out of the cars.

Q. You found him there? A. Yes, sir.

Q. Did he make a prayer on that occasion? A. I don't think 30 he did.

Q. You don't remember any occasion when he made a prayer at Irvington? A. No, sir; I do not. He was what we considered rather a "bore" to us about that matter, so that we told him we did not want him; he was too intimate and would mix in with the people after meeting; we told him we did not want him, but he would go; we found him in the cars when we got there.

Q. Who controlled those praying bands? A. In the general, I did.

Q. What authority had the leader over the members? A. The 40 leader of the band was considered the head man to direct in all matters.

Q. And what were the duties of this praying band? A. To go round to the different churches and assist them in their prayer meetings.

Q. Going round from place to place and uniting in the prayer meetings at other churches? A. Yes, sir.

Q. Mr. Lines, you spoke about his having expressed a preference for one of his sisters; I did not understand the name by which you said that he called her? A. I think it was "Missy." 50

Q. And that one he said lived in Philadelphia? A. Yes, sir; he read to me some two or three letters which he received from her in Philadelphia.

Q. Did he understand apparently what they said to him? A. Yes, sir.

Q. He had mind enough to comprehend a communication by letter? A. I thought so; he seemed to understand the purport of the letter.

Q. What did he say about her—his sister? A. I think he said that she was the only sister that he had, or some such expression as that.

Q. Did you understand him by that to mean that he had no other sister? A. No, sir. I took his meaning to be that she was the only sister that took any interest in him; he said to me that the others would not speak to him, or have anything to do with him.

Q. But he spoke kindly and pleasantly of his sister? A. Yes, sir. On the last 4th of July, I think it was, he wanted to go to Philadelphia, and he wrote to his sister on that subject, and she gave him a very cordial invitation to come out there; but he was very much worried about his money matters, and was afraid his money would not come in time; I persuaded him; I said, if you have no money I will let you have it and you can pay me back when you get your money. He finally got his money and went to Philadelphia, and after he got back he told me he had had a very pleasant time down there, on his visit.

Q. That was after his return? A. Yes, sir; after his return.

Q. You saw him in his last sickness? A. Yes, sir.

Q. Was that the time he spoke to you about his watch in his will? A. Yes, sir.

Q. Can you give the precise language that he used? A. I may not be able to do that, word for word, but when I went into the room he made a feeble effort to reach out his hand—he always called me “Uncle Billy,”—and I went and sat by his bedside and talked with him, and asked him in regard to his appetite, and his aches and pains, &c., and then I told him I thought he ought to get up; and, said I, if you will let me get you up and give you a wash and comb your hair, and fix you up a bit, I think you will feel a good deal better.

Q. I simply want you to repeat the language he used when speaking about the watch in the will? A. In regard to the watch, it strikes me he had the watch there in his hand, and he opened it and looked to see what time it was, and then he made a remark and said, “This watch I have willed to Gus. I am going to give this watch to Gus.”

Q. He said he was going to, or had? A. Said he was going to.

Q. Gus is your son? A. Yes, sir. Then he commenced speaking about his birds, and said he was going to give them to me. I said I didn't care about them.

Q. Do you know how long he had had those birds? A. Well,

I think that at the time that he died, he hadn't had them but since the Spring before, or the fore part of the Summer.

Q. Well, you think this interview you speak of before his death was the first time you saw him after he was sick? A. Well, I heard he was sick, and I called to see him on the Sunday afternoon—it was two weeks before he died. I think he was sick two Sundays before he died.

Q. His appearance was very disagreeable, was it not? A. In the general, yes, sir.

Q. His countenance was unpleasant? A. Yes, sir. 10

Q. His whole appearance was rather repulsive? A. Yes, sir. And on one or two occasions at the time I speak of, of our going to Rahway with the praying band, the people there set up quite a laugh at him; made quite an uproar, and the preacher requested us not to bring him with us again; and the same thing happened at Bergen.

Q. He went to Bergen with you? A. Yes, sir; at the time we had the same preacher, Mr. Atkinson.

Q. His manner and appearance excited merriment, did it not? A. Yes, sir. 20

Q. Did he take any part in the public exercises at Bergen? A. No, sir; we did not take him with us; but he went once by stealing a march on us, and we found it was very disagreeable to the people there, and so we told him he must not go any more after that.

Re-Examined :

Q. Why did you not want him to go with your praying band? A. Well, it was because of his manner—his manner was not in any way agreeable or pleasant, even in his conversation. After 30 the prayer meeting was over, he was one of those kind that would go and mix with the people, and make himself too friendly; the people rather didn't like him.

Q. Did he attempt on any of those occasions to interfere in the public exercises? A. No, sir.

Q. None of them? A. No, sir.

Q. So that it was his appearance and private manner that was so objectionable? A. Yes, sir; and his manner of expressing himself.

Q. How? A. Well, with perfect strangers, he would go and 40 mix right in; after the meeting was dismissed, he would go round and mix in and commence talking. Sometimes he would say, "We've had a good meeting to-night, and shall have a glorious old shout some day;" and the people thought it was not quite the thing.

Q. Then his ordinary manner was such as to shock the people so much, that they begged you not to bring him again? A. Well, Mr. Atkinson noticed it, and Mr. Opdyke at Rahway, requested us not to bring him again. He said he had nothing against him, but he said his people did not like it. 50

[By McCarter—You must not state what you were told, Mr. Lines.]

Q. Was this excitement caused wherever he went with you on the "praying band?" A. Yes, sir.

Q. Just by his appearance and strange manner? A. Yes, sir.

Q. Did you tell him not to go? A. Yes, sir.

Q. You often charged him not to go? A. Well, I told him from four to half dozen times.

Q. Would he still persist in going? A. Well, he would find 10 out by some means or other that we were going, and when the cars were started, we would find him in the cars.

Q. Could you not keep him back? A. Not after the cars had started; so when we got down there to the church, we would give him orders to go over to the side in a seat and to stay there.

Q. Would he obey those orders? A. Yes, sir.

Q. Still with all your discipline, you could not keep him from being so disagreeable; so that they told you not to bring him? A. Exactly.

Q. You said twice that he told you he had willed his watch to 20 your son, and had willed his birds to you? A. He didn't speak of willing the birds to me; he said he was going to give the birds to me, and that he was going to give the watch to my son; he told the—

Q. What did he say about the will? A. That was about all he said of the will at that Sunday.

Q. What did he say about the will? A. Well, something or other about that he had a will and had given his watch and chain and a few little things connected to it to "Gus," meaning my son.

Q. Then he did say he had made a will, and had given his watch 30 to "Gus?" A. That is the way I concluded, sir.

Re-Cross Examined:

Q. You told me when I asked you to say what he said about the watch, that he told you that he was going to give it to Gus, his watch? A. That was the expression.

Q. Now you say in answer to Mr. Keasbey, that he told you he had made the will, and had given the watch to "Gus?" A. He said he had a will, and was going to give the watch.

Q. His expression then was he had made his will, and was going 40 to give the watch to Gus—

Re-Examined:

Q. Did you understand him to say he had made a will?
[Proponents' Proctor objected.]

A. I didn't understand him to say anything more than he just made use of the expression, that he made use of the words that he had a will; I didn't pay much attention to the fact, because I didn't believe he had one.

Caveators' Counsel also called

Ezra Reeves, sworn :

Q. You are a builder, in Newark ? A. Yes, sir.

Q. Where is your place of business ? A. 409 Mulberry St.

Q. How near Mr. Alexander's former residence ? A. I think two blocks.

Q. Did you ever have Thomas Alexander, Jr., in your shop at work ? A. Thomas Alexander used to be about my shop, but not exactly at work.

Q. How did he happen to come there ? A. I did work for his father, and in the meantime Tommy got to coming round the shop, and Mr. Alexander said to me one day, if Tommy was not too much in the way—if he was not too troublesome, he would rather consider it as a favor if I would let him be about there, as he wanted to use him to the tools and such like, but he was afraid he would be too much in our way. I said he might busy himself about there for the present, and he did so for some little time.

Q. How long ? A. Well, he was there part of the time perhaps for — years.

Q. Did you do work for Mr. Alexander as soon as he came to Newark ? A. Yes, sir.

Q. And were on good and pleasant terms with him always ? A. Yes, sir.

Q. Was Tommy ever employed by you in any regular work, under pay, as a journeyman ? A. No, sir.

Q. What was his occupation there—describe it ? A. Well, nothing in particular ; if the team went out Tommy would go along if he could ; sometimes he would drive a gentle horse if he wanted to drive ; sometimes he would be going with the boy, and would drive them sometimes himself. He was very fond of driving horses ; he would go out with the wagon to different places. Sometimes we would be doing work where nails were required to be driven, and he used to like to drive nails.

Q. Did he undertake to do anything in the way of regular mechanical work requiring particular skill ? A. No, sir.

Q. Did he improve at all in this simple mechanical employment that he had ? A. Not that I discovered : that was not the intention—he did not come there for that purpose.

Q. For what purpose was it ? A. Not for learning particularly ; I never considered it that way.

Q. Well, for what purpose was it ? A. I simply allowed him to be around there because he wanted to, and his father had rather asked it as a favor, but there was nothing particular—

Q. Was he of any use to you ? A. No, sir.

Q. What was your view of his capacity and understanding from your knowledge of him ? A. Well, I don't think he had any capacity for any kind of business.

Q. You did not think he had any capacity ? A. No, sir.

Q. Did you consider him capable of any improvement even in mechanical matters ? A. I did not ; no, sir.

Q. How did you regard him, mentally ?

[Proponents' Proctor—I think the witness had better state what he knows about him.

Caveators' Proctor—That is what I want him to do.]

Q. From your long knowledge of him, what was your opinion of his mental condition and understanding ? A. Well, I thought he was very deficient ; I did not think he had any ability.

Q. What reason did his father give for wanting him to be about your place ? A. Nothing particular ; only to gratify Tommy.

10 Q. Did he sometimes occupy the stable of Mr. Sayre, and sleep there ? A. Not while he was working for me ; he did afterwards, I heard, but I never saw him in the stable.

Q. What did he do after his father's death ? A. Previous to his father's death he stopped coming there, and only came occasionally. After his father's death he used to come in occasionally ; used to come in the shop. I don't know that he ever done anything in the way of——. I don't think he intended to do anything so as to earn anything particular.

Q. Did he ever try to do that with you ? A. No, sir. I used to 20 give him a little money sometimes, to please him.

Q. Did you usually see him in the house when you went there ?

A. No, sir. I don't recollect of seeing him there except once, if I understand you. I have seen him about the house ; that is, I have seen him while I was working there. If Mr. Alexander sent for me to go over there on any business, I did not see Tommy about except once, when he called me in to see me about a society. He said Tommy wanted to join the " Sons of Temperance," and he was asking me some questions about it. He wanted to know what it was, or something to that effect. He wanted to learn a little more 30 about the society that Tommy wanted to join.

Q. Do you consider that he was a man of sound mind, memory and understanding ? A. No, sir.

Q. What is your view on that subject ; what would you call him ? A. Well, a kind of medium. I thought he wanted to try and do pretty near right, about as far as he knew how.

Q. I speak of his mind now ; not of his heart. A. Well, I thought he was very unfortunate about that ; he had no mind, apparently.

40 *Cross-Examined :*

Q. Could he read ? A. Well, that I never heard him do, but I think he could read a little.

Q. Could he write ? A. I have seen some of his writing.

Q. Then he had mind enough to learn to read and write ? A. Yes, sir.

Q. Could he add up figures, do you know ? A. I don't know about that.

Q. Did he never do anything in your shop except drive nails, and go about with the horse ? A. No ; he would use the plane a 50 little, after a fashion, but he never done anything that required the least skill.

Q. Did he not make boxes? A. Himself alone? No, sir.

Q. Did he do anything about making boxes? A. Oh, at that time we made quite a good many for the varnish makers, and he used to help.

Q. Did he not make boxes for himself and friends, in which he did the whole work? A. I think not.

Q. Well do you know? A. Well, I think I do; I am pretty sure he did not. He made a good many things there for his friends, in appearance, but he got the men in the shop to do it; then he took it home, and I guess his friends got them. 10

Q. Did he not, after the stuff was got out, put the things together himself, really? A. I never see him, and I don't think he did.

Q. Were you in the shop all the time? A. No, sir.

Q. Then he might have done it in your absence, and you not have known it? A. He might. I only judge from his general appearance; from what I see of him.

Q. Did you ever express any opinion about Tommy's common sense? A. Did I?

Q. Yes. Did you not say on one occasion, Mr. Reeves, something like this: Tommy's elder brother said he had no sense, but you thought he had more sense than a good many other men who appeared better? A. I don't know that I ever said that; I might have said something like this, "That Tommy done better than some that had common sense," but I had reference to his doing about as well as he knew how. 20

Q. But I ask you whether you did not say that Tommy had more sense than others who appeared better than he did? A. No, sir; I never said that.

Q. Are you a member of the Franklin street Church? A. Do 30 I go there?

Q. Yes, sir. A. No, sir.

Q. You don't attend that church? A. No, sir.

Q. You have conversed frequently with Tommy? A. Well, not very often. No, sir.

Q. You did not pay much attention to him? A. No; I used to hear him talk when I was there.

Q. What did he talk about? A. Well, he talked about his brothers and sisters.

Q. Family affairs? A. Family affairs. 40

Q. To whom would his conversation be addressed when he was there? A. That was when he was in the shop talking.

Q. When he was having this talk, you said you did not talk to him much; now, who was it addressed to? A. It was addressed to me, but I did not say much to him.

Caveators' Counsel also called

Thales A. Linthicum, sworn:

Q. You are a lawyer, living in Baltimore? A. Yes, sir. 50

Q. And one of the executors of the will of Thomas S. Alexander? A. I am.

Q. And one of the trustees of the estate of Thomas Alexander? A. Yes, sir.

Q. Did you file a caveat in this cause? A. Yes, sir.

Q. Are you a son-in-law of Mr. Alexander? A. Yes, sir.

Q. When were you married? A. In 1860.

Q. At that time what was Thomas Alexander's age? A. Thomas was 39 when he died, in his 39th year, so he could not have been more than 28; he was then 27 or 28 years of age.

Q. How long have you known Thomas Alexander? A. I have known him since the Fall of 1846; I first saw him in the Fall of 1846, and I knew him from his return from school in the North; he came back, I think, in 1856.

Q. Where did you live then? A. In Baltimore.

Q. Where did he live? A. He was then, when I first saw him in Baltimore, living with his father at No. 55 Lexington street.

Q. Why did you file a caveat against his will?

20 [Proponents' Proctor objected.
Caveators' Proctor withdrew question.]

Q. Did you consider him capable of making a will? A. I did not, sir. He never had been capable of making a will or transacting business, or anything else that required even ordinary understanding, since I have known him.

Q. Will you state your knowledge of him of his mental qualities from the beginning, by way of giving your reasons for the opinion you have just stated as to his capacity? A. O well, sir, the first time I ever saw him, that is, when my attention was first called to
30 him, was in the year 1846—I think in the Fall. I was going to school, and on my way there I passed Alexander's house, and saw a very peculiar looking person, who was Tommy, sitting on the fire plug in front of Dr. Harrison's house; and a boy that was going along with me, said, "There is crazy Tom Alexander." We went over to where he was, and this boy I was with went up to Tommy and said, "Hallo, Tommy! Did you kill my dead dog?" Tom jumped off the fire plug and ran into the avenue at the side of the house, and as we went by (we just went along—we did not stop), he came out and said "he did not kill the dead dog." I
40 saw him once or twice after that, and then I missed him. I left school the January following and did not see anything of him much after that January until 1856, when he returned from school. He came back to Baltimore after his mother's death; and during the Spring of 1856, before his coming back from school, I went round to his father's house for the purpose of seeing him about his buying a farm to put Tommy on, "so as to keep him away from the city," he said. After the matter was arranged, Tommy went out on this farm property, with the residue of the family, except my wife, and he stayed there, I think, until the following Summer.
50 Before going out on the farm, Mr. Alexander had talked with me—

[Proponents' Proctor objected to witness stating conversations had with Mr. T. S. Alexander 20 years ago.]

Witness—He told me why he purchased the property, and why he was going into the country to take Tommy there—

[Proponents' Proctor objected.]

The Court :

The Court looks upon this as a very important question—a very 10
important case, and feels that anything that will have a tendency
of giving this Court any light upon the condition of this testator—
anything that will throw any light upon that subject, should prop-
erly be admitted, although not strictly according to the laws of
evidence. I can say to Counsel, that I talked to Judge Titsworth
previous to coming in here, and he suggested this thing : That he
thought it would be well for this Court to admit all the latitude
that we could ; that is, to admit evidence, and if anything should
be admitted that was strictly illegal, it would be overruled here-
after in the event of its being found so ; and it strikes the Court 20
that anything that will throw any light upon the subject would be
competent.

Witness—He said that he expected his son Tommy on, and that
he wanted this place—the farm, for the purpose of placing him
there, and keeping him away from the streets. He said that he
would have no way of controlling Tommy in Baltimore, and for
that purpose he desired him to be away. He asked me if I knew
him. I said I had seen him, as I have before related, but I said
I had had no talk with him at all. He then made use of the ex-
pression “ Poor Tommy worries me ; he has no mind, but merely 30
the reflection of a mind.” The remark Mr. Alexander made struck
me as being a rather clear definition of what I considered to be
Tommy's real condition when I saw him. Well, the farm was pur-
chased, and after Mrs. Alexander's death, Tommy came home, and
was put on the farm, I think for the summer of 1856 or 1857 ; I
am pretty well satisfied it was 1856. Mr. Alexander also placed
out there—I think there was Robert Ghiselin, and if I mistake not,
Mr. Gibson and wife, the gardener. Mr. Ghiselin was put there as
a sort of general foreman, and Mr. Gibson to attend to—

Q. You need not give details. A. I think it was either the Fall 40
of that year or the next, that Mr. Alexander called me into the
back office, and said he was sorry to be compelled to put Tommy
in a lunatic asylum, as he had got uncontrollable, and he wished
Tommy to see he had some authority over him.

Q. When was this? A. In the fall of 1856 or 1857, I am not
certain as to dates, Mr. Alexander desired me to go out to the
farm and carry Tommy to the Maryland Hospital—he had made
all the arrangements for him to be carried there. He said to me
that Tommy was beyond his control, and he would have to let
him see that he had some control over him yet, and had the power 50

to discipline him. He told me to go and take a carriage out to the country and ask Tommy if he did not want to come to Baltimore, and if he did, just to say to him that there was a horticultural exhibition on the eastern side of the city—where the hospital was—and ask him if he would not go along with me in the carriage, and not tell the old man anything about it. Well, said I, Mr. Alexander, but there is no kind of a horticultural exhibition there. “Oh,” said he, “that is nothing—that is just to cheat him.” So I went out in the carriage and asked him if he did not
10 want to go to Baltimore, &c, and then I carried him over to the Maryland Hospital and left him there, and I think he was there a year.

Q. That is an insane hospital? A. Yes, sir.

Q. Now go on, if you please, and give your next knowledge of him. A. That was after he came out of the lunatic asylum. He came home, and was occasionally in the office. I was with Mr. Alexander from 1853 to February, 1861, the year preceding the breaking out of the war. Frequently Tommy would be in the office. I was in the front office—Mr. Alexander was in the back
20 office; and Mr. Alexander would say to us that we must not let Tommy interfere with us, and if he got troublesome we must keep him out of the office—

By the Court:

Q. How long was he in the asylum? A. I think he was in the asylum nearly a year; it was at the time Dr. Steward and Dr. Van Orden were in charge of the hospital.

Further Examined:

30 Q. Please repeat what you said about his coming into the office?
A. I said he came home from the asylum, and used to come into our office frequently, and Mr. Alexander said we must not let Tommy bother us, nor interfere with us at all, and if he got troublesome we were to turn him out. I think it was about 1859 that Mr. Alexander moved his family from Lexington street to North Charles street, and after that Tommy came very seldom to the office, but I saw him quite frequently, however, at his house when I would be up there. During all this time Tommy had no occupation, no employment; he was not capable of any occupation or
40 employment, or, as I thought, of the slightest mental effort; he did not have the capacity—or he never did it—to talk about what had taken place—things that had transpired up to the month preceding, unless some one acquainted with the facts was to refresh his recollection by asking him the question.

Q. Did he make any progress, to your knowledge, in intellectual matters? A. No, sir; he made no progress. On the contrary, there was, I thought, a deterioration; a gradual sinking of Tommy's mind.

50 Q. Did he learn to read and write? A. He had learned to read and write before I knew anything about him, sir. He could write letters, such as the specimen you have seen here.

Q. He was able to do mechanical work of writing at an early age? A. I don't know when he learned that, sir. I suppose it was before he went up North.

Q. When did he go up North? A. That I am not able to say, sir. It must have been after 1847, and before November, 1855.

Q. Now bring your knowledge of him down from the time when you left off. A. At the breaking out of the war, Tommy at first was what was called a decided rebel; but he told me one day that Mr. Cathcart, who then, I think, had something to do with the Provost Marshal's office, had threatened to arrest him if he didn't 10 behave himself, and he then became, from that, a decided Union man, and was then very active in taking down the names of what he called the rebels up there in North Charles street, and in that neighborhood, with the intention of using his endeavors to have them arrested. I think it was in 1862, that Tom enlisted in the Third Maryland Regiment, or said that he had enlisted. Mr. Alexander requested me, while he went to Washington on business, to go over to the camp and see if I couldn't get Tommy discharged from the service. When I went to the camp, I found Tommy there, but not in uniform at all. He did not pay attention to my 20 coming at all. I walked into Adjutant Dobson's tent, and there I saw the Sergeant-Major of the regiment. He laughed as soon as I went in, and says, "You here about Tommy Alexander——"

By Proponents' Counsel:

Q. Was Tommy present? A. He was in the camp.

Q. Was he present at the conversation? A. No, sir.

Further Examined:

Q. What was the result? A. He was allowed to come out 30 three days afterwards. He was kept in the camp three days, at my request. He had not been enlisted, and they refused to enlist him on account of his mental incapacity; Sergeant-Major knew Mr. Alexander, and refused to——

[Proponents' Proctor objected.]

Witness—Well, he was kept there until three days had passed, because Mr. Alexander desired I should make the request that he should not be released immediately, because he was afraid they would have the same trouble again with some of the other regi- 40 ments stationed around Baltimore.

Q. Did you know him after his father removed here? A. Yes, sir.

Q. Were you in the habit of coming here? A. Whenever I had business in New York, and his father was at home, I generally went down to his house. I did a great deal of business with Mr. Alexander from the time of his leaving Baltimore to the time of his death.

Q. Did you see Tommy when you would go to the house? A. Yes, sir. I would see him in the library and he would take occasion to speak to me and walk up the street with me.

Q. Have you observed any improvement in his mental condition 50

since he lived here up to the time of his death? A. I have not, sir. I consider that his capacity seemed to get weaker and weaker.

Q. What was your opinion as to the condition of his mind, memory and understanding at the time of the execution of this will?

A. Well, sir, at that time, and as I said before, at no time during my knowledge of him, had Tommy a sound mind, memory and understanding, particularly at the time, I think it was the second of January, and for a month previous (Mr. Alexander died on the fourth), as Tommy had been laboring under a good deal of excitement.
10 ment.

By Proponents' Proctor :

Q. What period are you speaking of now, sir? A. From December, 1871 to 1872.

Further Examined :

Q. State the circumstances within your knowledge of his excitement and conduct about the time of the execution of the will? A. Well, sir, I think the day after the will was read I was up in Broad street and I saw Tommy up there —
20

By Proponents' Proctor :

Q. You are speaking now of whose will? A. The will of Mr. Alexander in 1871.

Further Examined :

A. I saw him in Broad street and he seemed to be afraid of me. I asked him what was the matter, and he said that I was not going to have anything to do with him, and that I had no right to put
30 him in a lunatic asylum. Well, said I, Tommy, if you never get into a lunatic asylum until I put you there you'll never get there as long as you live. I carried you there once and I did that at the request of your father, but I have no power to put you into the lunatic asylum now, I am merely a trustee of your estate; the property is devised to us in trust; we have nothing to do with you on the face of the earth; all we have to do is to provide for your support and maintenance. Sometime after that, perhaps the next time I came on, I saw Tommy and he said that he had been
40 told that all that we wanted to do (meaning Mr. Alexander and myself) was to get him down to Baltimore, and put him in a lunatic asylum and cheat him out of his property, and he didn't wish to have anything to do with us. After the filing of the will we waited for the expiration of ten or fifteen days before coming on again, and Tommy told me then that he had been again informed that we were going to put him in a lunatic asylum; that we wanted to get him to Baltimore and put him in a lunatic asylum down there, and then we intended to spend all his money; and in other conversations that I had with him, which were very short, that seemed to be the impression he had on his mind, and I thought —

50 [Proponents' Proctor objected.]

Witness—Well, I had taken him to a lunatic asylum before and I thought he was afraid that I had authority to do it again.

Q. What assurance did you give him on these occasions? A. I told him that if he never got into a lunatic asylum until I put him there, he never would go there as long as he lived.

Q. After receiving that assurance did he still seem to have this fear? A. Yes, sir. He would write about it as those letters that you have read, show.

Q. When was the will read; do you remember? A. Well, Alexander died on Monday night, and I think the will was read on Friday. 10

Q. What day of the month was the death of Thomas S. Alexander? A. 4th of December, 1871.

Q. And it was on the 28th or 29th day after that that this will was executed? A. Yes, sir.

Q. What was going on at the house to your knowledge, about that time, shortly before the execution of this will? A. While the property was being appraised and arrangements being made for the sale, Tommy was there during that time.

Q. Were there troubles, &c., in the house? A. Yes, sir. When we came on from Baltimore, Julian Alexander and myself, the two executors, we always stopped at New York, but we stopped over here at Newark just to see how things were getting along. When we went into the passage we saw a police officer sitting there; this policeman was Mr. Hawkins; at that time Miss Margaret Alexander was there, Mr. Reverdy Alexander and Tommy. Tommy appeared to be in a great state of excitement; this was one or two days before New Year's day. I stayed at the house that night, and Tommy was talking about going to the police office to get out warrants. I told him he had better let these matters alone, and I was requested then, by Mrs. Bingham to send the police officer off. I said "No; you brought the officer here and I shall not have anything to do with discharging him." The next day a complaint was made that we had not taken possession of the property—the property was left in the house, and I remarked to — (Miss Margaret made the complaint). She said she could not get towels and sheeting for her own use — 20 30

[Proponents' Proctor objected.]

Witness—I told her then I would take possession of the property, and I went over and slept at Mr. Alexander's house, and the next day I came back and put the same police officer there to take charge of the property. Tommy was very much excited during this time; he seemed to think it was a matter involving a great deal of importance to him. 40

Q. Did you know anything about Tommy's will at the time of its execution? A. Not at the time of its execution. The day before the sale—I think it was the day before the sale—no, it was the night—no, the afternoon before the sale, I was told that 50

Tommy had made a will. Mr. Julian Alexander told me that Mrs. Bingham told him that she had made Tommy make a will, and that was the first I heard of it.

Q. Did you hear Tommy say anything about it? A. Not then, sir.

Q. When did you first hear him say anything about the will?
[Proponents' Proctor objected.]
[Recess of twenty minutes.]

Q. You were speaking of the time shortly after the father's
10 death; did you then have any conversation with Tommy himself, about the will? A. I had sometime; I think in the latter part of January; and he told me that he had been to Mr. Kirkpatrick and had destroyed the will that he had made. After that Mrs. Bingham asked me about Tommy having met my wife at Jersey City; she asked if he had met her. I told her that he had, and then she asked me the question, "What had taken place there?" and I told her I did not hear all the conversation; but that Tommy came one morning to my apartments, and said he was very hungry, and I gave him his breakfast and he rode down with us to
20 Jersey City, but I did not hear the conversation. Sometime after that Mrs. Bingham was talking about Tommy's will; I think that that was perhaps later in the Winter, or early in the Spring—the way the conversation came about was this: Tommy was talking about getting married; and she told me that Tommy was talking about getting married, and she wanted us to prevent it, and asked us if we would not put him a lunatic asylum. I told her—I told her that in view of what she had mentioned, that Tommy had made a will; if Tommy had capacity to make a will, why did she want us to put him in a lunatic asylum? And after that I re-
30 peated to Tommy what I had always said: that if he never got into a lunatic asylum until I put him there he would never go there. In the month of June, 1872, the letter which Mr. Alexander referred to was received by us, and we came on in response to it. That letter amongst other things, desired us then to take Tommy up to Media, I think, in Pennsylvania.

Q. Who desired you to do this? A. Mrs. Bingham, then Miss Alexander. She produced a pamphlet and said she had gone up there, I think with Mrs. Rutherford, or some relatives of her's I forget which, and then she told me that she had made all the
40 arrangements, and all we had to do was to take him there. She showed us a pamphlet, or a last year's report, or perhaps a report for that year. Tommy was always under the impression, and was always in fear of being sent to a lunatic asylum whenever we were on here; that seemed to be his continued apprehension, and we could not get him to understand that we had nothing to do with the disposition of his person. We told him time and time again that all we had to do was to take care of his property, pay for his board, buy his clothes and look out for him generally, so far as the property was concerned; but as to having the personal disposi-
50 tion of himself, or what was to be done with him, we had nothing whatever to do with.

Q. He writes letters speaking of the fear of being sent to a lunatic asylum, and of what he is told by Mrs. Bingham. Was there any foundation in your conduct or statements to him for these fears? A. Not the slightest, sir. We never had the slightest idea of putting Tommy in a lunatic asylum.

Q. Did you ever say anything of the kind to Mrs. Bingham? A. On the contrary, we told her whenever she talked about it, that we would not do anything of the kind.

Q. Will you state what, in your judgment, was the character of Tommy's mind? A. Well, Tommy was idiotic. He was always 10 cared for and treated as if he were a mere child, and required the attention of some one at all times. When he left Baltimore, in 1866, Mr. Alexander and Mrs. Bingham came on in advance, and Mr. Alexander left word for me to send Tommy on with the servants. After that, I think it was the next year, he paid us a visit, and I was notified in advance of his coming, what train he would be in, so that I could meet him when he arrived; and when Tommy left me I notified them in advance that Tommy had left, and what train he would leave by; and I was notified in return of his safe arrival here, by Mr. Alexander.

Tommy had no memory. I have never seen him, or heard him engage in conversation in my life except the mere ordinary salutations of the day, generally followed up by words that he wanted to borrow some money or tobacco. It was, "Give me a quarter or ten cents, or give me some tobacco." 20

Q. Have you ever observed any signs of improvement or advance in him? A. Never, sir. On the contrary, in 1870, Mr. Alexander was speaking with me again about Tommy's condition, and he said that Tommy, although appearing to be a little better in physical health, was not improving in mind, but he thought he was 30 becoming worse and was becoming unmanageable, and he was afraid he would have to confine him again; he said that people here had been speaking to Tommy, and saying he had no control over him, and for the purpose of regaining his control he would have to confine him again. In July, 1871, before Mr. Alexander's death, he stated the same thing to me.

Q. What were your relations with Mr. Thomas S. Alexander? A. My relations with Mr. Thomas S. Alexander, from the time I went into his office—or from within six months of that time—were always of a very friendly character, and our relations were also 40 confidential. I was surprised, after being there six months, that he would talk to me about his private, individual business, and I was also surprised that he should take my opinion about what he was going to do in the investment of his money, and in the management of his family, and in the purchase of the farm, as I was not a farmer, although I was raised in the country. Frequently he got me to go out there in the country with him; and in 1866, when he moved out to Newark here, he sent me on to select and buy his house, and I bought the property; I was some five weeks 50 searching out the property. He could not come on himself, being

very busily engaged in the trial of the Police Commissioner case in Baltimore, and so he sent me on to select out his property, subject to his approval; all he wanted was one room for his library—

Q. I only want to know your relations with him. A. They were always friendly and confidential; but from the 30th of December, 1860, to March, 1862, Mr. Alexander never passed a word with me.

Q. The latter part of his life, how was it? A. The latter part of his life, from 1862, was always of a most intimate character; there was but one subject of Mr. Alexander's matters that he never mentioned to me.

Cross-Examined:

Q. What age are you? A. I am in my 43d year; I was 42 on the last day of last October.

Q. When did you first see Thomas Alexander? A. In the fall, or early in the fall of 1846.

Q. How old were you then? A. I was then just in my 16th year—15 years old.

20 Q. You have told us of your relations with Thomas S. Alexander; what kind of a man was he, as to his mental and legal attainments? A. His mental and legal attainments were of a very high order. He was a superior man, sir.

Q. Was he capable, in your opinion, of forming a judgment as to the testamentary capacity of his son? A. I think that if it had been considered by Mr. Alexander, he could have formed an estimate of his son's testamentary capacity.

Q. Did you never, since Mr. Thomas S. Alexander's death, express the opinion that Tommy ought to be put in a lunatic asylum? 30 A. Yes, sir.

Q. You did? A. I did; yes, sir; all the family thought so, sir.

Q. It will be sufficient to answer the question, sir. To whom did you express that opinion? A. I don't know, sir. I think it was to Mr. Julian Alexander. I know I expressed it to him, and perhaps to others.

Q. You made no secret of that being your opinion, sir? A. No. I made no secret of it, and I did not go and proclaim it on the street, Mr. McCarter.

Q. Do you know Mr. Thomas T. Kinney? A. Yes, sir. Mr. 40 Kirkpatrick's brother-in-law. Yes, sir.

Q. Did you express that opinion to him? A. I don't know whether I did or not; if we ever talked upon the subject it is more than likely I did; I have had very little conversation with him.

Q. I don't want to go into that; I only want to know whether you expressed that opinion or not? A. I don't know whether I did or not.

Q. Mr. Julian Alexander expressed the same opinion, did he not?

A. He did to me, certainly. Yes, sir.

Q. How many conversations have you had with Mrs. Bingham 50 since her father's death? A. I cannot remember them, sir; frequent conversations.

Q. Who was present during the conversations you said you had with Mrs Bingham, when she spoke of Tommy's getting married?
A. No one but herself and myself. She was in the house by herself at that time, sir.

Q. Mr. Linthicum, you say Tommy was idiotic. Please explain what you mean by that? A. Well, sir, I suppose I might as well give you the definition I have in my own mind.

Q. That is just exactly what I want, sir. A. Well, an idiot is a person who, either from birth or accident, has no mental capacity. Blackstone says, "An idiot is a natural fool." Coke upon Littleton says, "An idiot is a person who from birth or accident becomes of unsound memory."

Q. Tommy could read and write? A. Yes, sir.

Q. Read newspapers? A. I don't think I ever saw him read anything but the old Methodist hymn, "When I can read my title clear to mansions in the skies." I think he was about five years trying to commit that to memory but he never could do it.

Q. Do you know whether he was capable of adding up figures?
A. I don't know, sir. I never saw him add up figures.

Q. Would you consider him capable of doing it? A. I should not think he could add up any number of figures; but he might put two and two together.

Q. Would you consider him capable of adding figures in his head—of conducting an arithmetical calculation in his head? A. He could not add up a column of figures.

Q. Would you from your knowledge of his capacity, think him capable of playing whist? A. I have seen him play whist, and I have seen him play chess, but he never exhibited any skill in either game.

Q. Did you ever play with him? A. I have. 30

Q. When? A. I have played "seven up" with him in 1860 and in 1863. My wife was away and Tommy came down and stayed with me as a sort of housekeeper, and he and I used to sit up half the night playing seven up or high, low, jack and the game.

Q. Could he get through a game of whist? A. Yes, sir; there is an end to all things; when you count ten the game is over.

Q. He could play his part of the game through? A. Yes, sir.

Q. In your opinion, can an idiot play whist? A. Yes, sir; I believe the purpose of establishing these schools in asylums, was to teach them games and how to spend their time. At one time a deaf mute was considered an idiot, but now they are not by a great deal; this shows the change. 40

Proponents' Proctor also called

Henry H. Miller, sworn:

Q. What is your business? A. Furniture dealer.

Q. The firm? A. John Jelliff and Henry H. Miller.

Q. How long have you been engaged in that business? A. 50

Thirty years last October—on the fourth day of October. I went there to learn my business.

Q. Did you know Thomas Alexander, the testator in this case?

A. Yes, sir.

Q. I mean Thomas Alexander the younger—the son? A. Yes, sir.

Q. How long did you know him? A. I cannot give you the number of years; but ever since he came to Newark; when they went into the house in which his father died.

10 Q. And from that time? A. Up to, perhaps four weeks before his death was the last time I saw him.

Q. What opportunities had you of becoming acquainted with him? A. The same as everyone who transacted business with him; he used to come in the store a great deal on business from the family, when they wanted us to send workmen to the house, &c.

Q. On those occasions would you have conversation with him?

A. Yes. I always did when he came in the store.

Q. Can you give us an idea as to about how often he used to come to the store? A. When they first came in the city, the first

20 —for perhaps two or three months he was in very often, as there were a great many things to be repaired, and he almost invariably brought me the messages. If his father wanted to see me, he used to come up and tell me about it. After we got the house fixed up I did not see him so often, except as I met him in the street occasionally, or in the church on a Sabbath.

Q. Describe the character of the interview you would have when you met during the first few months after his father's removal here; tell the Court how they came about? A. He used to come in the store the same as any other man would, and ask for me

30 always. They would call me down stairs, and then I would see him, and he would say, "Father wants you to come up to the house to-night," or, "He wants you to send up a man to mend a bedstead, or fix the drawers in his library table,"—which he had a great deal of trouble with. Tommy came a good many times about that. He used to say, "Now what hour will you send the man?" and he used to say, "Now, don't you disappoint; but send at the time you have promised, and I will be there to show the man what my father wants done." That was about the manner in which he used to talk to me.

4) Q. What did you discover in these conversations as indicating the character of his ordinary intelligence and capacity for business?

A. In all he ever said to me in the store or in the street, I never discovered but what he was able to carry a message, sir, and was consecutive when he talked to me; and he went through my shop a good many times up where the workmen were at work, and he used to ask me a good many questions about the work.

Q. Well, how was his conversation as to being rational, sensible or otherwise? A. I never heard Tommy say anything I thought was foolish or lacking ordinary intelligence, when he talked to me.

50 Q. Did you ever have any business transaction directly with him

—on his own account? A. Only one—after his father's death, when he came and ordered a bedstead from the store.

Q. Do you know how soon it was after his father's death? A. No, sir; I do not. I think it was after he was going to board. I think it was after the house was sold and the family broken up.

Q. Just describe that transaction, Mr. Miller. A. Tommy came to the store and said he wanted to get a plain bedstead and a mattress, and he wanted me to sell them to him very cheap, because he had not much money to spend. He did not buy them that day—he looked at them, tried the strength of the bedstead, and made all the inquiries about it, and said he would let me know further about it. After that he came in again, and inquired what spring slats would cost to go on to it. I don't think he purchased them in the store; I am not aware that he did. He came in and investigated it, and found out what it would cost, and said he would let us know further about it. I did not always see him when he came in the store. 10

Q. Did he make any purchase of you? A. Not from me personally, and I could not say whether he bought the spring attachment there or not. 20

Q. Did he purchase anything from your store? A. Not from me.

Q. Did he purchase anything there? A. He might have done, from my son.

Q. You have no recollection of the transaction yourself? A. No, sir. I made the bargain as to what he should have the things for.

Q. How did he conduct that negotiation with reference to his capacity to do that kind of thing? A. Well, he was as careful about it as ordinary men are. He even went so far as to ask what I would take off if he got a carman to take them away for him; he said they were to go to Catharine street, where he was going to board. 30

Q. From your acquaintance with him would you have had any hesitation in selling him goods on account of his capacity? A. No, sir. I never had any such thought at all.

Q. What was his appearance? A. His personal appearance was singular, and his manner, walk, &c., in the street was different from most anybody else that you would see, and at first sight there was nothing prepossessing about him at all to me. 40

Q. If in the interviews that you had with him at that time, his appearance had been that of an ordinary person, how would his conversation and mode of conducting the interviews you had, have impressed you?

[Caveators' Proctor objected.]

Q. Suppose his appearance had been that of an ordinary person, what would his conversation have manifested?

[Caveators' Proctor objected.]

Court allowed question. 50

Caveators' Proctor excepted.]

Witness—If I understand the question, it is what my judgment of the man's ability would be if he had been looking like other men. Well, I never had but one opinion of him, and that was, whenever he came to me with a message, he either came with a straight message from somebody else, or else he was as smart as the average of people that come in our store to ask questions about the goods. He was very particular to ask prices as to what I was going to charge.

10 Q. Did you ever observe whether he told the messages correctly? Did you have an opportunity of knowing his memory; whether he could remember what happened from one occasion to another? A. Only in our business, when he would come in as he did, and ask us to send a man down to the house, and he has not gone, Tommy would come in and say: 'You promised to send to father's on such a day and do something, and you did not send, and I waited for you so long'—he used to come back and remind me of my failure.

Q. Were these reminders correct? A. Yes, sir; always.

20

Cross-Examined:

Q. Did you ever have any communications with him except of the character that you have described, in carrying messages from his house for you on business; and on that one occasion of his buying a bedstead? Q. Only as I talked to him in the street; and, as I remarked, at church sometimes.

Q. Any more than casual? A. He hired a pew of me at our church, and paid the money for it.

30 Q. Did you ever have any literary conversations with him? A. No, sir; nothing more than the ordinary intercourse of the day; we talked about the war, &c.

Q. Nothing more than ordinary conversations on current matters? A. No, sir.

Q. All your business with him at the store was nothing more than you would do with a child of twelve or fourteen, was it? A. Well, yes, sir; because he used to examine the work.

Q. Well, a child of fourteen could examine the work? A. I never had it occur in our store.

40 Q. Did you have any intercourse with him in his family, in the house? A. Nothing; only when I went to the house and transacted business there. I would talk to him there.

Q. How old was he? A. I think, probably, if I was going to guess at his age, I should suppose he was probably twenty-five years of age.

Q. Very well, he was thirty-nine; so there must have been some difficulty in telling, was there not? A. I never stopped to think of that. For instance, Mr. Linthicum, who is sitting before me, I have known for a number of years, but I could not tell his age.

50 Q. How did you begin to call him 'Tommy'? A. I don't know when I began to call him that.

Q. Did you ever call him anything but "Tommy?"—A. No, sir.

Q. Did you ever hear anybody else call him anything but Tommy? A. No, sir.

Q. Did you ever hear any of your people about the store call him anything but "Tommy?" A. Some of them would say, here comes Alexander's son.

Q. Did they call him anything but Tommy? A. That is all.

Q. You called him Tommy? A. Yes, sir.

Q. And addressed him as Tommy? A. I would say, "How are you, Tommy?" 10

Q. From his strange appearance and queer movements, did you not always regard him as a singular being? A. Singular in his make up? I did, sir.

Q. Did you consider him as what we understand as a man of sound capacity and understanding? A. I don't know that I considered him as smart as many other men, but I never saw anything that led me to think he did not know what he was at. If he wanted anything, he knew how to tell me in all the years I knew him.

Q. Within the range of business which he had with you, you 20 mean? A. Yes, sir.

Q. Did you ever see him write? A. No, sir.

Q. Did you ever read a letter of his? A. No, sir.

Q. Ever play a game with him? A. No, sir.

Q. Ever read a book with him? A. No, sir.

Q. Ever hear him read a book? A. No, sir.

Q. Or a newspaper? A. No, sir; I have heard him talk of the news; he has simply told me items of news that were in it.

Q. You had no means of testing his understanding beyond these simple transactions in your business, had you? A. No, sir. No, 30 sir; except the conversations on the street, and in the Sabbath school.

Q. Are you at all expert in mental matters? A. No, sir; I don't profess to be. I have studied just two things in my life, and that was, how to make a living honestly, and to work hard.

Q. Did Tommy leave your church? A. Well, he stopped coming to it.

Q. Do you know why? A. I do not.

Q. Have you any knowledge? A. None whatever. I never heard any reason; only he went from our church to the Franklin 40 street church; he did attend our church for some time.

Re-Examined: (Direct.)

Q. Which church was it in which he took a pew? A. St. Paul's Methodist Episcopal Church.

Q. Did he hire that pew of you? A. Yes, sir; that is, he hired a seat in it.

Q. And paid for it? A. He brought me the money for it.

Q. How long did he continue to attend that church? Do you 50

know? A. I have no means of showing just how long. I should think from a year to eighteen months.

Q. Was he a member of that church? A. No, sir.

Q. You speak about newspapers, and conversation in the street about newspapers. Just state when you met him, and what you conversed about, outside of business? A. Well, sometimes when I met, we would talk about building; about a new building that was going on; and he used to sometimes tell me about what he used to do in Baltimore; and we talked some about the
10 w. r. When I first made his acquaintance, it was soon after the war was over—that is, it was since the war—and he would speak about horses and wagons, just as any two men would talk along the street, unless they had some special subject; and I used to walk frequently with him from my store to Franklin street.

Q. You frequently walked with him? A. Yes sir.

Q. Was the news of the day talked about? A. Yes, sir; generally at noontime as I was going up to my dinner; he would talk about the news in the morning papers, and he oftentimes told me of news I did not know of myself, for I never looked over the
20 morning papers.

Proponents' Proctor also called

Job DeCamp, sworn :

Q. Do you live in Newark? A. Yes, sir.

Q. What is your business? A. Expressman.

Q. A furniture mover? A. Yes, sir.

Q. How long have you carried on that business in this city?
A. For the last 14 or 15 years.

Q. Did you know Thomas Alexander, the testator? A. I did.

30 Q. When did you get acquainted with him? A. When he first came to Newark.

Q. Under what circumstances did you make his acquaintance?

A. He came on with the furniture, or just after the furniture came. I saw him at the depot when I went to get the furniture.

Q. Had you seen him previously? A. No, sir.

Q. What was your first interview with him? A. He asked me if I had come for the furniture of Mr. Alexander, and I told him that I had. Then he said his father had said I must pay the freight and he would pay me back when he came on; and I had
40 to go back up town to get some money to pay the freight, as I had not got so much in my pocket; and after that he gave directions about the disposal of the furniture at the house—where it was to go.

Q. Had you any previous notice that he would be there, or did you expect him in any way? A. I had notice that some one would come on, but it did not say who.

Q. And you found him there? A. Yes, sir.

Q. Well, sir, what part did he take in the removal and disposition of the furniture? A. He told me where to put it in the house
50 —he stayed in the house and directed there somewhat.

Q. Was his father there then? A. No, sir.

Q. Did anybody else give directions but him? A. A daughter came afterwards.

Q. I mean at the time you got this furniture from the depot? A. No, sir. I had two or three loads to the house before any one came.

Q. What other acquaintance did you have with him subsequently? A. Nothing more than only that he came to the house several times for his father.

Q. Came to your house on errands for his father? A. Yes, sir. 10

Q. Would you have conversations with him on these occasions? A. Occasionally.

Q. In what way. How did he converse with you and conduct himself in the disposition of the furniture; I mean with reference to the intelligence and good sense with which it was done? A. Well, he told me that such and such pieces of furniture wanted to go into Miss Mary's room, and such and such things wanted to go into his father's room, &c.

Q. He directed the distribution of the furniture throughout the house? A. Yes, sir. 20

Q. How was his conversation as to its being sensible and rational or otherwise? A. His conversation, I thought, was sensible enough.

Q. He could understand what you said to him? A. Yes.

Q. And he could make you understand what he wanted? A. Yes, sir. I could not understand him at first hardly; he talked like they do in Baltimore, or as they did when I was down there last.

Q. He had the Southern accent? A. Yes, sir.

Q. How long did your acquaintance with him continue? A. I 30 saw him off and on the whole time until his death.

Q. And conversed with him occasionally? A. Yes, sir. He used to come and stand there at the store and talk to me, and sometimes he would go to the stable.

Q. What would he talk about? A. About horses and wagons, &c.

Q. Ordinary matters? A. Yes, sir; about the stable when we were there.

Q. Well, sir, how did his conversation and manner in the latter part of his life compare with that you formed of him when you first knew him? A. I did not see any difference, only he occa- 40 sionally wanted to borrow money.

Q. Did you ever have any money transactions with him? A. Nothing more than the carting of his room furniture from his father's residence to Catharine street.

Q. Who got you to do that? A. He did.

Q. He applied to you for that purpose? A. Yes, sir.

Q. Did he make a bargain with you about that? A. He did; and paid me for it.

Q. And paid you for it? A. Yes, sir.

Q. Did you have any hesitation or compunction in doing so, as 50

to whether he was a man capable of making the bargain? A. No, sir.

Cross-Examined :

Q. Was he generally used as the messenger and errand boy of his father, as far as you knew? A. He used to come occasionally, and an old colored woman used to come.

Q. Then the intercourse that you had with him was of the same character as you would have from any of the servants from the house? A. Well, no, sir; I respected him a little more than the servants.

Q. I mean what he came for; the nature of the business and errands. Sometimes he would come, and sometimes Ann would come? A. Yes, sir.

Q. Was not the business such as is generally entrusted to servants? A. They might have been entrusted to servants, I suppose. It was messages for me to come up for trunks, or to buy such a thing in New York; such things as that.

Q. Was the intercourse he had with you such as you would usually have with the sons of gentlemen, between thirty and forty years old? A. He always gave verbal orders; not a written order.

Q. Did you not see the colored servant with him when the furniture came? A. No, sir.

Q. Was she at the house? A. She was not until I had got two or three loads there.

Q. That is, you did not see her? A. I did not see her, and she could not have been there without my seeing her.

Q. Was there much furniture brought up from the depot? A. Yes, sir; there was two car loads.

Q. Did you not see the colored woman there the same day that you saw Tommy? A. Yes, sir; about noon, I think.

Q. How many times have you seen him come to your place in all these years? A. I could not tell you; I suppose two or three times a week; and as I was passing along the street on the truck, I would see him, and he would get on the truck.

Q. Was he a strange looking man? A. Yes, sir.

Q. Did you call him "Tommy?" A. Yes, sir.

Q. And everybody else called him Tommy? A. Yes, sir. I took it from the family. I heard everybody else call him Tommy.

Q. You did not call him Mr. Alexander? A. No, sir; I never heard him called that.

Q. What kind of furniture came, that you brought from the depot to the house? A. It was generally household furniture; bureaus, boxes, beds, trunks, &c.

Q. Where was the furniture put when you brought it from the depot? A. It was distributed about the house.

Q. Was any put in Miss Mary's room? A. Yes, sir.

Q. The whole furniture of her room? A. No, sir. I don't know whether it was the whole furniture of her room; there was a bureau, bedstead, &c.

Q. Are you sure of that, Mr. DeCamp? A. I am.

Q. Are you sure that Mr. Alexander brought from Baltimore a large quantity of furniture and it was distributed through the rooms of the house? A. I know he did. I paid for the freight of two car loads.

Q. Were they boxes mainly? A. There was a good load of boxes; the boxes made probably a third.

Q. How many sets of bedroom furniture were brought? A. There was one, two, three, four sets; but I cannot say whether they were complete or not. 10

Proponents' Proctor also called

William Camfield, sworn:

Q. What is your business? A. Grocer.

Q. Where? A. Foot of Washington street and Clinton avenue.

Q. At the union of Washington street and Clinton avenue? A. At the foot of Washington street and Clinton avenue.

Q. Did you know Thomas Alexander, the testator in this case—Tommy as he was called? A. I have known him since 1872—20 from the first of April, about.

Q. Since the 1st of April, 1872? A. Yes, sir.

Q. 1872—that is two years this April? A. Yes, sir.

Q. Where did you get acquainted with him? A. At Franklin Street Church first. I had known him a little longer—that is by sight.

Q. Were you an attendant at Franklin Street Church? A. Yes, sir.

Q. How long? A. I was out of town some years, but I have been back four years—five years this Spring. 30

Q. For the last five years you have been attending there? A. Yes, sir.

Q. And you first made his personal acquaintance two years ago? A. Yes, sir.

Q. Prior to that what did you see of him, or how did you encounter him in any way? A. I saw him in church on the Sabbath.

Q. How did he conduct himself in church? A. Always civilly.

Q. Did you ever hear him take any part in the public worship? A. I have.

Q. In what? A. In prayer, quite frequently. 40

Q. How would he do that? A. He done it as well as an ordinary man.

Q. Was he called on sometimes by the elder or pastor to pray or take any part in the exercises, or did he volunteer? A. I think he volunteered as a general thing, as near as I can recollect.

Q. In these efforts which you heard, how was his mode of expression as to being intelligent and proper or otherwise? A. Just ordinary—as a man of ordinary education.

Q. Under what circumstances did you get acquainted with him personally? A. The first was by attending the meetings. I was 50

rather a cold Christian, and I got a little life and went to the meetings, and I always found him there sure.

Q. Did you ever have business transactions with him? A. Well, he dealt with me some, a little.

Q. In your grocery store? A. Yes, sir.

Q. For himself or for whom? A. Some of the things went to the house—charcoal and such things, and some were for himself, such as sugar, sausage, tobacco, &c.

Q. He made purchases there? A. Yes, sir.

10 Q. Did he have an account at your store? A. Yes, sir.

Q. Did you credit him? A. Yes, sir.

Q. Did he keep any account of his own of the transactions he had with you? A. I saw him do it once or twice; he took my book and looked it over.

Q. Did you ever see his account or hear him say anything about it? A. No; but I saw him foot mine up, and I saw that he footed it up right.

Q. You say you saw him figure up your account? A. I saw it after he had done so; I saw the figures he made, and I went
20 over it afterwards, and saw that it was correct.

Q. He figured it up and put the figures down below, then you went over it afterwards, and found it was correct? A. Yes, sir.

Q. Did you ever see a book he had, in which he kept memoranda? A. No, sir.

Q. Did he ever compare one with your book to see if they were alike? A. No, sir; he never did that.

Q. Did you ever hear him participate in discussions or conversations about church matters? A. Yes, sir.

Q. Did he take part in such conversations? A. Well, I don't
30 know that I could tell his language at any time.

Q. Do you remember the fact of his having taken part? A. Oh, yes; in prayer quite frequently; but in conversations there was some few times he got up and led the meetings. I never heard any of the members say anything against him in regard to it.

Q. Did you ever hear him engage in argument or discussion about church matters or other matters? A. Nothing I can remember, although if there was some little talk on some things, he would generally have a view of his own.

Q. Could he express his views with propriety? A. Why, yes;
40 as far as I could see; and part would be with him, and part another way, on some things—such as outside affairs.

Q. To what amount did he have an account at your store? Do you remember? A. Something over \$50.

Q. Did you have any hesitation about dealing with him, or crediting him? A. Not at all; not a particle. Some others lent him money.

Cross-Examined:

Q. Was your account paid, Mr. Camfield? A. No, sir.

50 Q. How often were you in the habit of seeing Tommy? A.

How often? I saw him in the winter of 1872, the fall of 1872, and the winter, after the first of January, 1873. He was almost daily in my place; I guess I could say daily.

Q. During what period was this debt contracted? A. This debt?

Q. Yes; was it before or after his father's death? A. Before; all of it, or pretty much all of it; with a trifling exception.

Q. What was it for? What did he purchase? A. Some charcoal, sausage, and I think a butter dish; and on one occasion, he bought a turkey, &c. 10

Q. Where was he living at that time? A. He lived with her sister, he told me. I should not know her, as I never saw her.

Q. You say his father was living at the time he purchased these goods? A. His father?

Q. I asked you whether this debt was contracted before or after his father's death; and you said "Before." A. I did not understand you.

Q. Well, was it before or after? A. It was after; of course it was. I did not understand you.

Q. He was living then with his sister? A. That is what he 20 always told me; I have never seen her that I know of.

Q. What was his manner, Mr. Camfield, when conversing with you? A. His manner?

Q. Yes. A. In conversation I never said any great deal to him, only more than what it was our business to say.

Q. What was the character of your conversation with him? A. The character was just the same as I should get from any ordinary man with an average education.

Q. When he came into your store to make purchases of goods, what was his manner? 30

[By Proponents' Proctor to Caveators' Proctor.]

Q. His appearance, or manner, or what? A. I mean his manner.

Witness—he always passed the time of day, and sat down by the stove, and would make himself at home, and if he wanted anything he would get up and ask for it.

Further Cross-Examined:

Q. Did you have any conversation with him beyond your conversation in selling goods? A. Sometimes—joked or something of that kind.

Q. In leading your prayer meetings, what was his manner there? A. As far as I could see, it was just ordinary remarks, always followed up with—(interrupted.)

Q. I mean to say, did he pray as well as the rest of you? A. I could not say but what he could pray as well as I could.

Re-Examined. (Direct.)

Q. You would have conversations with him; you say he was in 50

your place almost daily in the latter part of his life? A. Yes, sir; from the Fall of 1872, and after January, 1873.

Q. Now, outside of the churches in which you met; you would talk to him on general subjects of news? A. Yes, sir; on accidents, or something in the paper: we frequently had talks on different things.

Q. Now, how were such conversations conducted by him as to being ordinarily rational, sensible or otherwise? A. I could not see but what it was just as rational as other men's. I could not
10 see but what it was.

Q. Can you give an idea of the extent and size of the column of figures he added up? A. I could not be positive, but I think it was over \$40 at that time.

Q. Were the items one or two, or more? A. There was different figures, from four to a dollar, and a dollar and a half.

Q. From four what? A. Four cents to a dollar and a half; they ranged between those figures.

Q. They ranged between these figures up to \$40? A. Yes, sir.

Q. Then it must have been quite a column of figures? A. On
20 any small book there are two or three columns of figures.

Adjourned until 10 o'clock, A. M., Friday, May 29, 1874

Friday, May 29, 1874.

Before Lay Judges Rufus F. Harrison and Frederick W. Ricord.

Proponents' Proctor called

Rev. James O. Rogers, sworn:

Q. Where do you live? A. I live in Irvington, New Jersey.
30 Q. Did you formerly live in Newark? A. I did, sir.

Q. Were you pastor of Franklin Street Methodist Church? A. I was, sir.

Q. How long? A. Some six years ago I was pastor.

Q. For how long? A. Three years.

Q. Did you know Thomas Alexander? A. I did, sir.

Q. Was he a member of your church? A. He was.

Q. Was he admitted to the church under your pastorate? A. He was, sir.

Q. How long before you quit the church? A. After he was
40 received, sir?

Q. Yes. A. Well, I think about two years. I think the first year that I was there he was received; I am almost confident of it; for two years I was his pastor, strictly.

Q. At or about the time of his admission to your church, did you converse with him on the subjects connected with his admission into the church? A. I did, sir. It was my duty to have; he was a probationer for six months, on trial, according to the discipline of the church, and during that time he met once a week generally in the class; I was leader and had frequent conversations with him.

50 Q. Mainly on what subject? A. The subject of religion only.

Q. Did he, from the conversations which you had with him, understand the nature of the Christian religion, and the obligations that the church membership imposed?

[Caveators' Proctor objected.]

The Court—The Court understands that this question is merely to get Mr. Rogers' opinion; if that is so, the Court thinks the testimony is proper.]

Q. How frequently did you converse with him? A. Well, sir, we had a class that met weekly, and he was generally very punctual in his attendance, and the conversation there was in reference to his spiritual state—his spiritual enjoyments as a candidate for full membership into the church, and when I placed in his hand a copy of the discipline of our church—our articles of religion, he told me he had read them—the articles of religion, and we being satisfied that he understood his church relations and was capacitated to comprehend the plan of salvation and what the church required of him, we received him into full membership. 10

Q. During the period of your pastorate, did he sometimes engage in the public worship? A. I have heard him make a prayer in the meeting occasionally. 20

Q. How did he perform that service? A. Sometimes connectedly, and sometimes not so connectedly.

Q. Well, ordinarily? A. Ordinarily he prayed in a connected manner, and made a very good prayer.

Q. During the time that you remained there how did he continue as to his fidelity in his attendance to the church? A. He was very faithful, sir, so far as I ever knew.

Q. Did you ever hear him relate his experience? A. I have. 30

Q. How was his conversation as to being rational in that exercise? A. He seemed to be perfectly rational on the subject of religion.

Q. Did you observe any change in him—in his mental characteristics, during the period of your pastorate there? A. I did not, sir.

Q. Did he continue in the membership of the church until his death? A. Yes, sir; so I was informed, sir. He was a member while I was there, and I understood he was a member of Franklin Street Methodist Church when he died.

Cross-Examined:

40

Q. What was his appearance, Mr. Rogers? A. Well, sir, he had the appearance of a weak brother.

Q. Did you ever have any conversation with him other than the regular talk on the subject of religion? A. I never had, sir, of a business capacity.

Q. Did you ever meet him in any social or business way at all? A. No, sir; I did not.

Q. Did you ever have any opportunity of studying the range of his intellect in regard to matters of business? A. I never had 50

any opportunity of knowing anything with relation to his business capacity.

Q. Is your knowledge confined strictly to his department, &c., as one of your congregation, in the discharge of these duties only?

A. Only in that; that is personally.

Q. Were your relations with him generally as one of the members in the class? A. As the leader. He was assigned to my class.

Q. You dealt with him and treated him then in the class only?

10 A. In the class only.

Q. Have you ever heard him pray more than once? A. Yes, sir.

Q. Do you know of his going round with the praying band?

A. I did.

Q. Do you know of the fact that it was tried to keep him away, and he persisted in going with the praying band? A. I knew that some of the members of that band did not desire him to attend on some occasions with them.

Q. Is your church at all a respecter of persons as to character, or station, or intellect, or mental or social standing? You take all
20 to be saved, do you not? A. I should think that our church, if they thought he was an idiot in the eye of the law, they would not receive him; but they would receive him believing that he was a weak brother, and did not measure intellectually up to the full measure of a man.

Q. That is precisely the object of my question. I supposed you would give such an answer, and it is a very proper one. Would your church not receive, and endeavor to do all in its power to develop the Christian character of any one who was removed above
actual idiocy? A. I think they would, sir.

30 Q. However feeble the intellect, or imbecile the mental powers of a man, knowing enough to desire the consolation of your church, you would receive them, would you not, in the way you received him? A. We would, I think, sir; I should. The Bible says; "The wayfaring man, though a fool, need not err therein" Though a fool, yet not an idiot; and on that account I would receive him, and try to do all I could for him—minister to him.

Q. If a grown person, with no more intellect than a child of twelve years of age, and whose intellect could not grow any further, were to apply for your Christian consolation, you would
40 not refuse them, would you? A. Well, I feel a little embarrassed there. Some at twelve years of age are received, and they understand the plan of salvation better than some do at forty.

Q. The average don't come up to that character? A. Well, I should say that if I believed that they knew no more than a child at that age—the average child will go on learning something more as it proceeds—and I must not say I would not receive them if they understood the plan of salvation.

Q. What is the youngest age at which you receive persons in your church? A. There is no period. There is no age, unless it
50 might be a child of—say, from five or six years old, where we

would not receive them. We receive them as probationers at twelve years of age; as probationers, but not as in full membership. In a few instances they have been received where they have shown more than ordinary strength of mind.

Q. When you receive persons of such tender age, do you receive them because you believe that they do understand the nature of the Christian religion, and the obligation that it imposes? A. We believe that they do understand the plan of salvation. Yes, I will answer that we do believe that they do understand it sufficiently to be received as members of the church. 10

Q. Did you know Mr. Thomas S. Alexander, Mr. Rogers? A. I knew him only in the capacity of church relationship.

Q. Thomas S., the father? A. I did know him, so far as this: His son told me that his father tendered me an invitation to come down to his house to spend an evening there. I went—the time was fixed—and I spent an evening with his father. I had some conversation with him that was very interesting to me. I did not know him, sir. I had met him several times on the car.

Q. Did he talk about his son? A. He did, sir.

Q. Was there any request made by the father of you as to the son—a request in regard to your care and attention to him? A. He did say that he was glad that I was taking an interest in his spiritual welfare, and that he hoped that I would counsel him and give him what instruction I could, and he seemed to express some gratitude that I took an interest in his spiritual welfare. 20

Q. Did he give any reason why he wanted you to exercise a special care over him? A. He did not, further than this; I inferred from what he said—

[Proponents' Proctor objected.]

Witness—Well, what he told me was that he was not in intellect as strong as some, but that he was responsible to God, and that he needed counsel more than some other persons. That was the way it impressed my mind. 30

Proponents' Proctor also called

Dr. James Burnett, sworn:

Q. You are a practising physician in this city, Doctor? A. Yes, sir.

Q. And how long have you been engaged in that? A. Eight 40 years.

Q. Did you know Thomas Alexander, the testator in this case? A. I did.

Q. For how long? A. For a period, I should judge, of two years.

Q. With reference to the time of his death: Do you mean two years immediately before his death, or two years of his life? A. The last two years of his life.

Q. How did you make his acquaintance? A. I think I met him in the office of Dr. John F. Ward. 50

Q. First? A. First.

Q. What opportunity did you have of becoming further and better acquainted with him? A. I attended him as family physician the last few months of his life; that is, from the death of Dr. Ward up to his death.

Q. How often did you see him? A. Well, I attended him for two different diseases. He had convulsions, and an attack of intermittent fever.

Q. What was his last sickness? A. Double pneumonia.

10 Q. During that period, how often did you see him and converse with him? A. During the last few months of his life.

Q. Give us an idea, Doctor, during the whole time of your acquaintance with him how many times you had interviews with him? A. During the first eighteen months, very rarely, but during the last six months, very frequently.

Q. Where? A. In my office and at the residence of Mr. Price, where he was boarding in Arlington street.

Q. Formerly Catharine street? A. Yes, sir.

20 Q. In these interviews and conversations which you had with him, did you get any estimate or idea of the character of Tommy's mind? A. I did.

Q. Will you describe to the Court as well as you can what the character of his mental characteristics was? A. Although I never went into the subject of his mental capacity, while I considered him as suffering more from deficient mental developments, did not consider him a perfect idiot. In other words he knew the difference between right and wrong.

Q. Could he carry on a connected conversation? A. He could.

30 Q. How was his ordinary conversation with you as to its being intelligible or rational or otherwise? A. Although he showed, as I said before, a weakened intellect, still he could describe his symptoms; he knew the difference between a pain in the loins and the chills, or the difference between two medicines. For instance he knew the difference between genuine and compound cathartic pills.

Q. Did you ever have conversations with him on the subject of his own mental condition or hear him say anything about it? A. I think I heard him say something about it, but never had any conversation.

40 Q. What did you hear him say? A. Merely that he had been injured in infancy by a fall on the head; that is about all. He referred to it in general terms.

Q. Did he ever say anything about having been examined with reference to his mental capacity? A. Yes, sir.

50 Q. State what he said? A. Tommy came to my office quite excited on one occasion, and told me that shortly after his father's death some of his relatives wanted to place him in a lunatic asylum; and he said that Dr. John F. Ward and Dr. Dougherty had made a physical examination of him, and that they had given it as their written opinion that he was not a fit subject for an insane

asylum. Then he went on to say that they either had brought on, or were to, the testimony of a Baltimore physician, who would swear that he had been insane. "But," said Tommy, "the point is not whether I was insane ten years ago, but whether I am insane now." That was about all, I think.

Cross-Examined :

Q. Are you connected with a life insurance company? A. Yes, sir.

Q. Which one? A. I am connected with several; I am the 10 regular medical examiner of the New Jersey Mutual.

Q. Had Thomas Alexander applied for a certificate for a policy in that company? A. He did.

Q. Was it granted? A. It was not.

Re-Examined : (direct.)

Q. Was his bodily health good? A. It was not.

Proponents' Proctor also called

Alexander N. Dougherty, sworn :

20

Q. What is your profession? A. I am a physician.

Q. In this city? A. Practising here.

Q. Did you know the testator, Thomas Alexander? A. I did.

Q. Did you ever converse with him? A. I have done so.

Q. Did you ever have any conversation with him having reference to an attempt, or desire on your part, to ascertain the extent of his mental capacity? A. Yes, sir.

Q. Can you tell us when that conversation took place? A. In December.

Q. Of what year? A. Of the year of his father's death—at 30 the time of his father's death.

Q. Where did it take place? A. I think that it was at his father's house that I saw him.

Q. Can you narrate what occurred between you, Doctor—what you said to Tommy? A. I think that I inquired into his mental state by asking him questions on various subjects, and among the rest on figures. I tried his mathematics, &c. The impression that it left was that he was a man of inferior intellect; weak in intellect, but not an idiot by any means, and that his weak point was figures. He was not a good mathematician; that was my impres- 40 sion; in fact, that he was very inferior in that respect.

Q. Can you recollect any other subject in which you inquired? A. I asked him about his disposal of money, if he had it, and on the whole he showed pretty good sense, I thought. I think I asked him what he would do if he had sums of money to dispose of, and he said he would take good advice as to how to dispose of it. He seemed to have a want of confidence in his own ability; he did not seem to rely on his own judgment, but relied on persons of a better judgment than his own.

Q. Do you remember any specific question you asked him about 50

the value of money, or the use he would make of property? A. Well, I cannot recollect distinctly now.

Q. Do you recollect, Doctor, anything about an inquiry as to the Essex Court House? A. Well, it has been brought to my memory since, but I have not a very distinct memory about it; I know the impression I arrived at was that while he was not a man of the full average capacity, yet he knew the difference between right and wrong and that he would make a judicious disposition, within certain limits, of property if he had it to dispose of.

10 Q. Was he capable, in your opinion, of recognizing his family relations, and the obligations he was under to the different members of his family? A. I think there is no doubt about that.

Cross-Examined :

Q. When was this examination made, Doctor? A. In December, right after his father's death.

Q. The same month? A. Yes, sir.

Q. How did you happen to make it? A. I was invited, I think, to make this inquiry by Miss Alexander; I think she desired it to
20 be done.

Q. Which one? A. Mrs. Bingham, that is.

Q. How did she invite you? A. I think I received a note, asking me to call at the house.

Q. Had you had any acquaintance with her before? A. Yes, sir.

Q. Had you been visiting the family professionally? A. Yes, sir; I was called in at a consultation during the illness of Mr. Alexander.

Q. Have you the note she wrote? A. I don't think I have.

30 Q. Did she tell you what she wanted you for? A. I am not positive whether the note stated that or not.

Q. When you went there who was present? A. I think Dr. Ward came there.

Q. Was Mrs. Bingham present? A. I think she was.

Q. Any other physician? A. I think nobody but Dr. Ward.

Q. Where were you; what part of the house? A. I think it was up-stairs, but I am not positive what part; I think it was there.

Q. Did she explain what her object was in summoning you? A.
40 I think so.

Q. Did she give any reason why she wanted it done? A. She might have stated that there was some question as to his mental capacity that she wanted to have settled; that she wanted to know what his state was.

Q. Do you remember if she stated distinctly how such question had arisen? A. I could not recollect precisely.

Q. Was anything said about whether he ought to be sent to a lunatic asylum, or not? A. I think such a question was raised. I think that was one of the objects of our inquiry, to determine
50 whether he should be taken away from her custody and put in an

insane asylum ; she preferred to have the custody of him after his father's death.

Q. Did she say anything to you that led you to suppose that anybody was trying to take him away and put him in a lunatic asylum ? A. I think that was so ; I got that impression.

Q. Did you get the impression as to who she said was endeavoring to get him away, and put him in a lunatic asylum ? A. I don't remember any individual, but my impression is, it was some of the members of the family were desiring to do that.

Q. Then your attending as a physician was at the request of 10 Mrs Bingham, to examine into his mental condition, with a view of ascertaining whether it was right that others members of the family, should, against her will, take him to a lunatic asylum. Is that your impression ? A. That was the object, I think, of the inquiry in part.

Q. Was that impresslon, that object, communicated also to Dr. Ward, to your knowledge ? A. I suppose it was.

Q. Did you act in consultation at that examination—in concert, I should say ? A. I think so ; in that connection I saw Dr. Ward afterward, and we had a full talk on it. 20

Q. At the time ? A. I think we did.

Q. Did you make a physical examination ? A. I think we did made an ordinary listening at the chest.

Q. Describe his physical appearance. A. He was a tall, thin, lank person. looking unhealthy, rather sallow ; but I did not hear that he complained of ill health at all.

Q. I want to get a clear picture of his physique. A. He was a person with no great amount of intellect in his face. I think you would have been struck, if you saw him, with the degree and lack of capacity, and you would have that impression increased if 30 you talked with him ; you would see he was a man under the ordinary capacity.

Q. Now describe his limbs and head. A. His head was a queer sort of head, and his limbs had a shambling gait ; very marked.

Q. His features ? A. His features were coarse.

Q. Complexion ? A. Pale ; pasty.

Q. Beard ? A. I don't remember that he had much beard.

Q. Does that look like him (showing witness a photograph, Exhibit 8) ? A. Yes ; I should say that was a portrait of him.

Q. Did you tell him what the purpose of your examination was ? 40 A. I think he knew it ; he was interested on that ground apparently ; he appeared to be apprehensive that he would be sent to an asylum, and he did not want to go there.

Q. Is it usual when you are making an examination as to the sanity, or the intellect of a person, to state that object to them—to have them understand it, or do you try to do it while they are unconscious of your effort ? A. Well, I suppose that it was. It would be better if we could do it without their knowledge.

Q. Is it not a matter of professional advantage, if you are going to see whether a man's mind is sound or not, not to say to him, 50

"We are going to see whether you are crazy or not; we are going to examine you to see whether you are an idiot or not," but to make an unconscious examination—unconscious on the part of the patient? A. It would be better if we could do it that way undoubtedly.

Q. How did you begin in that examination? A. I forget. I remember we examined him by asking him questions as to his memory, &c.

Q. I want it as nearly as you can give. A. I cannot tell you.

10 Q. What questions did you ask him? A. I cannot tell you. I know we asked him questions that satisfied us.

Q. Can you state any question you asked him? A. We asked him some questions in mathematics, addition, multiplication, &c.

Q. Can you remember any question in mathematics that you asked him? A. Not specifically.

Q. Did you ask him any questions in the higher mathematics—in the "integral calculatist," for instance? A. No, sir; we did not know it ourselves, probably.

20 Q. Did you ask him any questions in the rule of three, for instance? A. I think we did; but what I cannot tell.

Q. Do you think he knew the rule of three? A. I think he was weak on the rule of three.

Q. Did you ask him any questions in simple addition? A. Well, I believe we did.

Q. How was he in simple addition? A. I don't think he was strong in any mathematics.

Q. Do you know whether he evinced any intelligence, such as you would find in a child of twelve, in the matter of mathematics?

30 A. I should think a child of twelve would be very deficient if it did not know more about mathematics than he appeared to.

Q. Did you examine him in any other branch of intellectual requirements? A. Well, we mostly wanted to find out what his capacity was, if he had property to dispose of. I have already intimated what he would do if he had property to dispose of; he appeared to trust himself alone without some suitable advice and assistance. I think he mentioned Mr. Sayre or some such man from whom he would take advice on the subject of what to do with property if he had it, how he would invest it, or something of that kind; he said he would talk to Mr. Sayre, a neighbor of his father's,
40 living in that vicinity, and mentioned that he would take his advice if the question ever arose as to his disposal of property.

Q. Did you examine him on any other subject than that in that general way? A. No; I think not.

Q. I will ask you more particularly. Did you attempt to examine him in regard to his knowledge of history or astronomy, or any of the subjects which engage the attention of students? A. No; I don't think we did.

Q. Why did you not, Doctor? A. Well, we did not think it was necessary to inquire as to his knowledge of astronomy.

50 Q. Or any other of these subjects. I don't mention that alone;

any subject which involves intellectual labor—why did you not?

A. I think we asked him some other questions beside, but what they were, at this moment I cannot recollect.

Q. Was it not because it was apparent to you that he had no knowledge of that kind? A. Well, yes; I think he had no knowledge of astronomy.

Q. Don't confine yourself to astronomy. I merely used that as one of two or three subjects; I mean any subject that engages the attention of the student or scholar of any kind, even a child. Was it not because you knew that those matters were beyond his range? 10
A. Well, we thought that they were.

Q. Did you sign the certificate? A. I did.

Q. Do you know where it is? A. Mr. McCarter has it.

Q. Do you know to whom you gave it at the time? A. It seems to me that it was—it is written upon paper that was already drawn up by Dr. Ward. It was addressed to Miss Alexander and I suppose she received it.

Q. You handed it to her while you were there? A. I don't remember. I don't think it was written while we were there. I think it was written subsequently, and I called at Dr. Ward's 20 office; I signed it there at his office.

Re-Examined: (Direct.)

Q. Doctor, is that the paper which you referred to (handing witness the certificate); look at that? A. Yes, sir; that is the paper.

Q. Is the first communication on that in the handwriting of Dr. Ward? A. I believe it is.

Q. And the subsequent portion in your handwriting? A. It is.

Re-Cross-Examined:

30

Q. Doctor, one moment, if you please. I want to ask you about this. Is this in Dr. Ward's handwriting? A. I think it is; the last part is mine—the former part is his; but the latter part is mine; he wrote it himself, I think.

Q. Do you know who did write it? A. No, sir; I do not.

Q. Where did you get it from? A. I must have found it at his office.

Q. In whose handwriting is the certificate signed; by Dr. John F. Ward? A. I believe it is in his handwriting; I don't know; 40 of course, I am not an expert in handwriting.

Q. Are you sure it is? Dr. Burnet says it is. A. I don't know. My impression is it is his handwriting. I did not write it.

Q. Do you know the date of it? There is no date. A. The date of this must have been about the time mentioned in my certificate, which is written by me, 9th of December, 1871. It must have been shortly after that; shortly after the occurrence.

Q. When was it, Doctor that you found the object of your examination was to determine whether it was proper to take him from her custody to the lunatic asylum? A. That was the principal 50 object.

Q. Will you state any other object? A. I think from the certificate, that the object was—there was some reference to his capacity as to whether he was able to make a will or not. I think we were asked to give a statement on that subject.

Q. Do you find in the certificate anything of your belief that he was incompetent to make a will? A. Yes, sir.

Q. Upon seeing that, is your recollection refreshed upon that subject? A. In what regard?

Q. As to whether you were requested to certify as to his capacity to make a will. A. I think that was the case, but I am not positive. I think so from the fact of its occurring then.

Q. If you were called upon by Miss Alexander as a physician to determine whether he ought to be sent to a lunatic asylum or not, and for no other purpose, would you have taken it upon yourselves to certify also that you believed him competent to make a will?

A. Without my opinion was asked, I should not probably do that.

Q. Was then your opinion on the subject asked at the same time? A. It probably was.

Q. Was this during the month of December, when his father died? A. Yes, sir. I am quite sure that that document was written in Dr. Ward's office.

Q. When you speak of Miss Alexander, who do you mean? A. I mean, of course, Mrs. Bingham.

Q. Did you see the certificate of Dr. Ward before it was signed? A. I think I did. I think I read it.

Q. Do you know whether the last words, "I consider him competent to make a will," were inserted at the same time as this, or were inserted afterwards? A. It seems to me that Dr. Ward inserted that at the same time that I wrote mine; I think so.

Q. Can you tell why he inserted that, after he had finished his certificate? A. Unless he had had it suggested to him that his opinion was desirable on that subject, I don't know why he should have done it.

Re-Examined: (direct.)

Q. Did I understand you to say that that last certificate was written by you, yourself, in your own handwriting, in Dr. Ward's office, and in his presence? A. Yes, sir. I think he produced the document, and I filled it out. I went to see him about it, and we conversed on the subject.

Q. Look at this, Doctor (handing witness a photograph similar to Exhibit 9). Do you recognize that? A. Yes, sir. That is a likeness of Tommy; I think it is; it looks like him at any rate.

[Proponents' Proctor then offered in evidence the physician's certificate, and also the photograph above referred to. Proponents' Proctor then read the certificate.]

Caveators' Proctor then called

William P. Price, sworn:

Q. Where do you live, Mr. Price? A. In Marshall street.

- Q. What is your business? A. I am in the furniture business.
- Q. How long have you lived in Newark? A. About five years.
- Q. In what street do you live? A. I reside now in Marshall street.
- Q. Where did you live at the time of the death of Thomas Alexander? A. 85 Arlington street; or Catharine street.
- Q. Did you know Thomas Alexander? A. Yes, sir.
- Q. How did you come to know him? A. I first got acquainted with him at the church, he being a member of the same church I was. 10
- Q. Did he ever board with you? A. Yes, sir.
- Q. Do you remember how long? A. He came to board with me on the 11th of February, and would have been a year, as he died in December.
- Q. He died at your house? A. Yes, sir.
- Q. Did he eat at your table? A. Yes, sir.
- Q. How many members were there in your family? A. My wife, my brother, my two children, and myself and Tommy.
- Q. What did Thomas look like; what was his appearance? A. In what way? 20
- Q. Whether he was a strange looking man or not. A. Yes, sir.
- Q. Did you have opportunities to talk with him frequently? A. Yes, sir.
- Q. What did he generally talk about; what kind of affairs? A. Well, he would talk about his church, and about his property, &c.
- Q. Did he have any business capacity? A. No, sir.
- Q. How do you know? What makes you think he had no business capacity? A. If he would receive a check from Baltimore, and was to come into my store, I could have, if I felt so disposed, taken every cent of it, because he would lay it all out in buying 30 things he did not want.
- Q. How large a check would he do that with? A. The amount that they would send him on; twelve or fifteen dollars; or twenty dollars.
- Q. What do you mean when you say if you were so disposed? A. If I were a mind to—well if I should use him as I would not consider it right—I don't think he realized the value of money at all.
- Q. Then you mean if you let him give way to that impulse to buy anything, you could take it all from him. Is that what you mean? A. Yes, sir. 40
- Q. How did you know he did not know the value of money? Can you give an instance of it? A. I was then carrying on an auction business in fancy goods, connected with the furniture business, and he would buy such things as handkerchiefs, stockings, ladies' hose, nubias—things to go around the head.
- Q. Women's goods? A. Yes, sir.
- Q. What else? A. Paper collars.
- Q. What kind? A. Common collars, such as those he could not wear; size 15 and 16. I think they are now among his things.
- Q. From his conversation and manner and ways in your family, 50

what was your opinion about his mind? A. I don't think he had much of a mind of his own, at all.

Q. How was it as to his memory. Did he seem to remember from time to time about things? A. Certain things he did.

Q. How was he employed; how did he occupy his time? A. Well, he would make bird houses; that is, he would undertake to make them, and making boxes and such things as that.

Q. Could he do that with any skill? A. No, sir; he was making a bird house one day at the house, and there was another
10 young man there, and he gave this house partly finished to this young man to take home and finish for him. He said he could not finish it; he did not know how.

Q. What was the condition of his mind and understanding; what would you call it? A. I could not call him insane; I could not hardly call him sane.

Q. As to his wits? A. I could not call him sane or insane; I don't think he had sense; I don't think he had a right mind hardly.

Q. Did you ever hear him speak of his will? A. Yes, sir.

Q. What did he say? A. He said that he had made a will
20 when he first came to my house, and he said that the will he had made he was going to destroy, and he was going to make another will.

Q. Did he speak of what he had done in his will? A. He said he had left his brother \$500; I think it was, either \$500 or \$1,000, I forget which.

Cross-Examined:

Q. How long did he live with you, Mr. Price? A. He boarded
at my place from the 11th of February until in December.

30 Q. Until his death? A. Yes, sir.

Q. Do you remember the date of his death? A. I think it was the day before Christmas; I am almost positive.

Q. Did any other member of his family board with you part of that time? A. His brother was there stopping at my house.

Q. Reverdy? A. Yes, sir.

Q. How long was he there? A. I think he was there for some
six or seven months.

Q. Who paid Tommy's board? A. I received my check from
Messrs. Linthicum and Alexander.

40 Q. Who paid Reverdy's board?

[Caveators' Proctor objected.
Court admitted the testimony.]

Q. Who paid the board of Reverdy Alexander at your house?
A. No one paid his board.

Q. It never has been paid, has it? A. No, sir.

Q. Then who do you look to for it? A. Sir?

Q. To whom do you look for it?

[Caveators' Proctor objected to question as irrelevant.
Proponents' Proctor withdrew question.]

Q. How often did he get checks from the executors while he lived with you—Tommy Alexander? A. Well, sometimes Tommy would show me letters that he had received, and I think they came about once a month, although I won't be certain.

Q. I asked you how often he received checks? A. When he got letters he received checks in them.

Q. Always? A. Yes, sir.

Q. He never got letters without checks? A. Oh, yes.

Q. How many times did he get checks? A. That I cannot tell.

Q. How many times have you seen checks in his hands that his 10 executors sent him? A. A number of times.

Q. Checks to pay Tommy's board? A. No, sir; I would not have taken him on that consideration at all.

Q. What consideration? A. That he should pay me himself.

Q. They were checks from the executors? A. Yes, sir.

Q. These checks you spoke of then were not checks to pay your board, but checks for Tommy's personal use? A. Yes, sir.

Q. What amount were these checks? A. \$12 and \$15, I think.

Q. Did you see the checks? A. Sometimes.

Q. Well, how many—of what denomination were those you 20 saw? A. Some for \$12.

Q. Did you cash them for him? A. No, sir.

Q. Where did he get money on them? A. He drew it at the bank.

Q. Were they payable to his order? A. I could not be sure.

Q. And he drew the money at the bank? A. Yes, sir.

Q. How much money did you ever know him to spend in what you considered an injudicious way? A. I only know of my experience in my own store.

Q. How much did you ever know him to spend in your store in 30 an injudicious way? A. All that I would allow him to let me have.

Q. Now I will try you again. How much did you allow him to let you have? A. Very little.

Q. How much is that? A. It might be \$2 or \$3.

Q. \$2 or \$3, that was all you ever got out of him that you did not think was judiciously expended? A. That was what I let him have.

Q. Let him have? A. I would pick them out for him. When he went out to Philadelphia he wanted to buy some things for the 40 servant girl, and I picked him out some three or four articles.

Q. What were they? A. A nubia and a pair of hose, I think.

Q. Those things you selected for him at his request? A. He wanted to spend his money on other things, such as collars.

Q. To take to the servant girl? A. Yes, sir.

Q. You thought it more judicious to take stockings and nubias? A. Yes, sir.

Q. Then these things, nubias, &c., he selected to give to the servant girl, did he? A. Yes, sir.

Q. Who was this servant? A. Ann.

Q. Is she not an old servant in the family, do you know? A. I think so—he said so.

Q. Had she been his nurse? A. That I don't know.

Q. Did you ever see Ann? A. I saw her two or three times; yes, sir.

Q. Those are transactions you refer to when you speak of his injudicious use of money? A. They might be part of them.

Q. Well, what others do you know of? A. There was a sale here in Broad street of pictures once, and with the picture you would receive a prize; and Tommy wanted to go there, and I told him I thought it was best he should wait, and I would go there with him if he would let me, because, I told him, that they would probably induce him to spend a great deal of money there—all the money that he had. I went up there with him and he bought a picture, and for that picture he drew either a watch or a chromo; he asked me what he should take and I told him that if I was in his place I should take a chromo, because I did not think the watch would amount to anything; but he took the watch and I think he afterwards sold it for \$1.

20 Q. Who did he sell it to? A. I think to Mr. Van Houten.

Q. What did he do with the picture? A. He did not draw a picture.

Q. He bought a picture? A. He bought a small card; a *carte de visite*.

Q. How much did he pay for the card? A. He paid \$1.

Q. Then he got the card and the watch for \$1, and sold the watch and got his money back? A. He sold the watch for \$1.

Q. He did not lose much by that transaction then? A. He did not make much either.

30 Q. Did he have any other transaction? A. He bought some lumber.

Q. Of whom? A. Lindsley & Drake, I think.

Q. Narrate about that transaction. A. There is nothing particular to say about that, except that the lumber stayed where it was hauled to, and part stays there now.

Q. He bought it and did not use it up, did he? A. No, sir.

Q. He was using lumber sometimes? A. Yes, sir.

Q. He worked a little at carpentering work, did he not? A. He tried to.

40 Q. Did he ever buy anything of you, except these articles you have named? A. He bought some furniture of me—a bed and bedstead, wardrobe and bureau.

Q. Anything else? A. No, sir.

Q. What did they come to? A. I don't recollect, but I have his bill at the store.

Q. Well, about how much? A. \$15 or \$20, I guess.

Q. That is all together? A. Yes, sir.

Q. Who made that purchase? A. He made that himself.

Q. Of you? A. Of me.

50 Q. Did he understand about that; did he know what he agreed

to pay for the articles? A. Know what he agreed to pay for the articles? Yes, sir.

Q. Did he make any bad bargain there? A. No, sir; he made a very good one.

Q. Where are those things? A. At my store.

Q. Can you tell us of any other business transactions you ever had with him? A. I don't know of any.

Q. Have they been paid for—those things? A. No, sir.

Q. You sold them on credit, then? A. I sold them on installment; that was the bargain. Mr. Linthicum bought him a hair 10 mattress, because when he came to our house, he had nothing but an excelsior mattress.

Q. When he was about the house, he talked with the members of your family? A. Sometimes; he would not stay long with the members of my family; after his meals he would go up-stairs to his room, and go to bed and sleep.

Q. Was he able to read? A. Yes, sir.

Q. Could he write? A. Well, as well as his nerves would allow him.

Q. Did he take a newspaper? A. Sometimes. 20

Q. What paper would he take? A. The "Newark Daily."

Q. Did he read it? A. Yes; that is, the local matters.

Q. Where did he read it? A. In the front room.

Q. Did he ever take it to his room, or not? A. I don't know whether he did or not.

Q. You say he read the local matters. How did you know he did not read it through? A. Because he would take up the paper and read off the local matter, and then throw the paper down.

Q. Did he ever take it up again? A. No, sir.

Q. How do you know? A. He did not in my presence. 30

Q. How much were you in the house? A. I got up there about seven o'clock, and remained there with the exception of when I went to church.

Q. You said that he had left his brother Reverdy either \$500 or \$1,000; can you tell which sum he named? A. I don't recollect.

Q. You don't recollect the amount he mentioned? A. I think it was either \$500 or \$1,000.

Q. You cannot tell the precise sum he named? A. No, sir.

Q. Did he say anything else about the will? A. He said that he had left Reverdy, or his brother Reverdy, either \$500 or \$1,000, 40 and I don't recollect of his saying anything else about it.

Q. Do you mean to say that he did not say anything else about the will, or that he did say things which you do not remember? A. No, sir. I think that is all I heard him say.

Q. Did he say anything to you about his having left some portion of it to Mrs. Bingham? A. No, sir.

Q. Do you recollect after his death of having had a conversation with Mrs. Bingham, in which you told her what Tommy had said about his will? A. No, sir.

Q. You don't remember it? A. I don't remember any personal conversation. I don't remember it now.

Proponents' Proctor then called

Robert Ghiselin, sworn:

Q. Did you know Thomas Alexander? A. I did, sir. I was his first cousin, and lived in the family for ten years.

Q. When was that? A. I went in the family in 1860, I think,
10 or in 1861. In 1859 I went in.

Q. And lived there until when? A. Until 1865.

Q. Where? A. In Baltimore, Baltimore County.

Q. Where do you live now? A. In Philadelphia.

Q. How long have you known Tommy? A. I have known him since he was a child.

Q. How old are you? A. I am forty.

Q. You are about the same age as him? A. Within a year or
two

Q. What opportunities had you of seeing him in childhood? A.
20 Well, he visited my father's house in Prince George County,
Maryland, pretty near every summer when a child, and we played
together; he and two or three other brothers of mine and myself.

Q. After that? A. I lived with him in Baltimore County. His
father wrote me a letter about this place in the country, and said
he wished me to take charge of it, and to take Tommy with me.

Q. You did? A. I did.

Q. Where is it situated? A. It is situated six miles from Balti-
more, near a little town called Franklin.

Q. How was that place occupied? Who lived on it? A. I
30 lived on it, and Tommy lived with me, and two or three men to
work it.

Q. And in the summer time? A. His father's family spent
part of the time there.

Q. And you stayed all the year? A. I did, sir.

Q. How long was Tommy with you? A. I suppose it was a
year or more before he was sent away.

Q. While he was there, what were his habits as to temperance?
A. Well, he was rather dissipated.

Q. In what way? A. Why, in drinking.

40 Q. Would he get drunk? A. Often.

Q. Did you ever hear his father say why he sent him there? A.
Well, he wanted Tommy to have something to do; he thought it
would occupy his mind a little.

Q. What did he do there? A. He worked a little, and when
he got tired he would go and sit down in the house.

Q. Was he sent to the hospital from there? A. He was sent
to the hospital from there; yes, sir.

Q. What knowledge have you on the subject of his being sent to
the hospital, and why he was sent? A. It was because he got
50 drinking a good deal, and his father could not do anything with

him, and he thought it would break him ; after he was there it did break him somewhat, but he came in the city to live again and he drank again.

Q. Did he resume his intemperate habits? A. Yes, sir.

Q. How long did that continue? A. Pretty near until they left the City of Baltimore.

Q. Can you tell us to what extent he indulged in drink? A. Well, he would get drunk, and then go into the market and lay down on a bench in the market ; or he would come home and go to bed ; and his father often had to send for him at night. On one occasion he shot himself, being drunk ; he shot himself in the hand with a pistol. 10

Q. What effect did that have on his hand? A. It was a long time getting well, but afterwards he could use it just as well as he ever did.

Q. Could he read? A. Yes, sir.

Q. And write? A. Yes ; he could write.

Q. When you lived with him ; during that time did you talk with him? A. Yes ; but not a great deal.

Q. Do you know anything about his capacity to play cards? 20
A. I know he was a very good player of cards.

Q. What games could he play? A. Whist and euchre ; all fours as he called it.

Q. Could he play chess? A. A first rate game of chess, I was told ; he often played chess with his father.

Q. Did you see that? A. Yes, sir ; I often saw it.

Q. During the time you lived on the farm, who slept with him?
A. He had a bed to himself.

Q. Did he have a room to himself? A. No ; he slept in the same room as I did. 30

Q. Afterwards you went to his father's house and lived? A. I did.

Q. After they left the farm? A. Yes, sir.

Q. And remained with them? A. Until they moved to Newark.

Q. From Baltimore? A. Yes, sir.

Q. Was Tommy at home during that time? A. He was.

Q. During that time, where did he sleep? A. He slept in the same room as I did ; in the same bed, in fact.

Q. You slept in the same bed with him after he went to his father's? A. Yes, sir ; in the city. 40

Q. How was he as to his habits and manners, and the condition in which his bed was kept as to tidiness? A. His bed was kept pretty clean, but he was a great chewer of tobacco.

Q. What was the character of the conversation that he engaged in as to its being rational, sensible or otherwise? A. He generally talked very sensibly, sir, whenever he talked.

Q. Have you been acquainted with him since the family came to Newark? A. I met him two or three times at his sister Mary's (Mrs. Bingham) before she was married.

Q. When she was living in Philadelphia? A. Yes, sir ; he 50

stayed at my house, too; he came down and took dinner and tea with me.

Q. You reside in Philadelphia? A. Yes, sir I saw him a month before he died; he was in Philadelphia.

Q. How did he seem to be as to his mental capacity, in comparison with his former state? A. He seemed to be about the same he always was to me.

Q. How was he treated in the family? A. As well as the rest of the family.

30 Q. Did he eat at the table with the rest of the family? A. He did.

Q. After the occasion when you saw him in Philadelphia, after his sister's removal there, did he talk with you on anything about his business? A. He did. He talked about making his will; he said he had made his will.

Q. State what he said about it? A. He said he had made his will, and had left his sister Mary the largest portion of his money, and he had left part to his brother Reverdy. He said that he did not intend to leave his brother Reverdy any more because he
20 would spend it in drink; that was his remark to me. Then he made a remark about his sister Maggie, and said he did not leave her any because she would give it to the priest, or something of that kind.

Q. What were the relations—the nature of the intercourse between himself and his father as to their being pleasant and kind, or otherwise? A. His father always treated him well, and always thought a good deal of him. I asked him the reason he made his will, and he said he had got two certificates of two physicians saying he was able to make a will; and I asked him why
30 he did that; and he said because Linthicum told him he could not make a will.

Q. How were his relations with his sister Mary? A. He said that his reason for leaving his money to his sister Mary was, that he thought his father desired it, and that he thought his sister Mary thought more of him than any of the rest of them.

Q. Did you ever have any other conversation with him about business or money affairs than these you relate of his will? A. No, sir.

40 *Cross-Examined:*

Q. You say that you lived in the family with him ten years? A. Yes, sir.

Q. Where did you live before you lived in the family with him? A. Before I lived in their family?

Q. Yes, sir? A. I lived in Baltimore county, on another farm.

Q. When did you come from there to live with him? A. I think in 1858 or 1859.

Q. And you lived with him until he come to Newark? A. After I left Baltimore county I went to Prince George's county.

50 Q. You lived with them until they come to Newark? A. Yes, sir.

- Q. Were you in the army? A. I was.
- Q. When did you go in the army? A. In 1862.
- Q. How long did you stay? A. I was there three years.
- Q. Did they buy a place in the country, and did you live on that place before you went in the army? A. Yes, sir.
- Q. Were you a farmer? A. I was raised on a farm in Prince George's county.
- Q. What was the object in having this place? A. He thought he could get Tommy to do something on the place.
- Q. Was the place bought for that purpose? A. That was my 10 understanding.
- Q. Were you sent there for the purpose of taking care of him? A. I was sent there for the purpose of taking charge of the place and trying to teach Tommy to work on it.
- Q. Who occupied the place beside you two? A. There was a gardener there and his wife; but no other member of the family, except in the Summer.
- Q. Why did you not talk to Tommy much? A. Tommy was a good deal down at the little town of Franklin.
- Q. Well, you slept in the same room with him? A. Yes, sir. 20
- Q. You did not talk to him much? A. Not a great deal.
- Q. Why not? A. I suppose he did not want to talk, and I had nothing to talk to him about, except the place; I used to talk about things on the place.
- Q. Why was it Tommy had to be taken care of on the farm? A. I don't know; I was in the country when his father sent me word that he had bought this place, and he wanted Tommy to go on it, and me to take charge of it.
- Q. What was the matter with Tommy? A. Nothing except that when he was a child he got hurt, I believe. 30
- Q. Do you know how? A. He fell from one part of the building when they were repairing it, I believe.
- Q. What building was it? A. The back part of the building that they lived in, in Lexington Street, Baltimore; that is what they told me; I don't pretend to say I know it to be a fact.
- Q. Who told you about that? A. I heard some of the members of the family say so.
- Q. Well, what was the consequence of all that? A. Well, they say it injured him somewhat.
- Q. Injured his mind? A. No, sir; I don't think it injured his 40 mind.
- Q. Do you think he was as strong minded as anybody else? A. No; but I think he was capable though.
- Q. Do you think he was strong minded? A. Tommy's mind was ordinarily firm; he could talk pretty well.
- Q. You think he was about the average mind, do you? A. I did.
- Q. About as good a mind as yours, for instance? A. Well, Tommy's——Yes.
- Q. You were pretty well acquainted in his life, and considered 50

that he was pretty well on the same level in intellectual capacity as yourself? A. Well, Tommy had not much education.

Q. He had good opportunities for an education? A. Yes, sir.

Q. Why did he not get an education, then? A. Well, his father sent him to school.

Q. Well, he had chances to get an education as well as you, did he not? A. Yes, sir.

Q. Then why did he not get an education as well as you, do you know? A. I cannot say why he did not.

10 Q. Do you consider that you and he are about on the same level or grade of mind? A. Oh, well, Tommy's mind was not as strong as an ordinary man, but I think—(witness interrupted).

Q. I asked you one question, and you say his mind is not so strong as an ordinary man's. Now, do you consider that Tommy's mind was equal to an ordinary mind—the average mind of man? A. I answered that once.

Q. You answered it twice, in different ways. Now, I want to know which you think now. A. Tommy had an average mind.

Q. Do you think Tommy had an average mind? A. Yes, sir.

20 Q. When you stated that you considered that his mind was about equal in grade to your own, did you mean to be understood that you considered his mind equal to your mind? A. I did not say his mind was equal to mine. I said his mind was on the average.

Q. Then I asked you if you considered it was about equal to yours, as an averaged mind; yours may be superior, of course. A. Tommy was a little dull, to be sure.

Q. Did you believe him to have a sound, healthy, averaged and mental capacity? A. He had very good mental capacity, I think.

30 Q. Do you mean to say that his mental capacity was very good, more than ordinarily good? A. No, sir.

Q. Then you do not mean very good? A. He had an ordinarily good mind.

Q. Do you know whether he was in a lunatic asylum for some years? A. He was in a hospital.

Q. An insane hospital? A. For a year he was sent there.

Q. Was he sent to New England, to an institution there? A. He was sent to school.

Q. What kind of an institution was it? A. I understood it was a regular school, kept by—I forget the gentleman's name, anyhow.

40 Q. What is your business? A. I am clerk in the Philadelphia Post Office.

Q. Do you remember Tommy putting a fork in a colored man's eye once? A. I do not.

Q. Was he not a member of the Methodist Church at Grove Chapel there? A. I think he was.

Q. Also in Charles street, Baltimore? A. Yes, sir; he went to the Charles Street Church, but I do not know whether he was a member or not.

Q. Did he go regularly? A. He used to go every Sunday.

50 Q. Did you ever know him to engage in any business of any kind? A. I did not.

Q. Did you ever know him to attempt any business of any kind—any regular business? A. No, sir; his father never set him up in any business.

Caveators' Counsel then called

Birdsey G. Northrup, sworn :

Q. Where do you live, sir? A. New Haven, sir.

Q. What is your business? A. I have the general supervision of the schools of Connecticut. 10

Q. Under what title? A. In New England that office is termed Secretary of the State Board of Education of Connecticut.

Q. With general superintendence? A. That is the business of the office.

Q. Were you at one time living in Massachusetts? A. Yes, sir; twenty miles from Boston.

Q. Where? A. In the village of Saxonville.

Q. What position had you there? A. I began when I first went there Pastor of the Congregationalist Church; from that I was called to a position on the Board of Education in Massachu- 20
setts, in which I served eleven years.

Q. Did you have a school of your own in Massachusetts? an institution of any kind? A. While I was pastor I had a small number of students; never over six.

Q. Did you ever have Thomas Alexander with you? A. He came with me in September, 1852; or, rather, at the request of his father I went to Baltimore for him. His father did not deem it, as he said, proper to have him travel alone.

Q. How did you come into communication with his father? A. How his father heard of me I don't know; but he came up to 30
Saxonville and said he had been to New England in the hope of finding some institution or position for his son. He said he had visited some schools for imbeciles, but that Tommy was of a higher grade than the idiots he had seen in many of the institutions, as some of them could not even feed themselves, and some could not stand, and some were very filthy in their habits. He said Tommy, his son, was weak minded, and I would have no trouble in the management of him; and he thought that a private family, with special instruction, would be better for him than to put him in an ordinary school of idiots. He made inquiries, he said, in Boston— 40
I don't know from whom—and he heard of me, and that my home was about twenty miles from Boston, and so he came on.

Q. What arrangement did he make with you in regard to Tommy? A. He wanted to put him in my hands, and wished me to do the utmost I could to awaken dormant intellect in him if it could be done. He said the utmost he hoped for him was to develop enough mental power to enable to engage in some manual labor. He hoped that I would train him so that he might be engaged on a farm; and it was with that aim that the methods adopted by me were pursued. 50

Q. How long did you keep him? A. A little short of four years. He came in September, 1852, and left in March, 1856.

Q. Did he live in your family? A. In my family, always.

Q. Did you exercise personal care and supervision over him, and direct his course of education with a view to the purpose his father proposed? A. Especially with reference to that; and for that purpose, finding that it was not practicable to develop much mind in the direction of study of books, and he being very nervous, of great physical activity and restless unless occupied, I started him
10 first with games of checkers and backgammon, and tried him at chess; but he had not enough intellect for that, and could not manage a game of chess sensibly; he could play after a fashion, but nobody else could take any pleasure in playing chess with him. I encouraged him in games which were bought for his use; this was out of the regular school hours; he was inside, indoors, most of the ordinary school hours. I tried him a good deal in various activities of that kind, and then I encouraged him in some garden work. He was very easily managed, very kind and tractable indeed; but one trouble was his want of will; he wanted
20 independence; he was very easily persuaded, very easily handled. I never had a student in my charge more tractable and docile than he.

Q. What were his mental characteristics when you first saw him? A. It seemed to be largely weakness of mind, lack of judgment, weakness of will and fickleness; those were his special characteristics.

Q. Now state what progress you made in developing his mental powers. A. I tried him regularly on ordinary studies, with the least satisfaction and the least progress altogether of any student
30 I have ever had in my hands, or any one I have known outside of a class of imbeciles, with whom I have had to do.

Q. Could he read after a while? A. He read fairly, sir. I think in reading he did better altogether than in arithmetic or grammar, or any study that requires the exercise of the reflective faculties.

Q. Did he ever obtain any proficiency in arithmetic? A. There was very little progress there.

Q. In any studies ordinarily pursued by youth, did he make any advance? A. He made a slight advance, but it was the most
40 discouraging case of treatment I ever had, because he made so little progress, and yet there was nothing in his habits and nothing in his disposition that was at all troublesome.

Q. What was the character of his mind as to his liability to be influenced by a more controlling mind? A. He was very susceptible in that direction, and would ordinarily express the opinion of the last person influencing him. As an illustration of his lack of judgment, he was continually liable to little accidents. For instance: In order to develop some business talent, I would trust
50 him to drive a gentle horse, but with that horse he would have frequent accidents. He would drive, for example, a buggy under

a low shed, where the top would be broken off. He was driving once, and came into collision with another wagon; not intentionally—and he had a frequent, a very frequent series of little accidents of that kind, all showing a want of judgment. Another illustration I remember is, he borrowed a watch, or rather he got hold of a watch of another student, opened it and undertook to pick a hair out of it, which spoiled the watch. He took out the main spring which he thought was a hair.

Q. From your careful observation of him for four years, did you consider that he was capable of any material intellectual development? A. It seemed to me that he was not. 10

Q. When he left you, was your object of preparing him for some sober, steady, easy pursuit, gained at all? A. I think progress had been made, but I never felt he would be able to carry on alone any kind of business. I felt that under some supervision, at occupation which his nature craved, he was very restless, if idle; he was not like some imbeciles, ever in a state of stupor; he was restless when not doing something. I think he might be trained to do some simple farm work, where some one might be with him.

Q. Did you have some talk to Tommy's father after he left? A. I think not; I don't remember any. 20

Q. Did you communicate with him your views in any way as to Tommy, by letter? A. I did, sir. There was improvement manifested; all that could be expected under the circumstances.

Q. What did that amount to on the whole, in four years? A. He made very considerable in reading and spelling, and considerable in manual dexterity, and games of various kinds; any kind of games I could devise. I tried him in garden work, and at carpenters' work. I bought tools so that he might try his hand in that way. He made progress in those directions. 30

Q. Did he have a fair opportunity of becoming skillful in carpenters' work? A. Not a full opportunity. He had an opportunity, as I had tools, and encouraged him to make any sort of things boys would naturally be interested in.

Q. What progress did he make—what growth was apparent in his reflective faculties? A. I think very little. After he had left me, perhaps a year or two, he wrote love letters to a young lady in Saxonville, who had been the first assistant teacher in the High School there, a very accomplished lady. She said if it was any amusement to him, she would let him write the letters. I never saw them. 40

Q. Did you ever see him after he left you? A. I have not, sir. I don't remember to have seen him.

Q. Do you remember his face? [handing witness photograph.] A. That I recognize very distinctly.

Q. I mean to ask if you regard yourself as experienced in matters relating to mind and mental growth and education? A. In my early years I was a teacher, and my whole work for the last twenty years has been the supervision of schools, and watching the youth in the supervision of schools. I have made it my work 50

to visit schools for imbeciles frequently, and to note the philosophy of the education. In dealing with imbeciles there is need of great skill in awakening the dormant minds of the imbeciles. For the purpose of learning the modes of teaching in these schools, I visited the celebrated school at Media, in Pennsylvania, and the equally celebrated school in Syracuse. I would say in answer to the question whether much progress was made with Tommy, that you may find imbeciles sometimes in the schools at Syracuse and Media, who are not able to feed themselves, and
 10 they are drawn from that state until they can feed themselves. At first the food is put in the boy's hand and lifted up to his mouth ; then after that when the boy gets hungry, they give him a little less and less help ; and there are cases of these who are now able to take care of themselves. I found out this long after I had charge of Tommy, and I also found that in these schools that they made very great use of games, &c., as modes of awakening the dormant mind.

Q. I asked if you considered yourself experienced in these matters, from your opportunities ? A. I suppose I have had unusual
 20 opportunities to judge of such things.

Cross-Examined :

Q. Did you ever try Tommy with games of cards ? A. No, sir ; I did not, because I had other students, and I did not wish to encourage the use of cards.

Q. Could he play backgammon and checkers ? A. Yes ; it was with those games I started with him.

Q. You tried him with chess ? A. Yes, sir.

Q. Did he learn the moves ? A. Some of my family tried him.
 30 I never played with him myself. I only know how he played, from information derived from my family, and observation of the game.

Q. Did you play the game yourself ? A. No, sir.

Q. Then you could not tell by looking on, whether a person played well or ill ? A. No, sir.

Q. Then your observation could not enlighten you as to whether they played well, or ill ? A. Exactly.

Q. Was he capable of playing games which required the exercise of judgment, and a very considerable use of the memory ? A.
 40 I think that his memory was very much better than his other faculties ; he would play games in which the memory was brought into play.

Q. What was deficient in his mind ? A. I think in the judgment ; in the reflective faculties.

Q. Could he read ? A. A fair hand.

Q. Could he write an intelligible hand ? A. I think it was intelligible ; you would know what he meant by it ; but I think that his writing always answered to his feebleness of mind.

Q. Could he write a letter on ordinary topics that would be
 50 ordinarily sensible—to the purpose and intelligible ? A. I think

it would be intelligible ; that is, you would know what he meant ; it would certainly not be ordinarily sensible.

Q. If he grew afterwards able to write letters of the kind I have spoken of, it would be evidence that he had advanced since he left you ? A. I think so.

Q. Did he understand his family relations ? A. I suppose so, sir.

Q. Had the man memory enough to know his father and mother and sisters and the various relations they bore to him ? A. Certainly, sir.

Q. He was not then an idiot ? A. No, sir ; I did not regard 10 him as that.

Q. Was he what would be called a lunatic ? A. I think he was not a lunatic ; you mean by a lunatic, a person naturally deranged. He was weak minded.

Q. And of a facile disposition ? A. Very facile.

Q. He understood ordinary conversation ? A. Yes, sir.

Q. And carried on conversation sensibly ? A. What do you mean by sensibly ?

Q. Intelligently. He could comprehend what was said to him ? A. If you asked him what was done home, or had a conversation 20 about his plans of work, in simple sentences, then he would answer correctly.

Q. The opportunity he had to learn the carpenter's work was simply access to the tools ; an opportunity to use them ; he had no instruction in that ? A. No, sir ; my other pupils would use them too ; tinkering and at play.

Q. You never saw him since he left you ? A. No, sir.

Q. Were you with him when this accident occurred to the buggy ? A. No, sir ; I trusted him alone with a gentle horse ; he drove in various directions during those four years. 30

Q. Did you have any communication with his father after he left you ? A. On that point I don't remember ; I may have had

Q. Was there any misunderstanding or difficulty about the boy while he was with you ? A. Not the slightest that I know of, sir.

Q. You were originally a minister of the Gospel ? A. Yes, sir.

Q. And have devoted much of your life to matters of education ? A. Yes, sir.

Q. You are not a physician ? A. No sir.

Re-Examined : (Direct.)

Q. I want to refer you to Exhibits Nos. 1 and 2. (Counsel read Exhibit 1.) I read that to ask you whether you observed much progress in his mode of expressing himself when writing ? A. I think that would answer very well to his style with me 4)

Q. Do you consider that much progress had been made since he left you ? A. I should think that about the same style that he wrote when with me.

Q. (Counsel read Exhibit 2.) How does that ? A. That seems very like his usual style of writing ; I had him write letters very frequently, and compositions, in hopes of developing his mind in 50 that direction.

Re-Cross-Examined :

Q. That was about his grade of letter writing ? A. I think so.

Q. If he could write better than that he must have improved since he left you ? A. I should think so.

Proponents' Proctor also called

Rev. Jonathan F. Stearns, sworn :

10 Q. Are you pastor of the First Presbyterian Church in this city ? A. I am.

Q. How long have you been so ? A. Four or five years.

Q. Did you know Thomas Alexander, the testator in this case ?

A. I did, sir.

Q. Relate under what circumstances you made his acquaintance ?

A. I had occasion to use services somewhat in his line. I had a sort of toy doll's house belonging to one of my children, which had been lying about of no utility, and it was suggested to me that it might make a good house for the sparrows, and some one hap-
20 pened to mention Tommy Alexander, and said he would be a good man to get to do it, and I said send him round. He came round to my house and I showed him the article and he said that that could be utilized in that way, and told me how he could do it and gave me his plan, and I thought it was a pretty good plan, and I believe I asked him how much it would be, and he gave me his views. I told him he could take it and do it. He took it away and after a while brought it back and showed me what he had done, and I found it satisfactory, and that ended the transaction between him and myself.

30 Q. Did you pay him for it ? A. Yes.

Q. What was the nature of his conversation with you on that occasion as to its being sensible, intelligent, or otherwise ? A. Well, as respects the same line of business in which he proposed to serve me it was very intelligent.

Q. Did you have other interviews with him ? A. Yes ; one or two, I think.

Q. Can you recollect ? A. Some of it ; I don't recollect very distinctly.

40 Q. Can you recollect the occasions of them ? A. I recollect one somewhat distinctly ; it was after the decease of his father I met him on the street and he was walking very hurriedly, and seemed a little excited. I spoke to him of the decease of his father and talked with him a little on the loss. He said he was going up to consult his lawyer, and I asked him what was the matter ; he said that they were trying to prevent him from making his will ; I asked him why, and he said they were trying to prove him incompetent to make a will, and so he was going up to consult his lawyer about it. I don't at this moment recollect anything beyond that. I think I spoke to him in regard to his father's
50 death and made some general remarks.

Q. Do you recollect any conversations you had with him on the subject of religion? A. Nothing that I could detail.

Q. What was the condition of his mind as indicated by his conversations in the interviews you had with him? A. As far as respects the subject matter, I saw no deficiency.

Q. In the matter of working upon the bird house, who suggested the mode in which it should be done? A. He, entirely; it was his own plan.

Q. Who fixed the price at which it was to be done? A. He fixed it. 10

Q. Did he do anything else beside after it? A. Yes, sir; he brought it round, and after I had seen it he put it up in a tree; he put it in the branches of the tree.

Q. When he brought it back fixed, did you pay him for it? A. I paid him after he got through; I don't think I paid him that day, but I paid him afterwards.

Q. Can you tell from the interview you had with him, whether he recollected the price at which it was to be done? A. Yes, sir; he was correct in his recollection of that.

Q. Did you discover any incapacity in him to do what he was required to do? A. No. If I had never heard of him before, I should not have doubted his competence to do all ordinary things. You asked about the price he charged for altering the doll's house; he made a little addition to the price when he came about his bill, which I did not look for; I think he added \$1 for putting the bird house up in a tree. I questioned him as to whether it was worth so much, and he said that he had had to climb up and place it in the tree, and fix it, &c. I did not dispute the bill at all. 20

Cross-Examined:

Q. What was the bill, doctor? A. I don't remember; I remember that \$1. 30

Q. Can you give us any idea of the rest of the bill? A. No; I don't think I could.

Q. You say it was a little bird house; how big was it? A. It was a little girl's doll's house, transformed into a bird house.

Q. Cannot you form some idea? A. I should suppose it was under \$5.

Q. The whole bill? A. I should think so.

Q. You said you wanted some one in his line; how did you know that that was in his line? A. I did not know it until afterwards.

Q. Did you know Thomas S. Alexander? A. I had the pleasure of seeing him once.

Q. Did you know he was a distinguished lawyer, and that this was his son? A. Yes, sir.

Q. Did it not strike you as strange to find him in Sayre's stable making little dolls' houses? A. I don't know that it did.

Q. Do you mean to say it is naturally reasonable that the son of a distinguished lawyer or a clergyman in full practice, should 50

live in a stable, and make dolls' houses? A. Such things often occur in families—

[Proponents' Proctor objected.]

Q. What I mean is, do you mean to say there is nothing remarkable in that? A. I was not aware that there was.

Q. I thought you said you sent to the stable for him? A. I did. I was told that he had a little corner in the stable where he worked as a carpenter. I was not aware of anything else

10 Q. Did you not think it was strange, that a man nearly forty years of age, and the son of Mr. Thomas S. Alexander, should be engaged in that trifling business? A. No; I cannot say I thought it strange, because it often occurs.

Q. Do you know anything of the fact that he was regarded as a "semi-imbecile?" A. I don't know how much you mean by "semi-imbecile;" I did learn the fact that he was not considered equal to the rest of the family.

Q. Did you not know that he was not in the habit of associating with the guests of the family, and was not treated as the rest of
20 the family by his father? A. I was not aware of that; I made no inquiries at all.

Q. Did you have any opportunity of examining into his intellectual state, farther than those two interviews you have spoken of? A. Nothing at all.

Q. Did you ever have any other business dealings of any kind with him? A. No, sir.

Q. Or ever see him in the social way? A. I think I met him in the street and talked.

Q. You said that his mind seemed to be sensible as to the sub-
30 ject matter; what subject matter? A. I referred to the bird house.

Q. Not to the subject matter in general? A. To bird houses, and also to the subject we were speaking of when I met him in the street.

Q. About his father's death? A. Yes; and about his right to make a will.

Q. Did he say who was trying to prevent him from making a will? A. I could not say positively that he described the persons, but the impression I received, if that is proper—

Q. Not unless you recollect that he did describe some one? A.
40 I can only recollect the impression on my mind; I recollect he used pronouns in the first instance. I may have asked him and learned, but I cannot say.

Q. Do you know Dr. John F. Ward? A. Yes, sir.

Q. Have you confidence in his judgment about the mental state of such a man? A. I never had occasion to test it at all, but I have great confidence in him as a physician.

Q. If he pronounced him a semi-imbecile, how would it agree with your opinion? A. I should not call him an imbecile exactly.

Q. I said a semi-imbecile? A. I should not have supposed him
50 equal to an ordinary man in his position—in his family position.

Proponents' Proctor also called

John H. Gallagher, sworn :

Q. Where do you live? A. 25 Tichenor street.

Q. Did you know Thomas A'exander, the testator? A. I did.

Q. How long did you know him? A. I don't know that I could state that very distinctly; it must have been some two or three years, I think, prior to his death.

Q. How did you become acquainted with him? A. I became 10 acquainted with him as he came there to practice reading up at the church.

Q. Are you a member of the Methodist Church? A. I be.

Q. And of Franklin Street Church? A. Yes, sir.

Q. Were you a member when he became one? A. Yes, sir.

Q. How long did he continue in the membership of that church? A. Up to his death.

Q. Did you ever hear him take part in the public worship? A. I have heard him relate his religious experience in our public meetings. 20

Q. And in other exercises? A. I think I have heard him make a prayer.

Q. Now, Mr. Gallagher, tell us, if you please, how he performed this exercise, with reference to its being reasonable, sensible, rational, or otherwise? A. Well, he could perform it very reasonably and intelligently as far as I could see, but like a great many other young men converts in getting up to speak in public, they are embarrassed some. Tommy spoke intelligently in relating his religious experience as far as I could see.

Q. Did you converse with him outside of the church, on other 30 occasions than when he was in the church? A. Yes; at different times in going home at night, we have walked down the street together and talked.

Q. What was the character of his conversation as to being rational, intelligent, or otherwise? A. He did not say anything out of the way in it; I did not see but what it was rational and understandable.

Cross-Examined :

Q. You considered Tommy a young convert then? A. He 40 was; yes, sir.

Q. Do you remember when he was converted? A. I think about the time he joined the Franklin Street Church.

Q. Do you know under whose ministrations? A. Brother Rogers, I believe.

Q. I am speaking of his conversion; I want to find out whether he was a young convert, or not. He was converted under Brother Rogers? A. I think he was.

Q. Before that time he was unconverted, then? A. I have no knowledge of him until he joined the church under Brother Rogers. 50

Q. Then do you know he was a young convert? A. Why in the sense that we ordinarily took them, I did.

Q. What sense do you take to be the sense of a young convert?

A. A person that has experienced experimental religion, that has the power of Christ shed abroad in his heart, I consider experimental religion.

Q. Then a young convert is one who experiences such experimental religion for the first time, is it? A. Yes; so I consider it.

Q. Then is it your understanding of Tommy's condition, that he was in this sense, a young convert when he came into Franklin St. Church? A. Yes, sir.

Q. He had not experienced experimental religion prior to that, to your knowledge? A. Not to my knowledge; no sir.

Q. Was that, in your judgment, the cause of his embarrassment and peculiar behavior in his prayers and relating his experience?

A. Yes, sir; I have seen it in others; some hundreds of them.

Q. It is a phenomenon you witness in most young converts?

A. Yes, sir.

Q. Does it wear off after considerable experience in experimental religion? A. Yes, sir; as a general thing; sometimes not.

Q. They become more confident and ready in expressing their feelings? A. Yes, sir.

Q. You were not aware then that he was a member of the Methodist Church before he left Baltimore? A. No, sir; I was not.

Q. If he had been a member of the Methodist Church there, and had experienced experimental religion three years before, what would be your view then about his strange manner and nervousness? A. As I said before, I should not have thought anything

strange of it, because in my experience in the Church these twenty 30 years, I have found others, even with years of experience, that never got over this feeling.

Q. Did Tommy ever tell you about when he first experienced religion? A. No, sir.

Q. Did he ever tell you he was a member of the Church in Baltimore? A. Not that I remember of.

Q. You thought him a young convert all the time? A. Yes, sir.

Q. You had a good deal of experience in the Church? A. Well, I have belonged there now, I think, very near twenty years.

Q. Will you be kind enough to tell us the character of his 40 prayers; something that he said? A. Well, I don't know that I have exactly got the drift of what you want, but I could answer that to your satisfaction, and—

Q. You say that he prayed in such a manner as to strike you as being perfectly sensible and intelligent. Now I want to know if you can give any idea of the drift of his prayers, so that we can judge? A. Well, I will do it in my own way.

Q. No. I want it in his way. A. Well, I will give it in my own way.

Q. That is, I want to know what he said. A. It was nothing

more than this ; supplication and thanksgiving to Almighty God for benefits received.

Q. Cannot you give his own words ? A. No, sir ; I would not attempt to do that with anybody.

Q. Did you have any social or business intercourse with him ? A. No, sir ; nothing further than walking to or from church sometimes.

Q. Did you go with the praying band sometimes ? A. No, sir ; I never went with that.

Q. Why did Tommy not pray oftener ? A. That I don't know. 10

Q. How often do persons usually pray ? A. We have men in our church who have come there ever since I have belonged there, and I have never heard them pray yet ; yet they are good Christian men, I think ; so that is no criterion, I don't consider, at all.

Proponents' Proctor then called

Van Cleve M. Salmon, sworn :

Q. Where do you reside ? A. I reside at 412 Plane street.

Q. What is your business ? A. Grocer. 20

Q. With whom ? A. William Campfield.

Q. At what place ? A. 75 Clinton avenue.

Q. Near Washington street ? A. Right at the corner of Washington street and Clinton avenue.

Q. How long have you been in business there ? A. Sixteen years this spring, I think.

Q. Did you know Thomas Alexander, the testator in this case ? A. Yes, sir.

Q. How long did you know him ? A. I suppose betwixt one or two years before his death. 30

Q. How did you get acquainted with him ? A. By his coming there to the store.

Q. During that period preceding his death, was he in the habit of coming to your store ? A. Yes, sir.

Q. How often ? A. Sometimes every day ; sometimes once in two or three days ; sometimes maybe it was a week that he would not be there.

Q. What would bring him there ? A. He used to come there to get some few articles occasionally.

Q. He traded there ? A. Yes, sir. 40

Q. Did you talk with him ? A. Yes, sir.

Q. And deal with him ? A. I used to ; yes, sir.

Q. How did he conduct his business ? A. Well, he conducted it pretty straight, so far as I could see ; he kept a book of his own, and when he got an article he would set it down, and occasionally come up and compare the books together to see if they agreed ; and always found it about straight.

Q. Did he have an account, or credit, at your store ? A. Yes, sir.

Q. To what extent ? A. I guess it got up as high as betwixt \$40 and \$50. 50

Q. Goods you sold him on credit? A. Yes, sir; he would occasionally pay something on it.

Q. Now, sir, how did he conduct those transactions as indicating his capacity to do business? A. I did not see anything different from anybody else; it was the same as anybody else would.

Q. Did you have any hesitation about selling him goods on credit, on account of his incapacity? A. No, sir.

Q. Do you know whether he kept any idea of the amount of his account beside the book? A. I don't know. I know he was very strict with the book; he always depended on his book.

10 Q. Did he ever do anything with your book—go over the figures and add them up, or anything of that kind? A. I don't think he did. He would compare his book with ours; he would run over book—run over the figures and see whether it would come out right, as we had it.

Q. Do you mean the additions? A. Yes, sir.

Q. From what you saw, do you know whether he could add up a column of figures or not? A. Oh, yes; he could add up figures.

Q. Do you know whether he was capable of computing the price
20 a thing would come to? A. If we sold him anything at so much a pound, he could tell how much it would come to as well as anybody.

Q. How would he do that—in his head? A. He would do it with figures.

Q. Have seen him do that? A. I have seen him; yes, sir.

Q. Did you often talk with him on other matters beside business? A. Oh, yes.

Q. Did he make your store his place of resort? A. Yes, sir; he was there quite frequently in the evenings.

30 Q. What did he talk about on those occasions? A. Most anything.

Q. Ordinary matters? A. Yes, sir.

Q. How was his conversation as to being rational or otherwise?
A. It never was anything but rational.

Q. Did you consider him capable of transacting ordinary business affairs? A. I should.

Cross-Examined:

Q. When did he first begin to come to your store, Mr. Salmon?
40 A. I could not tell exactly when it was, but it was from one or two years before his death.

Q. Was it all before his father's death? A. No, sir; it was after, I think; I think it was pretty soon after his father's death.

Q. What did he go there for; why did he want to buy things?
A. He would want some little notions that he could not get at home.

Q. What kind of notions were they? A. Piece of pie; and he used often to come and buy sausage by the pound to send home, and any such nicknacks which he said they did not have home.

50 Q. Now you have mentioned pie and sausage; what other nick-

nacks did he use to get? A. I could not exactly tell; there were a great many things which he took a notion to, and he would get a little and take home.

Q. Well, now, look at that account (handing witness account of goods purchased from witness by Thos. Alexander, Jr., deceased) and see if that does not give you the whole thing.

[Witness read account.]

Q. Is that the bill from your place? A. Yes, sir, it is; it looks like the account.

Q. That begins in August, 1872, and runs to March, 1873. 10 Will you look over it and see if it is your bill from August, 1872, to the date of it? A. Well, now, I am not the bookkeeper there, and I don't know whether I could tell.

Q. Whose writing is that? A. I should judge it was Mr. Campfield's writing.

Q. Is that a bill from your store? A. Yes, sir.

Q. It amounts to \$48; this bill is for (Counsel read off items.) There has been one payment it appears of \$11; this whole bill amounts to \$48, besides \$11 paid, which would be some \$60; is that the amount of your dealings? A. That was in the neighbor- 20 hood of all the dealings.

Q. Do you know what this was written for by him on the back of the bill; have you any knowledge of that? A. I did not know that there was anything there. No, sir; I could not tell.

Q. Is that his writing? A. It looks like his writing; that is his name signed to it; I should judge that was his writing.

[Counsel read what was on back of account.]

Q. Have you ever tried to see whether he could add up a column of figures? A. No, sir; I never tried that.

Q. Did you ever see him in the act of totaling up a column of 30 figures? A. I have seen him add up his book.

Q. How do you know he added it up? A. He would go up to the desk and add it up, and then compare it with ours.

Q. How do you know he added it up? A. I saw him add it up; I never watched him, as I did not expect to be asked such a question.

Q. How do you know you saw him add that up; for instance, here is a column of figures; am I adding it up? [Counsel looked at witness.] A. Not now you ain't.

A. Am I now? [Counsel looked at figures.] A. I cannot tell; 40 if you were in our office I could tell whether you were or not; I could tell by watching you.

Q. How long a column of figures did you ever see him add up? A. It was simply a pass book.

Q. Do you not know he was regarded as a man of feeble intellect? A. I used to hear the folks say so.

Q. How did his appearance correspond with that? A. I think if Tommy had the chances other people had, he could take care of himself.

Q. Suppose he was sent under the special charge of a careful 50

teacher, and to be in his own family in a small, select school, would you not call that a fair chance? A. It would give him a chance to get an education; not a chance to get a business.

Q. Do you know what chances he had to do business? A. He never had a chance to handle money.

Q. How do you know? A. From what I heard.

Q. Heard where? A. In trading with us, he would say: "At such a time, I am going to pay you;" but when such a time came, he could not get his money.

10 Q. How do you know what chances he had in early life? A. I don't know; just what time he was there, when we were acquainted with him, is all I know.

Q. How long did you know him? A. Only two years.

Q. You did not know him until after his father's death? A. No, sir.

Q. Nor yet what chances he had during his father's lifetime? A. I was only speaking of what chances he had since: but from what I have heard tell, he could not have had much of a chance.

20 Proponents' Proctor also called

Jonathan Elder (colored), sworn:

Q. Where do you live? A. I live in Camp street.

Q. What is your occupation? A. Coachman.

Q. For whom? A. James R. Sayre, Jr.

Q. How long have you been in his employ? A. Eighteen years.

Q. And have worked for him during that time? A. Yes, sir.

Q. Where was Mr. Sayre's stable? A. In Camp street.

Q. Do you live in the stable? A. Yes, sir.

30 Q. And your family? A. Yes, sir.

Q. How near is Mr. Sayre's stable to the former residence of Mr. Alexander? A. One block, I should think.

Q. Yours is on the north corner, and Mr. Alexander's is on the next block? A. Yes, sir.

Q. Did you know Thomas Alexander? A. Yes, sir.

Q. "Young Thomas," as he was called? A. Yes, sir.

Q. How long did you know him? A. I suppose it was three years I was acquainted with him.

40 Q. What did you use to see of him? A. I used to see him at the stables very frequently, and used to see him ride out horse-back: and I used to see him make stools, and at carpenter work; he made small benches, which we called stools, for children to sit on.

Q. Any other things? A. He made a tool chest for me, which I have at the stable; a very nice one.

Q. Did he make it himself? A. Yes, sir.

Q. Did you see him? A. Yes, sir; he made it in the stable; he had his chest of tools there.

50 Q. Did you see him do any other work there? A. I saw him make these small stools, which he sold for children; and bird cages and bird houses, and the likes of that.

Q. Who assisted him in making these things? A. No one.

Q. Did you talk with him often? A. Yes, sir.

Q. What about? A. Well, he made a tool chest for me, and he asked me what kind of a lock would be my choice; I told him I did not know; I had not had much experience in those things, and I asked him what kind he would think would be the proper lock to put on this chest, as I was going to keep some few articles in it, and he said, "You had better have a spring lock on it, and then if you forget to lock it, and if you shut the lid down it will be sure to be locked, and then you will know your things are safe; so you had better have a spring lock." I told him very well; if he would purchase it, I would furnish the money, and he did so. 10

Q. Who purchased the lock? A. He purchased the lock, and put it on the chest.

Q. Did he make anything else for you? A. Yes, sir; he made me a very nice black walnut table; he made me a Christmas present of it.

Q. Where did he make that? A. In Mr. Reeves' shop.

Q. What kind of a table was it—with leaves, or without? A. With leaves; it had two leaves. 20

Q. To go up and down? A. Yes, sir; one on each side.

Q. Did you ever hear him make bargains with people, or talk about his business? A. Yes, sir.

Q. How; in what way; what was it? A. Well, in selling gentlemen bird cages. He sold Mr. Campfield—Dominie Campfield—he made a bargain with him one day; he was to have \$2 for a bird cage when it was completed. Mr. Campfield asked him what he would make a bird cage for, and he gave him the dimensions; and Tommy told him he would make it, and he done so; I helped him put it up in the tree afterwards. He said Mr. Campfield asked him the price, and he told him \$2. Tommy asked Mr. Campfield if he was pleased with it, and he said he was, and it was very nice, and he paid for it. 30

Q. Can you tell from your acquaintance with him, whether he could remember from one time to another about things that happened? A. Yes, sir; I have known him relate things that happened a month before; and he would remember things; if he promised to do a piece of work at a certain time, and if anything rose that hindered him doing so, he would go round and say he was sorry to disappoint them, and he would tell them, whoever it was, 40 he was going to do the work for that he could not meet his obligation. I have known him to do that a great many times; he got me to go and see some parties once and to tell them he could not meet his obligations.

Q. Did he ever say anything to you after his father's death about his own will? A. Yes, sir.

Q. What did he say about that? A. He came into the stable one day and said: "Jonathan, I am going to make my will to-day;" and I said to him, "You are, aye, Tommy?" and he said "Yes." "Well," I said, "I hope you won't forget me." He 50

turned round, and laughed, and said, "he did not know how that would be;" he said, "I like you first-rate, but you come rather outside the will." I said, "That's bad for me, Tommy;" and he said, "I know it, but I cannot help it." I said, "Who are you going to leave the property to?" and he said, "I have made up my mind that I will leave my money to Missy;" then he says, "There is my brother Reverdy, I must remember him too; I want to give him some money, but I am afraid he won't take good care of it; he is trying to be rather 'sporty.'" "Well," says I, "my
10 be he knows how to take care of money." -- "Well," said he, "he don't as well as I do, I think; he likes to live fast." "Well," said I, "it would be very kind in you to leave him something; he would appreciate it." "Well," he said, "I am going to leave him a few hundred, anyhow; it is my duty to do it; but the most of my property I shall will to Missy. I board with her, and she takes care of my clothes, &c., and I think she ought to have it." He made these remarks to me.

Q. Did he ever say anything to you about it afterwards? A. I don't remember as he did; I don't think I asked him anything
20 about it; I don't remember that he ever told me how he made the will.

Q. Something has been said about his sleeping in Mr. Sayre's barn; tell us about that. A. Well, he came to Mr. Sayre's barn, and we had a place there which he had fixed up; he brought it from Mr. Reeves' shop, and he slept there during the summer time for about a week; there was something going on—I don't know what; my memory don't tell me what it was just now. It was something, I think, going on at the Franklin street Church, and he said that Missy objected to him going in the house so late at night;
30 and he said he was bound to go this thing, and I don't want to disturb Missy, and if you will let me sleep here, I will try it. I said I had no objections, but I didn't know what Mr. Sayre would say. Well, he said, I don't think he cares, and he certainly would not if you don't say anything about it. Well, said I, go ahead, then, and he did so. He slept there about a week.

Q. When was that? A. I don't know exactly, I did not call my attention to it particularly. I am very positive he slept there; I often went in with him and locked the door after him.

Q. Where did he get his meals, Mr. Elder? A. I suppose he
40 got them at home; he often told me he was going home to breakfast, and I would say to him when he returned, "How did you make out?" and he said, "I got in and got my breakfast, but I did not see Missy, she had not come down to breakfast. I meant to get home pretty early, on that account, before she come down, so as not to answer any questions."

Q. Did you understand from him whether his sister knew he was sleeping out of the house? A. I did not understand whether his sister knew he was, or not. I asked him what his sister said, if she asked him any questions why he stayed away; and he said
50 she did not because he got in before she came down, so that he did not see her.

Q. Was it Summer time when he slept there? A. Yes, sir.

Q. Before or after his father's death? A. After his father's death.

Q. In this work that you saw him do; and this talk that he had with you; how did he seem to be; as a man of ordinary sense and understanding? A. Yes, sir; he did.

Q. Did you hear him speak about his brothers, and sisters and the family at various times? A. Yes, sir; I have.

Q. He seemed to know who his relations were? A. Yes, sir; very well.

Q. You said that you askèd him to leave you something, and 10 that he said you were outside? A. Yes, sir.

Q. Did he say anything further than that—why you were outside? A. No, sir.

Q. Did he give any reason why he could not leave you anything? A. No, sir; he only made the remark, "I like you first rate, but you rather come outside of the will."

Cross-Examined:

Q. You have been employed by Mr. Sayre as coachman for how long? A. Sixteen years. 20

Q. When did you first know Tommy? A. I think about three years ago; I don't know exactly.

Q. How did you first become acquainted with him? A. At Mr. Reeves' carpenter shop.

Q. That is close by your stable, is it not? A. Yes, sir; I used to be sent there on business.

Q. What did you use to call him? A. I called him Mr. Thomas Alexander.

Q. Whenever you met him in the stable? A. No, sir; I said 30 Mr. Tommy.

Q. Did you know his father? A. Yes, sir.

Q. Did his father talk to you about Tommy? A. No, sir.

Q. Why did you let him be around the stable and sleep there, and be there so much? A. Well, he used to come there, and Mr. Sayre had four horses there, and I sometimes feared to exercise them all, and he used to be fond of riding, and used to say that appeared to benefit his health to be around horses. I used sometimes to saddle a horse for him and he would go out and give the horse exercise, and exercise himself, too, and come back, and if I was not there he would put the horse back in the stable. 40

Q. Did you ask Mr. Sayre's permission? A. Yes, sir.

Q. He was willing, was he? A. Yes, sir.

Q. Did Tommy have regular employment, except in making bird cages and tinkering around the stable? A. No, sir.

Q. Where did he keep his clothes? A. He kept his clothes at home, I suppose.

Q. Did he not keep some in the stable? A. He kept a pair of overalls there and clothes he used to have to keep him from soiling his clothes, as a workman would.

Q. When was it he was talking to you about his will? A. Shortly before he made his will.

Q. How did you know he made a will? A. No more than from what he said, that he was going to make it.

Q. How did you know that he actually did make it? A. I don't know that he did.

Q. How can you tell then it was shortly before he did make it? A. Because he told me he was going to.

Q. You only know that he told you he was going to? A. Yes, 10 sir.

Q. Do you know what season of the year it was? A. Well, it was, I think, in the Spring.

Q. The Spring of what year? A. I don't remember.

Q. His father died in the latter part of the year 1871? A. Yes, sir.

Q. In the winter. Now what spring or summer was it he talked to you about making a will? A. I don't remember whether it was that spring or not; if my memory serves me right, it was.

Q. The spring or summer after the father's death? A. Yes, sir.

20 Q. What time of the day was it that he came and talked to you about the will? A. It was about 10 o'clock, I think.

Q. You can remember the time of day, can you? A. I think it was about that; I did not look at the time particularly, because I did not expect to be questioned upon it.

Q. I only want to know how nearly you remember? A. I know it was before dinner.

Q. Now, if you can be sure it was before dinner, cannot you be sure whether it was in the spring or in the summer? A. Well I don't remember that; whether it was spring or summer.

30 Q. Could not you try to remember now, what kind of work was going on at the time you had this talk with him about making the will? A. I could not tell that particularly; my work was driving the coach, and that was going on every day, as I had been, winter and summer.

Q. Did you have any knowledge of the garden? A. I did.

Q. Well, cannot you tell what was growing about that time? A. I don't remember exactly what time in the season it was, no more than I know it was not winter.

Q. You are quite sure of that? A. Yes, sir.

40 Q. Now, if you cannot remember whether it was spring or summer, how can you remember just exactly the very words that Tommy said, as you have told them? A. Because that was impressed on my mind at the time he said them. I never forgot what he said about making the will.

Q. You have told all he said, have you, about the making of the will? A. As far as I remember, I have.

Q. You have undertaken to state just the words he said. Will you state them again—what he said to you, as near as you can?

50 A. He came into the stable in the forenoon, and said, "Jonathan, I am about to make my will to-day—"

Q. Are those just the words he said? A. Yes, sir; something to that effect. I said to him, "You are, eh, Tommy?" "Well," said I, "I hope you wont forget me;" and he turned round to me and laughed and said, "I like you very well, but you rather come outside the will." I said, "That's bad for me, Tommy, but who are you going to leave the property to?" "Well," he says, "I am boarding with Missy, and she takes care of me, and I think she ought to have the most of it; but there is Reverdy," he says, "I feel I ought to leave him something; he is my brother; but if I do, I am afraid that he will squander the money." I said, "Why 10 so, Tommy?" and he said, "Rev's very fast; I think he is inclined to be rather sporty." "Well," said I, "I would leave him something, Tommy; he may not sport off what you leave him." "Well," said he, "he is a pretty fast liver, but I feel it is my duty to leave him something; he is my brother."

Q. Now you have stated question and answer between you and Tommy. Have you stated just the words that passed between you about it, as near as you can give them? A. As near as I can remember.

Q. You undertake to give them as correct, do you not? A. Yes, 20 sir; I do.

Q. Was anybody present when he talked about that? A. No, sir.

Q. Did you ever talk to him before or afterwards about his will? A. I did not.

Q. Did you ever hear him mention the subject of the will before or after that time? A. I never did before that time, and I don't remember as I ever did after.

Re-Examined: (direct.)

30

Q. Mr. Elder, what makes you think this was not in the winter, when you talked to Tommy about the will? A. The reason I thought it was in the spring, was because I think that he said something about trimming the pear trees or grape vines. It might have been early in the spring.

Q. Can you be at all certain about what time of year it was? A. I would not like to say, for I don't remember that. It occurred to me it was in the spring.

Q. Did Mr. Sayre have fine horses? A. Yes, sir.

Q. Spirited horses? A. Yes, sir.

40

Q. Did Tommy use to ride them? A. Yes, sir.

Q. Did he ever have an accident with them? A. No, sir.

Re-Cross-Examined:

Q. Were they well trained horses? A. Pretty well trained.

Q. Did Tommy fall off one, once? A. Not to my knowledge. We had one horse which required a man who knew how to ride, that was going to ride him, and Tommy used to go out with him and come back with him.

50

[Proponents' Proctor offered in evidence the will of Thomas S. Alexander, senior. (This was offered in the will book from the Surrogate's office, Counsel intending to put in a certified copy of the will hereafter.)

Caveators' Proctor objected.

Proponents' Proctor said he offered the will because it showed that it conferred upon Thomas Alexander, Jr., the power of disposing of the property by will.

10 Court admitted the will.

Caveators' Proctor took exception.]

Adjourned until 11 o'clock, A. M., Saturday morning, May 30.

WALT. J. KNIGHT, *Stenographer*.

SATURDAY, MAY 30.

[Caveators' Proctor asked permission to call, during the day, another witness, of whom he had known nothing until the preceding day.

20

Proponents' Proctor objected, as Caveators' Proctor had already stipulated that he would not call any other witness.

Court gave the required permission.]

Proponents' Proctor then called

Charles L. C. Gifford, affirmed:

Q. You reside in Newark? A. I do, sir.

30 Q. You are a Counselor at Law? A. I am, sir.

Q. Recently the Presiding Judge of the Common Pleas? A. I was, sir.

Q. Did you know the testator, Thomas Alexander? A. I was acquainted with him.

Q. Under what circumstances did you make his acquaintance? A. My impression is that the first time I saw him was at a fair, held under the auspices of a Temperance Society in the new room in the Newark Savings Institution building, corner of Broad and Mechanic streets.

40 Q. About when? A. Some four or five years ago; I have no way by which I can fix it.

Q. What other opportunities had you from that time on, of becoming acquainted with him? A. I saw him frequently after that at meetings of temperance organizations, and I think two or three times at Masonic meetings.

Q. Did you see him also at other places, on other occasions? A. I have seen him on other occasions on the street, but I never recollect having spoken to him on the street but once.

50 Q. Did you converse with him on those occasions? A. Frequently.

Q. What extent of conversation did you have with him—of what nature? A. That would be almost impossible for me to state, whether with relation to the object of the meetings at which we met, or some general conversation, I cannot now pretend to say.

Q. What, judging from the conversation you had with him, and the opportunities you had of seeing him, was, as you perceived, the condition of his mind? A. I have never had my attention called to any fact that would induce me to presume he was any ways defective in mind until the matter was first brought to me on the opening of this case. 10

Q. In your intercourse with him, what did you discover as to the condition of his mind? A. Well, I don't know, sir, that anything happened that called my attention to the fact at all; there was nothing in his conversation that led me to presume that he was not as ordinary men are.

Q. Was he a member of a temperance organization? A. He was, sir.

Q. The same as yourself? A. I don't think he belonged to the same division, although it is impossible to tell; we cannot keep track of the membership of the different divisions. 20

Q. Was he a member of one division of the joint organization, of which you belonged to some other? A. I presume so from his meeting in a division into which he could not have gained admission unless he did.

Q. Was he also a member of the Masonic fraternity? A. That is my recollection of the matter now. I met him, I think, on the night that Oriental Lodge held the dedication of that same room where I first met him, on the corner of Broad and Mechanic streets. I think now, if I am not very much mistaken, I have a distinct recollection of meeting him in the ante-room and passing the 30 usual remarks that were made on these occasions, and having some other conversation with him and others.

Q. Can you tell how many degrees or grades of Masonry he must have taken, or did take? A. I am not certain whether on that occasion the meeting was open to members of all the degrees or whether it was confined to members of the third degree; and I don't know whether he was an original member, or an affiliate member, or a sojourner.

Q. You are yourself a member of the Masonic fraternity? A. Yes, sir. 40

Q. I don't wish to inquire into any secret of your order, but— (Interrupted.) A. I can assure you, sir, I won't answer you if you do.

Q. I don't wish to ask you anything of that kind; I simply want to ask you this question: What degree of intellectual capacity is necessary to gain admission into that institution?

Caveators' Proctor—What institution do you mean?

Proponents' Proctor—The Masonic fraternity.

[Caveators' Proctor objected.] 50

Witness—I think I could answer that question without trouble to either party. I could give no opinion on that without knowing whether Mr. Alexander was a Mason under the jurisdiction of the Grand Lodge of New Jersey, or whether he may have been made under other lodge requirements of the said lodges of other States. As I stated before, I did not know whether he was a made member, whether he was made in a lodge here, or whether he was an affiliated Mason, which is one that comes from another State, or whether he was a sojourner, which means a man who belongs to another
 10 Lodge, under another jurisdiction, which merely visits around. As I stated before, after I have thought about this matter, since I have first spoken, I would not be willing to say distinctly, without examining the record by which I could tell if Mr. Alexander at the time I saw him, was at a Masonic meeting or not; the trouble arises from the fact that several Institutions hold their meetings in the same place: I may have met him in regard to the Temperance organizations, although my strong impression is that it was at the dedication of that room, by the Masonic Lodge; and I think I afterwards met him in open lodge; and he could not have gained
 20 admission there, without he was a Mason.

Q. Are you an Odd Fellow? A. No, sir; I am not. My strong impression is I met him on two occasions in the room.

By the Court:

Q. But you are unable to say whether he was a member or not?
 A. Yes, sir.

Cross-Examined:

Q. Can you say with any certainty at all that he was ever a
 30 member of the Masonic Fraternity? A. I have just stated that that was my impression.

Q. Have you ever given him the countersign? A. No, sir; I have not to one Mason out of five thousand. If we meet a man inside the Lodge room, we don't want to give the countersign

Q. How many times have you met Tommy Alexander? A. I presume, to within a year prior to his death, thirty or forty times; perhaps oftener.

Q. Did you never meet him during the last year of his life? A. When did he die?

40 Q. He died before Christmas, 1873. A. Last year? I don't think I met him within—I think not. No, sir; I don't think I met him within that time; I am certain I did not.

Q. Did you ever have any business relations with him? A. No, sir.

Q. Any social relation with him? A. Only those we engaged in at the temperance organizations, of which I spoke, which are almost altogether social.

Q. Do you call them social. A. Well, if you came in one, you would say so.

50 Q. Well, I did not mean exactly in that way—if there is any

word to express it; I mean in private social life, rather. A. No, sir; I never met him out in private.

Q. Did you ever meet him alone, and engage in conversation on literary or scientific subjects? A. No, sir; I never did.

Q. Have you on business subjects? A. Yes, sir; together with others, on business matters connected with organizations.

Q. Have you ever conversed with him alone on any subject? A. Well, yes; I remember having a conversation with him once in the ante room of a temperance organization; we were talking about matters and things in general; I think we had quite a 10 pleasant little time.

Q. Do you say that you never, in all these interviews, observed anything which made you suspect that he was not a man of average mental capacity? A. I did not; that is, I say this, Mr. Keasbey, that in the interviews I had with him, the idea that the man was was out of his mind, or that he was of an unsound mind, and did not fully comprehend and know all that was said and done, never for a single moment entered my mind.

Q. I shall have to ask the question again, Judge, I did not say anything about his being out of his mind; I meant to say—or, I 20 asked just what I meant to ask. Did it never occur to you in any of these interviews, that he was a man of less than average mental capacity—not that he was insane? A. My attention was first directed to Mr. Alexander, by his peculiar appearance; and I asked who he was, and I was informed that he was a Mr. Alexander, and that he was the son of a gentleman. I afterwards, but not at that time, nor for a long time after that, entered into conversation with him without any introduction; and in that conversation, or in any conversation I had with him, or in any interview, the question as to his mental qualities, never for a single moment entered into my 30 mind.

Q. Then you never attempted to form any judgment as to his mental capacity? A. I never did, sir.

Q. Were there any others beside Masons admitted at the dedication of the Masonic Lodge? A. On that occasion I think not, sir—they very often are.

A. Are there not two lengthy examinations for admission into Masonic privileges? A. That depends upon circumstances, sir—on what you may mean by admission into Masonic privileges. I want to state, Mr. Keasbey, in regard to whether others were not 40 admitted at the dedication of the Lodge room. I said my impression was they were not, and I think the records will show that was the case at that time. I attended and delivered the opening address that night. I have attended on very many other nights where there has been a generally mixed assemblage, and at other meetings which were confined to the membership of the lodge; and whilst I give it as my impression now that none others were admitted, yet it may have been that others were admitted, but I think not; Judge Titsworth was present, I think.

Caveators' Proctor, in accordance with the permission given him by Court, called

William B. Van Houten, sworn :

- Q. Where do you live ? A. Newark, sir—432 Plane street.
- Q. What is your business ? A. Decorative paper hanger,
- Q. Did you know Thomas Alexander ? A. Yes, sir.
- Q. When did you first know him ? A. About six months after he came to the city of Newark. It was about 4 or 5 years ago.
- 10 Q. What opportunities had you of seeing and knowing him before and after his father's death ? A. He was at my house nearly every day.
- Q. Did he take his meals in your house ? A. Yes, sir.
- Q. How ; in what way was that ? A. He would come in the same as a visitor at any time, and at meal time ; we always asked him to eat ; every Sunday he generally came there, and on Sunday afternoons, and several times through the week, and generally most every day for the last two years up to about six months before his death.
- 20 Q. Did you frequently talk with him then ? A. Yes, sir.
- Q. Do you remember talking with him shortly after his father's death ? A. Yes, sir ; he was at my house a day or two after his father was buried ; he was at my house the day his father was buried, and he was there nearly every day afterwards.
- Q. What did he say to you, if anything, at that time about his will ? A. Well, he was always talking about his will ; it was his general conversation every time he came to my house for the last two years, and I cannot say how late it was after his father's death, or anything about that ; it was a short time. He said that
- 30 his sister Missy (I don't know Miss Alexander's first name), was anxious for him to make his will and there, but there was some trouble about a bedstead or some things they had taken away from him, and he would not—he did not think he would make his will until he saw how they used him.
- Q. Did he speak of it more than once ? A. Yes ; several times about their wanting him to make a will, and I advised him to choose a guardian in Mr. Sayre, and put his business in his hands, as he seemed to be a particular friend of his.
- Q. What was his expression in regard to "Missy ?" A. Well,
- 40 there seemed to be trouble between him and his sister at the house, and he was not altogether satisfied ; and he said that they were talking to him about making his will ; that seemed to be his conversation, and that he did not want to make his will just yet, until he saw how the parties used him at the house. After that he came to my house and told me he had made a will, and told me who he had willed the property to.
- Q. Did he say anything then about anybody persuading him to make it ? A. He said Missy advised him to make his will in case anything should happen to him—for fear anything might happen

to him. He said something about a plan to get him to Baltimore and put him in an asylum ; that was his conversation.

Q. Did he speak to you afterwards—sometime afterwards about his will? A. Oh, he talked about the will from that time along up ; said he was going to change his will in something.

Q. Did he ever tell you about that? A. He said he was going to change it and was going to will his brother more than what he had, on account that they did not use him right with the money that was willed to him by his father ; that he would will him more ; that he said a few weeks before he died. 10

Q. Did he ever speak of having actually changed his will? A. He told me he had.

Q. When? A. This was last year at a camp meeting, when he was there with me ; he stayed there with me.

Q. What did he say about that? A. His brother had been to Baltimore ; I don't know what time this was, and he had no place to stay, and Tommy said he felt sorry for him, and he intended to provide more for him out of his estate in his will.

Q. You say he told you he had changed it? A. Yes, sir.

Q. What did he say about it? A. That he had provided more 20 for his brother.

Q. It was in reference to that? A. Yes ; that's all I know about it. He said so much about his will I could not remember all he said. It has been his last two years' conversation at my house.

Q. What was his disposition as to being led? A. Well, I could—anybody could lead him and persuade him to do most anything ; I would advise him, and he would generally do it ; I could lead him any way I wanted to. He made me a confidential friend ; when he had trouble he came and told me of it. 30

Q. What was the character of his mind? A. Well, his mind—he would say things one day, and the next day—(interrupted.)

[Proponents' Proctor objected.]

Witness—He did not seem to have much mind.

Cross-Examined :

Q. You had frequent conversation with him about the will? A. He had with me, sir ; I would object ; I would tell him that I did not want to hear so much. 40

Q. You did not charge your mind with what he said? A. No, sir. I remember his speaking about that ; I told him he had better get Mr. Sayre to be his guardian.

Q. Did you pay attention to the precise language he used? A. No, sir ; only to that one matter ; he used that every time ; that Missy advised him to make his will.

Q. In regard to his having changed his will, or his mind with regard to his brother, what did he say? A. That was the last time.

Q. What did he say ; what was his precise language? A. He 50

said he changed his will for his brother's sake, and he was going to will him more; he was going to will his brother Rev. more; that is what he said.

Q. And he said he was not satisfied with the way they used him, did he? A. He said something about the money that was willed to his brother and that he had nothing to get along with.

Q. When was the first time he told you he had made a will? You said he told you to whom he had left the property; what did he say about that? A. He said he had willed \$1,000 to his nephew.

10 Q. What did he call him—do you remember? A. No; I don't remember the name; Mr. Linthicum's son; I think that was the name; and he willed his tool chest to some colored man; I don't know who he was; and his watch he willed to my boy, he said; I told him I did not want none of his money.

Q. Anything else do you remember? A. No, sir.

Q. Did he say how he disposed of the bulk of his property? A. No, sir; I did not ask him; it was none of my affairs.

Q. These are the only three items you remember? A. Yes, sir.

20 Q. When was that? A. Well, it was talked of most every time he came to my house.

Q. Do you know when he first told you he had made a will?

A. No, sir; I could not say positively about that.

Q. When he talked with you about having made a will, did he not say something about having left Rev. something? A. Yes, sir; he said he had left him something.

Q. Did he say how much? A. He did not, sir.

Q. Did he say how much he gave his sister Maggie? A. No, sir.

Q. Nor to Missy? A. No, sir.

30 Proponents' Proctor then called

Thomas T. Kinney, sworn:

Q. You are proprietor and editor of the Newark Daily Advertiser? A. Yes, sir.

Q. Did you know the testator, Thomas Alexander, deceased? A. Yes, sir.

Q. How near did you live to him? A. I don't know how many feet; it was the next house but one.

40 Q. How long did you know him? A. Well, I knew him since about 1865—a long while.

Q. Were you on visiting terms with the family? A. Yes, sir.

Q. Your families exchanged visits—you and he were acquainted—I mean old Mr. Alexander? A. Yes, sir.

Q. Did you see Thomas, the son, frequently or otherwise? A. Oh, I used to see him very frequently.

Q. Where? A. Generally in the street, sometimes in our house, and sometimes round the place; we used to belong to the same neighborhood.

50 Q. Did he ever come to your office? A. I think he has been there; yes, he has been there; I have seen him around during office hours.

Q. Did he frequently come to your house? A. Yes, sir.

Q. Did he ever take meals there? A. Yes, sir.

Q. With the family? A. Occasionally he has; well, two or three occasions I remember.

Q. What, on those occasions, was his deportment and behavior, &c.? A. Always unexceptionable, I thought.

Q. How did he conduct the operation of eating; in the ordinary way or was there anything peculiar about him? A. Nothing very remarkable.

Q. How was he as to temperance; do you know? A. He 10 seemed to have strong temperance principles about him.

Q. Do you know whether he would drink or not? A. He never would drink wine.

Q. Did you ever know him to refuse? A. I think the last time I saw him he came in my house—not a great while before his father's death; I had not seen him for a long while, and as we were at dinner my wife asked him to take a seat at the table. He did so, and I asked him to take a glass of wine as some happened to be served on the table, but he declined; he said it was contrary 20 to his principles.

Q. You had some opportunity of forming a judgment about the condition of his mind? A. Yes; I used to hear him spoken of as being an idiot, and I thought the matter over and concluded he was not exactly that.

Q. Now be good enough to state your estimate of Tommy. A. I thought he was rather a low grade of intellectual development; that he was a feeble minded young man but that he had decided opinions; he had some very decided opinions; he was not an associate of mine, I only saw him from his being around the place; he would go around to the stable, and he had, I remember, a strong 30 proclivity towards carpenter work at one time—he made bird houses.

Q. What do you know of that? A. He made one that I know of to put up in the trees around my place; he seemed to have some facility in carpenter's work; I understood he got a place somewhere afterward.

Q. In your conversations with him could he understand the conversation? A. Oh, yes; there seemed to be no restraint about him; he was a great deal in Mr. Sayre's stable, and his coachman could tell you more about him than I could; he used to ride the horses; he used to exercise Mr. Sayre's horses, and I don't know 40 but what he has done so with mine; I used to hear him talking to the man; he would want clothes, and he would complain of the executors not giving him the money; he needed over-clothes and boots, &c. I have heard him talk on these subjects.

Q. How was his conversation as indicating whether he understood what he was talking about? A. He understood what he was talking about well enough.

Q. Did he understand the relations of his family—his father and sisters? A. Yes, sir.

Q. He understood them? A. Yes, sir.

Q. And knew them? A. Oh, yes, sir.

Q. Did you form any opinion as to whether he was susceptible of being moved by kind treatment or to be moved by anything of that kind? A. I think he was, and the opposite, too; I never took any great amount of interest in his affairs, I had too many affairs of my own to be thinking about; I noticed that he went without restraint and seemed to have to a certain extent mind and will of his own; he had a very strong determination which I thought hereditary, for his father seemed to have that too.

10 Q. Your estimate of Tommy, then, was that he had a strong determination? A. I thought he was rather feeble minded; a very feeble minded young man, in fact.

Q. Did you ever have any conversation with Mr. Linthicum or Mr. Julian Alexander on the subject of putting him in a lunatic asylum or restraining him? A. Well, really, I don't remember.

Q. I mean shortly after his father's death and burial? A. I don't remember on that occasion.

Q. On any occasion before Tommy's death? A. Well, I think a few weeks ago—but I don't recollect—I cannot recollect it if I
20 ever did.

Cross-Examined:

Q. You were quite intimate in the family, were you not, Mr. Kinney? A. Yes, sir.

Q. You knew Mr. Alexander very well, and Miss Alexander?
A. Yes, sir.

Q. You knew all the family? A. All that were living here.

Q. Were you in the habit of having them at your house? A.
Yes, sir.

30 Q. You invited them there? A. Yes, sir.

Q. Did you ever have such social relations with Tommy? A.
No; I think not.

Q. He was differently treated, was he not? A. Oh, yes; I very seldom saw him around the house; when I went there, I generally saw Mr. Alexander or Miss Alexander, or both.

Q. Did you ever happen to have any conversation with Mr. Alexander about Tommy? A. No, sir; he mentioned him, but there was no conversation about him.

Q. Was it in regard to his mind? A. No, sir.

40 Q. Did you not regard him from the first, as a man of a very low grade of mind; a semi-imbecile at any rate, and one who had to be treated entirely different from any other member of the family? A. I understood him to be what I say, a feeble minded young man, but not an imbecile; I did not think him an imbecile. He did not seem to have the same associations with the family as others had.

Q. Did you ever try to engage him in literary or scientific conversation, or anything of that kind? A. I never conversed with him much; most of the conversation was when he conversed with my wife and family. He came to my house on one occasion
50 with one of the aprons, or something that they have in the Sons

of Temperance ; he seemed to be very proud of that ; there was some procession or something going on ; he said they were going to have a procession or some kind of a jamboree there.

Q. Does that look like him in that picture (handing witness a photograph)? A. Yes ; I think that was the thing he had on then.

Q. Where did he go? A. To my house

Q. Did he come in in that style? A. No ; he had it in paper, and was showing it to my wife as the gorgeous apparel he was going to fix up in.

Q. You say his associations were more with your coachman? 10
A. He was more with—I think he was more intimate with Mr. Sayre's coachman ; he seemed to take a fancy to him, and Mr. Sayre's coachman used to keep him exercising the horses.

Q. Did you frequently visit at Mr. Alexander's? A. Not frequently ; I have been there.

Q. Was Tommy at the table when you were down there? A. I think not ; I think that on one occasion he was.

Q. You have not stated that you had any conversation with Mr. Linthicum in regard to placing him in a lunatic asylum. A. No, sir

20

Re-Examined : (Direct.)

Q. Did you ever have any conversation with Tommy about the disposition of his property? A. Yes ; he had that on his mind a great deal at one time, and he had a very strong determination, so I never undertook to advise him one way or the other about anything, except one day he said he had been writing to Mr. Linthicum, and I think he told me what he had been writing ; and I said, "Tommy, it is all foolish for you to write this kind of thing." He was complaining of not getting money to buy clothes he was in need of ; I think it was a despatch he had been sending. I 30
said to him, "You will do yourself no good, Tommy." He seemed to have a strong feeling about his Baltimore relatives—against them ; he had got an idea that they wanted to put him in a lunatic asylum, and that they were trying to entice him off, but he was determined to stay here.

Q. Was anything said about the disposition of his property by will? A. Yes, sir.

Q. State what he said. A. He said he had left most of the property to Missy, and he had left some to his brother ; I cannot remember any other.

40

Q. When did he tell you that? A. About the time he said he had made his will. I understood from Mr. Kirkpatrick that Tommy had been there two or three times to get him to make out the will.

Q. It was about the same time he told you of that? A. Yes ; he was talking about that a great deal ; he talked frequently about it.

Re-Cross-Examined :

Q. Did Tommy tell you that he got \$150 for spending money 50

from the trustees per year? A. I never heard him say anything about that.

Q. Do you know yourself whether the trustees did not send him regularly his allowance? A. That I know nothing about.

Q. Do you know whether Tommy was in the habit of squandering his money when he got it: if he was thriftless about these things? A. I do not; he would borrow money, I heard; he borrowed on one or two occasions of my wife.

Q. Did Tommy ever tell you how much they did send him? A. 10 I think on one or two occasions, after he had been complaining a good deal, he said he had got something or other; I did not charge my mind with the matter; I had no particular interest in the young man; I thought he was a very low grade of mind, though not an idiot, because I always had the idea that an idiot had no mind at all; and Tommy had a mind up to a certain point.

Re-Examined: (Direct.)

Q. At the time he complained to you about not having sufficient clothes, what was the appearance of his clothes? A. I did not 20 notice.

Q. You said something about shoes, I think; what did he say about them? A. I think there was snow on the ground, and I thought it was a pity that he should not be better shod than he was at the time; he seemed to have an idea of what kind he wanted, and he afterwards got them, I believe, and was very jubilant over the shoes; and said he was fixed up for the Winter, I think.

Proponents' Proctor also called

30 **George Ward**, sworn:

Q. What is your business, Mr. Ward? A. Druggist, sir.

Q. Where? A. 923 Broad street.

Q. How long have you been in that business? A. Three years, sir.

Q. Did you know Thomas Alexander? A. Yes, sir.

Q. How did you become acquainted with him? A. Through business, sir.

Q. State in what way. A. He used to come after medicine 40 with prescriptions from Dr. John F. Ward, sir.

Q. How frequently? A. Two, three, or four times a week, sir.

Q. For how long? A. For a period of a year and a half before his father's death; or two years.

Q. Did he come there as a loungee, sometimes? A. Quite frequently.

Q. That was one of his stopping places, was it? A. Yes, sir.

Q. What business would you do with him; what would you do in a business way? A. Well, he very frequently brought prescriptions there; it was mostly prescriptions.

50 Q. On whose account? A. His own account, sir.

- Q. Did you credit him? A. We did, sir.
- Q. Do you know what he did about the account; whether he took any notice of it? A. He had a pass-book, sir, in which everything was put down except the prescription, which was put down to his account in the regular ledger; the pass-book account he paid himself, except the last, which has run over since his death.
- Q. Now, sir, in what way did he conduct these transactions? A. In the regular business way, sir: in the ordinary way.
- Q. Do you know whether he could add up? A. Yes, sir; he could. 10
- Q. How do you know? A. I have seen him do it.
- Q. What have you seen him do? A. I have seen him add up two columns of figures, and put it down correctly.
- Q. What was the character of his conversation—intelligent? A. Yes, sir.
- Q. Could you understand him? A. Yes, sir.
- Q. How was he as to knowing what he was about; what he was there for? A. The ordinary way; the same as any one, sir.
- Q. His business that he conducted there was done in the ordinary way? A. Yes. 20
- Q. Did he come in there sometimes as a visitor and loungee? A. Yes, sir.
- Q. What would he do on these occasions? A. Nothing particular; he would sit round the stove in winter time.
- Q. Would he engage in conversation? A. Yes, sir.
- Q. With whom? A. Any one that happened to be in the store.
- Q. What did you notice about the character of his conversation? A. Nothing particular, sir.
- Q. Do you remember what he would talk about? A. No, sir; nothing particular. 30
- Q. Ordinary topics? A. Ordinary topics.
- Q. Do you know whether he read the newspapers or not? A. Very seldom, I think, sir.
- Q. In the store? A. I don't remember ever seeing him read the paper in the store.
- Q. To what amount did he have an account with you? A. The last account was forty odd dollars, I believe, sir.
- Q. Before that, when did he settle? A. He settled every quarter, sir.
- Q. Did he pay the money himself? A. No, sir; it was through 40 his executors.
- Q. Did the executors pay it, or did he bring the check? A. The executors paid it, except this pass-book account, which he paid himself.
- Q. Do you know how much that amounted to? A. I remember one account, amounting to \$12; for tobacco, segars, &c.
- Q. That he paid himself? A. Yes, sir.
- Q. How did he make these payments, as indicating whether he understood the value of money or not? A. He seemed to understand it perfectly. 50

Q. What is your idea as to whether he understood the value of money? A. I should judge he understood it perfectly.

Cross-Examined :

Q. Did you ever have any other transactions with him than these little transactions with regard to small bills? A. No, sir.

Q. When you spoke of his understanding perfectly, you mean in the small matter of paying for little bills of drugs, do you? A. Yes, sir.

10 Q. Adding up a few small figures and paying the account; buying drugs and afterwards putting them down on his book? A. Yes, sir.

Q. What kinds of drugs did he buy? A. Well, he generally used to bring a prescription, sir.

Q. Were they not signed by his father or sister? A. No, sir.

Q. Did you not receive instructions not to give him anything, without it was signed by his father or sister? A. No, sir.

Q. Did he buy brandy frequently? A. No, sir.

Q. Never? A. Yes, sir; it was ordered by his physician.

20 Q. Did he buy brandy occasionally then? A. Yes, sir.

Q. In what quantities? A. By the bottle.

Q. Did he buy tobacco and segars? A. Yes, sir.

Q. Did he use a good deal of tobacco? A. I think he did, sir.

Q. Did you consider him a man of ordinary intellect and understanding? A. Yes, sir.

Q. You saw no difference between him and the average ordinary run of human beings, did you? A. No, sir.

30 Q. Did you consider his intellect and understanding, and capacity were equal to the average of those who came to your store, and who belonged to your acquaintance? A. As far as I know of, sir.

Q. You considered his intellect then equal to the average of men whom you know, do you? A. Yes, sir.

Q. Did you ever examine him, or have an opportunity to inquire as to his attainments? A. No, sir.

Q. Did you ever talk to him on literary or business subjects? A. No, sir.

Q. Did you consider him equal to yourself, for instance, in capacity? A. Yes, sir.

40 Q. How long did you know him? A. I knew him about three years.

Q. How often did you see him? A. Two, three or four times a week.

Q. And yet knowing him for three years, and seeing him three or four times a week, you concluded that his mental capacity and understanding were quite equal to your own? A. Yes, sir; as far as I know.

Q. Do you know that Dr. John F. Ward had certified that he was a semi-imbecile? A. Yes, sir.

Proponents' Proctor also called

Silas C. Halsey, sworn :

Q. You live in Newark, Mr. Halsey? A. Yes, sir.

Q. What is your business? A. Clothier.

Q. Of the firm of Halsey, Hunter & Halsey? A. Yes, sir.

Q. Did you know Thomas Alexander? A. Yes, sir.

Q. How long did you know him? A. I think about four years ;
I could not say exactly.

Q. Were you on visiting terms with his father's family? A. 10
Yes, sir.

Q. Were you frequently at the house? A. Yes, sir.

Q. How often did you see Thomas and under what circumstances ; just give the Court an idea of what was the nature of your intercourse? A. I saw him almost daily, sir, either on the street, or at my store ; he used to come in frequently.

Q. On those occasions would you converse with him? A.
Yes, sir.

Q. And transact business with him? A. Well, he came to my
store to get clothing. 20

Q. You knew him well? A. Yes, sir ; I knew him quite well ;
I used to see him almost daily.

Q. How was his conversation with you in regard to whether it was rational, intelligent, or otherwise? A. Perfectly rational, I thought, sir ; whatever he talked about, he seemed to understand very well.

Q. What business would he transact with you ; just describe the business—what transactions he had with you? A. Well, he came there to be measured for his clothing ; before his father's death his father generally selected the material, and sometimes he left it to me. Tommy would come there to be measured for his clothes, and he would often give directions in regard to the manner in which he wanted them made. 30

Q. Did you ever have money transactions with him? A. None except to lend him money ; I have loaned him money on several occasions.

Q. In small sums? A. Yes, sir ; a dollar ; sometimes 50 cents.

Q. Did he tell you what he wanted it for? A. Yes sir ; he always told me he wanted it for a certain purpose ; once or twice I loaned him money to buy lumber when he was making bird houses 40 and to make foot benches ; he brought a foot bench to my store one day which he had made, and said he wanted money to buy lumber to make more.

Q. Was there anything in your intercourse that enabled you to judge about his memory? A. Yes, sir ; his memory was very good in regard to his owing me the money ; I think he repaid me once or twice ; I won't be positive about it, but I scarcely ever met him in the street, when he owed me money, that he did not dun himself about it, and say he had not received any money from 50

the executors, but as soon as he got any money he would come in and pay me; that was about all that I remember.

Q. What did you observe in him as indicating whether he had a will of his own or was guided by the will of others? A. Well, he had a pretty strong will of his own in regard to some things—in regard to his clothing and the manner in which he wanted it made. I remember that some one had cut the pockets out of his pants, and he brought them back to have them put in again, and that we refused to do unless it was ordered so from the house, 10 because it had been taken off at his house, and we did not want to interfere with any family arrangement; and in regard to another suit we made for him since his father's death, he selected the goods for one suit himself—a cassimere suit—an every day suit; he gave us the directions as to how he wanted them made; he wanted the coat to be a double-breasted coat, what we call a Prince Albert coat, just as Mr. Linthicum there has on; I tried to persuade him out of the idea of having that style, because it would be a very awkward coat for him as his figure was such that the coat would not look well on him, and I tried to persuade him to have a sack 20 coat, that would cover up his deformity, as you might say, for he was not a very good shaped man, but I had great difficulty in persuading him to have the coat made differently.

Q. You did succeed finally—he gave up? A. I did, sir; I put a coat on him of the kind he wanted and showed him in the glass how he looked, and he thought it was not quite as becoming as the coat he had formerly worn.

Q. Well, did he say anything about it afterwards? A. Yes; I think I asked him afterwards if he was not better pleased with the sack-coat than he would have been with a Prince Albert coat, 30 and he said he thought I was right about it—the garment was more becoming to him.

Q. Did you ever fell out with Tommy? A. Yes; we had a little difficulty once.

Q. Just describe it, please? A. He said I insulted him; he was in my store one day; he used to come in there frequently and the clerks would talk with him; Tommy talked very loud one day and I went up to him and told him we did not like to have him talk so loud in the store as the customers would think it was the clerks; he said something which I don't recollect just now, 40 and I said well, if you do it again I shall have to put you out, and Tommy became very much offended and did not speak to me for months afterwards. Of course I was only jesting with him; he did not speak to me for, it must have been several months; I used to pass him daily on the street coming up from my house; he came to me one day and said I have been mad long enough; I said well, I am not mad, Tommy, at you; I was only jesting, and you ought to have known that; then he said that he had been angry, and had been to Scott's in the meantime; he would not come to our place to get his clothes, but he went to Spencer Scott's to get 50 his clothing, and now he said he wanted to come back and have a

suit of clothing made by us, as he said the suits of clothing we made made him look better than the clothes made at the other places; I said very well, Tommy, suit yourself about that—

Q. Did he ever say anything to you about his will? A. Yes, sir; I think he did; I know he did.

Q. When was that? A. I cannot tell; it must have been a year and a half ago; it might have been longer than that; but it was some time ago.

Q. Just state how the conversation came about; how it was introduced, and what he said about it. A. I think Tommy came 10 in the store and wanted to borrow a dollar and a half to buy lumber with, and he told me that he had an order for some foot benches and bird houses, and he could make so much money on it if he could get a dollar and a half to go and buy the lumber with, to make the bird houses and foot benches; and then he could make so much money and repay me. I told him, "Tommy, you owe me some money now which you have not paid me, and I hope you will remember me when you make your will, and leave me some of your property" He said, "Well, that is all attended to; I have made my will long ago." I said, "I hope you remembered 20 me in it." He said, "He had not." Then, I said, "Well, Tommy who did you leave your money to?" and he said that he left (I don't remember the amounts) Buck some money, and \$100, I think, to his sister Maggie; it was some money, I don't remember how much, but he said he had left the balance of it to Missy; and I think he had left some money to some one in Baltimore, but I don't remember who it was; whether it was a niece or nephew, or brother or sister, or who; but I think there were three persons he mentioned; and the balance he said he had left to Missy.

Q. Did he give any reason for leaving the balance to Missy? 30
A. He said Missy had been his best friend, and he had left her the bulk of his property.

Q. Did you have a conversation with him once on the subject of buying a hat? A. Yes, sir; it was at the time when he ordered two suits of clothes. I received the order from Mr. Linthicum to make him two suits of clothes about the same as he had been in the habit of buying, and at the same time he wanted some socks, I think, and some underclothing and a hat; and although I did not trade in goods of that kind, I thought I could get them for him. Mr. Alston, on the corner, owed us some 40 money, and I said, "Tommy, if you want a hat, I will go with you to Mr. Alston's, and you can get a hat and have it charged to us, and I will collect the money of Mr. Linthicum." He said he would rather go to "Jolley's" and get a hat, as he thought he could buy one cheaper there; he saw a hat there that he liked, and he said he would like to buy that one I had, of course, to go where he chose.

Q. Did you go to Alston's, or Jolley's? A. Jolley's.

Q. Now, in these conversations which you have narrated, did he understand what he was talking about? A. He seemed to under- 50

stand perfectly about these matters, as I said before; about the matters that he talked about; he seemed to understand perfectly about his wants in regard to his clothing; of course, I had no conversation particularly about anything else.

Q. Did he talk with you about the price of his clothes? A. I think he did.

Q. Can you form any opinion, from his conversations, as to whether he understood the value of money? A. I remember this; When I spoke to him in regard to those two suits of clothes, I told
10 him the price, and he said, "Well, that is all right; all I can get is what I can eat and drink and wear, and then the balance will have to go to my relations; that is all I can get." I don't remember his exact words, but that was the idea; that all he could get out of what was left him, was what he could eat and drink and wear, and so any difference in the price did not make much difference to him.

Not Cross-Examined.

20 Proponents' Proctor recalled
Andrew Kirkpatrick.

Q. You stated on your former examination that you had an interview with Mrs. Bingham on the subject of making the testator's will. State what that interview was.

Caveators' Proctor—What the conversation with Mrs. Bingham was?

Proponents' Proctor—Yes, sir.

30 Caveators' Proctor—I object.

Court allowed question.

Caveators' Proctor took exception.

Q. What was that interview, Mr. Kirkpatrick? A. Prior to the making of this will I was frequently at Miss Alexander's house; and one day she said to me "that Tommy was coming to my office and wanted me to draw his will;" and I said, "Very well; send him up; let him come." I had no further talk with her about it prior to the making of the will.

40 Q. How long had you known him? A. I had known him for several years, I think, before his father's death.

Q. You were intimate with the family, were you not, sir? A. I was.

Q. And saw Tommy frequently? A. Frequently.

Q. At home? A. At home.

Q. Did you converse with him? A. Often.

Proponents' Proctor at this point asked permission to speak with the witness, as he had mislaid the memoranda given him by witness.

50 Caveators' Proctor objected.

Proponents' Proctor—I simply want to call the attention of the witness to a matter which he called my attention to before he went on the stand.

Witness—It was the matter of bill posting.

Q. Now, Mr. Kirkpatrick, state the interview you had with him on business subjects, if any, prior to the making of the will, or since. A. Since the making of the will, and prior to his death, Tommy came into my office and asked me to make a loan, I think, of \$500. I asked him what he wanted to do with so much money 10
—(interrupted.)

[Caveators' Proctor objected.]

The Court allowed.]

He stated he had a proposition from some one to join him in partnership, and to go into the bill posting business; I said that I did not see why he should want so much money to go into the bill posting business. He said it was necessary to hire fences and places to stick the bills on, and it was also necessary to buy lumber 20
and make boxes to put round trees and such things, on which bills might be posted; and he said that this man had considerable business, and had been in it for some time; and he had said that if Tommy got this sum of money—\$500, I think—and invested it in hiring the right to stick bills, and in building boxes round trees, he would give him half the profits; and, of course, Tommy should assist in sticking the bills. I told him I had not the money to loan, and he went off. I think he afterwards came in and made another attempt to borrow a like sum, for the same purpose, and I declined to loan it.

Q. You were intimate in the family of old Mr. Alexander? A. 30
I was.

Q. Had you opportunities to observe the nature of the intercourse between old Mr. Alexander and his daughter Mary? A. I had.

Q. What was the character as to its being friendly or otherwise? A. So far as I had an opportunity of judging, it was very friendly. The old gentleman always seemed very kind when conversing with her, so far as I knew; and he always spoke of her in a pleasant way. 40

[Caveators' Proctor objected.]

Witness—As I am supposed to be a sort of Counsel in this case, might I suggest a matter that occurs to me, as evidence?

Q. You may volunteer anything—anything you can state that bears upon this question. Proceed, and state it. A. It was only in regard to when I was examined before. I think I was asked whether I had ever seen Tommy at his father's table, and it has since come to my recollection, that in the Summer prior to Mr. Alexander's death, I had occasion to stay there at his house for two days, or three, and Tommy was always at the table for break- 50

fast and dinner as usual ; that is as the rest of the family—Mr. Alexander, Miss Alexander and Tommy. I thought I had been examined on that point, and I wished to say that my recollection of it had been refreshed.

Cross-Examined :

Q. Who composed all of the family of Mr. Alexander during his residence here ? A. At what time, Mr. Keasbey ?

Q. I mean all of those who really composed his family at different times ? A. I did not know Mr. Alexander as soon as he came here.

Q. Well, after you knew him ? A. After I knew Mr. Alexander, I think there was Mr. Alexander himself, Miss Mary Alexander, Tommy and, I think, part of the time Mr. Reverdy Alexander.

Proponents' Proctor also called

Thales Linthicum :

20 Q. I wish to ask you one or two questions. You are one of the executors of Thomas Alexander, deceased ? A. I am, sir.

Q. You have acted in that capacity ? A. Yes, sir.

Q. I should like you to give the Court an idea of the amount of the estate which came to your hands as such executor. I don't care about the precise figures but just the general amount ? A. I think the balance of our last account as executors of the realty was somewhere about \$69,000 or \$70,000, the appraised value. The real estate was sold for \$40,000, and out of that we paid the expenses of attending the sale, and then there was a mortgage upon the property of \$9,500 which is also to be counted out, with some interest which is assumed as part of the purchase money.

30 Q. That was part of the \$40,000 ? A. Yes, sir.

Q. Give us an idea of the general balance, about, of the estate ? A. Well, there was between \$100,000 and \$120,000, appraised value.

Q. You say it is the appraised value ; is it appraised at less or more than its actual value ? A. Well, sir, some is appraised at a great deal less than its actual value and some at a great deal more than its actual value.

40 Q. As to coming out, I mean, is it appraised at its full value ? A. I think it will.

Q. Its natural value ? A. I think so—about ten per cent.

Q. About the amount of the estate to be distributed under the will ? A. You might say between \$100,000 and \$120,000, ranging between them ; the information is all here, in the office.

Q. One more question I omitted to ask you, that is as to the habits of Tommy when he was on the farm, and after that, as to intemperance ? A. Well, perhaps you will make that question a little broader, because my information is broader in connection with the city ; there are circumstances I would like to state in

answer to that question that I should not like to state in this presence.

Q. Whether you knew that about the time that Tommy was sent to the hospital he was addicted to intemperance? A. I never knew that. I knew Mr. Alexander procured knowledge of a fact which I was surprised he knew; I can say this, I knew Tommy to have been drunk once, when some youngsters got him terribly intoxicated, and he was carried home on a shutter; that was in 1863 or 1864.

Q. I mean at the time when he was sent to the hospital in 1856? 10
A. I never saw Tommy drunk in my life, and never heard he had been drinking out at the farm until Rob Giesling testified to it the other day.

Cross-Examined:

Q. What was the other circumstances?

[Proponents' Proctor objected.]

Witness—It was in connection with his sending him to the hospital. 20

Adjourned until Monday, June 1st, at 12 M.

WALT. J. KNIGHT, *Stenographer.*

MONDAY, June 1, 1874.

Before His Honor Judge Titsworth and Associates.

Proponents' Proctor also called

Mary Bingham, sworn:

Q. Mrs. Bingham, did you state to Julian Alexander that you 30
had made Tommy make a will? A. Never.

Q. Do you remember when Tommy was sent to the Maryland Hospital? A. Yes.

Q. What, prior to his being sent there, had been his habits as to temperance? A. Most intemperate; I had known of frequent occasions when he became fearfully intoxicated.

Q. Do you know why he was sent there? A. Simply on that account. His habits of intemperance had become so great, and my father's business, of course, compelled him to stay a great deal from home, so that there was no one to keep him from drink- 40
ing; and he (Tommy) was sent there to break him of these intemperate habits, but it did not however.

Q. It has been stated in evidence here, that when your father moved from Baltimore to this place Tommy was sent on in charge of the cook or the servants; please state what the fact was about that? A. My recollection—the impression I always had is, he came on to take charge of the servants—one a woman over 60, and the other a girl; and he was to look after the furniture and see that Mr. DeCamp put it in its proper positions. I remember going once to Newark and made some inquiry as to what Tommy 50

had done, and I found everything exactly where we told Tommy to fix it.

Q. When did you first hear the subject of Tommy's being put in an asylum mentioned, after your father's death? A. Directly after the reading of the will of my father. I was in bed at the time and the will was read in my chamber; Mrs. Linthicum came to my bedside and, after one or two words by way of prelude, she said: "Missy, we have all been talking, and think that Tommy ought to be put in the hospital; we don't want to keep him there, 10 but just for the present; you know how he talks about this." I said, "Never, Emma, will I consent to that; I never thought him to be sufficiently insane to my knowledge, and pa did not want him to be put in an asylum, and no other member of the family shall." I said, "Don't get excited, Emma, and——"

Q. When did you remove from here to Philadelphia? A. February 10th, 1873, I think.

Q. And when did you get married? A. Last February.

Q. When did you remove to Philadelphia? A. February 10th, 1873.

20 Q. And you got married last February? A. Yes; this last February.

Q. During the year after you left here, when at Philadelphia, did you and Tommy correspond? A. Frequently; I think upon the average of two or three letters a week, and various postal cards.

Q. Did you receive letters from him? A. Constantly, and he paid me two visits; he would have paid me visits more frequently, but I was called from Philadelphia.

Q. Look at that (handing witness a letter); is that written by him? A. Yes, sir.

30 Q. You received it by mail? A. Yes, sir.

Q. The date? A. March 14.

By the Court:

Q. What year? A. It is not given.

Further Examined:

Q. This was written to you while you were at Philadelphia?

A. Yes, sir.

40 Q. Did you receive this letter from him also, dated March 21? A. Yes, sir; that I also received from him.

Q. See if you can identify that (handing another letter)? A. This is April 23, 1873.

Q. That one you received from him? A. Yes, sir.

Q. This one is April 29? A. Yes; that is also his; and this of May 11th, 1873.

Q. That is one of his also (handing another letter)? A. Yes, sir; you can recognize the handwriting. This is his, too, dated June 18, 1873; and this, July 8, 1873; and this, September 29, 1873; and this, October 17, 1873; and this, July 11th.

50 Q. And that? A. Yes; that is August 19.

Q. And they are all in his handwriting? A. All in his handwriting.

Q. And all received by you? A. Yes, sir.

Q. Look at that one (handing letter to witness) and see if you know anything about that; it is dated November 29. A. Oh, yes; that is a letter written to my colored woman; she brought it to me to read.

Q. Cannot she read? A. No, sir.

Q. That is Tommy's writing? A. Yes, sir.

Q. The date? A. November 29; within a day or two it was 10 written, after he left me; he had been visiting me.

Q. How many letters are there—twelve in all? A. Yes.

[Proponents' Proctor offered the above letters in evidence, and marked them as Exhibits L 1 to L 12, inclusive. He then read them.]

By the Court, (during the reading.)

Q. Were these written from Newark? A. Yes, sir.

20

Cross-Examined:

Q. Where did you get the letter that was written to Ann, marked L 12? A. She came out to me to bring over some things. I will tell you how I think it came to my possession—

Q. I don't care for particulars; I only want to know whether you got it from Ann? A. Yes; directly from her hands. She brought it on to Mr. McCarter, and he handed it to me, and I have had possession of it—

Q. Have you the envelopes of these letters? A. I have the envelopes of several of the letters, but my fashion is always to 30 take my letters and tear the envelopes open, and I have several at home, not—

Q. Would you just say simply whether you have them or not; it would save so much time? A. Well, I have.

Q. Do you know Tommy's writing? A. I think I do.

Q. Is that his? [handing letter marked L 12.] A. Well, it does not look very much like my writing—

Q. I asked you whether it was Tommy's handwriting; not whether it looks like yours? A. I would rather not pass an opinion about this letter. 40

Q. How does it compare with that? [handing witness another letter.] A. I will see if I can find a word in each—a word of the same kind; then it is possible to get at it better. There is "certainly." Yes, I say it resembles; there are several letters here in different words that are alike.

Q. Do you think that is his handwriting? A. I think I would rather not swear to it; I would not like to swear to it. (This letter was dated March 2, 1872.) I could make one remark: Tommy's hand trembled a great deal; he used a great deal of tobacco, and his handwriting may have varied on that account. 50

Q. Have you brought all the letters that Tommy wrote? A. That he ever wrote?

Q. Yes; to you, in Philadelphia? A. I don't think—my habit is, whenever I receive letters upon family matters, to put it away, and—

Q. I only want to ask you if you brought all you have? A. No; I have some touching on family matters, which are to be kept out of Court.

Q. Have you then made a selection from the mass of his letters?

10 A. I glanced over his letters with the intention of bringing every one on; but some were more abusive of his Baltimore relatives than I felt disposed to read in Court, and I left them out purposely; we have had too much excitement already, I think.

Q. Was that the principle on which you selected the letters—to take those letters which were the least abusive of his Baltimore relatives? A. That was my motive; that was the principle on which I started.

Q. What was your object in bringing the letters? A. In bringing the letters?

20 Q. In bringing those letters; if you wanted those that were the least abusive? A. I brought these on because I wished to show that I had corresponded with Tommy, and to show a specimen of his handwriting and composition; and I think these are fair letters for an idiot.

Q. Then the purpose for which you brought these letters was to show as a specimen of his handwriting and composition; is that so? A. (Witness nodded assent.)

Q. And that was your object in bringing them? A. (Witness again nodded assent.)

30

By Mr. McCarter :

Q. You must answer verbally, Mrs. Bingham; the stenographer cannot hear you nod. A. Yes, sir; yes, sir; yes, sir.

Further Examined :

Q. Then I understand you to say, it was your object in bringing these letters, to show specimens of his handwriting and composition? A. Yes, sir.

40 Q. Did you bring any of the envelopes in which these letters came? A. None.

Q. There is this letter (L 9), which is not signed, in which he said: "he was very sick, and was confined his bed with chills and fever?" Do you know when you received it? A. If you tell me the date I can tell you.

Q. How would that tell you? A. Exactly as it would tell you I imagine. When you look at the date, you can tell when you received the letter.

50 Q. That is the way to tell when the letter is dated, but when the letter was received is a different thing. A. What is the date?

Q. That is a matter which I did not mean to communicate. A. Well, then, Mr. Keasbey, I am too ignorant to answer the question.

Q. Whose handwriting is that (handing witness letter)? A. Mine.

Q. When did you write it? A. On Saturday; I think on Saturday morning.

Q. Have you been in the habit of getting letters from Tommy, during many years? A. I don't think I ever went away from home on any occasion, that Tommy did not write to me once or twice a week; I have been away from home twice, I think. 10

Q. Why did you not bring some letters written during the preceding year, or on some other occasion? A. I don't know why I did not; it never suggested itself to me.

Q. Were all these letters written while you were in Philadelphia? A. While I was in Philadelphia.

Q. You say that Tommy was sent to the hospital simply on the ground that he was intemperate? A. I do, sir; that is what my father told me; "that he would send him to the hospital because he was so intemperate;" and there is no inebriate asylum in Maryland, unless it is of recent years. 20

Q. Where were you living at that time? A. In the city.

Q. Of Baltimore? A. Of Baltimore.

Q. When you say then, that he was sent to the hospital simply on that account, do you mean that your father told you that he sent him there on that account? A. My father told me that the overseer of the farm had been to him, and had told him that Tommy was drinking very hard; and my father considering he had but one course open for him, he said, "I must send Tommy to the Maryland Hospital and see if they cannot cure him."

Q. What officer was it came to him—what overseer of the hospital? A. That would be beyond my power to tell you the name; I don't remember the name; oh, it was the overseer of the farm, but that was nine or ten years ago, and I rarely have anything to do with that class of people.

Q. What class of people? A. The overseers on the farm—my father's hands; I was always in the house, you know.

Q. Was the intemperance of Tommy a thing of long standing? A. Yes; I should say it was, for he was in the hospital for—I could not tell you how long—it was several months, and when he came out it was but a very short time before he resumed his intemperance. I might relate many instances when he was so intoxicated that he was brought home by the police. 40

Q. In Baltimore or here? A. In Baltimore.

Q. And here, too? A. No; he took to temperance very shortly after he got here, and kept it strictly.

Q. What were his habits here? A. Perfectly temperate always; he would even refuse sauce and other things that had wine in them.

Q. How were his personal habits here? A. Well, his personal habits—I know it was not the habit of the male portion of the family to be particularly neat, except in the case of my father. 50

Q. I did not venture to inquire how it ran in the male portion of the family; I was inquiring only in regard to Tommy? A. I should say as a general thing he did not keep himself tidy.

Q. Was he not particularly the contrary?

[Proponents' Proctor objected.]

Q. Was he not, then, Mrs. Bingham, in a different position from the other members of the family? A. Not to my knowledge. Do you mean socially; in the manner in which he was treated by
10 the family? Tell me the meaning of your inquiry; I answered hastily.

Q. Did he attend in the social gatherings in your house at that time? A. At all large gatherings he was present, but at my little social gatherings of three or four he came in very rarely; in fact he could not be prevailed upon to come in.

Q. Was he in the habit of dining with the guests of the house? A. Always.

Q. All his life? A. All his life; and I can mention several instances when the guests were all strangers to him, and some of
20 them were strangers to me.

Q. Before and at the time he was sent to the hospital was he in all respects treated like the rest of the members of the family, socially, publicly and privately? A. To my knowledge I saw no difference; my father made no difference.

Q. Did you live in the house with him? A. Yes, sir.

Q. So that you had full knowledge of his position? A. Full knowledge of his position.

Q. Was he ever treated as a person of feeble intellect? A. I don't mean to intimate for one moment that I thought he had a
30 mind equal, for instance, to Mr. McCarter's, but I say he was never treated as an idiot or an imbecile by any member of the family to my knowledge, and I never heard the accusation or insinuation until within the past few months, since my father's death.

Q. Until the past few months did you never hear insinuations from your father or from any one that he was regarded as a person of very feeble intellect? A. Ever hear his mind spoken of? I have answered that question already.

Q. Please answer it again? A. I have never seen him treated by the family or by my father as an imbecile, and I don't think he
40 was ever considered, until very recently, as an imbecile.

Q. Or as very feeble minded? A. Or as very, very, very feeble minded.

Q. I did not make the addition of the two words—I said "very feeble?" A. I don't think he was treated as very feeble minded.

Q. Do you know of his being sent to Mr. Northrup's school? A. Yes, sir; he went there.

Q. Were you living in the house with him at the time of his father's death? A. Yes, sir.

Q. Did you continue to live there? A. Until I removed to
50 Philadelphia.

Q. Were you in the house with him from the time of his father's death until he made his will?

[Proponents' Proctor—One moment; I object.

Caveators' Proctor—On what ground?

Proponents' Proctor—That it is not cross-examination.

Caveators' Proctor—I am now on the ground of her stating to Julian Alexander that she had made him make a will.

The Court allowed the question.]

10

Q. Was Tommy living there with you at the time he made the will? A. Yes.

Q. Was Julian there shortly after? A. Julian Alexander was there off and on, up to the time of the sale of the house; but I don't think he slept more than one or two nights at the house; he used to be in and out of the house, at different times; he would go to Baltimore and come back there again.

Q. Was he there shortly after? A. Well, I cannot tell you, for I don't remember. 20

Q. Was he there before Tommy made the will—between that time and your father's death? A. Yes; he was there at the house.

Q. I mean to ask, whether, at the time he speaks of, when he says that you told him that you had made Tommy make a will—whether he was there at that time? A. Whether at that time—(interrupted.)

By Mr. McCarter to Mr. Keasbey.

One moment: Perhaps the witness does not know the time that Julian says she made the assertion. 30

Witness—When was it that Julian said I made the assertion? I don't remember; it was the simple fact, I remember.

Further Cross-Examined:

The date of the alleged assertion was read to witness, and the question asked:

Q. Was Julian there at that time? A. I presume he was; I cannot tell.

Q. Did you have a talk with him about doctors? A. I did not.

Q. Did you tell him that you had had three doctors to examine him? A. I did not. One day Tommy came into my room, when Mrs. Davis was there, and he said, "Missy, T." (that is the name he had for Mr. Linticum, whose name is Thales), "says I cannot make a will, and so does Julian and Emma, and all of them, and they say I am crazy. I want to know if I can make a will, and I am going to ask a doctor to come and examine me." I said, "Yes; get a doctor;" and he said, "The doctor won't come unless you send for him." Then I said, "Very well, go down and tell Doctor Ward I want to see him." He started off, and was absent about long enough from my room to get down to the platform, when he 50

returned and said, "Might he have Mr. Dougherty also?" I said, "Certainly; tell him I want to see him." And the doctors came.

Q. Did you tell Mr. Julian Alexander that? A. Not until after the death of Tommy, I never mentioned it.

Q. Did you tell Tommy that they were going to take him to a lunatic asylum? A. I told him of the remark Mrs. Linthicum made to me.

Q. Did you tell him frequently after that, that Messrs. Linthicum and Alexander, the executors, were going to send him to a lunatic asylum? A. Mr. Linthicum made no secret of it; they talked about it to Mr. Kinney, and I may have mentioned it to Tommy; but I don't remember.

Q. You say Messrs. Linthicum and Alexander made no secret of their intention to send him to a lunatic asylum, and they talked about it to Mr. Kinney; and who else? A. Mr. Linthicum and Alexander made no secret of their saying that Tommy ought to be put in the hospital, and they spoke of it to people, and asked if he ought not to go to the hospital. I know they said it to me, and I remember Mr. Kinney said they said it to him.

Q. Do you know that Mr. Linthicum said it to Mr. Kinney? A. Mr. Kinney, on his examination the other day, said so.

Q. I asked if you knew that he said so to Mr. Kinney? A. I took Mr. Kinney's word for it.

Q. It is only what you heard, then? A. I did not hear them tell him.

Q. Have you ever heard them say it to anybody? A. I have; in my presence, and in Mr. Davis' presence, and in the presence of the servants.

Q. That they were going to take him to a lunatic asylum? A. That he ought to be put in the hospital.

Q. Did you ever hear either of them say they were going to send him there? A. No; I don't think they would have made that remark to me—

Q. Please not to give the reason you may have in your mind; I merely want a simple answer. A. No, Mr. Keasbey.

Q. Did you ever tell Tommy that they had threatened to put him in a lunatic asylum? A. I have told Tommy, I dare say, that they said he ought to go in the hospital.

Q. You have told Tommy that? A. At that time, and the time Mr. Linthicum said it; I don't know that I talked about it afterwards.

Q. Did you ever talk to Tommy about the asylum at all afterwards? A. I don't remember that I did; I might and I might not. In calling Drs. Ward and Dougherty I mentioned to them when they entered what their purpose was in coming; then I said, "Doctor, I am particularly anxious to have your opinion and certificate as to whether Tommy is a fit subject for the hospital (because of what Messrs. Linthicum and Alexander had told me—they always had—they made no secret of it), and if in the event of my absence or sickness they ever took Tommy to the hospital,

I wished to have these certificates so that I could take him right out;" and so I made that remark distinctly at that time to the doctors.

Q. Did you ever tell Tommy that they were going to take him to the asylum? A. Did I ever tell Tommy?

Q. Yes. A. I don't remember it.

Q. Do you remember his telling you that you lied when you did say so? A. Tommy never used such words to me, and I never heard him use such words in the house.

Q. Then it was all a delusion in his letter, was it? A. He may 10 have said it, if he wrote it, and I never paid any attention to it.

Q. He wrote this on the 21st June? A. What dates were those letters you have read in Court—what years are they written?

Q. He writes on the 21st of June, 1872, "that Missy had told him that they told Missy that they were going to take him to an asylum," and he says, "I told her she lied." Is that a mistake? A. Am I called upon to express my opinion of these letters?

By Mr. McCarter to witness:

No; you are called upon to state whether that is a mistake or not. A. I decline to answer that question. 20

Further Cross-Examined:

Q. In the letter of January 31st Tommy says to Mr. Linthicum that you told him "That he said he ought to be put in a lunatic asylum, and then Julian and Mr. Alexander only want to get me to make a will and leave my property, &c." (Counsel read from letter.) That is what Tommy says; was that merely a delusion on his part or was it true? A. I remember hearing Tommy say 30 that Mr. Linthicum asked him—

Q. No; he talked about what you said; did you say anything about that or not? A. I cannot go back so far.

Q. Tommy writes that you told him that Julian and Mr. Alexander want him to make a will and then they are going to take him away and put him in a lunatic asylum; he says you told him that. Now I ask you if you did tell him, or whether it is a delusion on his part? A. I don't remember; I don't recollect anything of the kind now; my memory is not so good as yours though.

Q. You said that you could not go back so far; did you not go 40 back as far when you gave long conversations which took place at the same time, or a little further back? A. On that topic I might.

Q. Well, why do you not remember if you told Tommy? A. I cannot tell you, I cannot; but I do not recollect it, and I will not say it if I cannot recollect it.

Q. Then you cannot say whether you did or not tell Tommy what he says to Mr. Linthicum, in letter Exhibit No. 3? A. I have answered that four times, haven't I?

Q. Will you please answer it once more? A. I will answer it once more—I don't recall it. 50

Q. Can you swear that you did not say it? A. Well, I am on oath on that, and I have told you I cannot recall it.

Q. I will repeat the question: Can you swear that you did not say it? A. I am not willing to swear one way or the other.

Q. In January, 1872, Tommy says—(interrupted)

[Proponents' Proctor objected on ground of not being cross-examination.

Court overruled question.]

10 Q. Now, one other subject I am going to try, and we will see how far we can get in that. When you moved from Baltimore who composed the family? A. When we first got there, there was my father, myself, my sister, since deceased, and my brother Tommy.

Q. How did you come? A. I came over from New York with my father; we went to New York a week prior to the moving of the furniture.

Q. Who did Tommy go with? A. He went the same day that the servants came over.

20 Q. Who were the servants? A. That antiquated individual you saw in Court some days ago, and a chambermaid; the man servant preceded.

Q. Did you bring the furniture? A. The furniture came on by express, or freight, or something.

Q. Then Tommy came on with the family servants? A. Yes, sir; to take care of them; I understood he was to see that they got home properly.

Q. And Tommy took care of the furniture, too? A. The furniture came by express or freight.

30 Q. I mean at the house? A. Yes; he superintended it, and saw it was fixed properly.

Q. Was Tommy sent by your father from Baltimore with the servants? A. I was under the impression that he came on to take care of them; that he had to bring the servants to their destination, and then superintend the unpacking of the furniture, and direct where it should be put, &c.

Q. Did you hear your father make such arrangement—that he would send Tommy to take charge of the servants? A. I heard father say, at the Brevoort House, when I spoke of going over to Newark to see how things were going on, that he did not know whether it would be worth while, as Tommy would attend to all there was worth attending to; intimating that he trusted to Tommy.

Q. Was Tommy at that time in such a condition of mind and body as to be general manager of the household? A. I should think he could have superintended the disposition of the furniture.

Q. In your judgment was he fit to be the general manager of the household? A. He was certainly fitted to take charge of the furniture, and direct it to be put in its proper position.

50 Q. I ask whether or not, in your judgment, he was fit to take charge of the servants, and all of the arrangement of the furniture, and the disposition of the property about the house?

[Proponents' Proctor objected.]

Court allowed question.]

Q. Well, was he fit to come on in charge of the servants and the furniture, in order to make the proper disposition of it about the house? A. In my opinion, he was fit to take charge of the servants and the furniture, and to direct it to be put in the proper position, &c.

Q. Who put him on board the cars? A. I suppose he put himself on board; I was not there. After he was here, he travelled 10 frequently to Elizabeth, Rahway, New York, and everywhere.

Q. Can you tell me from anything in this (handing witness a letter), when this letter was written? A. Are my letters to be introduced into this examination? This is a letter of mine; it has my name, I see.

[Proponents' Proctor objected.]

Q. I ask you whether you know when it was written? It has no date. A. When I read it, I will tell you. (Witness looked at letter.) It looks like my handwriting, and it does not look like it. 20

Q. Well, is it yours, or not? A. Yes; I think it is. Let me see—Tommy was very sick at the time I left, and Ann was left in charge of him—

Q. Do you know when it was written? A. I do not. I don't know when I was at Richfield Springs.

Q. I was going to ask you whether Tommy improved as he went along? A. How?

Q. In his habits; in his personal habits?

[Proponents' Proctor objected.]

Witness—I don't see that his personal habits had anything to do with his mind. 30

Q. I mean in his capacity, rather than in his habits.

[Proponents' Proctor objected.]

Q. Did you ever speak to Mr. Alexander yourself, about taking Tommy to Media? A. I never said a word to him—(interrupted.)

[Proponents' Proctor—One moment. I object.]

Q. You did not see Tommy write any of these letters, did you? 40
A. To me?

Q. Yes. A. I don't think it is possible for me to—(interrupted.)

Q. If you will be kind enough to answer the question I asked, without giving any of your own speculations, we should get on much better. Did you, or not, see Tommy write any of these letters that you received from him? A. No, sir; I did not.

Q. Then you don't know whether it is his handwriting or not? A. I do know from its similarity to letters I have seen him write.

Q. Do you judge only from that—from its similarity to what you have seen him write? A. I have seen Tommy write again and 50

again, and it is exactly like those I have seen him write ; and I don't think he was able to pay for an amanuensis.

Q. Will you look over these, and say if you think Tommy wrote them ? (handing witness the six Exhibits offered by Caveators.)

[Proponents' Proctor objected.]

Witness—Must I read all these letters ? It will take so long

Q. Do you judge that to be Tommy's handwriting ? A. That is. In very many letters I have seen Tommy write, I have seen
10 him write well ; and in others not so well, as his hand shook very much at times ; he used so much tobacco. I may make this remark : that once, Tommy—when I went to Philadelphia—wrote to me on a piece of paper torn out of a composition or blank book, and I afterwards directed him to be more careful about the style of his letters.

Proponents' case closed.

Caveators' Counsel then recalled

Thales Linthicum, sworn :

20 Q. Did you tell Mrs. Bingham that Tommy ought to go to a lunatic asylum ? A. I did not, sir ; and whenever she spoke to me about sending Tommy to a lunatic asylum, I invariably told her I should never attempt anything of the kind.

Q. Were you present at the time Mrs. Linthicum was there—at the time the will was read ? A. I was. Shall I state who was there ? Mrs. Bingham was there, lying in bed ; Mrs. Linthicum was there ; General Graham was there, from New York ; Mr. Alexander was there—Mr. Julian Alexander, that is ; Reverdy
30 Alexander was there ; Tommy was there ; Miss Margaret Alexander was there, and myself. Directly after the will was read, we all went down stairs, leaving Mrs. Bingham in her room, and in her bed ; and we left Miss Margaret Alexander and Mrs. Linthicum together, I think, in the library ; we left them there, and brought the will up and left it at the Surrogate's office—Mr. Reverdy Alexander going with us.

Q. Did you hear what passed in the room, when Mrs. Linthicum was there, while Mrs. Bingham was in bed, after the will was read ? A. I did ; every word.

40 Q. Mrs. Bingham says that Mrs. Linthicum told her then, while she was lying in bed, after the will was read, that Tommy ought to be taken to the hospital. Did you hear that ? A. I did not hear that, sir.

Q How near Mrs. Linthicum were you sitting ?

[Proponents' Proctor objected.]

Witness—Mrs. Linthicum did not go to the Surrogate's office ; she went down stairs, and General Graham remained behind in the room, a little while afterwards. I was as close to Mrs. Linthicum and Mrs. Bingham, when they were in the room, as I am sitting to
50 Judge Condit, here.

Q. Did anything occur, while you were there, of the kind? A. Nothing of the kind; all that did occur was this: That after the will was read, I think, Miss Mary held out her hand to the two other girls, and they went up and kissed her; she then held out her hand to me and I kissed her, and then she said, "You are the best friend I have, and I must trust to you." That was the first word I had ever spoken to Mrs. Bingham since the time I was there, that has been spoken of, when Mr. Kinney was present.

Q. Where did Mrs. Linthicum go, from the room? A. She went down stairs into the library, sir; she and Miss Margaret. 10

Q. How long did she stay in the house (Mrs. Linthicum), up to the time she left? A. I think she left the Monday after we deposited the will for record; she was at the house the 4th December, and that would make it 10 days, I think, to the Monday after the will was deposited for record, and then we left.

Q. When Mr. Alexander removed from Baltimore, had you knowledge of his arrangement? A. Yes, sir.

[Proponents' Proctor objected. Witness has already testified as to that.] 2)

Q. Whose letter is that (handing witness a letter)? A. That is in the handwriting of Thomas S. Alexander, the father of Tommy.

Q. When was it written? A. It was written in 1866; Mr. Alexander came on to New York on the 8th December, bringing Mrs. Bingham along with him; she had been home for a day or two before they left Baltimore; we were packing up when she came home; I was packing a box myself when she came; this letter is dated 15th December, and I received it in the course of the mail the next day— 30

[Proponents' Proctor objected.]

The Court admitted the evidence.

Caveators' Proctor then quoted from the letter.]

Q. Now, I was going to ask Mr. Linthicum how Tommy did really come on to Newark? A. I think I stated in my examination that he came on with the servants.

Q. Have you looked over these letters that are offered by Mrs. Bingham? A. I have, sir; I have looked over them carefully.

Q. He says, "I am very sick and confined to my bed with chills." 40
Is that letter written in his handwriting? A. It is not, sir.

Q. Then he must have got somebody else to write it for him.

By the Court to Counsel.

Q. Which is that? A. Marked L No. 9, August 19.

Further Re-Examined:

Q. If they were received by Mrs. Bingham from Tommy, how must they have been written?

[Proponents' Proctor objected.] 50

Q. What do you say about the handwriting of that letter? A. From my knowledge of his handwriting, I say it is not his handwriting.

Q. And that also (handing witness another letter)? A. And that, too.

By the Court to Counsel.

Q. Which is that? A. These are L 8, L 9 and L 1.

Q. Is that the same with all these Exhibits? A. Yes, sir; L 10 8, L 9, L 1, L No. 3 and L No. 4.

Further Re-Examined:

Q. Do you know whose handwriting these are in (showing witness the above Exhibits)? A. I do not know whose handwriting these are in; I was about to give my reasons for my opinions. These letters are in a more enlarged hand than Tommy ever wrote; he wrote a more contracted hand. Well, there is an imitation attempted, but they all lack the nervous manner of Tommy; the hand is freer as these letters will show, especially L 4, which is 20 evidently written by a master of the pen. The signature to all of his letters, before his father's death, have Thomas S. Alexander, Jr.; perhaps there are one or two where he may have omitted it; but he changed this signature immediately upon his father's death; he used to sign his name before his father's death, Thomas S. Alexander, Jr., but since his father's death, he signed his name Thomas Alexander, Jr.

[The Court, Counsel and Witness looked over letters.]

Witness—You can mix all these letters together with any other 30 writing of Thomas Alexander, and I can pick out those letters without seeing their backs.

Witness—If I may use the expression, there is an expression in these letters—in the style of writing—which is totally dissimilar to any letters that Tommy Alexander ever wrote in his life; he never penned that word (pointing to a word in letter.)

Q. That word is what, Mr. Linthicum? A. "Peggy."

Q. Which letter is that? A. March 14, L No. 1.

Q. Here is a postal card that only has "Alexander,"—I cannot see any first name at all? A. The postal card is marked Newark, 40 November 12, 1873. "Dear Sir." That is Tommy Alexander's writing.

Q. Take all these, Mr. Linthicum? A. Now, as you will observe in the writing, there are certain expressions; for instance, in the stroke of the pen—in the way in which letters are formed. I am speaking now of a letter of a person who could write; there will be distinct characteristics in the manner in which the strokes are made—the hair strokes, the heavy strokes—or even the crossing of a "t," or the dotting of an "i," and they are a good criterion 50 to determine the genuineness of a letter; but in Tommy's particularly, you will find no letter of his that does not exhibit a marked

tremulousness or nervousness of his hand ; his hand was always more cramped ; this is more expanded ; just refer to this letter and then refer to the postal card, and the tremulousness becomes more patent.

[Court, Counsel and Witness again looked over letters.]

Q. Look over these letters and see whether these letters are familiar to you ? A. Yes, sir.

Q. Who wrote them ? A. Tommy Alexander.

Q. To whom were they sent ? A. To Mr. Alexander and myself ; the letters came addressed to Linthicum & Alexander.

Q. Look over these, and say whether those are his ? A. These letters were all written by Tommy Alexander, and received by us. This is a postal card, post-mark, "Newark, November 12 ;" this is his handwriting, (marked Exhibit No. 10, on part of Caveators.)

Q. Is that written by him or not ? (alluding to a letter in which the writing was smeared.) A. We have put that in our safe where we kept our letters, but the safe was new and damp, and we had leather in there, and it has got very musty or moldy ; it has never been in our press. 20

[Caveators' Exhibits, marked from 10 to 15 inclusive, offered in evidence.]

Witness—I wish to state here, that I never told Tommy or anybody else, that we were going to put him in a lunatic asylum.

Cross-Examined :

Q. You and Julian Alexander are partners in business ? A. Yes, sir.

Q. Under the firm of Linthicum & Alexander ? A. Yes, sir. 30

Q. Have you produced and offered in evidence all the letters you have received from Thomas Alexander, since his father's death ?

A. We have not.

Q. Several have not been produced ? A. Yes, sir.

Q. That (handing witness Exhibit No. 15) is on the first introduced, I think ? A. That is one that has just been introduced.

Q. That is ? A. Yes, sir.

Q. You observe that is signed Thomas Alexander ? A. Yes, sir ; Your affectionate cousin, Thomas Alexander.

Q. Then when you state that all the letters you received from Tommy were signed Thomas Alexander, Jr., you must except that ?

A. I meant with one or two exceptions.

Q. Where are the envelopes to these letters ? A. I expect you have some of them in the envelopes there.

Q. I don't propose to look for them. A. Some are there ; some I have not here.

Q. Have you got them anywhere ? A. Yes, sir ; in Baltimore, I expect.

Q. Why did you not bring them ? A. I have been endeavoring to contract our bundles as much as possible. 50

Q. You did not think it was important to produce them, did you? A. No, sir.

Caveators' Proctor also called

Margaret Alexander, sworn :

Q. Were you living at home at the time when Tommy was sent to the Maryland Hospital? A. I was—

10 [Proponents' Proctor objected.
Court admitted the evidence.]

Q. Now, Miss Alexander, were you present in the family when Tommy was sent to the Maryland Hospital? A. I was at home, at my father's house in Lexington street.

Q. Was he known to you as being intemperate at that time? A. He was not.

20 Q. Do you know whether or not he was sent to the hospital because of his intemperate habits? A. He was not. My father said to me, "Poor Tommy boy has gone to the hospital;" he had his hand up to his head as he said it. I said, "Oh, pa! why did you do that?" He said, "Because I fear I cannot be at home all the time, and he is becoming unmanageable; his mind is growing weaker and weaker every day, and Missy—Devil take it—(the only expression he ever used—with his hands to his head, this way)—the Devil take it, I cannot do anything; she worries me to death to send him there." I said, "You always do something for her." He said, "What can I do? I have sent him there because he is getting weaker and weaker every day, and I can do nothing with him."

30 Q. Do you know, yourself, of his being in the frequent habit of getting intoxicated, then? A. I never remember of his being tight but once in my life, and then he was brought home on a shutter.

Q. Were you present when he moved from Baltimore here? A. I was in the house in Charles street.

Q. Were you in the house here when the will was read? A. I was.

40 Q. Were you with Mrs. Linthicum at the time the will was read, and immediately afterwards? A. I was; and immediately after it we went down stairs into the library, and had some talk there; from the library we went up stairs, and finally went to New York, and did not return until 9 at night.

Q. Do you know whether she went to her sister's room, or not? A. She did not; we went right up stairs to our own room; we slept in the same room; Mrs. Linthicum, myself, and her daughter also.

Q. Where were you the next day? A. I was at home, in the house at Newark, on Broad street. I think probably Mrs. Linthicum and I went to New York.

50 Q. Did you hear anything said by Mrs. Linthicum to Mrs. Bing-

ham about taking Tommy to the hospital, in her room? A. Never; never.

Q. Have you looked at those letters that were shown to Mr. Linthicum, that Mrs. Bingham produced? A. Yes; I have.

Q. Do you think they are Tommy's writing? A. I do not. One, distinctly, the one in which 'Peggy' is in. I know Tommy did not write that; and, in fact, all of them are not Tommy's; it is not Tommy's orthography; and the letters are written too boldly; far above his style; in fact, they are not his letters at all.

Q. Look over these and tell me whether you know the writing 10 in these letters; these letters are offered in evidence by us. A. All of those letters are in his handwriting.

Cross-Examined:

Q. When was he sent to the Maryland Hospital? A. I think about—after he had been on the farm—I think it was in the fall of the year that he was sent to the asylum.

Q. Was he sent from the house? A. No; from the country.

Q. Do you know who took him? A. Mr. Linthicum, and, I think, brother Reverdy. 20

Q. Was your brother Reverdy older or younger than his brother? A. Older, I believe.

Q. You are younger? A. I am younger than my brother Tommy.

Q. You are one of the proponents in this will, are you not? A. Yes, sir.

Q. One of the Caveators? A. Yes.

Q. For some years prior to your father's death, you did not live at home? A. I did not.

Q. Did Tommy write to you? A. No, he did not; he did not 30 write to any one at that time.

Q. Have you been in the habit of getting letters from him? A. No. Oh, yes; I made a mistake. I did get letters from him; several, when staying at Mr. Linthicum's. Yes; I remember that perfectly well.

Q. Was that while the family was living in Newark? A. Yes; shortly after they went to Newark.

Q. Before your father's death? A. Yes, sir.

Q. When you were with your sister in Baltimore? A. Yes, sir; partly. 40

Q. Had you ever seen or heard of any of these letters before? A. Heard of what letters?

Q. Those read and produced by us? A. I have read letters from Tommy while I was at Philadelphia last Summer, but they were totally-unlike these letters.

Q. Did you ever see the one where he speaks about his wishing you to send his father's picture? A. I never saw them; Missy told me that if I sent two pictures he would pay me for it, but the letters I used to see were ridiculous, and I used to scream with laughter. 50

Q. The subject of this letter was told you by Mrs. Bingham?
 A. Yes, sir; in that way she told me he wanted me to send the pictures; I never saw the letter.

Q. Did you not learn the contents of one of the letters as to the disposal he desired made of some of his effects? A. After the will was read, I received a letter from my sister saying she had found a letter telling her that Tommy said so and so, and so; she copied that from the letter and sent it to me—at least she says so; there was something about his watch going to Mr. Lines, and his

10 birds to somebody; something of that style.
 Q. You never heard of Tommy's being drunk but once? A. Never—what I call drunk.

Q. Well, a little sprung sometimes? A. No.

Q. Don't you know he was addicted to habits of intemperance?
 A. No; I do not know it.

Q. You never heard of but one occasion? A. No; the one when he was brought home on a shutter.

Q. Did you ever know him to drink at all? A. No, sir, except to take a glass of wine; I have no doubt he did that.

20 Q. Did you always see him when he came in at night? A. Nearly every night of my life when I was at home in Baltimore.

Q. He was always straight? A. Yes; I used to play cards with him; father asked me to play cards with him to keep him in the house at night; we would set up at night and play high low jack and the game, and he was always sober.

Re-Examined: (Direct.)

Q. Miss Alexander, did you say that you heard about some letters that Tommy wrote while you were with your sister? A. I
 30 have heard my sister read some letters while I was staying there, which she received from Tommy.

Q. Have you heard any of them read to-day as far as you remember? A. I don't think I have.

Q. In what way were they ridiculous, so that you screamed with laughter? A. Why, some about Mrs. Linthicum, and the things he said to Mr. Linthicum and Julian, and other little things about Buch, and —

[Proponents' Proctor objected]

40 Witness—His style was ridiculous, the expressions and all, and I used to roar with laughter when they were read, and we always remarked, "Poor Tommy, he is getting worse and worse;" she did so, too; and when we went into dinner we would show it to Colonel Bingham, who is her husband now, and he would say, "Oh, Missy, Missy, he is getting worse; you ought not to allow him to do it; you ought not to encourage it, and you ought not to laugh." And Missy used to say, "He is getting worse and worse every day, but he is not responsible." That is what she always said every letter we got. One letter he sent—not a letter but a postal
 50 card—something about his clothes, or something very ridiculous;

anyhow she wrote back and told him not to do it again—not to write such a thing on a postal card.

Q. What time in the Summer were you there? A. I was there in May and in April; I think from March until June; I left some time in June, and I was there again in the Fall a little while.

Proponents' Proctor recalled

Mrs. Mary Bingham:

Q. When you brought these letters on that have been offered, 10 did the envelopes accompany them? A. Envelopes accompanied them.

Q. Did you have any directions from me what to do with the envelopes? A. I was told they were of no use, so I did not bring them.

Q. Where are they? A. I carried them back and left them on my bureau at Philadelphia, and I suppose they are there at home.

Not Cross-Examined.

Proponents' Proctor,

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Thomas N. McCarter, sworn:

Witness—On the day this trial commenced, when these letters which have been produced here were brought to me, they were accompanied by envelopes. Mrs. Bingham asked me if I needed them and I told her they were of no consequence and she might take them back; that is all.

Not Cross-Examined.

Case closed, and further proceedings were adjourned until the 30 14th July, 1874.

WALT. J. KNIGHT, *Stenographer.*

PROPONENTS' EXHIBITS.

Exhibit A.

I, Thomas Alexander, of the City of Newark, County of Essex and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this Instrument as and for my last will and testament, that is to say :

10 *Item First*—I give and bequeath to my brother Reverdy the sum of Three hundred Dollars.

Item Second—I give and bequeath to my sister Margaret the sum of Six Hundred Dollars.

Item Third—I give and bequeath to my nephew Stewart B. Linthicum the sum of One Thousand Dollars to be held in trust by my Executors hereinafter named, and paid to my said nephew together with all accumulation of interest thereon when he, my said nephew, shall attain the age of twenty-one years. If my said nephew should die in my life-time or before he shall attain the age
20 of twenty-one years, then the legacy to him herein made shall lapse and become a part of my residuary estate.

Item Fourth—I give and bequeath to my niece Eliza Kerr, the daughter of my sister Fannie, the sum of Five Hundred Dollars, to be held in trust by my Executors hereinafter named and paid to my said niece, together with all accumulation of interest thereon, when she, my said niece, shall attain to the age of twenty-one years. If my said niece should die in my life time or before she shall attain the age of twenty-one years, then the legacy to her herein made shall lapse and become a part of my residuary estate.

30 *Item Fifth*—I give and devise to Allen Griffith my chest of tools which belonged to me prior to my father's death.

Item Sixth—All the rest, residue and remainder of my estate, whether real, personal or mixed, whether in possession, remainder or reversion wheresoever and whatsoever, I give, devise and bequeath to my sister Mary to have and to hold the same to her, her heirs and assigns forever.

Item Seventh—I nominate, constitute and appoint my friends James R. Sayre, Junior, and Andrew Kirkpatrick, the Executors of this my will.

40 In witness whereof, I have hereto set my hand and seal, this second day of January, eighteen hundred and seventy-two.

Signed, sealed, published and declared,
as and for his last will and testament in
our presence, who at his request and in
his presence and the presence of each
other, have hereto set our hands as }
witnesses. } T. ALEXANDER. [L. S.]

C. S. HAINES, Newark, N. J.

50 FRED. FRELINGHUYSEN, Newark, N. J.

Exhibit B.

I, THOMAS S. ALEXANDER, late of Baltimore City and State of Maryland and now of Newark, in the State of New Jersey, do make this my last Will and Testament. Imprimis, I hereby revoke all other wills heretofore made by me.

Item.—I give and bequeath to my eldest son, Reverdy G. Alexander, the sum of Two Thousand Dollars.

Item.—I give and bequeath all the residue of my estate to my son Thomas, to my daughters, Mary, Margaret and Emma, and to my grand daughter Eliza, the daughter of my deceased daughter Fanny, to be equally divided between them, share and share alike, and to be held and enjoyed by them respectively in manner as hereinafter indicated. 10

Item.—The shares of my daughters Mary, Margaret and Emma, to be paid over to them respectively so soon after my death as may be convenient. My daughter Emma will take my Law Library at a valuation of Five Thousand Dollars as *as* parcel of her one-fifth part or share of my estate.

Item.—I desire and empower my executors to retain my son Thomas' part or share of my estate and invest the same in some interest bearing public stock or evidence of debt and to apply the income or profits of such investment, or such part and parts thereof as they in their discretion may think necessary and expedient, to the support of my said son for and during the term of his natural life. I vest in them this large discretion because of the facility of disposition of my said son and to protect him against the practices of designing men. I desire that any surpluses of income which may at any — remain over what may be expended on his proper maintenance shall be invested in like manner. He is to have the power of disposing of the said principal fund and its accumulations by last will to and among his brothers and sisters and niece and their descendants or such of them as he may prefer and as he may think proper, and in the absence of any valid disposition thereof as aforesaid, the said fund and its accumulations are to go — the person and persons who at the time of his death may be designated by law as his personal representatives and in proportions as determined by law. 20 30

Item.—I desire and empower my executors to retain my said grand-daughter's part or share of my estate and to invest the same in some interest bearing public stocks or evidence of debt and the income and profit thereof to reinvest as from to time they may accrue until my said grand daughter shall attain her age of twenty-one years or marry. On the happening of either of the said events the said fund with all its accumulations shall vest in and be paid over to my said grand daughter. But if she shall die under the said age, and unmarried, the said fund with all its accumulations shall go to my said sons and daughters if they shall survive her, or to such other person and persons as shall or may be her next of kin and personal representatives of the blood of her mother to the exclusion of her father and all persons of the blood of the father. 40 50

My son-in law, Kerr, has declined the offer which I have made and repeated, to charge myself with the nurture and education of my said grand-daughter, and it is for this reason that I have directed her portion of my estate to be accumulated as aforesaid. If from any cause whatever the education of my grand-daughter would otherwise be unprovided for, I give to my executors the discretion to apply the income of the said investment as it shall or may accrue or any part thereof to the purposes of her education.

10 *Item.*—My intent is that the directions hereinbefore given in regard to the investment and investments of my son Thomas' child's part or share of my estate shall apply to and embrace any interest which he may acquire by survivorship in my said grand daughter's part or share of my estate ; and in like manner that the directions hereinbefore given in regard to the investment and disposition of my said grand-daughter's child's part or share of my estate shall apply to and embrace any interest which she may acquire by survivorship in my said Thomas' part or share of my estate.

20 *Item.*—My said executors are to have power to change the investments at any time made of the said funds or any part thereof whenever and so often as they may find it expedient so to do.

Item.—In the event of the death of my sons, or daughters Mary or Margaret, or my grand-daughter, or any or either of them in my lifetime, the gift or gifts herein made to such decedent or decedents shall lapse into the residue of my estate and be distributed as if such decedent or decedents had not been named. In the event of the death of my daughter Emma in my lifetime, her children surviving her are to represent her and succeed to the provisions I have made for her by this my Will.

30 *Item.*—I direct and empower my executors to sell my real estate wherever situate at such time and on such terms as they may deem expedient and to convey the same to the purchaser or purchasers thereof, who is and are hereby relieved from the duty of seeing to the application of the purchase money therefor, and

Lastly—I hereby appoint my son-in-law, Thales A. Linthicum, and my friend, Montgomery H. Thoop, executors of this my last Will, which is hereby signed and sealed by me this fifteenth day of October, in the year eighteen hundred and sixty-seven.

TH. S. ALEXANDER. [scroll]

40 Signed and sealed by the testator and by him declared to be his whole and sole last Will, before us, who at his request, in his presence and in the presence of each other, have hereto subscribed our names as witnesses to the making thereof.

JAMES LORIMER GRAHAM,
21 Washington Square, N. Y.

EDWARD A. STANSBURY,
Manchester Township, Passaic County, N. J.

EDWARD C. GRAHAM,
Astoria, L. I.

By this Codicil to my last Will I confirm the same excepting in the particulars herein provided.

Imprimis.—I revoke the legacy given by said last Will to my son Reverdy. My daughter Emma will have no difficulty in conjecturing my motive in so doing and I am sure will aid in giving her brother a start in life.

Item.—I give my daughter Mary my India china ware, recently purchased, also the furniture of her chamber with the usual changes of linen and such books as she may select from my miscellaneous library, not exceeding a child's part of the appraised value thereof. 10

Item.—Subject to the prior right of selection of my daughter Mary, I give to my daughter Margaret such books as she may select from my miscellaneous library, not exceeding in value a child's part thereof.

Item.—The residue of my miscellaneous library and my law library are to be taken by my daughter Emma at a valuation of Five Thousand Dollars in the distribution of the residue of my estate.

Item.—I give my grand piano to my grand-daughters Maggie and Ella, the daughters of my daughter Emma. 20

Item.—I give to the trustees of Mount Pleasant Cemetery Two Hundred Dollars, in consideration of which I expect them to keep my lot in good order.

Item.—I direct the residue of my estate, including therein my library given to my daughter Emma, shall be divided into six parts instead of five parts as directed by my last Will. Two parts of said six parts are hereby given to my daughter Emma and the remaining four parts to my son Thomas, to my daughter Mary, to my daughter Margaret and to my grand-daughter, the daughter of my deceased daughter Fanny, to each one part. In all other respects excepting proportions as hereby altered, the dispositions made in respect to the residue of my estate by my said last Will are to be followed. My object in this clause being simply to alter the shares or proportions of the residue to my son Thomas, my daughters and grand-daughter respectively. And lastly, I hereby constitute and appoint my son-in-law, Thales A. Linthicum, and my nephew, Julian I. Alexander the executors of my said last Will and of this Codicil thereto. And in witness thereof, I have hereto set my hand this twenty-second day of August, in the year 1871. 30

TH. S. ALEXANDER. 40

in presence of the witnesses who have subscribed their names here-to in the presence of the testator and at his request and in the presence of each other.

JAMES LORIMER GRAHAM,
20 Washington Square, N. Y.

EDWARD A. STANSBURY,
Haledon, Manchester Township, Passaic County, N. J.

STATE OF NEW JERSEY, }
 ESSEX COUNTY, } ss: I, GEORGE D. G. MOORE, Surrogate of the County of Essex, do certify the foregoing to be a true copy of the record of the last Will and Testament and Codicil of Thomas S. Alexander, deceased, as the same is recorded in my office, and that said Will has been proved in conformity with the laws of the State of New Jersey.

In testimony whereof, I have hereto set my hand and seal of
 [L.S.] office the thirtieth day of May, A. D. eighteen hundred and
 10 seventy-four.

GEO. D. G. MOORE *Surrogate.*

Exhibit C.

MISS ALEXANDER.

You ask my opinion as to the mental condition of your brother, Thomas Alexander. I will briefly state that I have had him under observation since my first acquaintance as your father's family physician. I have conversed with him often upon different topics, and have watched his movements with an eye directed to his intellectual caliber, and have long since arrived at the conclusion that he is semi-imbecile, and that the cause of his now mental development is congenital, or, in other words, has existed from his birth. His case is without doubt incurable.

I do not look upon him as insane in any sense, and am fully satisfied that it would be an act of injustice to place him in an asylum for the insane.

I consider him competent to make a will.

Yours, most truly,
 JOHN F. WARD.

30

I made, in conjunction with Dr. Ward, an inquisition into the mental condition of Thomas Alexander, on the 19th of December, 1871, and am satisfied that he is of weak mind, but not a fit subject for a lunatic asylum, being as he is beyond reach of benefit thereby, and such a step not being demanded either for the public security.

I believe him competent to make a will.

ALEX'R N. DOUGHERTY.

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Exhibit L 1.

NEWARK N J March 14

DEAR SISTER

I send you one of my photographs & also I enclose to you a bill which Mr. Miller gave to me for you and he said he would like to have the bill paid as soon as it be convenient for you to do so. I would like to have one of your pictures and I want you to ask Peggy to send me three of those pictures of Pa on to me & the next letter I write I will send her \$1.50 for them I am not so

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well at present I am troubled with my throat I can hardly get my breath some time I cant hardly Talk with it. Yester day I was so sick that I had to go to bed. All night I took a dose of medicine & I am a little better now than I was last night. Bruno has been bitten by a dog & I chain him up now I have moved his house & find him in it. The Scoundrels were in the city on wednesday what they came here for I do not know. they did not come for any good purpose They have not paid Dr Wards Bill & Robbins & Ward & Muligan yet Muligan has stopped sending the Daily around to me & I cant get a paper to read unless I go to Robbins & Ward & ask them for their paper to read I received a letter from you to day & you say in your letter to live like a gentleman. I do live like a gentleman & have to work hard to make a little spending money those scoundrels dont do any thing for me you owe me \$2.00 for buying stamps for sending your letters & papers onto you I had a nice dinner got up for you on the day that you promised to come I must stop now Write soon

Your affectionate Brother
THOMAS ALEXANDER

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Exhibit L 2.

NEWARK, N. J. March 21.

DEAR MISSIE

I enclose you a few lines to say that I am well as I can expect to be. When you come on to newark you must let me know the day that you come & what train you be on so I can meet you & I want you to take dinner with me. Is it so that you are going to get married to Colonel Bingham if so you must tell me I will make you a nice present. He will make you a good husband and a kind one too. How is ann getting on tell her that she must write to me & let me hear from her as often as she can. I enclose you a bill that mr. Compton gave me for you & mr Day the milkman wished me to say that he would like to have his bill settled as soon as it will be convenient for you to do so the amount of the bill is \$2100. Give my love to ann & write soon & let me hear from you.

From your affectionate Brother,
THOMAS ALEXANDER, 85 Catharine st

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Exhibit L 3.

NEWARK April 6th 1873

DEAR MARY

I received your letter to day & was glad to hear from you you state that Mr. Linthicum had called Peggy a liar. who is a greater liar than Linthicum & Julian. They told me on thursday of last week that you had attached all the money in the bank & if they gave me a check for any money the check would

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be worthless that I could not draw any money I heard on Sunday that they had taken all their money out of the bank. Please send me word at once whether it was so about the bank. I am going to write a severe letter to Emma to night and let her know that I think more of my dog Bruno than I do of her after her dirty proceeding that she carried on against her brother Rev in taking Revs money for her own use. She need not write any more about leaving my money to Stewart I am up to her. I had a severe talk with the scoundrels in Mr Prices furniture store on that afternoon before they left the city. I told them what I thought of them that they were no gentlemen & had no principle about them and they told me that I must stop writing such letters as I wrote to them & I said that when ever I thought to write to them in that Style that I would do it that I was not afraid of them & they said I had no right to talk about Emma so. I told them if Emma would do what was right & just & where Pas will called for her to do to help her brother in some business then I would treat her as a brother ought Write soon & let me hear from you I am well

Your affectionate Brother

THOMAS ALEXANDER.

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Exhibit L 4.

NEWARK N J April 29

DEAR MISSEE

I send your money on to-day and I had to borrow some money to have it registered so if you do not get it I can look to the Post Office to pay. I was down to market Str yesterday to meet you and staid there till 6 o'clock.

Your affectionate Brother

THOMAS ALEXANDER

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Exhibit L 5.

NEWARK May 11th 1873

DEAR MISSY

I receive a letter from you on wednesday and was glad to hear from you I am not able to walk I have sprained my foot I wish ann was here that she might do something for me to ease me from suffering They dont do anything for me When I hurt my foot they laughed at me & would not do anything toward my relief I intend to leave the house as soon as I am able to move. I have something to send on to you next week I wont say what it is. I have written to those scoundrels about a suit of clothes & also wrote to allen to ask Emma about the money that she stole from buck Write soon & let me hear from you oftenor How is ann getting on

Your affectionate Brother

THOMAS ALEXANDER

85 Catharine Street

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Exhibit L 6.

NEWARK June 17th 1873

DEAR MISSIE

I have been very sick but I am a little better now than when Rev wrote to you I have not been out of the house until to-night I went to take a walk but I had to come back soon I am suffering with my head as I did on Sunday I thought that was my last day and would never see you again I send for the Doctor to come to see me Mr Price wanted to write to those scoundrels and I told him that if they came on I would not let them come in my room to see me I did expect you on to see me How is ann tell her she must take care of herself & not get sick again I may be on to spend the fourth of July with you & I will bring you something that you would like to have You will hardly know me when you see me How is Bob

Mr Linthicum & Julian say they wish that I would die & then they would know what to do with my money that as long as I live they get no peace if I was in hell they would be better off I told them that I intended to give you whatever board you wanted they said that I was a damm fool & I dont know what I am saying I told them if I was a fool they couldnt cheat me and I could swear to the best of my ability that they were stealing my money every day & to furnish Emmas house with it & they say that I must not talk to them in that style I told them I would say what I pleased to them Give my respects to Colonel Bingham I must stop now let me hear from you soon

Your affectionate Brother

THOMAS ALEXANDER
85 Catharine Street Newark N J

Exhibit L 7.

NEWARK, July 8th 1873

DEAR MISSIE

I arrived home safe and sound I arrived at my boarding house at 8 P. M. I will send a box on to you on Saturday and a white straw hat I want you to give Tommy telling him that I sent it to him See that he takes it ; I also send my Blk Pants to ann I told her what to do with them the black Slouch hat is for George. When I got home I heard that Dr. Ward was dying Mr Price wanted to know what Doctor I would have I told that I would have Dr. Burnett to attend me after the death of Dr. Ward. To day I went to enquire after him and was told that he was a little better but not out danger. Rev thinks that you ought to help him more I told him that you can hardly help yourself along the dirty scoundrels had treated you so badly he says he is sorry that he had ever said anything about you that Emma had got around him and told him to do it that she would do Justice to him. I told him that the devil had told him to carry on the way he had

after Pa's death I told him that I dont think a good strong hearty man like him ought to expect his sister money to help him I think he is out his senses My idea is that he dont want to work but wants to live on you & Peggy & myself But he is mistaken if he thinks so He asked me if colonel Bingham would give him a job of some kind to do I told him that I did not know that he would Doctor John F. Ward has given him a job to collect bills for him How are you now Be careful of yourself & take exercise as often as you can & if you are ever taken very sick I
 10 dont want you to forget to send for me I will come at once to you. the rogues will be on this week. Written to Mr. Noon that they would be on and pay his bill. I think about you every night since I been home I will take a trip down to the fishing banks on thursday to get a mess of white fish & on Monday I will be in Pompton Plains Morris county New Jersey. Write to me at Newark—my letters will be kept till I return from there. I send my best regards to Colonel Bingham.

Your affectionate Brother

THOMAS ALEXANDER

85 Catharine Street

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Exhibit L 8.

NEWARK July 11

DEAR SISTER

I received your letter last night after my trip from the fishing bank. I was very sick on the boat the sea was very rough. I put a strip of paper in this letter for you to read. Dr John F Ward died at half past two o'clock to day. It is a sad loss. We
 30 must all go some time. I hope you will try to be ready when you are called to die. I wrote to the rogues. You know who I mean. I told them that they ought to be ashamed of themselves not paying Dr. Ward's bill. they will have to pay now whether they want or not. I attended to your message to day Mr Kirkpatrick said he would attend to it for you and he would write to you also. I will not be home next week but you can send my letters to the house and they can send them to me where I am After next week I will be home till the 12th of August & then I will go to campmeeting and be gone a week & after that I will be home altogether up to the
 40 time I come to spend a month with you I went to see Dr Burnet this evening & told him I wanted him to attend me when I am sick. Mr Price wants me to have his Doctor. I told him I would not have any one except Dr Burnet. I suppose when the rogues come on Mr Price will tell them that he knows a good Doctor that will attend me cheap. I will not let him come in my room & will not take his medicine Write soon and let me hear from you before you go away to Baltimore & let me know where you will stop at when you are there Give my best respects to the colonel & I send you my love

Your affectionate Brother

85 Catharine St

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Exhibit L 9.

NEWARK Aug 19th 18

DEAR MISSIE

I am very sick & confined to my bed with chills & fever my first I had on last Wednesday at noon on the camp meeting ground & one Thursday. I came home & went to bed & there I have been ever since. I am so weakened down that I have hardly strength to move myself in bed Last friday I had another severe one I had to have some one to sit up with me & to give me my medicine I wish you would come here. I want to see you Last friday I thought I would never see you again. Dr Burnet was with me & gave me my medicine & came Sunday again I have other things to have put in my will & I want you to be here then It is this. All on my bed stead. my Sheets & my Pillow cases blankets & Spreads to go to ann my under clothing to Buck my Gold sleeve buttons my Bird cage & birds to go to Mr Billy Lyons my class leader my silver watch to his eldest Son & my over coat is for Jimmy Pas & mas likeness is to go to you. I must be laid out in full black & my remains left under the charge of lodges to which I belong in this city. Mr L & family not to know any thing of my death till after I am buried. to be buried beside my father my coffin to be taken to franklin Str. church it is to opened & any one that wishes to take a last look at me

Write soon. I must stop now

Your affectionate Brother
85 Catharine St

Exhibit L 10.

NEWARK Sept 29th 187

DEAR MARY

Those scoundrels had impudence to send my law bill on to Mr Price to pay for me. I wrote to them that I was able to pay my own bills & not call on any one else to pay for me I wrote to them to ask how they felt over the case that they lost on last thursday I told them that I was glad to find that Missy had won the case & when the other case comes up that if you want \$700 for my board you shall have it & if you want \$1000 you shall have it And I told them that they would steal from me and put it on Emma's back as she had already taken Revs money for her own use the scoundrels have said it openly in the presence of William Price & myself that they would not tell what they do with my money & I want you to ask Mr Jeackle Wallis whether Mr Linthicum & Julian had any right to make any arrangement to any one to keep me as long as I live

They refuse to do any thing for Rev & Mr Price says he cant keep him any longer. Write soon

Your affectionate brother

THOMAS ALEXANDER 50

Exhibit L 11.

NEWARK N J Oct 17

DEAR MISSIE

I will drop you a few lines to let you know how I am treated by those scoundrels they refuse to send me an order for a suit of clothes & refuse to send me the money that they allow me by the month. The clothes that I have got on the Doctor says are too thin to wear now that I must wear thicker clothing If I dont I will be laid up the balance of the winter at present I have to go about & get jobs to do. put coal away in peoples houses to make some money to buy a pair of pants to keep me warm mr Kirkpatrick says that mrs Linthicum gets \$40000 & we get only \$25000. I hope you will attend to this matter for me as soon as you can. I wrote to Bob to see if he could get me work either in the Post office or in a Store & if he can I will go there to live

Write soon & let me hear how you are

Your affectionate Brother

THOMAS ALEXANDER

85 Arlington Street

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Exhibit L 12.

NEWARK Nov 29th

DEAR ANN

Mrs Lee is here & stopping at 76 Academy street I will let you know more with my next letter I was told by Robert yesterday morning on my way to Pompton Plain to thanksgiving We came near having a severe accident on the Road. There was a large Rock rolled over on the track & if they had not sent a man to give us a warning of the danger that we would be in We would all been kill on the train But the providence of God had save our lives & we were saved from being crushed to death But I arrived there at two o'clock in the afternoon when we ought been there at 11 oclock we was all that time on the road. I enjoyed my thanksgiving very much indeed & I saw Rev & he looks well & fat & his work is this. He — attends to the cattle & feeds the Pigs & brings in woods & water & nurses the babies they think a great deal of him. But they say that mrs Linthicum ought to give him some heavy clothes to wear to keep him warm I have done all I can I have bought him a nother pair drawers & an undershirts & one white Pockankerchief & two Red ones Buc wants me to give my old over coat I told him that I want that my selve to wear on every day. Bill Price says I ought to give it to him that I dont want two over coats But I do not intend to let him have it Write soon & let me hear from you I must stop now

Nomore

Your Youngmaster TOMMY

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CAVEATORS' EXHIBITS.

Exhibit No. 1.

NEWARK N. J Jan 13th 1872

DEER SIR

When I left you & went home & the first thing that they got at me by going away & let the Furnance fire go out. I told her that I went out the city on busineeas & she want to know. I went to meet Emma & she want me to tell her. what. I said to you & her. I told her none her business, 'And she said to me that she intend to write to you & Julean to come on to take me a way she says that I should leave the house by Satures day. I told her that she can give me up as soon as she please But I have my order to to stay in the house till it was sold, And I told her that Green cheesh was not made out old moon & the world was not made in one day, And I told her that you and Julean will not interfere my business what ever, that she said that you putting things in my head. By telling me so you can get hold of me & then you & Julean will put me in the Hospital I told her that she can taughe as much as she choose & she sent for mr Sayre come over the house & told a pack of liar on me & she also say that I must promise her that I would not wear a Jackell like Julean wear under his overcoat. I told her that I would not make a promise to her or to Mr Sayre on anyterm If she make any more trouble with me. I will sent you by telagraph to inform you of her behavior. Give my love to Emma & rest of the family for me did you get home safly on yesterday direct my letter in this form
Thos S. Alexander. Jr.
1070 Broad Street

Newark

N. J.

I shall go to Jeresy city to morrow & see them for some time & try to get them Paper for you.

Exhibit No. 2.

NEWARK N. J-Feb 13th 1872 40

DEAR THALSE

I take this oppurnity to write a letter to state how matter going on. I had a Job to make two Boxes for mr. James R Sayre to pack cider in to Send a way And I made them around to mr James R Sayre stable. And when I went home to dinner they said that I stunk horeses. I had not been near is horeses that day. And missy Put on air & say that I smell horeses & Ann said so too. And she told me that if I did not pull my boot off that she would not give me any dinner I told her that. I would not take them off for her. And I did not do it for her And she

told Ann that she went to See Mr Sayre coachman to tell him that he must not let me come around theor. And I told her that I would go around mr James. R. Sayre as often as I choose to do so. And if I did she would go away from the house & lock it up and go to mr Kinney house. I told her that she can go assoon as she please. New moon was not made out Green cheese. I had my Indiarubber on all day & when I went home this afternoon I pull my Indirubber off & Put my leather boot on & wear them & she said that they smell horse. did I do right doing what I did
 10 do. I exspect to commence to go to. work next week if I should live to see it. Ann took me to account of going around to Mr James R Sayre Stable work & that she call me a dirty shit ass & if I did not stop that she would pitch me out the house and double her threst up in my face & I told her that I did not mind what she said & she said that if I came home that way again she would do so You did not come back on Thursday that you promise you—would & we expect you friday & then you did not come. I was a fraid that you were sent to go home on account of Stewart & Maggie was worse When you intend to come on again to Newark to see
 20 us. Missy says that she intend to carried her rule out to keep lent. To have fish on friday & Wednesday. I told her that she must not buy any for me. Because I would not come home on them days that She had fish. I would get my get my dinner up town I dont think aright that I should to be made to keep fast on them days & I dont intend to do it for her Write soon as you get this & let me herefrom you. The cider I promised to get for you. It had been bad wheather since you were out here that I did not been able to attend to it yet. But will do it assoon as posible & let you know what day that I send it on to you Give my love to
 30 Emma & rest of the family for me & tell her that she owes me two letter yet.

GoodBy

GodBless

Youraffectionate cousin

THOMASALEXANDERJR

Residence 1070Broad &
 Pennington Street
 Newark
 N. J.

Did you received your valentine that was sent to you last week.

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Exhibit No. 3.

NEWARK N. J May 16th

JULEAN LINTHICUM

I want to Send me word to the affected that I can board I will not Stay at the house any longer and will go out this morning to See that person if they can take me & if she cunst that Mr Sayre told me that if I can aplace to—board in ferries street between Broad & Mulberry missy has taking my coat away
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from me that I wear every day & Says that I must wear my best my best black suit to wear & works in & I say that I will not do so My other clothes will not be done till next week I can get work enough to do And missy let the chamber maid call me all name She she call me a block head or fool & liar & I Stinch horse will you pay my board any where else Please Send me word by the next mail

Your affectionate
cousin

THOS ALEXANDER JR

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I will stop at present at Mr Sayre stable I want you direct my letter to the care of Mr James R Sayre 1048 Broad Str
Newark
N. J.

Exhibit No. 4.

NEWARK N. J. Jne 27 187

JARLUEAN

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Please send \$25 so I can go on and Excursion & campmeeting you promise that if I wanted any money for that purpose that I write to you and Linthicum Did you tell missy in your letter that she must pack my clothes up that you were coming on & take to a Asylum. I told her she lie. Please let me have that amount as soon as you can inconvience so I can make arngment to board at campmeeting & for the excursion that will be on the 19 of July

Please send my letter in my letter in the care James R sayre 1048 Broad street Did you tell missie to have the house close up at ten oclock at night on Wednesday night I came verry near go 30 to the station house and stay there till next morning I got home on the night of Wednesday at 10 oclock & finds the door lock & the Gals all out I rung the bell till I thought I had broken and fine that I could not get in so I started to go up to the station house & I got to Kinney street the police call me back and said that he thought that I could get in the house, so I went back and run the bell again and at last got in.

Your affectionate cousin,

THOMAS ALEXANDER,

In the care of James R. Sayre, 1048 Broad, near Camp st., 40
Newark, N. J.

Exhibit No. 5

NEWARK July 13th 187

J. J ALEXANDER

I take this oppurnity to write a few line to stated that missy has nail my bedstead down to the floor and because I had the bedstead near the window & she had it taken away & 50

told Robert Duncan to nail it—down to the floor & I took the bed of the bedstead & put it on the floor & slep on it & she took it way from me & lock it up & said she wont give it up till I promise her that I will let it stay on the bedstead I did not make no promise to her I want to know what right she has to take my bedstead & nail down to the floor & take my bed aw ay from me on last thursday night & friday I stay out night because I had no where to sleep but saturday & sunday & monday Tuesday lay on the floor To morrow night I will not sleep home because I go to the station & 10 sleep their before I allow Missy treeted me in that style. And I was told that you said that you would not buy me another hat. But I must wear the straw hat that missy bought for me I took it up to the store & chang it to a white hat and I pay 75 cts difference so I got the best of you & & Linthicum & missy beside I am not willing to pay missy my board & to be treated in this style by her I will stay out all night instead going home. I have writting to Mr Sayre about the capable of missy case an I wante you to tell her to give up the bed & let her understand that I can 20 put my bed on the floor if I choose. She told mrs Sayre that she better not let me come in her house that I would give her some diseases and that I had lice & bud on me & mr Sayres told me what she had said I took my clothes of & he examine me & find that missy had told him a lie & missy says that I scant go to camp meeting & I told her that I have put my money away for that purpose has she any right to keep me from going to camp meeting. Please answer this letter as soon you can and direct my letter in this form—

THOMAS ALEXANDER JR

In the care of James. R. Sayre 1048 Broad Street near camp 30 Street Newark N. J.

His Rev in Baltimore city Rev has runaway with Peggy money. She gave it to him to pay for new suit & have not hear from him since and if he is city please let me as soon as you can so I can write

Exhibit No. 6.

NEWARK N. J Nov 18th 1872

40 Julian and Linthicum

I wish you would Send me some money on to me that I would like to buy some 8s yarn sock & also I want to get a heavy spread to Cover me at night My room is very cold now to sleep in and also I want to get my watch I would like to have \$80 And then if you send my order for my winter clothes on the name of Linthicum clothing store in New York city I can have them made up before it get any coldest We had a Snow Storm here on Saturday The reason is that the bed-clothing is so like that it do not keep me warm. I have only two Blank & light 50 Spreads & a Sheets on the bed. I am intend to get marry this

winter. I have a young lady all pick out and she lives in Rahway about 3 miles from the depot. She has a farm I suppose. You will make me a present when I get marry. How is uncle Billy getting on How is health Tell him that he must write to me & let me hear from him. Please do not forget to send me some money and misses wrote to you that I had cut down all the pear trees in the orchard. She is a lie. I have not cut down any of them. I only trim them up to make to looke something like a orchard. I must stop now.

Your affectionate cousin,

THOMAS ALEXANDER JR.

1048 Broad St., near Camp, in the care of James R. Sayre.

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Exhibit No. 7.

I feel very bad what I have done I got \$7 from my lawer to pay for my trunk & I have lost it and that is the first time that I have never lost money before in my life time. I wish you would send me some to pay for it.

THOMAS ALEXANDER

1048 Broad & Camp str

Newark

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Feb 13th 1873

Exhibit No. 8. [photograph.]

Exhibit No. 9. [photograph.]

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Exhibit No. 10.

NEWARK Nov. 11th 1873

DEAR SIR

I receive your kindness toward me & now hoping every thing may work in good order the balance of your days & you will see the same kindness from the balance of my days as long as I live I am very much oblige what I received from you to day

ALEXANDER

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Exhibit No. 11.

NEWARK N. J. March 4th 1872

DEAR JULEAN

You promise to send me a check out to me on Saturday & I have not received it yet. You did not come to your word. But missy says that you said that you do not intend to give me any more money to spend. But you intend to pay my

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board & clothing & Doctor bill and if I wanted any money that I have to work for it. Which I expect to do so after I buy my tools to work with & I will not trouble you any more about money till Augst 15 camp meeting time. I expect to get to work in a few days. Mr. Sayre intend to get me another Job for me. And I asked him if he have any objection to have my letter sent in the care of him & he says he have not that they would care of them for me & keep them till I call for them. And that I must report myself to them every Saturesday night so they can see me.

10 And they say that when I go to board and taken sick I must send them word I told them that I would do so Give my Aunt Margrett & aunt ann an Eve & rest of the family And Tell Stewart that he must write to me & let here from him & tell me how he getting on his lesons & that he must be a good boy & tell maggie that she must not forget her lesson & must learn how to play the peani & Ellan too do the same. Tell Emma that I wanted to direct my after this date in this form—Thomas Alexander, Jr. In the care of James R. Sayre, Residence 1048 Broad Street near camp Street. They promise to keep them for me till I call for them. Tell Emma that I am waiting very Patient for them stocking that she proms me that she would send them on to me by Mr Linthicum when he came on he has been on twice since she promise to do. And also that they promise to send me the Dailey American I expect to see them nex summer to get that paper How is Uncle Billy health getting on Tell him that he must write & let me here from him I would like to here from him very much. I must close my letter it is going on ten o'clock It is time to go to bed We had a severe snow storm here this afternoon and evening & it commence at ten o'clock this morning But if it continued to snow

30 all night it may have a fine sleighing ride on Broad Street I was going to take a ride out to day on horse back but the snow storm came down so hard that that I conclude to disappoint it some other time missy had to tell mrs Sayre & miss Mary Sayre on me that I went to bed my clothes on & I would not mind her about sleep in my night gown that she could not make me do it. But they could do it if they saw fit to so Mr Sayre said that he would not make me do anything but he can persuade me to do it & they got at me about cutting my hair & I told mrs Sayre that if she would not say any more about my hair till warm wheather

40 set in I would cut it for her then if she would to speak to me about it. Give my best regard to mr L & Emma & best love to the family for me Direct my letter inthisform Thomas Alexander in the care of James R Sayre 1048 Broad Street Newark I writethis without taken my pen of this lines you can see that I can write a business writing Newark Julean J Alexander, Esq T A Linthicum Esq 44 North Charles You must show this letter to T A Linthicum and asked him if this aint done nice & let me know and if so will writetoyou this way on so you aread it more distinctly

Baltimore city Maryland

Exhibit No. 12.

NEWARK N. J July 27

J. J ALEXANDER

Missy has gone to white sulphur spring she went on thursday That afternoon I taking down with a chil & I am so weak so I am not able to write & do any work Dr F Ward said that I better go to long branch & stay a week or so. It would be more benefit than all the medicine that I take. So I can get the sea breath I can get board at \$7.00 aweaks. Please send me some money on to pay my fare down to long branch missy has stop the Dailey & the morning paper too So I after go out & borrow newspaper to read I have got some thing to do But I am not able to go at it yet. The business is Post Bill They asked me what I want to work for I told them that I want to make some money to buy a suit of clothes to wear I told them that mr Halsey had made me a suit And also I told him that he had order me out his store & said that if I came in is store he would kigh me out & They say that I did right not to order the new suit that he made They all know how you treated me up her.

I had writing a letter to you and did not take any notice of my letter than I was a dog to you They all got Suffer for it at day of judgement to answer every thing done in this world. Give my love to aunt ann & aunt Margrett & rest of the family

Youraffectionate cousin

THOMAS. ALEXANDER JR

In In care of James R.Sayre 1048 Broad near camp street. Newark
N. J.

I owe to the church from April 1 to Augst 1th 1872 at 25 cts a week Please pay that up the minister have asked for it I pay \$13 a year.

Exhibit No. 13.

NEWARK May 21th 18

LINTHICUM & JULEAN

I recieve your kind letter yesterday and I glad to hear from you I thought I would drop aword to you to tell you what missy had done She havs bought thin woolen undershirt for me & had put my name on them & said that I after to put them on. I told her that I will not wear them if you ask Emma she can tell you that I have wear thick woolen under shirt and Draw all my life time And now change my shirt now and put on thin one now I would have the chill & fever. I want you to get me three undershirt of Red flannels & three pr Red flannels drawr and send them on to me at once. Have you receive your box of eider that I send it to you and I had no money to pay for it cost \$4.40 The money that you gave me I paid all my bill the only bill I owe is for my Boots & my medince bill And missy said that I must bathes in cold water & I told her that I would not do it. My every day suit was

finish on satures day & they are to short & I had no other to put on that told ann to go in my room on sunday — morning & take my Blk Suit and bring them down to her room & of course that I had to wear them. Mr. Silas Halsey order me out is Store & told me not to come in their again and this morning I told him that he needent make my other suit. Did I or did I not do right I send a sample & Price of cloth & the names of gentleman & now you can send me a nother order. Please direct my letter in the care of James R. Sayre for me & then I get it there camp & Broad

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Your Truly

T. S ALEXANDER JR.

Exhibit No. 14.

NEWARK Nov 29

DEAR SIR

I want you to let me have some money to make a present to my sister mary as a Wedding present when Emma got married to you I made her a handsome present and I think you ought to let me give her one too Please do — not for get it & send me a check of \$50 so I can make her a nice one I have not here about the bedstead & the clothes press to keep my nice clothes in from getting soil it only cost \$23.00 for both I enjoy my thanksgiving very much indeed & came home yesterday evening from the place where I was And further mores I had my old over coat done up & I want to know whether you will let mr Halsey put a cape to that coat for me I dont like towear my New coat every day. Please send me word asoon as you can about it so I can have it done before the deep snow come & then I will be ready to go to shovel snow of the side. I have curstoms that I have got & they are good pay about that Names of them gentleman are James. R Sayre Andrew. Kirkpatrick Thomas T. Kinney John H Kaise Moses Bigelow Mr Titsworth Robbin & Ward Edwin Allen Dr Wilson Keen & McCarter Franklin str church Mr Brown Mr Ripper these are 14 Persons that I have got to attende to it the mount al-
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Your Humbles servante

THOMAS ALEXANDER

85 Arlington str Newark

40

Exhibit No. 15.

NEWARK N. J April 10th 1872

JULIAN

I was told that you said that if I did not do what missy told me to do that she must telegraph to you you came out yesterday to see missy and did not have polite to ask after me whether I was dead or not. You suppose that I am going to bathe in cold water
 50 this times of year if you do you are mistake of it I will

not di for missy & I know I would do not di for you or no one else. I want you to send me \$20 so I can pay to a person that I owe \$20 and then I can get my watch that the gentleman wanted his. Please do not disappoint of me by not send it on to me at once. I am going to have a new apron It will cost \$25 I have been a member two years. I have more to say But I will stop now and write to you some other time that is putting on without being sick

Your affectionate cousin

THOMAS ALEXANDER JR 10

I wanted to know when you intend to sell this house & I wanted to know that if I can have that cupola that stand in the back yard if so I wanted you to send me word assoon aspossible Give my love to all the folk for me do not forget it

Your affectionate cousin

THOMAS ALEXANDER

Exhibit No. 16.

2)

NEWARK August 10 1872

Tommis Alexander

Bought of Salmon & Campfield

Augt 10	to Chimibly	10	
	7 Lb Sugar	90	
	Beer 5 & crackes 2	7	
12	Cash Lent	1 00	
	1 Segar	2	
Sep	Cash Lent	4 00	
10	Cash Lent	3 00	30
	1 Sassage	12	
	1 Lb Sugar	59	
	1 Sassage	14	
		<hr/>	9 97
20	tobaco	21	
Oct 25	1 Lb Lamb	25	
	1 Bread	10	
28	$\frac{1}{4}$ tee	20	
	1 Lb Candles	25	
29	2 Sugar	26	40
Nov 2	P tobaco	10	
	Cider	10	
6	1 Starch	3	
7	1 Pie	16	
	Chees & Cider	8	
9	2 P tobaco	15	
	Cider & Wood	10	
	Cash Lent	1 50	
13	1 Pie	16	
		<hr/>	3 75 50

00 11	15	P tobacco	10	
		Box Blackin	25	
08 01		1 Pencil	5	
	16	Cash Lent	50	
	18	Cider 3 & 1 Pie 16	19	
		P tobacco	10	
		1 Sassage	12	
	20	1 Pie	16	
	21	1 Pie	16	
00 10		P tobacco	5	
	23	2 Sassage	24	
		2 Lb Sugar	26	
	25	Chees	5	
		2 Bt Ink	20	
		maches	5	
				2 48
	26	Salt Sack	50	
		1 Pie	16	
		1 Segar	10	
00 20	27	1 Pie	16	
	28	2 Segars	20	
	29	P tobacco	10	
		1 Pie	16	
	30	1 Pie	16	
	Decembr	2 Sassage	24	
	2	P tobacco	10	
		1 Pie	16	
		3½ Sugar	45	
		2 Sassage	24	
00 30				2 73
				18 83
				18 83
		Amount Brot up		
	Dec 5	2 Sassage	24	
		1 Pie	16	
		P tobacco 10 & 1 Bowl 8	18	
		1 Qt Chesnuts	10	
	6	1 Pie	16	
	7	1 Sassage 12 1 Pie 16	28	
00 40		1 Box	15	
		3 Sassage	36	
	9	1 Pie 16 P tobacco 10	26	
		Paper & Segars	22	
	10	¼ tea 20 Cash 3	23	
		1 Pie 16 P tobacco 10	26	
		2 Sassage	24	
				2 84
	12	1 Pie	16	16
00 50				21 83

		Cr	By Cash	11 00
		Dr		10 83
	2 Sugar 24 to 1 Sassage 12	36		
13	1 Pie 16 Cider 3	19		
	1 Segar 10 Sassage 12	22		
	tobaco	10		
14	Cash Lent	20		
	1 Rice 12 to 3 Sassage 36	48		
	4 Eggs	19		10
	Cash Lent	1 25		
	1 Box 10 17 to 2 P tobaco 20	30		
		<hr/>		3 29
18	Bt Syrup	50		
	Crackes 4 Segars 20	24		
19	7 Sugar	85		
	2 Sassage 24 Crack 4	28		
	tobaco	10		
20	$\frac{1}{2}$ Lb Crackes	7		
21	$\frac{1}{2}$ Crackes	7		20
	3 Sassage	36		
	1 Barel Coal	80		
	2 P tobaco 20	20		
23	1 Rice 12 4 Eggs 16	28		
24	2 Lb Sugar	30		
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	1 turkey	2 09		
	tobaco	10		
25	3 Sassage 36 Cash 12	48		
	4 Segars	20		30
26	yest 10	10		
	Sett glass dishes	1 50		
	P tobaco 10	10		
	3 Lb Lamb	75		
	1 Duck	74		
	2 Salt Sacks	1 20		
27	P tobaco 10 $\frac{1}{2}$ Pie 8	18		
	$\frac{1}{2}$ Crackes	7		
28	3 Sassage	38		
1	$\frac{1}{2}$ Lb tee	40		40
	Bunch maches.	30		
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Ac Brot Over				
December	28 tobaco	20		
	31 7 Sugar	80		
1873	2 P tobaco	20		
Jany	2 Ink 10 tobaco 20	30		
	Maple Sugar	50		50

		1 Sop 15 4 Sassage 48	63	
		Cider 3 ½ Cracks 7	10	
	4	tobaco	30	
		8½ Ham	1 49	
	6	½ Cracks	7	
	7	3 Sassage	36	
		2 P tobaco	20	
	8	½ Lb Cake	10	
	9	½ Cake	10	
10		2 P tobacco 20 B Salt 15	35	
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	10	Cash Lent	30	
		4 Sassage 48 maple Sugar 50	98	
		1 B Char Coal	80	
		½ Crackes 7 Pencil 15	22	
	11	½ Crackes 7, 2 tobaco 20	27	
	13	¼ tee 25 ½ Crackes 7	32	
	14	5 Sassage 60 tobaco 20	80	
		Crackes 7 15 Segars 30	37	
20		1 Lb Caks	18	
	17	B Samp	36	
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		½ Lb Crackes	7	
	18	7 Sugar	90	
		Crackes 11 Sassage 12	23	
		Segars 20 4 q Salt 15	35	
	20	½ Crackes 7 1 Cake 20	27	
		1 Sassage 12 maple sugr 50	62	
	22	1 Crackers 14 3 Sasge 36	50	
30	24	4 Segars 40	40	
	25	1 Barel Coal	80	
	28	6 Segars	60	
	29	5 Lb Sassage	60	
		2 Segars 20 1 Crackes 11	31	
			<hr/>	5 65
	31	1 Crackes	14	
febry	3	7 Sugr	80	
		2 Segars	20	
		2 Sassage	36	
40		1 Crackes	14	
			<hr/>	1 64
	6	4 Lb Sassage	48	
		1 Crackes	14	
		2 Segars	20	
		tobaco	80	
	13	4 Segars	40	
	15	1 Broome	60	
	25	10 Eggs	50	
March		P tobaco	10	
50		1 Qt Maple Syrup	50	

19	Pappers	30	
	P tobaco	10	
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			48 57

[Endorsed with Pencil as follows:]

When Miss Mary H Alexander was charg me board I had to board myself by buy those thing and she had a face to charge me that amount of Board \$730 year at \$60 a month that is over \$200 a day 10

This is all right

THOMAS ALEXANDER JR.

OPINION.

THE ORDINARY.—Thomas Alexander late of the city of Newark in this state, died there in December, 1873. On the second of January, 1872, he executed at the office of Messrs. Frelinghuysen & Kirkpatrick in the presence of two witnesses, one of them the first named of those gentlemen, a paper purporting to be his last will and testament. This document had been drawn for him by the other member of the firm who is named therein as one of the executors.

By it he gave to his brother Reverdy \$300, and to his sister Margaret \$600. He also gave to his nephew Stewart B Linticum \$1000, and to his niece Elizabeth \$500, to be held in trust for them respectively by the executors until they should respectively have attained the age of 21 years and then to be paid to them with all accumulations. These two legacies were to lapse and fall into the residue of his estate in case of the death of the legatees in his lifetime or before attaining the age of 21 years. To Allen Griffith he gave a chest of tools which belonged to him, the testator, before the death of his father, Thomas S. Alexander. All the rest of his property he gave to his sister Mary, now Mrs. Bingham. From the decree of the Orphans' Court of Essex County, admitting this document to probate as his last will and testament, this appeal was taken. The testator though at the time of executing the instrument in question he was of mature years, being then 38 years old, was, as he had been from his childhood, of a very low grade of intellect. His boyhood and youth had been spent in Maryland, where his father long practised the legal profession of which he was a distinguished member. In 1866, the latter removed to Newark bringing the testator with him as one of his family, and the testator resided with him there until his father's death, which occurred on the 4th of December, 1871. His father by his will and the codicil thereto, after certain specific legacies and a small pecuniary one, gave all the residue of his estate to his four children and his granddaughter, the child of his deceased daughter. As to Thomas' share, which was one-sixth of the residue, he made the following provision: "I desire and empower my executors to retain my son Thomas' part or share of my estate and invest the same in some interest-bearing public stock or evidence of debt, and to apply the income or profits of such investment or such part or parts thereof as they in their discretion may think necessary and expedient to the support of my said son for and during the term of his natural life. I vest in them this large discretion, because of the facility of the disposition of my said son and to protect him against the practices of designing men.

"I desire that any surpluses of income which may at any time

remain over what may be expended on his proper maintenance shall be invested in like manner. He is to have the power of disposing of the said principal fund, and its accumulations by last will to and among his brothers and sisters, and niece, and their descendants, or such of them as he may prefer, and as he may think proper; and in the absence of any valid disposition thereof as aforesaid, the said fund and its accumulations are to go to the person and persons, who at the time of his death may be designated by law as his personal representatives, and in proportions as determined by law." He appointed Charles A. Linthicum (to whose 10 wife, his daughter Emma, he gave one-third of the residue), and his nephew, Julian J. Alexander, his executors. Both of them proved the will and codicil, and accepted the trust. After the death of his father, Thomas, the testator, whose will is under consideration, continued to live in the family mansion in Newark, with his sister Mary who was then unmarried, for many months, and until she left this State. The testator was at best a semi-imbecile. His very personal appearance indicated his deficiency in mental capacity.

While the testamentary witnesses and others sworn before the 20 Orphans' Court, testify to his competency in their opinion to make a testamentary disposition of his property, it is from the evidence too clear for question that he was at best a very feeble-minded man.

His father anxiously endeavored, by means of his own association with him and otherwise, to strengthen his intellect. He placed him in a training school, under an experienced and skillful educator of the feeble minded. At one time, partly to break up habits of intemperance which he had formed, the testator was sent by his father to the Maryland Hospital where he remained for a 30 considerable period. While the result of these efforts was probably some improvement, he nevertheless, up to the time of his death, was justly regarded as a person of very feeble intellect. Mr. Haines, one of the testamentary witnesses, speaking of his condition at the time of executing the will says, from what he observed of him, he had "no reason to think he was anything but sound." His acquaintance with him, however, was, he says, but slight. The other testamentary witness, Mr. Frelinghuysen, was somewhat acquainted with him. He says that while the testator, in his opinion, had not a sound mind, he had sufficient intellect to 40 dispose of his property; that he knew what he was doing, what disposition he was making of it, and to whom he was giving it. Mr. Kirkpatrick, one of his executors, by whom the will was drawn, says he thinks that he perfectly understood the manner in which he disposed of his property, and he adds that he gave his directions clearly. Numerous witnesses testify on the subject of the testator's capacity. Of these, many are persons of high social position in Maryland and elsewhere, some of whom were acquainted with him from his childhood. Their testimony leads to the conclusion that before he came to this State he was of so low a grade 50

of intellect as to be incapable of transacting any business whatever, and if he had testamentary capacity it was merely such as would satisfy the lowest requirements of the law. I deem it unnecessary to refer particularly to their testimony.

The testimony of those witnesses who speak on the subject from their knowledge of him after he came to Newark to reside, makes it evident that his capacity had not materially increased. Mr. Thomas T. Kinney, one of these witnesses who knew him well, and whose opportunities for observations were good, says he
 10 used to hear him spoken of as an idiot, and thought the matter over and concluded he was not exactly that, but thought he was of rather a low grade of intellectual development, a feeble minded young man, but not an imbecile. He says, in explanation, "I thought he was of a very low grade of mind though not an idiot, because I always had the idea that an idiot had no mind at all, and Tommy had a mind up to a certain point." It is in evidence that as late as July, 1872, five months after the making of the will, his sister, Mrs. Bingham, contemplated placing him in a training school for feeble minded persons. It was urged by the coun-
 20 sel of the Proponents on the hearing of this appeal, that the fact that his father had, with full knowledge of his mental condition, provided in his will for the exercise by the testator of the power of testamentary disposition of his share of his father's estate, should have great weight in determining the question of capacity. It is, however, only evidence of the opinion of his father, and is of no legal value in determining the question.

It was also contended on behalf of the Proponents that if there be doubt as to the testator's capacity the will ought, in view of the above quoted provision of his father's will, to be regarded as
 30 the execution of a power. But surely it is not necessary to say that an idiot or lunatic cannot execute a power involving the exercise of discretion even though it should appear that the donor knew, at the time of the grant of the power, that the donee was non compos mentis.

The view which I take of this case, however, renders it unnecessary to pass upon the question of the testator's capacity, except as connected with the question of undue influence. That he was of a facile disposition, and liable to be imposed upon, is evident from
 40 the testimony. His father vested a large discretion in his executors, as to the testator's share of his estate, expressly because of the facility of the latter's disposition, and to protect him against the practices of designing men; and he limited the exercise of the power of testamentary disposition.

The testimony shows unmistakable evidence of undue influence over the testator by his sister Mary, the principal legatee, to whom he gave almost all of his estate. That she designedly influenced his mind against his sister Emma and the executors of his father's will, who were trustees of his share of his father's estate, and one of whom was the husband of Emma, and that she procured him
 50 to make a will of his property while he was under that influence

exerted not only against Emma but in her own favor abundantly appears.

By such a person as he confinement in an asylum, of which he had had some experience, is regarded with ineffable dread, and no greater cause of enmity can be presented to the mind of such a one than the imputation of a design on the part of another person having, or being supposed to have, some right to control over him to subject him to such confinement. That the legatee referred to had filled the testator's mind with apprehensions of the intention on the part of his sister Emma and the executors of his father to 10 put him into an insane asylum with a view to getting his estate for themselves is manifest. In her testimony she admits that she told him that the executors and his sister Emma had said that he ought to go to the hospital. As early as the 19th of December, 1871, which was but about two weeks after his father's death, she obtained the certificates of two physicians in Newark as to his condition with reference to the necessity of putting him into an insane asylum, when according to the evidence nobody had proposed to put him there.

The effect of her influence in this direction is seen in the testi- 20 mony of Mr. Kinney, who says that after the will was made he had a conversation with the testator on the subject in which he seemed to have a strong feeling against his Baltimore relations; and Mr. Kinney adds, "He had got an idea that they wanted to put him into a lunatic asylum and that they were trying to entice him off but he was determined to stay here." Mrs. Bingham's own testimony produces the conviction that she exerted her influence over him (which is shown to have been great), against his father's executors and his sister Emma in this direction. To the question "Did you ever talk to Tommy about the asylum at all 30 afterwards," she answers "I don't remember that I did; I might and I might not."

In calling Doctors Ward and Dougherty, the physicians just referred to, "I mentioned to them when they entered what their purpose was in coming; then I said, Doctor, I am particularly anxious to have your opinion and certificate as to whether Tommy is a fit subject for the hospital because of what Messrs. Linticum and Alexander (the executors) had told me they always had; they made no secret of it, and if in the event of my absence or sickness they ever took Tommy to the hospital, I wished to have their 40 certificates so that I could take him right out, and so I made that remark distinctly at that time to the doctors." She further testifies as follows: Q. "Did you ever tell Tommy that they were going to take him to the asylum?" A. "Did I ever tell Tommy?" Q. "Yes." A. "I don't remember it." Q. "Do you remember his telling you that you lied when you did say so?" A. "Tommy never used such words to me, and I never heard him use such words in the house." Q. "Then it was all a delusion in his letter, was it?" (referring to his letter to Julian J. Alexander, of June 21st, 1872), in which he says, "Did you tell Missy (meaning Mrs. 50

- Bingham) in your letter that she must pack my clothes up, that you were coming on and take to a asylum. I told her she lie." A. "He may have said it if he wrote it, and I never paid any attention to it." Q. "He wrote this on the 21st of June?" A. "What dates were those letters you read in Court; what years were they written?" Q. "He writes on the 21st of June, 1872, that Missy had told him that they (the executors) had told Missy that they were going to take him to an asylum, and he says, I told her she lied. Is that a mistake?" A. "Am I called upon
- 10 to express my opinion of these letters?" Her Counsel then said to her, "No; you are called upon to state whether that is a mistake, or not." She then replied, "I decline to answer the question." Her further examination on this subject is of the like character, and closes with her refusal to swear whether she did or did not tell the testator that the executors were trying to get hold of him to put him into a lunatic asylum. She admits, however, that in fact they never did tell her that they were going to send him to an asylum. Her influence over him appears in the testimony of Mary D. Davis, a witness for the Proponents. She
- 20 was a frequent visitor at Mr. Alexander's house. She says Mrs. Bingham's treatment of the testator was always very kind," but she adds, "of course she had to be firm." To the question "What control had she over him—why had she to be firm and restrain him?" she answers, "Because no one else in the house could." Mrs. Bingham says that the certificates which she obtained from the physicians were procured at the testator's request, and if that be so, it is not difficult to understand what was the condition of such a mind as his under such circumstances. The certificates are addressed to her, and thus,
- 30 and by other internal evidence show that the examination was by her procurement. Dr. Ward certified that he had long before that time arrived at the conclusion that the testator was semi-imbecile, and that his defective mental development was congenital, and he added that his case was without doubt incurable. He further certified that he did not look upon him as insane in any sense, and was fully satisfied that it would be an act of injustice to place him in an asylum for the insane. He added to his certificate a statement that he considered him competent to make a will. The certificate of Dr. Dougherty is of a like character. He testifies as
- 40 follows: Referring to the examination by him and Dr. Ward (the latter died before the trial in the Orphans' Court.) "Q. Was anything said about whether he ought to be sent to a lunatic asylum, or not? A. I think such a question was raised; I think that was one of the objects of our inquiry to determine whether he should be taken away from her control and put into an insane asylum. She preferred to have the control of him after his father's death." "Q. Did she say anything to you that led you to suppose that anybody was trying to take him away and put him into a lunatic asylum? A. I think that was so; I got that impression."
- 50 "Q. Did you get the impression as to who she said was endeavor-

ing to get him away and put him into a lunatic asylum? A. I don't remember any individual, but my impression is it was some of the members of the family who were desiring to do that."

He further testifies that the testator seemed to be apprehensive that he would be sent to an asylum, and he did not want to go there. He indeed says that he and Dr. Ward "mostly wanted to find out what his capacity was, if he had any property to dispose of;" but he also says that the principal object of the examination was to determine whether it was proper to take him from his sister Mary's custody to the 10 lunatic asylum.

That she caused him to make the will is proved. Leaving out of consideration his statements on that subject to Mrs. Price and his sister Emma, to the former of whom he said that Mrs. Bingham had told him that if he did not make his will in her favor she would put him into a lunatic asylum, and to the latter that he had to make the will, and that Mrs. Bingham had said if he did not make his will he should not live in the house with her, and that she would give him over to Mr. Linthicum and Julian Alexander, and that they might do as they pleased with him; that they had 20 said they were going to put him into the hospital, and that she intended to give him up to them and let them do as they pleased with him, and that all they wanted was to get him to Baltimore, put him into the hospital and spend his money, her statement to Julian J. Alexander, one of the executors, is sufficient evidence of the fact. He testifies that about the fifth of January, 1872 (the will was executed on the second of that month), she told him that she had had three doctors examine the testator, and that they said he could make a will, and that she "had made him make a will," so that if they, the executors, took him to Baltimore, they 30 would be disappointed. He says that on a previous occasion she had accused him of conspiring with Mr. and Mrs. Linthicum to take the testator to Baltimore to get him to make a will in favor of them and their children. It further appears in the evidence that about a week before the will was made she told Mr. Kirkpatrick that the testator was coming to his office and wanted him to draw his will, thus making the arrangement for the drawing and execution of the will, about the time when she obtained the certificates of the physicians.

The testator had not signified to that gentleman any intention 40 to make a will. The will was executed on the second of January, 1872, two weeks after the examination of the physicians. The testimony in the cause leads to the conclusion that the paper in question is not the will of the testator by that by undue influence on the part of the principal legatee his free agency was virtually overborne. The testator was, according to the testimony of the physicians whom she employed to certify his condition, a semi-imbecile. He was subject to her control and influence, and she is shown to have exerted a malign influence over him against his sister, who had equal claims with her to his estate. She appears to 50

have greatly interested herself in the making of the will, as is evidenced by her declaration, that she had "made him make a will," and she appears to have provided herself in advance with the means, as she supposed, of sustaining the will against the objection of incompetency, which was obviously to be expected, by obtaining the certificates of physicians on that head.

The testator resided with her from the death of their father in December, 1871, until February, 1873, when she married and left Newark and went to reside in Philadelphia. From the time when
 10 she left Newark up to his death, which occurred in December following, she was in constant correspondence with him. She says she received on an average two or three letters a week, and various postal cards, and that he visited her in Philadelphia twice in that time and would have paid her more frequent visits but that she was called away from that city. She appears to have kept up a constant communication with him, and her influence over him seems not to have diminished. Her testimony, instead of relieving her from the imputation of undue influence, only makes it the more clear that she in fact did exert it. The instrument ought not under the cir-
 20 cumstances to be admitted to probate as his will. The law secures the right of testamentary disposition, neither hedging it about with unnecessary regulations, nor restricting it by unreasonable limitations or conditions, but it requires that the will shall be as its name imports, the voluntary free act of the testator, not coerced by restraint nor induced by fraud or extreme or unreasonable influence.

The Decree of the Orphans' Court will be reversed.

30

DECREE.

This appeal having been heard, upon the proofs taken before the Orphans' Court of the county of Essex, in the presence of Anthony Q. Keasbey of counsel with the appellants, and Thomas N. McCarter of counsel with the respondents, and the arguments of counsel having been heard and considered; and it appearing to the Court that the will of Thomas Alexander was, on the twenty-
 40 fourth day of November, eighteen hundred and seventy-four, admitted to probate by the Orphans' Court of the county of Essex, and that from the decision of the said Orphans' Court admitting the said will to probate, the said Thales A. Linthicum and Julian J. Alexander have appealed to this Court: And it now satisfactorily appearing to this Court that the said Thomas Alexander at the time of the execution of the said will was of very feeble mind and limited mental capacity, and that the execution of the said will by the said Thomas Alexander was procured by the undue influence of Mary A. Bingham, then Mary A. Alexander the sister
 50 of the said Thomas Alexander, and the chief legatee in said will,

and that the same was not the last will of the said Thomas Alexander: It is thereupon, on this second day of December, eighteen hundred and seventy-six, on motion of Anthony Q. Keasbey of counsel with the appellants, ordered, adjudged and decreed that the order and decree of the said Orphans' Court of the county of Essex, be and the same is hereby reversed, set aside and for nothing holden; and it is further ordered, adjudged and decreed, that the sum of one hundred and fifty dollars be paid out of the estate of the said Thomas Alexander in the hands of the said appellants to the counsel of the appellants and a like sum to the counsel of 10 the respondents in this Court; and that the costs of the said appeal be paid out of said estate. And that the record and proceedings in this cause be remitted to the Orphans' Court of the county of Essex, to be proceeded upon according to law and in conformity with this decree.

THEODORE RUNYON, C.

20

PETITION OF APPEAL.

To the Honorable the Court of Errors and Appeals of the State of New Jersey:

The humble petition of James R. Sayre, Jr., and Andrew Kirkpatrick, Executors, &c., the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by a decree of the Prerogative Court made in the above stated matter, bearing date the second day of December, eighteen hundred and seventy-six, reversing, setting aside, and for nothing 30 holding the prior order and decree of the Orphans' Court of the County of Essex, in the above cause, and adjudging and decreeing that the sum of one hundred and fifty dollars be paid out of the estate of Thomas Alexander in the hands of said respondents to the Counsel of the respondents in said Prerogative Court, and that the costs of said appeal be paid out of said estate.

And your petitioners humbly appeal from said decree of the Prerogative Court which decrees as aforesaid, on the ground that it is erroneous, in that it sets aside the prior order and decree of the said Essex County Orphans' Court, when it should have affirmed 40 the same, and because the costs should not be paid out of the said estate, but should be paid by the caveators respondents herein. Your petitioners, therefore, pray that the said decree of the Prerogative Court may 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.

Dated the first day of April, 1877.

MCCARTER & KEEN,

Solicitors and of Counsel for Appellants. 50

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