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BOX:

242

FOLDER:

2360

DESCRIPTION:

Soutter, William K.

DATE:

12/24/86



2360

POOR QUALITY  
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No 225  
Counsel, Oct day of Dec 1886  
Filed, Prohibitory writ  
Pleads, Ex parte

[Section 530 Penal Code]  
Grand Jurors first degree  
Foreman first degree

THE PEOPLE

vs.

William H. Sautter

(in error)

RANDOLPH B. MARTINE,

District Attorney.

A True Bill.

J. W. Martin Foreman.  
Sept 20, 1892  
Grand Jurors  
or Jury

Witnesses:

Timothy Enright  
Louis Sanders

The defendant and  
the case is found.  
I recommend that  
the indictment  
be returned.

Sept 20, 1892  
District atty



New York Sept. 17, 1886,  
11 A M

Met pursuant to adjournment.

Present Counsel as before

Wm K Souther being duly sworn,  
deposes as follows:

Q 1 You are one of the exors. of the estate  
of James T. Souther decd.?  
A Yes sir.

Q 2 As such exor you caused the  
inventory of the estate of James T.  
Souther (deft's Ex. Inventory) to  
be made?  
A I did.

Q 3 There was cash on hand and certain  
personal property that does not seem  
to be on the inventory; do you  
know why that was not inven-  
toried?

Complts Counsel says that  
if the reason to be given  
relates to conversations between  
the witness and Robert Souther  
(decd) under whom Complts

claims, Then the witness is  
not competent to testify

Obj overruled. Exception.  
A Yes.

Q 4 What was the reason?

A There was an assignment between all of  
us children that all of these things  
should go to our mother, and it was  
executed by all of us.

Compt's counsel objects to  
all of the answer that gives the  
contents and effect of said  
agreement, and Mr Upson  
joins in the objection, claiming  
that the agreement is the best  
evidence, and moves that the  
answer be stricken out.

The Master allows the ques-  
tion and answer to stand,  
subject to the production of  
the agreement.

Q 5 As an executor you kept a book  
of account of the accounts and trans-  
actions of the Evers, did you?

A Yes sir.



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Q 6 Is this it? (Counsel shows a book marked exh 6 for identification)  
A Yes sir.

Q 7 Such acct commences on p. 42 of exh 6 and extends to the end of the account; is that so?  
A Yes.

Deft's counsel now renews the offer made Sept 15<sup>th</sup> 1886, and asks that the book in question be marked Exh 6 and the same is so marked.

Q 7 1/2 Have you examined the accts marked for identification No 1, 2, 3, 4, 5, 7 and 8, and are they correct?  
A Yes sir.

They are also offered in evidence and admitted of this date.

Q 8 I show you the vouchers of acct #1 marked for identification; do they represent amounts paid by you a/c of the estate?  
A Yes.

The same are offered in evidence and marked in evidence

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of this date. The same is also done with Nos 2, 3 and 4.

Q 9 In Account No 4 I find an item of \$15<sup>00</sup> under date of Jan'y 5, 1875, marked "affidavit"; did you make that payment?

A Yes.

Q 10 Was that the sum charged?

A Yes.

Q 11 The next item seems to be "Dec. 17, 1875, Chicago property, Horton & Hoyne \$5000." Did you make that payment?

A Yes sir. The voucher ought to be there somewhere.

Q 12 Have you looked for the voucher?

A I think a duplicate was written for.

Q 13 What services did Horton & Hoyne do?

A They paid out our taxes and acted as real estate agents. I know of one fee my father paid them of \$12000.

Q 14 There was litigation, was there not, between the heirs of Stephen A Douglas and your father as regarding the title



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to the Chicago property?  
A Yes.

Q 15 Then your father made an agreement to sell the property to H. H. Honore and C. T. Bowen of Chicago, and Bowen and Honore gave notes for the purchase money, and until their payment, they, (the purchasers) could not have title to the property. Is that so?

A Yes.

Q 16 Did they pay these notes?

A Not without suit. We had a suit for almost every one of them.

Q 17 Were these suits or some of them instituted in your father's life time?

A No.

Q 18 Did you recover back the possession of the property from Honore & Bowen by means of these suits?

A Yes sir.

Q 19 Do you remember the amount of these notes, and the number of them?

A I think it was about \$25,000. It may be more or less.

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Q 20 Was it in and about the suits on these notes, and to recover this property that you paid this \$ 5000 to Horton & Hayne?  
A I have no doubt of it. There might have been other litigation also with the Chicago Park Commissioners which was included in that \$5000.

Q 21 In Dec 31<sup>st</sup>, 1874, and Feby 21, 1876, you seem to have charged as paid to Brisbane as services and expenses under the first date \$928.27 and under the second date \$300. Did you make those payments, and if so, for what?

A He was our counsel in the Minnesota Bond case. My father held \$100000. in Minnesota Bonds which were repudiated by the State. I caused a suit to be instituted and recovered the amount of the bonds with interest, and it was for these services that I paid Mr Brisbane.

Q 22 Did you receive from Mr Brisbane a voucher for the payment?

A I think I did at the time, but I can not now find it.

Production of the two above vouchers is waived by Defts Counsel.



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(Witness continues) The item "J. V French \$100 mch 10, 1877," was, I think, for drawing Retirement papers for taxes on real estate. It is really a real estate expense.

The production of voucher waived

Q 23 In acct #3 for the items Oct 16, 1878, \$100. Sept. 26, 1879, \$150., both to C. G. Cooper, you seem to have no vouchers. Did you make these payments?

A I did.

Q 24 What for?

A I paid them to have my account made in the Surrogate's office.

Q 25 Was Mr Cooper a clerk in the Surrogate's office, Ulster Co?

A He was.

Q 26 In acct. #4 under date of Jan'y. 14, 1885, \$102. was charged as paid for rent of safe. Did you make that payment?

A Yes sir.

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Q 27 What was that safe rented for?  
A To keep the securities &c belonging to the estate.

Q 28 Was that a fair rental for the safe?  
A It was in the Stock Exchange - the cheapest place I could get.

The production of the voucher for the above named safe waived.

Q 29 Between your acct (Exh 6) and in the accts marked #1, 2, 3 and 4, 5, 7 and 8, there is this difference, the acct Exh. 6 shows a credit to the estate of Pro-  
file & Montgomery coupons \$11669  $\frac{95}{100}$   
in excess of what appears to be credited in the accts #1, 2, 3 &c. Was the credit in Exh 6 of that amount an error?

A Yes sir, that was an error.

Q 30 Upon examination how do you account for that error?

A It was a book keeper's error.

Q 31 And did it arise from crediting the estate with semi-annual coupons after the bonds had been distributed to



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the parties entitled to them, in excess of the five remaining on hand?  
A Yes.

Q 32 In acct exh 6 there are credited "Carolina Central" coupons in excess of what is credited in the accounts 1, 2, 3 &c, to the amount of \$960. Is that credit to the amount of \$960 an error?  
A Yes sir.

Q 33 These credits were made from 1882 to 1885, were they not?  
A Yes.

Q 34 Had you sold the bonds previous to that time?  
A I sold the bonds in 1881.

Q 35 So that the credit of coupons after that time was error, was it not?  
A Yes.

Q 36 Between the acct Exh 6 and the accts 1, 2, 3 &c less is credited in Exh 6 on acct of Lackde Gas Co bonds than appears to be credited in accts 1, 2, 3 &c?  
A Yes sir; \$150.

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Q 37 There is also a credit of \$90. too much on acct of Georgia bonds in Exh 6; is there not?

A Yes sir.

Q 38 In some instances the bonds which came into your hands as Exr. were then undergoing, or shortly underwent the process of refunding, by which the number and amount of the bonds inventoried were changed. Point out in what cases and to what extent that process obtained?

A Mobile City bonds inventoried \$22600, \$10000 divided, scaled down to \$10000 by refunding. La. bonds inventoried \$24000, divided \$2000, scaled \$4000 to \$2500. City of Nashville \$2000. inventoried at \$1300 and there is now on hand \$2200. I funded one of the bonds which paid no interest, and a new bond and a coupon certificate for \$200. which accounts for the difference.

Adjourned to Wednesday September 22<sup>d</sup>, 1886, at 2 P.M.



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New York September 22<sup>d</sup> 1886.

Met pursuant to adjournment.

Parties appearing as before.

Examination of William K Souther continued.

Q 39 In what month of 1873 did your father die?

A In February or March. I don't remember the date.

Q 40 In what month of 1873 did your brother Robert die?

A In July.

Q 41 He left a will?

A Yes sir.

Q 42 And Timothy H Porter and your brother James T. Souther were executors of your brother Robert's will?

A Yes sir.

Q 43 They qualified and acted as Executors?

A Yes sir.

Q 44 Was Mr Timothy H Porter, at the time

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of your father's death, familiar with the property left by your father, and all of them?

A Yes sir.

Q 45 Mr Porter had been for many years and was at the time of your father's death the attorney in fact of your father?

A Yes sir.

Q 46 Mr Porter was also a member of the firm of Souther & Co a co-partner with you and Robert Souther?

A Yes sir.

Q 47 Your brother James T. Souther, after the death of Robert became a co-partner with you in the firm of Souther & Co in the business?

A Yes sir.

Q 48 Some of the dividends were partly of the securities in kind and in part cash. From what source was the cash included derived?

A Some of it was from the sale of the securities of the estate and some from the income.



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Q 49 Will you look at the account and the inventory and tell me what securities were sold, and the proceeds thereof distributed in the dividends?

A I don't think I could answer. I couldn't tell you exactly.

Q 50 You do remember the fact that some of the securities left by your father were sold and the proceeds divided in cash?

A Yes sir, I remember that.

Q 51 Before such sales were made, did you consult with Mr Porter and your brother James T.?

Question objected to so far as it relates to James T. Souther Jr on the ground that it calls for personal communications between the witness and the testator of Julia E. Souther.

Mr McCurdy objects to the appearance of Mr Upson and to any interference on his part with the orderly course of proceeding, on the ground that he represents no party to the proceeding.

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Objection overruled.  
A Yes sir.

Q52 In the account as rendered it appears that as executors you paid taxes on the real estate left by your father from the time of his decease up to the present time. That is so, is it not?  
Objected to as incompetent.  
Objection overruled. Plaintiff excepts.

A Yes sir.

Q53 Was there <sup>yourself and</sup> between the heirs at law of your father and their representatives of the heirs at law a consultation with respect to the payment or non payment of the taxes upon the real estate?  
Objd to as incompetent, and by My Upson so far as it calls for personal transactions between the witness and James T. Souther Jr on the same ground.  
Question allowed. Exception

A Yes sir.

Q54 Were these taxes paid after such consultation by the express direction of all the persons interested in the



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real estate?

Obed to as incompetent by the  
Plff's counsel, and by Mr Upson  
to ~~by~~ the same extent and on  
the same ground as the pre-  
ceding question.

Question allowed - Exception.  
A Yes sir.

It is consented that the hearings  
and rulings be had before Mr  
Shields with like effect as before  
the Master.

Adjourned to 11 A.M. on Wednesday  
next, September 29<sup>th</sup> 1886.

New York September 29<sup>th</sup> 1886  
11 A.M.

Met pursuant to adjournment

Present Counsel as before.

Examination of Wm K Souther continued.  
Defts Counsel offers in evidence  
a paper releasing to Syrus Gordon  
Souther certain personal property

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bequeathed by the will of James  
T. Souther, and signed by all of  
the heirs at law and legates  
under the will, and the same  
is marked Defts Exh Release  
Sept 29/06 J.G. Master.

Q 55 Are you acquainted with the signa-  
tures of your brothers Robert and  
James T. Souther, your sisters Emily  
W. Souther and Eliza M. Bell, your  
own signature, and that of your mother?  
A Yes sir.

Q 56 Are these the signatures respectively  
affixed to Defts Exh Release?  
A Yes sir.

Q 57 Was Mr Porter at all times familiar  
with the situation of the estate of  
your father, and did he know what  
disposition was made of the funds  
and securities belonging to the estate  
of your father?

Obj. to as incompetent and  
as improper in form.

Overruled - Exception.

A Yes.

Q 58 Was there any disposition made of any



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of the securities or funds belonging to the estate of your father except after consultation with Mr Porter, and in accordance with his advice and approval?

A No sir. Same objection.  
Same ruling - Exception

Q 59 In the first dividend all of the securities and some of the cash were not divided and distributed. Why were some of these retained if you recollect?

A Some of them were not of very much value - such as Minnesota Bonds - but became of value afterwards. The undivided cash was reserved for contingent expenses including taxes on real estate.

Q 60 Did you have a consultation with Mr Porter with respect to how much and what should be divided, and what retained previous to the division?

A Always.

Q 61 Did you have such consultation with all of the other parties interested in the estate?

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A Yes sir.

Q 62 Was the course pursued in accordance with their unanimous advice?

Oj to as incompetent and improper in form. Oj to also by Mr Upson so far as the question concerns James J. Souther Jr on the same ground. Objections overruled and exceptions taken.

A Yes.

Q 63 Previous to this first dividend your brother Robert had died and your brother James J. and Mr Porter acted as executors of his estate?

A Yes sir.

Q 64 In making the second dividend some cash and some securities appear to have been left undistributed; was or not such course taken after consultation with and by the advice and consent of all the persons interested under your father's will?

Same ojs as to Q 62  
Same ruling - exception.

A Yes sir.



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Q 65 I ask the same question as to the third dividend?

Same objections

Same ruling & exception.

A Yes.

Q 66 Before the fourth dividend was made your brother James Souther had died, had he not?

A Yes sir.

Q 67 In making the fourth dividend some cash and some securities appear to have been left undistributed; was or not such course taken after consultation with, and by the advice and consent of all the persons interested under your father's will?

Same obj as to Q 62.

Same ruling & exception.

A Yes sir.

Q 68 Were any of the securities or cash belonging to the estate of your father deposited with or loaned to or by the firm of Souther & Co?

A Yes sir.

Q 69 While Mr Porter and your brother

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James T. were members of <sup>the</sup> ~~your~~ firm?  
A Yes sir.

Q 70 Were all the persons interested under your father's will acquainted with that fact?

Same obj's as to Q 62.  
Same ruling and exceptions.

A Yes sir.

Q 71 Was it or not by their request that the securities and funds were deposited with Souther & Co?

Same objections, ruling and exceptions.

A They were cognizant of the fact.

Q 72 After your qualification as executor was any consultation had between you and Mr Porter as to where the securities and funds belonging to the estate should be kept, and if so, where?

A Yes sir, with the firm of Souther & Co.

Q 73 Do you know whether before the securities were thus placed there was any communication with the other parties interested in the estate by you



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or Mr Porter?

A Both of us I think communicated with the other members on that subject.

Q 74 State to whom that fact was communicated if you recollect?

A My mother, Mrs Bell and Mrs Dix. My brother James was a partner and knew all about it.

Latter part of answer - obj to by Mr Upson who moves it be stricken out.

Motion denied. Exception.

Q 75 At the time of your father's death was he indebted to the firm of which you were a member?

Obj to on the ground that the question calls for a conclusion of Law. Mr Upson joins in the objection.

Overruled - Exception

A Yes sir.

Q 76 Were securities belonging to him deposited by him with your firm as collateral securities for such indebtedness?

Obj to as calling for a trans.

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action between the witness and decedent. Mr Upson joins in the Objection.

Objection overruled. Exception taken and counsel for Complt asks that the question be certified to the Court.

Adjourned to Friday October 8<sup>th</sup> 1886  
at 11 A.M.

New York Oct 8<sup>th</sup> 1886.  
11 A.M.

Met pursuant to adjournment.

Present - Counsel as before.

Adjourned to Saturday October 9<sup>th</sup> 1886  
at 11 A.M.

New York Oct 9, 1886,  
11 A.M.

Met pursuant to adjournment.

Present - Mr Sanders and Mr Upson.  
Complt will then apply to the Master to strike out the credit side of



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executor's account and close W. K. Souther's testimony.

Adjourned to Monday October 11<sup>th</sup> 1886 at 2 P.M.

New York October 11<sup>th</sup> 1886  
2 P.M.

Met pursuant to adjournment.

Counsel appearing as before.

Witness answers Q 76.

A Yes sir.

Mr Sanders excepts to the ruling of the Court admitting the answer. Mr Upson joins in the exception.

Q 77 Do you remember what securities, or can you tell what securities ~~to~~ were handed you by your father at that time?

A Yes sir. 27 <sup>th</sup> Mansfield & Sandusky bonds, 500 shares Peoples Gas stock, 50 <sup>th</sup> North Carolina bonds, 30 <sup>th</sup> Peoples Gas bonds, 15500 Georgia 7's bonds, 21 <sup>th</sup> Georgias, 25 <sup>th</sup> Va. Consols bonds, and 27 <sup>th</sup> Tennessee

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bonds, and 95 <sup>th</sup> Mobile & Montgomery  
bonds, 950 shares Laclede Gas Co  
stock, and 5 <sup>th</sup> bonds of the same.

Q 78 At the time of your father's death  
how much was he indebted to the  
firm of Souther & Co?

Obj to as calling for a con-  
clusion of the witness  
Overruled Exception.

A \$136220.82

Q 79 Look at the paper now handed to  
you, marked for identification No. 1,  
and state if that is all?

A \$169816.69.

Q 80 Were the securities thus pledged by  
your father sold?

A A portion of them were sold and they  
realized \$136220.82 leaving a debit  
balance of \$33595.87.

Q 81 Was that debit balance paid by the  
estate to the firm of Souther & Co in  
cash?

A Yes sir.

Q 82 Upon the payment of that debit bal-



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ance, what securities were released and came into your hands as executor?

A The securities mentioned on p. 10 No 1, July 1873, to July 1, 1874.

Q 83 In addition to the indebtedness for which these securities were pledged for security, was your father indebted to your firm on a speculative account?

Obj to as calling for a conclusion and as a transaction by the decedent. Mr Upson concurs in the obj. Overruled. Exception

A Yes sir.

Q 84 Do you know what stocks your firm had bought or sold or held for the account of your father at the time of his death?

Same obj by both Counsel.  
Same ruling. Exception.

A 1500 shares of Harlem Railroad stock.

Q 85 Had that been bought by your firm on a margin, and if so, how much was your father indebted to your firm on that account?

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A The full amount that our firm paid for the stock.

Q 86 Can you tell ~~me~~ by any memoranda you have here, or can you tell by the books what the cost of said stock was?

A I don't recollect now, but I can find out.

Q 87 Will you ascertain and tell us at the next meeting what your firm paid for said stock, when it was bought for your father, and how much your father owed on it at the time of his death, when it was sold, and for how much?

A I will.

Q 88 Perhaps you can tell by the memorandum when it was sold?

A It was sold after my father's death.

Q 89 Do you remember whether there was any conversation between the members of your firm and the heirs at law of your father's estate with respect to this her late stock and the indebtedness of your father on account of it?



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A Yes sir, we all talked it over.

Q 90 To whom do you refer when you say "we"?

A Mr Porter, my brother James, my mother Mr Bell and myself.

Q 91 As the result of that conversation were any directions given to your firm what to do with the Harlem stock?

A We were ordered to sell it.

Q 92 Did your firm sell it in pursuance of such directions?

A Yes sir.

Q 93 With what result?

A A loss of \$21615.94.

Q 94 Was it known in the conversation of which you speak that to sell it would result in a loss?

A Yes sir

Q 95 Do you recollect whether it was with a view to saving a greater loss that it was resolved to sell it?

A There had been a greater loss than this and the market having advanced

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we took advantage of the rising market to sell it.

Q 96 Was the Harlem stock at that time an active and readily salable stock?  
A No sir.

Q 97 After you had sold the stock with the result you have stated, did you communicate the fact of such sale with the persons interested in the estate?

Obj. to by Mr Upson so far as it asks for communication with James T. Southern Jr, as incompetent.

Overruled. Exception.

A Yes sir.

Q 98 Did any one of them find any fault with you or your firm for the disposition you made of the Harlem stock?  
A Never sir.

Q 99 Do you happen to know how that disposition of the stock was regarded by the members of the family and all of them?

A We never had any dissatisfaction;



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it was all done with their concurrence.

Q 100 In your judgment was that the best possible disposition of the stock?  
A Yes sir.

Q 101 Tell me just why?  
A We were just getting over a panic which effected a depreciation of securities for six years following. Money was dear - worth 1% a day. Money was due on the stock.

Q 102 Do you remember as a matter of fact whether Harlem stock went lower immediately after the sale in question?  
A I do not.

Q 103 By the account as rendered you seem to have acquired 10 Mobile & Montgomery bonds in addition to the M & M bonds mentioned as belonging to the estate; do you remember how you happened to acquire those bonds?  
A I could not tell you now. I know they belong to the estate. They came in from part of these coupons. I don't recall it now.

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Q 104 Will you examine it and having re-freshed your memory, tell us how those ten bonds passed from Souther & Co to the estate?

A I will.

Q 105 Did you buy 10 4th M & M bonds?  
A I don't think I did.

Q 106 Did you buy any Mobile & Montgomery coupons

A No sir, my father bought them himself.

Q 107 You seem to have acquired 2344 M & M coupons at one time, and subsequently six more. Will you tell us how and under what circumstances those coupons came to you, if at all?

A My father was one of a syndicate who bought the whole issue of Mobile & Montgomery bonds to be re-sold. These were coupons that my father bought when the road defaulted in the payment of the interest.

Q 108 How did they come to you?  
Same obj as to Q 97.



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Same ruling and exception.  
A Souther & Co paid the cash for them  
under my father's instructions.

Q 109 How much money did Souther & Co  
advance on those coupons at the  
request of <sup>your</sup> father?  
A \$1235-25.09

Q 110 And did Souther & Co hold those  
coupons for the repayment of the  
money advanced on them?  
A Yes sir.

Q 111 And was that transaction, the pur-  
chasing of the defaulted coupons, had  
in your father's life time?  
A Yes sir.

Q 112 After these coupons were acquired  
by the syndicate were the coupons  
foreclosed and the road sold under  
that foreclosure?  
A Yes sir.

Q 113 After the sale and foreclosure was a  
new Co. organized and new bonds  
issued?  
A Yes sir.

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Q 114 And in that reorganization scheme these coupons were disposed of, were they not?

A They were, and I sold as executor 75 % of them for \$68400, and the balance for \$22800.

Q 115 And you received the 5 ~~RA~~ bonds as executor, which appear in this account?

A Yes sir.

Q 116 Have you examined the accounts which have been marked for identification here to see whether there is any entry in them of the acquisition of these coupons of which we have spoken?

A No sir I have not. I did see in the account that they have been disposed of, and the amount received for them credited.

Q 117 The entry in Exh 6 for identification on p. 40, relates to the purchase of these coupons which you say your firm made in your father's life time?

A Yes sir.

Depts Counsel now offers in



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evidence all of the accounts  
and ~~etc~~ vouchers therefor  
heretofore marked for i-  
dentification.

Adjourned to Friday Oct 15<sup>th</sup> 1886  
at 11 A.M.

A true copy  
J. M. Smith  
Master  
E. A. Smith

POOR QUALITY  
ORIGINAL

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d'Arcy,  
20

Southern

Testimony of Wm. J.  
Southern up to and  
including Oct 11/86

LEWIS SANDERS,  
COUNSELOR AT LAW  
5 BECKMAN STREET,  
NEW YORK CITY

LEWIS SANDERS,  
COUNSELOR AT LAW  
5 BECKMAN STREET,  
NEW YORK CITY

\$480



New York October 15, 1886,  
11 AM

Met pursuant to adjournment

Present - Counsel as before.

Examination of the witness Wm K.  
Southern continued.

Q 118 Have you examined with respect  
to the Harlem matter so that you  
can answer the question I asked  
you?

A Yes sir. I find on Dec. 31, 1870,  
by this account my father held 1000  
shares of Harlem at a debit balance  
of \$71236.92. On Oct. 18, 1871, he  
bought 500 shares of the same stock  
at a cost of \$30250. I sold as Exr.  
on July 22<sup>d</sup>, 1873, 500 shares at  
129 <sup>3</sup>/<sub>8</sub> realizing about \$32000. Cash,  
Sept 17, 1873 I sold 300 shares at  
129 and 200 at 129 <sup>1</sup>/<sub>2</sub> amounting  
to about the same amount of mo-  
ney. Sept. 30, 400 shares at 110,  
and 100 shares Oct. 1<sup>st</sup> at 110.

Q 119 The aggregate sales was not suf-  
ficient to pay the amount of the

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indebtedness of your father to the firm on acct of this stock?  
A No sir.

Q 120 The year 1873 was a year of panic was it not?  
A Yes sir.

Q 121 Do you remember whether the rate of interest from the spring until the fall of that year ran high or not?  
A I do.

Q 122 Do you remember what the average rate of interest was on the street about that period, or about how high the rate of interest ranged?  
A The rate on the street was about 1% a day for the use of money.

Q 123 Do you remember whether to carry this stock your firm was obliged to borrow money and pay those high rates of interest?  
A Yes sir.

Q 124 And in borrowing money to carry this stock your firm would charge



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the interest against this account?  
A Yes sir.

Q 125 Do you remember whether the fact of the high rate of interest you had to pay and the condition of the market previous to making any sales was communicated to the other persons interested in the estate of your father?  
A Yes sir.

Q 126 At that time Mr Porter and your brother James T. were interested in business with you?  
A Mr Porter was, my brother James was not.

Q 127 Did you confer with Porter upon the subject of what disposition to of the Harlem stock account?  
A Yes sir.

Q 128 Did you also confer with your brother James T. on the same subject?  
Obj to by Mr Upson as incompetent under the Statute Overruled. Exception.  
A Yes sir.

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Q 129 What instructions did they give you in respect to it?

Same obj., ruling and exception.

A To sell it.

Q 130 At that time, or at any time after your father's death, and at any time prior to the sales made by your firm of the Harlem stock, was there money enough belonging to your father's estate with which to pay your father's indebtedness to the firm on account of this Harlem stock?

A No sir.

Q 131 Could you have obtained the money requisite to pay the indebtedness of your father on this stock without borrowing the money at the high rates of interest you have mentioned or selling at a sacrifice the stocks and bonds belonging to the estate, for that purpose?

A No sir.

Q 132 Was it in view of those circumstances, and with a knowledge of them, that your firm was instructed,



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to sell the stock?

A Yes sir.

Q 133 In selling it did you dispose of it to the best possible advantage by your firm taking the best ~~of~~ state of the market to sell it?

A Yes sir.

Q 134 Was it your judgment then, and is it now, that your disposition of it was the most advantageous one to the estate?

A Yes sir.

Q 135 To have held the stock and borrowed money on it for the purpose of carrying it would have simply made the loss to the account greater than it was, would it not?

A Yes sir.

Q 136 On p 38 of Exh 6 there is an entry "com. for advances ~~of advances~~ of cash to October 31<sup>st</sup>"; what does that mean?

A Commissions and interest and extra interest to Oct 31<sup>st</sup> 1873.

Q 137 Was that money advanced or paid

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by your firm of Souther & Co?  
A Yes sir.

Q 138 Previous to the date?  
A Yes sir.

Q 139 How did it happen to have been paid, and for what - I mean on what account?

A Money advanced to my father in his life time.

Q 140 Do you remember how it happened and for what purpose the money was advanced to your father?

A I cannot state specifically. He was building the Peoples Gas Co. works at Baltimore. He was buying the Mobile & Montgomery coupons among other things, and what money he called for we advanced to him. The Saclede Gas Co of St Louis was another operation of the same kind.

Q 141 Your father was not then and never was a member of the firm of Souther & Co?

A No sir.



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Q 142 When your firm advanced money to him or purchased stocks, coupons or bonds for him, they charged him the same rate of interest which the firm had to pay for the money, and commissions the same as to any other customer of the firm, did they not?

A Yes sir.

Q 143 And it is of such interest, advances and commissions that the item \$51367.90 is made up, is it?

A Yes sir.

Witness submitted for cross examination.

X 144 Have you brought with you the securities which your account submitted show to be on hand and belonging to the estate?

Obj to as irrelevant and immaterial.

Question withdrawn.

X  
X 145 Have you on hand 250 shares of Raleigh & Gaston Railway stock called for by your account?

A I have been threatened by the Comptroller

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with criminal prosecution and for that reason I decline to answer.

X 146 Do you decline to answer because your answer will tend to criminate you?

Obj to as improper in form and immaterial  
Overruled. Exception

A I do.

X 147 Did those shares stand originally in the name of James S. Souther?

Obj to as incompetent. The certificates will speak for themselves.

Overruled. Exception.

A They did.

X 148 Did you not surrender the certificate and have a new certificate issued in the name of Souther & Co?

Obj to as incompetent and irrelevant.

Overruled. Exception

A No sir.

X 149 Did you not surrender the old certificate?



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Yes I did. Same obj's, ruling and exception.

X 150 To whom was the new certificate issued, and in whose name?

A I gave instructions to have it transferred to my own name as executor.

X 151 In whose name did the shares stand when Souther & Co pledged them as collateral security for a loan of \$50000. to the Bank of the Republic?

Obj to as incompetent and immaterial. Overruled. Exception.

A In the name of James T. Souther.

X 152 You had a memorandum in regard to your Harlem stock transactions this morning; from whence did you get it?

Same obj's. Same ruling and exception.

A From the books of Souther & Co.

X 153 Did you get it from the books of Souther & Co?

Same obj's. Same ruling and exception.

A Yes.

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Compts Counsel calls for all books of the firm of Souther & Co showing the transactions of the firm with James T. Souther Sr., and his executors.

Adjourned to Saturday October 16, 1886, at 11 A.M.

New York Oct. 16, 1886,  
11 A.M.

Met pursuant to adjournment.

Present - Counsel as before.

Mr Souther withdraws his answer to X Q 146 and now offers to answer the same.

Mr Sanders objects.

X 154 Will you take Exh No 8 showing securities belonging to the estate, and taking them up in their order, will you state where those securities now are?

Obj to as immaterial and irrelevant.

Obj overruled. Exception.

A They are all in my possession, every one of them, I mean those on



//

p 3. On page 2 they are all in my possession except the 250 shares of Raleigh & Gaston R.R. stock which is in the Bank of the Republic. And the same is true on page 1 except the 10 M Mobile City Bonds about which I would like to refresh my memory.

X 155 Has the loan to Souther & Co from the Bank of the Republic, for which 250 shares of Raleigh & Gaston stock was pledged, been paid?  
A Yes, on June 26<sup>th</sup> 1886.

X 156 The securities on hand itemized on pages 1 and 2 of Exh 8 were pledged as collateral security by Souther & Co at the time of their failure, were they not?

Obj to as immaterial and irrelevant.

Obj sustained. Exception.

X 157 In whose handwriting are the entries on pages 36 to 41 inclusive of Exh 62?  
A I should say Mr. Kennedy's a clerk in the employ of Souther & Co, with the exception of the entries on pages 40

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and 41 which are in the handwriting of Mr Thompson, also a clerk in said firm.

Compts Counsel asks the Master to direct the witness to produce all the books of Souther & Co from which the accounts offered in evidence were made, showing the account of James F. Souther with the firm, from which the witness made his memorandum or refreshed his memory.

X 158 The books of Souther & Co show the items from which the entries on p. 38 Exh 6, "Loss on Harlem and commission for advances, cash Oct 3/12" were made up, do they not?  
A Yes sir.

X 159 And are those books now in your possession?  
A No sir, they are in the hands of Morris H. Miller, Assignee.

X 160 Whereabouts were these books when



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Q You last saw them?  
A No 11 Wall St.

X161 Is the entry Nov 8<sup>th</sup> "Commissions for advances cash Oct 31<sup>st</sup> \$51367.91" a correct entry?  
A Yes.

X162 How much of the loss on Harlem \$21613.94 is made up of interest at 1% a day?  
A I could not answer that question, I have no idea.

X163 How much of the commission for advances of Nov 8<sup>th</sup> is made up of interest at 1% a day?

Obj to as immaterial and irrelevant, it appearing that the amount was loaned to the decedent in his life time.

obj. is overruled. Exception.

Adjourned to Monday October 18<sup>th</sup>, 1886, at 2 P.M.

New York Oct 18, 1886,  
2 P.M.

Met pursuant to adjournment.

Present Counsel as before.

Adjourned by request of Dfts Counsel to Thursday Oct 21<sup>st</sup> 1886 at 2 P.M.

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*deputy or Southern*

*Testimony of Wm R*

*Southern from Oct 15  
to Oct 21 inclusive*

LEWIS SANDERS,  
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NEW YORK CITY.

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\$190

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NEW YORK CITY.



**POOR QUALITY  
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District Attorney's Office.

PEOPLE

vs.

*Don'ton*  
*EL*

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CIRCUIT COURT OF THE UNITED STATES,  
Southern District of New York.

-----x  
B E T W E E N,  
Charlotte the Duchess D' Auxy,  
Complainant,  
-a n d-  
Agnes Gordon Soutter, Executrix etc.,  
and William K. Soutter as Executor of:  
the last Will and Testament of James  
T. Soutter, deceased.  
-----x

To, the Judges of the Circuit Court of the United States,  
for the Southern District of New York.

*June 20 1885* Under the decretal order of this Court filed  
this cause was referred to me, the  
undersigned as Master, whereby it was ordered that the de-  
fendants account fully for all the monies, stocks, bonds,  
securities and personal property of all kinds belonging to  
the estate of the late James T. Soutter, and for all monies  
stocks, and bonds paid out or distributed by them, belong-  
ing to said estate, and that the undersigned take and  
state such account with annual rests at the then legal  
rate of interest.

And by which decree it is adjudged that the  
complainant is entitled as devisee of the late Robert



Soutter, to the one-twentieth undivided part of the estate of the late James T. Soutter, Senior, and as one of the next of kin of the late Pauline Soutter, deceased, daughter of the late Robert Soutter, to the one hundred and sixtieth (1-160) undivided part thereof, and to recover the same of the defendants, less what part thereof she has already received.

In accordance with this decree I caused the respective parties to appear before me with their witnesses, and the matter has been proceeded with as rapidly as the convenience of counsel and myself permitted.

On the 25th day of June, 1886, the following parties appeared, represented by their counsel respectively, Lewis Sanders, for complainant, Charles Yates for Defendants, and subsequently for Defendants by Delos McCurdy and by Messrs. Cary & Whitridge, represented by William Ford Upson, for the executors of James T. Soutter, Junior, who was "permitted to appear by said decretal order before said Master and contest the accounts of the executors of the last Will and Testament of the late James T. Soutter, Senior, the same and with like effect as if they were parties to this suit."

As conclusions of fact, I do find and report :

1st. That James T. Soutter, died in or about the month of March, 1873, leaving his widow Agnes Gordon Soutter and five children, namely, Robert Soutter, William K. Soutter, James T. Soutter, J5., Eliza N. Bell, and Emily W.

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Dix, surviving him, his only heirs at law and next of kin; and that he also left a last Will and Testament, and a codicil thereto, of which the following is a copy :

"Grateful to the "Giver of every good" that He has given me some property to bestow upon my family, and still more grateful that He has given me loved ones to whom I can transmit it, I, JAMES TAYLOR SOUTTER, a native of the State of Virginia, a resident of the City of New York, and now in London, England, do proceed to declare this to be my Last Will and Testament.

1. After paying my just debts and the legacies hereinafter mentioned, I give and bequeath to my beloved wife, AGNES GORDON SOUTTER, one-half of all my estate, real, personal and mixed to be hers absolutely to do with as she may think proper.

2. I give and bequeath to my dear children who shall survive me, the other half of my real estate, personal and mixed. After payment of my just debts and the legacies hereinafter mentioned to be divided equally among them, share and share alike with this qualification however, that inasmuch as I have already given my sons ROBERT & WILLIAM each the sum of Twenty-five thousand Dollars in money they shall each receive Thirty thousand Dollars less in bonds (taking the average of the Bonds) than each of my other children. Should any of my children have died, leaving children, then the latter shall, at their majority receive the share which would



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have fallen to their deceased parent had he or she survived me, and during their minority their said share shall remain with my executors and the income thereof, used for their support and maintenance until they reach their majority and then it shall be paid over to them. Should any of my children be minors at the time of my death I wish my executors to keep possession, as Trustees, of the share or shares of, said minors, using the same for their support and maintenance until they attain their majority, and then ~~to~~ pay the same over to them absolutely.

3. As a large part of my estate will consist of State and other Bonds I desire my executors to pay over the same in kind in proper divisions to my legatees instead of selling the same and dividing the money, the same course I would like pursued with my Chicago, Florida and Texas lands but this I leave to the discretion of my executors.

4. I give and bequeath to my brother ROBERT SOUTTER or to his widow and children should he not survive me Five Thousand Dollars in Bonds of the States of North Carolina and Tennessee at par half of each kind.

5. I give and bequeath to my four sisters MRS. MARGARET BELL, MRS JEAN BROUGHTON, MRS. VIRGINIA A. KNOW and MRS. CHARLOTTE FALCONER, Three Thousand Dollars each in Tennessee State Bonds bearing five per cent interest at par. Should any of my said sisters die before me then the above share or legacy of said sister

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shall go to her daughter or daughters if there be more than one.

6. Should my reverend and beloved mother MRS. MARGARET SOUTTER survive me then I desire my executors to provide an annuity for her out of my estate, to the amount of Three Hundred Dollars, which of course will cease at her death.

7. I hereby appoint my beloved wife AGNES GORDON SOUTTER executrix and my sons ROBERT and WILLIAM K. SOUTTER, executors of this my last Will and Testament, and respectfully beg the Court or other authority having jurisdiction in such cases to permit them to qualify without giving bonds as provided by law.

Given under my hand and seal at London, England, on this 13th day of December, 1867.

J. T. Soutter, (L.S.)

Signed and sealed by the said James Taylor Soutter as his last Will and Testament in presence of us who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses.

G. Morgan,

C. C. Gooch, both of 22 Old Broad St. London."

The Codicil reads as follows :-

" W H E R E A S, I, JAMES T. SOUTTER, of the City of New York made my last Will and Testament bearing



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date the thirteenth day of December, 1867, and WHEREAS I intend to alter the same in the particulars hereinafter set forth ;

N O W, T H E R E F O R E,

FIRST: W H E R E A S my sons ROBERT and WILLIAM voluntarily repaid me the monies loaned to them to embark in business I revoke and cancel the deductions given in the second section of my Will to deduct from each of the shares of my sons ROBERT and WILLIAM thirty thousand dollars as therein directed.

SECOND: W H E R E A S my beloved mother is dead and WHEREAS I have made such provision as I deem necessary for my brother ROBERT and my surviving sisters I revoke and cancel the directions and provisions made for them in sections four, five and six of my said Will.

THIRD: To equalize the shares of my children and WHEREAS I advanced to my daughter ELIZA N. BELL the sum of Fifteen Thousand Dollars towards building a house in 1870 and also advanced to my son WILLIAM the sum of Ten Thousand Dollars toward paying for his house on Staten Island I direct my executors to deduct the sum of Fifteen Thousand Dollars from the share of ELIZA N. BELL and the sum of Ten Thousand Dollars from the share of my son WILLIAM in dividing my estate.

Jas. T. Soutter, (L.S.)

I N W I T N E S S W H E R E O F, we have in

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the presence of the testator and in the presence of each other signed our names hereto as subscribing witnesses at the request of the testator who at the same time declared the same to be a codicil to his last Will and Testament on the first day of May, 1872.

Sophia Hawack, residence No. 16 W. 21st, St., New York.

Rebecca Harvey, residence No. 15 W. 21st, St., New York.

T H A T thereafter the said Agnes Gordon Soutter and William K. Soutter duly qualified as Executrix and Executor of the said Will and Testament and on the 23rd day of June 1873 Letters Testamentary were duly issued to them by the Surrogate of Ulster County New York and they thereupon entered upon the discharge of their trust, the active management whereof, was entrusted to the said William K. Soutter.

2nd. T H A T in or about the month of July 1873 the said Robert Soutter died leaving a widow Charlotte Soutter (now the complainant Charlotte the Duchess d'Auxy) and four children, viz: James Soutter, Robert Soutter, Lamar Soutter and Pauline Soutter his only heirs at law and next of kin and the said Robert Soutter also left a last will and testament of which the following is a copy :

"1st. I direct that all my just debts and funeral expenses shall be paid by my executors hereinafter named as soon after my death as possible.



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2nd. I give, devise and bequeath unto my dear wife Charlotte A. Soutter, all my household furniture and one half of all the residue of my property real and personal to be hers forever. This bequest is in lieu of dower and all other interest in my estate.

3rd. I give, devise and bequeath unto my children the other half of my property real and personal in equal shares. The share of each child to be paid to such child by the Trustees hereinafter named or the survivors of them, on their respectively attaining the age of 25 years. But in case the said Trustees or the survivor of them shall deem it advisable to pay to any child his or her share of my property or any part thereof on such child attaining the age of 21 years, they are hereby authorized so to do. Until the share of each child is paid over to him or her as herein provided, my said executors and trustees and the survivor of them are hereby directed to pay and apply so much of the income thereof as may be necessary towards the support and education of said child. In case of the death of any of my children leaving lawful issue him or her surviving, then and in that case I direct that the issue of such deceased child shall take in equal shares the portion their parent would have taken if living.

4th. In case my said executors and trustees or the survivors or survivor of them shall at any time

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deem it advisable to sell any part of my real estate, I hereby give them full power and authority so to do at public auction or private sale for the best price they can obtain therefor, and they are hereby empowered to convey the same by proper deed or deeds of conveyance, and during the time they shall have the management of my said estate they shall have power to lease and let the same on the best rent that can be procured and for such period as they may deem best for the interest of my estate.

LASTLY: I hereby nominate and appoint my brother-in-law TIMOTHY H. PORTER of the City of New York my Cousin HENRY F. DUMONT of Wellesley in the State of Massachusetts, and my brother Jas. T. Soutter of the City of New York, but late of Oxford University, England, to be the Executors of this my last Will and Testament and the Trustees of the estate of my children.

Executed April 1st, 1873.

Robert Soutter, (L.S.)

S i g n a t u r e."

3rd. T H A T the Will of said Robert Soutter was duly admitted to probate on the 31st day of July, 1873, and Letters Testamentary thereunder were duly issued to Timothy H. Porter, James T. Soutter and Henry F. Durant, the Executors therein named who duly qualified and entered upon the discharge of their duties.

4th. T H A T James T. Soutter, Jr., died in 1883 and



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to  
said Henry F. Durant is also dead, and the said Timothy H. Porter is still living and is the sole surviving executor of the said last Will and Testament of said Robert Soutter.

5th. T H A T in July 1873 the defendants caused an inventory of the personal estate of said James T. Soutter deceased, to be made and filed and the same was appraised at the sum of \$692,228.21.

6th. T H A T a long time prior to his death the said James T. Soutter had deposited all of his stocks, bonds and securities with the firm of Soutter & Co., (which firm was composed of his sons Robert Soutter and William K. Soutter and Timothy H. Porter and Henry Fitzhugh) against which said stocks, bonds and securities so deposited the said James T. Soutter was accustomed to draw his checks and drafts which checks and drafts were paid by said firm of Soutter & Co.

7th. T H A T the drafts and checks so drawn by said James T. Soutter on the firm of Soutter & Co., amounted to hundreds of thousands of dollars at a time, to pay which, the said firm of Soutter & Co., were required to and did borrow money on the Street to meet and pay the same, and pay for such loan the ruling rates of interest, for call loans.

8th. T H A T the Executors proceeded first of all to adjust and pay all the debts of the deceased in order to release the bonds and securities which the testator had pledged with SOUTTER & COMPANY as aforesaid and enable the Executors to distribute the personal estate of the testator as directed by his Last Will and Testament.

9th. At the time of the death of JAMES T. SOUTTER, he was indebted to the firm of SOUTTER & COMPANY, to the extent of \$339,065.67 on account of advances made upon various enterprises in which he had been and was interested at the time of his death ; the LECLEDE GAS WORKS of ST. Louis, the building of which testator was engaged in and largely interested ; on account of 1,500 shares of Harlem R'y stock carried on a margin ; on account of 85,000 Mobile & Montgomery bonds carried on a margin ; on account of 2,344 First Mortgage M. & M. coupons of Nov. 1872, \$40. each.

10th. From the time of his death until the final settlement of said accounts of the testator with SOUTTER & COMPANY, Dec. 29, 1873, the foregoing accounts incurred further indebtedness of \$164,967.07, making a total indebtedness of \$504,032.18 to liquidate which the Executors sold securities through SOUTTER & COMPANY where all the securities were held and against which the testator had been in the habit of drawing for large amounts of money.



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11th. Securities to the amount of \$136,276.27 were sold of those that appear in the Inventory and which were inventoried at \$139,765. there were also sold of securities not on the inventory \$145,174.08. There were receipts from other sources to the amount of \$188,985.96 such as loan from Guaranty and Indemnity Company of \$50,000; sale of the 1,500 Harlem R'y ; receipts from Chicago property, dividends and coupons, from securities, odd coupons and sundry cash items due the testator, making in all \$470,436.31, leaving still a balance of \$33,595.87 due SOUTTER & COMPANY, which amount the Executors paid in cash, December 29, 1873. Upon the payment of this indebtedness the following securities were released,- \$95,000 in Mobile & Montgomery Bonds ; 2,350 Nov. '72 First Mortgage M. & M. coupons, \$40. each; 950 shares Leclde Gas Stock of St. Louis and 5,000 1st Mortgage Bonds of the same company, all of which had been specially pledged by the testator to secure the above mentioned enterprises and speculations.

12th. On January 1st, 1874, the Executors proceeded to make a dividend of securities in pursuance of the direction of the Will and did divide securities to the amount of \$400,000 at par, as follows :-

- 10,000 Richmond & Danville Bonds,
- 20,000 Louisiana State Bonds,
- 10,000 Madison City Bonds,
- 10,000 Nashville & Chattanooga Ry. Bonds,
- 70,000 People's Gas Co's Bonds (Baltimore),
- 2,000 shares of the stock of the same Company,
- 600 shares of Baltimore Gas Co.,
- 2,000 shares Nashville & Chattanooga R. Stock,
- 1,000 Leclde Gas Co's Stock (St. Louis) not inventoried,
- 20,000 Georgia State Bonds,
- \$400,000 - - First dividend of securities.

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The second dividend was made July 1st, 1874,  
in cash and securities.

Cash, \$60,000.

Securities at par as follows :-

5,000 Georgia State Bonds,  
12,000 Madison City Bonds,  
8,000 Nashville & Chattanooga Bonds,  
100,000 Carolina Central Ry. Bonds,  
\$125,000 - - Second dividend of securities.

The cash dividends made of \$60,000 was derived from mon-  
ey received from the sale of securities and other sources  
as follows :-

1873			
Oct. 28,	8,000 Nashville & Chattanooga Bonds, inventoried at \$6,000	sold for	\$7,065.
1874			
Mar. 30	2,600 Virginia Central Ry. Bonds		1,840.25
Apl. 1,	<u>3,000</u> " " " "		
	5,600 inventoried at 2,800	" "	2,126.25
1874			
Mar. 4,	10 shares Wilmington & Rutherford Stock inventoried as valueless, sold		662.50
1874			
Mar. 28,	11,000 Chesapeake & Ohio Canal Bonds, inventoried as valueless "		16,920.98
1873			
Dec. 9,	1,000 People's Gas Stock inventoried at 20,000 "		21,923.75
1873			
Dec. 11,	451 People's Gas Stock, inventoried at 9,020		9,883.84
1874			
Feb. 6,	Cash received from Chicago Park Com'rs notes		2,567.85
May 5,	" " " "		10,000
May 20,	" " " "		6,304.73
May 23,	" " " "		1,620.27

The note on which the foregoing  
payments was made as inventoried at \$17,500 -  
face value \$35,000.

Rec'd from real estate over expenditures	8,343.
Income from personal property	17,841.55
Rec'd on account of interest,	773.46
Amount carried forward .....	\$107,873.43



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	Amount brought forward .....	\$107,873.43	
1873			
Nov. 28,	Rec'd on account of Georgia Bonds,	2,000.	
Dec. 24,	\$400 Virginia Bonds Scrip,	226.08	
1874			
Jun. 27,	Rec'd from odd coupons, notes and sundry items due testator (not on inventory)	8,358.50	
	Rec'd on account of sundry items,	55.45	
	Total receipts to July 1, 1874, .....	\$118,513.46	
	Besides the dividend of \$60,000		
	there were also the following disbursements,		
	The balance due the firm of Soutter & Co., paid Dec., 29, 1873,	33,595.87	
	Sundry miscellaneous payments including cost of 50 shares Leclde Gas \$4500 purchased to make a divisible amount :		
	1 share Nat'l Bank of the Republic \$100 purchased to make an even 50 in accordance with scaling scheme and sundries to the amount of \$2,007.83 in all - -	6,607.83	
	Legal fees	2,098.66	
	Expenses	857.11	\$103,159.67
	Cash balance July 1, 1874. ....!		15,353.79

The next dividend was made July 1st, 1876, in cash and securities.

In cash \$50,000  
In securities as follows :-

90,000 Mobile & Montgomery Bonds,  
(5,000 more than inventoried)  
10,000 Mobile City Bonds,

100,000 -- Third dividend of securities.

These M. & M. bonds were not divided until July 1876 owing to litigation of the road, foreclosure of mortgage and consequent funding of coupons.

As to the Mobile City bonds there had been default in interest and delay in process of funding.

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The cash dividend of \$50,000 was made from money derived as follows :-

	Balance after previous dividend	\$15,353.79
	From sale of securities and from other sources as follows :	
1875		
May 1,	Rich'd & Danville Bonds, (redeemed) inventoried at \$1,400.	1,995.
1874		
July 2,	3,000 City of Memphis Bonds inventoried at 1,650.	1,350.
Aug. 13,	50 shares Great Western Ins. Co. Inventoried at 1,800.	1,480.
Dec. 19,	Cash from Chicago Park Comm'rs notes	: 7,000.
Dec. 19,	Cash from same source	: 5,104.15
1875		:
July 23,	" " " "	: 4,577.68
1875		:
Apr. 19,	" " " "	: 10,000.
Aug. 9,	" " " "	: 8,685.
Jan. 10 1876	" " " "	<u>\$16,625.32</u>
		51,992.15

The note on which the foregoing payments were made was inventoried at \$15,000. face value \$30,000.

1876		
July 1	Income from personal property Interest on loans,	19,927.74 4,715.87
1876		
Feb. 29	Sundry cash items not inventoried	605.10
	Total receipts to July 1, 1876	\$97,419.65
	From which deduct dividend of \$50,000	
1875		
Oct. 8,	Legal fees 2,165 Expenses 1,563.93 Sundry payments	
1875		
Feb. 2,	Fees and settlement of the Hawkins suit 3,500	
1876		
Feb. 21,	Paid Brisbane on acct. of Minn. bond litigation 1,228.27	
Mar. 1,	H. C. Semple on acct. of Mobile & Montgomery Bond litigation 1,000.	
July 1,	M. & M. Bond scrip 116.67	
Jun 22,	Three assessments on Cumberland Coal Co. 60.	
May 25,	Five assessments on Meriposa Land & Mining Co. \$270. each 1,350.	
Apr. 4,	Excess payments on acct. real estate over receipts 6,111.92	
	Cash bal. July 1 1876	<u>\$67,095.79</u> \$30,323.86



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The dividend in securities of July, 1876, was the last made in kind.

On March 1st, 1882, a dividend of \$150.000 was made in cash.

There was a balance from the last dividends in 1876 of \$30,323.86

Since that date there were receipts from sales and other sources as follows :-

1877			
May 16,	2,500 Louisiana Bonds inventoried	\$1800	
	After funding and scaling sold for		2,196.87
July 12	2 shares bank Republic,		150.00
1881			
Aug. 3,	4,000 Carolina Central funded from		
	6,000 originally inventoried	\$4200	2,349.
Nov. 3,	108,000 Minn. State Bonds		
	inventoried	27000	130,000.
Nov. 22,	3,000 Rich. & Danville Bonds		
	inventoried	2100	
	redeemed for		3,000.
1879			
Feb. 1,	1,000 Quincy & Palmyra Bonds		
	inventoried at	800	
	redeemed at		1,000.
1881			
Jan. 17,	1,000 University Virginia Bonds		
	inventoried	900	
	redeemed		1,000.
1879			
	NOT ON INVENTORY.		
Nov. 30,	Seventy-five per cent of the pro-		
	ceeds of sale of scrip received for the		
	2,350 M. & M. coupons,	68,400	
1880			
Jan. 3,	The balance 25 per cent of the		
	same	22,800.	
Jan. 3,	M. & M. scrip	-522.27	
Mar. 2,	400 shares Nash. & Chattanooga		
	Ry. stock	11,737.50	
1881			
Jul. 6,	Scrip of Mobile City Bond	252.25	
Jul. 24 '76	Receipts from North Carolina farm	91.40	
1876			
Sep. 28,	Receipts from same	160.	
Dec. 20,	" " "	14.75	\$103,978.17
	Amount carried forward .....		\$227,997.90
			273

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	Amount brought forward .....	\$273.997.90
1877	NOT ON INVENTORY.	
Feb. 7,	First dividend from Falcom estate	:1,001.76
1880		:
Mar. 13,	Wabash Pool	: 693.99
1881		:
Jan. 1	Received from H.Y. ATTRILL	:
	Equitable Charter	:5,299.46 6,995.21
1882		
Mar. 1,	Received from Mrs. E.M. Bell	15,000.
Mar. 1,	" " W. K. Soutter	10,000.
Mar. 1,	Income from securities on hand	
	after Jan. 1876	29,277.09
" "	Interest on loans	13,324.
	Total receipts to Mar. 1, 1882	\$348,594.58
" "	Deduct dividend \$150,000	
" "	Expenses 11,830.41	
" "	Legal fees 7,446.02	
1876		
July 1	Correction of error in credit	
	of coupons in previous in-	
	come account.	592.38
1876		
Dec. 27,	Assessment on Cumberland	
	Coal	20.
1877		
Jun. 20,	Assessment on same	20.
Apr. 30,	Funding Nash. Bonds	23.75
1878		
Feb. 28,	Brisbain Minn. Bonds,	200.
1880		
May 4,	Paid acct. Alabama Coal	
	Mining Company	419.71
1881		
Jul. 5,	City of Mobile scrip	900.
1879		
Jun. 9,	Paid acct. of Carolina	
	Central bonds,	108.
Jun. 11,	Paid on same	100.
1880		
May 4,	" " "	6.59
1877		
Nov. 21,	Paid J.B. Thompson acct.	
	of Mobile & Montgomery bonds,	300.
1878		
Aug. 31,	Bible presented to Mr.	
	Porter in recognition of	
	his services in the Mo-	
	bile & Montgomery mat.	200.
Nov. 16,	H. A. Semple (M. & M. Matter)	8.60
Dec. 5,	Printing in the M. & M.	
	Matter	9.25
1880		
May 14	Fees paid in the M.M. Mat.	428.22
	Forward	\$162,612.93



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Amounts brought forward - \$162,612.93

\$343,594.<sup>29</sup><sub>55</sub>

From July 31st 1876 to  
Aug. 11, 1881, paid 16  
assessments on Mariposa  
stock aggregating  
The excess of payments on  
account of real estate over  
receipts from same,

4,127.50

27,635.29

\$194,375.72

\$154,218.<sup>29</sup><sub>55</sub>

There have been no dividends made since March 1, 1882.

Receipts from different sources since that date are  
as follows :-

1885 Balance of March 1, 1882,  
Jun. 16, One 1,000 Rich. & Danville  
redeemed for  
inventoried \$700

\$154,218.<sup>29</sup><sub>55</sub>

1,000.

1885  
Mar. 3, Two 1,000 Leclde Gas Bonds  
not on inventory  
redeemed for

2,000.

1882  
Jun. 21, Received from Bell Bros.  
in settlement

100.

Oct. 28, Received on acct. sale  
of Confederate Bonds,

240.

1884  
Apr. 26, Received from J. M. Payne,

2,595.70

1885  
Aug. 1, Sundry cash items

171.47

Sep. 30, Income from personal property

9,643.87

" " Interest on loans

18,010.83

Total receipts to Sept. 30, 1885,

\$187,980.<sup>29</sup><sub>55</sub>

Disbursements after Mar. 1, 1882.

1885  
Sep. 30, Expenses \$2620.13  
Legal fees 2083.12  
Excess of payments on  
acct. real estate over  
receipts from same 8898.51

1882  
Jun. 29, Paid subscription to  
13,000 Bonds to West  
Fairmount Coal Co., 14154.14

1884  
May 13, Paid assessments to  
West Fairmount Coal Co 2933.33

1885  
Aug. 1, Taxes West Fairmount  
Coal Co.

33.33

\$30,722.56

\$157,258.<sup>29</sup><sub>55</sub>

\$157,258.<sup>29</sup><sub>55</sub>

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This amount of \$157,258.14<sup>8.94</sup> is the balance up to the date of September 30th, 1885, of monies derived from all sources over and above all dividends and disbursements made.

\$103,883.14<sup>2.79</sup> of which, remained on deposit with the firm of Soutter & Co.

\$32,000.00 was loaned by the Executors to the Cameron Coal Company which was secured by \$40,000 in first mortgage bonds of the same Company as collateral and the interest of said loan was secured by \$10,000 more of the same bonds - \$50,000 in all.

\$13,125.00 loaned to D. T. Hotchkiss, Aug. 21, 1880 (not secured). \$7,950.00 loan to H. P. Delafield in several amounts from June 18th, 1877 to Sept. 2, 1878. Not secured.

\$300 loaned to C. G. Cooper, Jan. 2, 1880, not secured.

T O R E C A P I T U L A T E.

Due from SOUTTER & Co., on deposit,	\$103,883.14
Loan to CAMERON COAL CO.,	32,000.00
Loan to Hotchkiss,	13,125.00
Loan to Delafield,	7,950.00
Loan to Cooper,	300.00
Total .....	\$157,258.14

(A list of the securities of the estate remaining undistributed will be found hereto attached and marked Schedule "A". (See proceedings of Jan. 17, 1887, when they were produced before the Master.)



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10,000 Mobile City Bonds accounted for by the Executors turn out to have been disposed of and the amount of \$5,500 is to take their place. These bonds were hypothecated with Lovell & Co., for a loan, evidently by mistake and are to be treated as a sale of the same.

There is also a mortgage in the name of WM. K. SOUTTER, as Executor on real estate called "Retirement" for \$5,000. upon which \$1,000 has been paid.

13th. I also find that at the time of the Testator's death and subsequently thereto there was litigation affecting the validity of some of the securities held by him, and with respect to others they were in process of liquidation.

14th. That in compliance with the directions of the Will the Executors did distribute in kind securities such as are indicated in the Will, and that said provision was practically complied with in 1874 under the then circumstances of the personal estate of the Testator, and that the additional amount distributed in kind in 1876 was so distributed as early as reasonably possible owing to the litigation and liquidation in which the same were involved.

15th. That the securities sold by the Executors were either odd lots, speculative holdings, or such

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as were sold for the purpose of paying off indebtedness of the testator to the firm of SOUTTER & CO., and such sales were properly made.

16th. T H A T the payments made by the Executors to the firm of SOUTTER & CO., were properly and necessarily made in order to release the securities of the testator from pledge and to enable the Executors to administer upon and distribute the same, and for which payments the Executors received credit upon the books of the firm of Soutter & Co., and released said securities which credit and the surrender of said securities are vouchers for said payment.

17th. T H A T in addition to the other payments made by said Executors they paid the taxes and assessments upon the real estate of the testator, which said payments were made by and with the consent of all of the parties interested in the personal estate, including Timothy H. Porter as Executor and Trustee under the Will of Robert Soutter and were properly made.

18th. T H A T the interest of the complainant in said real estate was the same as her proportion of the personal estate, therefore she derived a benefit from said payments in the same proportion.

19th. T H A T the settlement of the accounts of the testator with the firm of Soutter & Co., December



29th, 1873, was participated in and acquiesced in by Timothy H. Porter as Executor and Trustee under the Will of Robert Soutter.

20th. T H A T after the death of said James T. Soutter the firm of Soutter & Co., as Bankers received the moneys derived from the estate on deposit with the knowledge, consent and approval of all the parties interested, including Timothy H. Porter as Executor and Trustee under the Will of Robert Soutter.

21st. T H A T the fact that the firm of Soutter & Co., as bankers were the depositaries of the fund or portions of it was known to the complainant for many years, she having received from Mr. Porter as Executor moneys to which she was entitled from her husband's estate in checks drawn by him on said firm of Soutter & Co.

22nd. T H A T between the time of the death of the testator and the settlement of the accounts on the 29th December, 1873, the firm of Soutter & Co., were compelled to and did carry the stocks and bonds belonging to said estate safely through the panic of 1873, and to do so the said firm were obliged to and did sacrifice their own interests, thereby enabling the said Executors to realize for such securities largely increased values.

23rd. T H A T by reason of the intimate knowledge of Soutter & Co., with the securities belonging

to the said estate and with the enterprises and transactions in which the testator had been engaged the selection of said firm as bankers and brokers by the Executors was wise and judicious and beneficent to the estate.

24th. T H A T the sums paid by the Executor as additional interest and expenses to the firm of Soutter & Co., were proper and just payments.

25th. I further find that all the acts and transactions of the said Executors with respect to the distribution of the estate and deposit of the securities and funds with the firm of Soutter & Co., the transactions with Soutter & Co., in respect thereto and the disbursements on account of both the real and personal estate were all and each of them done after consultation with and by and with the consent and approval of all the parties interested, namely, all the surviving legatees under the Will of James T. Soutter, deceased, and Timothy H. Porter as Executor of and Trustee under the last Will and Testament of Robert Soutter, deceased.

26th. I find that there has been no wrongful or negligent act committed by the said Executors, or either of them, and that their management of the estate has been proper, prudent and eminently successful.

27th. T H A T for all sums which were bor-



rowed from the Executor by the firm of Soutter & Co., the said estate has received the ruling rates of interest thereon, which said interest has been credited to said estate ; and there is no reason therefore, for charging any interest as against the Executors therefor.

28th.        T H A T        there are no facts connected with the management of the estate to justify the imposition of compound interest upon the sums remaining undistributed, or any of them by way of a penalty or otherwise.

29th.        T H A T        the Executors are entitled to the commissions allowed by the laws of the State of New York for administering upon said estate, and that, there are no facts or circumstances which would justify the withholding of such commissions by way of penalty or otherwise.

30th.        T H A T        said Executors are entitled therefore to the commission allowed by the Revised Statutes of the State of New York for receiving and paying out the moneys received and paid by them as such Executors.

              T H A T        the amount received by them is 1,345,215.02-100 Dollars and the amount paid out by them is 1,187,956.88-100 Dollars and the amount of commissions to be deducted therefrom and paid to said Executors is 24,109.14-100 Dollars.

31st.        T H A T        the amount to which the estate of Robert Soutter may be entitled cannot be ascer-

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tained on this accounting nor reasonably approximated, for the reason that such amount can only be ascertained by an accounting had between Timothy H. Porter as Executor and Trustee under the Will of Robert Soutter and the Executor of James T. Soutter ; and any sum which might here be suggested as the proportion to which the estate of Robert Soutter might be entitled would be subject to the deduction of its share of the commissions of the Executors of James T. Soutter, the expenses of the administration of that estate together with its proper proportion of all indebtedness or expenses which have been incurred since the 25th day of September, 1885, at which time the said Executors were enjoined by an order of this Court from interfering with the assets of said estate.

32nd.        T H A T        the exact proportion of any amount which may be found to belong to the estate of Robert Soutter which would belong to the Complainant cannot here be found for the reason that the same can only be ascertained by said intermediate accounting between the said Timothy H. Porter as Executor and Trustee of the estate of Robert Soutter and the Complainant and her children and the Executor of the estate of James T. Soutter.



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AS CONCLUSIONS OF LAW.

1. T H A T the Executors duly entered upon the discharge of their duties as such.
2. T H A T they duly collected all the outstanding claims due the estate which were collectible.
3. T H A T the payments of the debts of the deceased made by them were just and proper, and they have produced upon this accounting good and sufficient vouchers for the same.
4. T H A T they have distributed the estate, as far as possible, in accordance with the Testator's Will.
5. T H A T the Executors have not been guilty of negligence, misconduct or any fraudulent act in the administration of the estate.
6. T H A T they should not be charged with compound interest on any sums whatever.
7. T H A T they should not be charged with interest upon any of the sums remaining in their hands undistributed on the 29th of September, 1885.
8. T H A T the consent and approval of the parties in interest was a sufficient justification for any departure from the express terms of the Will, and

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for any act or acts done in accordance with such approval or consent of the parties in interest.

9. T H A T the said Executors were entitled to the commissions allowed by the law of the State of New York upon all sums received and paid out by them as such.

10. T H A T the accounts of the Executors, as presented, and modified by this report, exhibit the true condition of the estate and the amount in their hands September 29th, 1885.



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O P I N I O N.

The importance of this case suggests to me the propriety of an opinion in which to set forth more fully and at large the reasons which have led me to the conclusions at which I have arrived in my report. The testator died in the spring of 1873 leaving a last Will and Testament in which he appointed the defendants, the Executor and Executrix of his estate. Prior to his death, and for many years, all of his personal property consisting of stocks, bonds, and other securities were deposited by him with the firm of Soutter & Co. The Testator was engaged in many enterprises and in speculation. The monies which he required for use in his enterprises and speculations were furnished to him by said firm, under an arrangement by which he was permitted to draw his checks and drafts upon said firm for whatever sums he required, the said firm holding his securities in pledge for the repayment of the sums so advanced to him. These checks and drafts amounted to hundreds of thousands of dollars at a time to pay which the firm of Soutter & Co., were obliged to, and did borrow money on the securities pledged and their own securities and pay the ruling rates of interest for call loan. At the time of his death, he was indebted to the firm of Soutter & Co., in the sum of \$339,065.67 for advances made to him by the firm besides his contingent liability upon speculative accounts. Between the time of his death

OPINION.

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and the 29th day of December, 1873, his indebtedness to the firm by reason of interest and losses on speculative accounts was increased \$164,967.07 making a total indebtedness at that time of \$504,032.18 and to secure the repayment of this indebtedness the said firm of Soutter & Co., held all stocks, bonds and securities belonging to the testator. Before the Executors could obtain the possession of the testator's property it was necessary that this indebtedness be paid. This indebtedness was paid by the Executors in the manner set forth in my report. During the period from the death of the testator to December 29th, 1873, the panic of 1873 occurred. To carry these securities safely through this panic with the burden of indebtedness upon them required skill and ability on the part of the Executors together with the help of the firm of Soutter & Co. That this help was accorded to the sacrifice of the interests of the firm is abundantly shown, and without this help it would have been impossible for the Executors to have preserved these securities from sale at a sacrifice to discharge the indebtedness. As soon as the indebtedness was discharged and the securities reduced to possession and in January, 1874, the Executors divided \$400,000 thereof in accordance with the provisions of the Will. By this division the terms of the Will were practically complied with so far as the condition of the estate at that time permitted. At the time of the testator's death there

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were litigations pending affecting the validity of some of the securities, with respect to some they were in process of liquidation and other securities were yet to be received as the result of the advances made by the Testator in the enterprises in which he was engaged at the time of his death. In the dividend of 1876 the remainder of the securities were distributed and this was as early as a distribution could reasonably be made, owing to the litigation and liquidation in which some were involved and the non-receipt of the residue. It is difficult to see how any more of the securities belonging to the testator's estate could have been distributed in kind. To be sure some of the securities were sold, but these were odd lots or speculative holding or such as were necessarily sold to pay the indebtedness of the estate, and therefore did not come within the reasonable interpretation of the provisions of the Will requiring the securities to be distributed in kind. Under the circumstances in which the estate was left it would have been impossible to have distributed the testator's securities in kind. Before that could be done it was necessary to discharge the burden of indebtedness for which they were pledged and to do that necessitated a sale of some of them. In addition to the personal estate the testator left real estate situated some in Chicago and some in various other States and localities. At the time of his death the title to the property in Chicago, the most valuable and productive part of the real estate was in



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litigation. It seems to have been unanimously agreed by all of the parties interested that the real estate should be held and not sold and that the Executors should use the personal estate to preserve and protect the title and discharge the taxes and expenses thereon and connected therewith. By the Will of Robert Soutter, Mr. Porter as the Executor and Trustee thereunder was given full power to sell or lease the real estate of the children if advisable and during the time he shall have the management thereof to rent the same for the best terms and for such period as he may deem best for the interests of the estate. This power extended to the real estate derived by Robert Soutter from his father. The real estate in question was held by all of the parties interested under the Will of James T. Soutter, including the Complainant, as tenants in common. Whatever payments of taxes and other expenses of the real estate were paid either by Timothy H. Porter, as Executor and Trustee under the Will of Robert Soutter or by the defendants, as Executors of the Will of James T. Soutter, resulted in the equal benefit to all of the tenants in common for it will be borne in mind that the real estate was held by them in exactly the same proportions as their respective interests in the personal estate. So long, therefore, as the real estate was held by Mr. Porter, as Trustee for the children he was bound to protect that interest and he could not do so without at the same time protecting the interest of the Complainant as one of the

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tenants in common. It must be presumed that Mr. Porter acted wisely on behalf of his cestuis que trust. What he did in that respect as Trustee was for the equal benefit of the Claimant and imposed upon her no more than her just share of burden and she is therefore estopped from any claim to the restoration of the personal estate thus devoted to the maintenance and protection of the real estate. But independent of this it is clear and undisputed that the payment of taxes and other expenses of the real estate were made by the Executors after consultation with and by the consent approval and direction of all the parties interested either in the personal estate, or in the real estate. At all events the real estate has been held and protected by these payments and presumably when disposed of will return to the owners all the benefits naturally flowing from such payments. From the death of the testator down to September 29th, 1885, the firm of Soutter & Co., appears to have been the depository of the undistributed monies and securities belonging to the estate. They were Bankers and Brokers and their selection as such depository, clearly appears to have been made with the knowledge, consent and approval of all of the parties interested in the personal estate. But apart from that consideration the selection seems to have been a wise and judicious one, and to have resulted in a substantial benefit to the estate. They were familiar with the securities, with the speculations and enterprises of the testator and this knowledge



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would enable them to handle the securities with greater skill and success than persons wholly unfamiliar with such securities and with the condition of the testator's estate. That the complainant had been for many years aware of the fact that the funds of the estate were deposited with Soutter & Co., is evidenced by the fact that the payments to her by Mr. Porter as Executor were made in checks drawn upon Soutter & Co., or in drafts purchased by the checks of that firm. Indeed it does not admit a doubt that all of the persons interested in the personal estate well knew where the funds and securities were kept and not only acquiesced in that disposition of them but approved of it. So far as I can see, there is very little, or if anything pertaining to the management of the estate of which the persons interested therein had not actual knowledge at the time or such knowledge must be fairly attributed to them. Mr. Porter, the Executor and Trustee under the Will of Robert Soutter, was a member of the firm of Soutter & Co., from the formation of the firm down to the time of its failure, September 29th, 1885. For many years prior to the death of the testator, Mr. Porter acted for him as his attorney in ~~the management of his affairs~~ and at the time of the testator's death was familiar with all his property and all his enterprises and in all of the acts and transactions relating to the estate of James T. Soutter he was either a participant or entirely familiar therewith. I have carefully examined every detail of the accounts present-

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ed as well as the version of them appearing upon the books of the firm of Soutter & Co., and all of the very voluminous testimony taken before me and I am unable to perceive that the Executors or either of them have been guilty of any neglect, misconduct or impropriety in the management of the estate. Judging from the results produced by their management it is impossible to say that that management has not in the main been wise, prudent and successful. Assuming that there is a portion of the estate remaining undistributed, of which the estate of Robert Soutter is entitled to its proper share and the Complainant to her share thereof as a legatee under the Will of her husband, I have been unable to state the precise amount of such shares for the reason that since the 25th day of September, 1885, the Executors have been restrained by injunction from interfering in any manner with the assets of the estate and the amount of indebtedness which has been incurred since that time is not ascertained and for the further reason that before the share of the Complainant can be definitely ascertained and set apart there must, it seems to me, be an accounting between Timothy H. Porter, as the Executor and Trustee under the Will of Robert Soutter, the Complainant and her children and these defendants. Indeed, as to the Complainant it is quite impossible to say what precise sum may belong to her after the sum which may belong to her children is set apart to them. I can only find the condition of the estate of James T. Soutter as it



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existed on the 29th of September, 1885, when the Executors were enjoined and leave the exact amounts to which the Complainant and her children are entitled to be ascertained and stated in a subsequent accounting where all of the parties in interest can be brought in and the precise condition of the account between the estate of James T. Soutter and that of Robert Soutter accurately set forth.

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SCHEDULE "A".

\$2,200 Currency - proceeds 2,200 Nashville City Bonds  
Redeemed.  
3,000 Mobile & Ohio First Mortgage Bonds.  
2,800 " " " Debenture "  
1,000 Georgia State "  
5,000 Mobile & Montgomery 1st Mtg. "  
36 Shares Bk. of Republic.  
250 Shares Raleigh & Gaston Ry. Stock.  
20 Shares Cumberland Coal Co. "  
1,320 Shares West Fairmount Coal Co., "  
13,000 " " " " " Bonds.  
604 " Mariposa Mining Co. Stock  
4,000 Richmond & York Bonds.  
3,500 Cincinnati & Chicago Bonds.  
1,000 Cincinnati, Cambridge & Chicago Bonds.  
10,000 Wisconsin Central Bonds.  
33,000 Florida R. R. "  
10,000 Genl. underground R. R. Bonds. Inventory calls  
for only 2,500.  
14,000 Fremont & Ind. R. R. "  
18,000 Lacrosse & Milwaukee Ry. "  
750 Shares Alabama C. & M. Co., Stock.  
70 " Breckenridge Cannel Coal Co., Stock.  
50 " Lacrosse & M., Stock.  
88 " Bank of Columbus, Ga., Stock.  
50 " Bank of Commerce, Savannah, Ga.



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30 Shares Bank of Wilmington, No. Carolina.

10 " Niagara Falls Hydraulic Co.

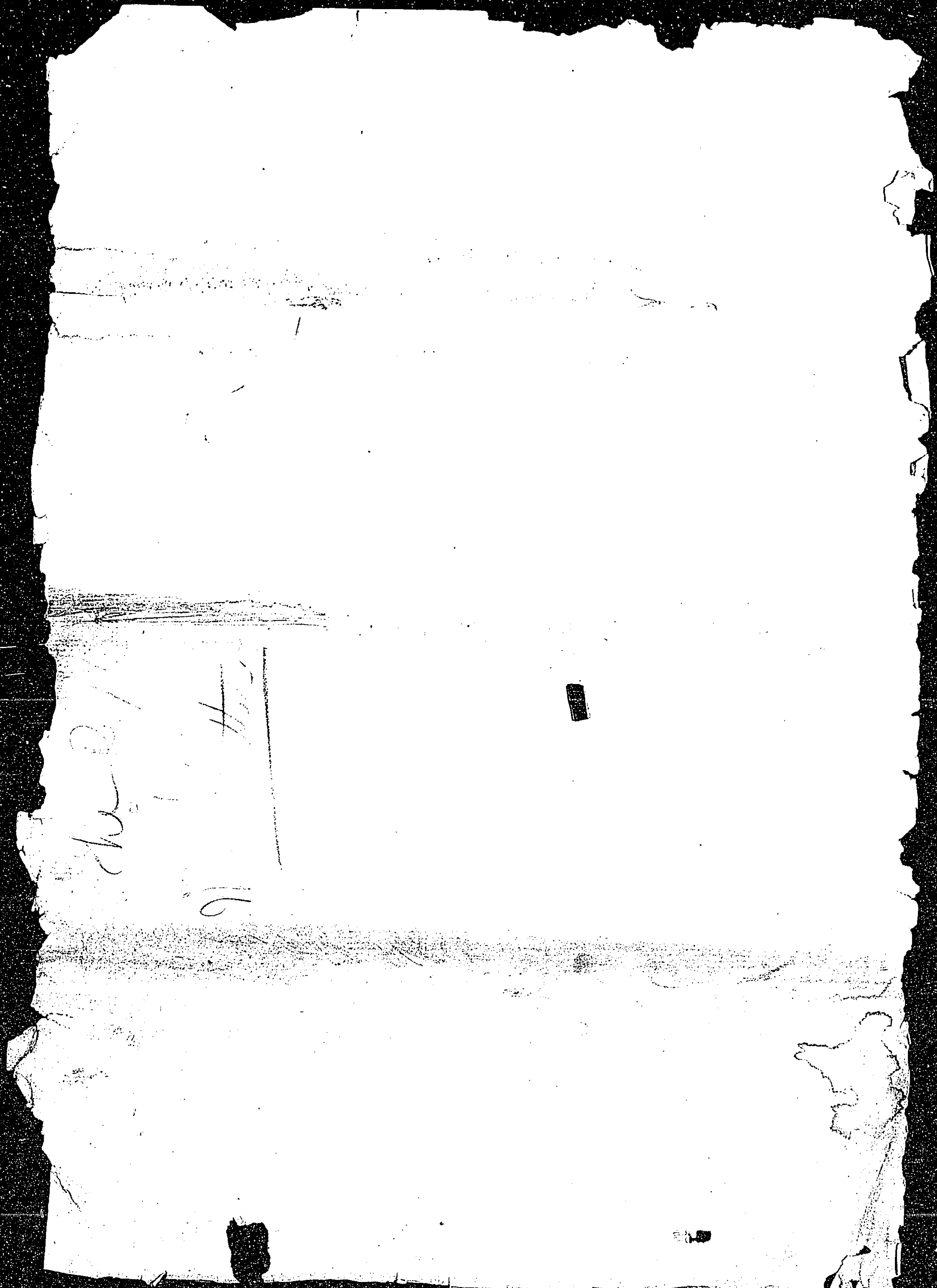
275 " Greenville Mfg. Co.

250 " Zerbes Run Imp. Co.

3,000 Laclede Gas Co., Bonds not on inventory.

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Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William H. Sawyer

The Grand Jury of the City and County of New York, by this indictment, accuse

William H. Sawyer

of the CRIME of Grand Larceny in the first degree, —

committed as follows:

The said William H. Sawyer, —

late of the First Ward of the City of New York, in the County of New York aforesaid, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and eighty-~~one~~, at the Ward, City and County aforesaid,

being then and there a person acting as executor, having been duly appointed as such by the last will and Testament of James H. Sawyer, the elder, deceased, with force and arms, did feloniously, secretly, with hold and appropriate to his own use, a large sum of money, to wit: the sum of thirty thousand dollars in money and gold money of the United States of America, and of the value of thirty thousand dollars, belonging to the estate of the said deceased, and then in the possession and custody of the said William H. Sawyer, by virtue

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of his said appointment and office  
as such executor, against the form  
of the Statute in such case made  
and provided, and against the peace  
of the People of the State of New  
York, and their dignity.

Handwritten signature: Randolph B. Smith

District Attorney.



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4. *Leuzothera suffrutescens*  
Louis Sauer 4/28

W224  
Dea Mandy  
Counsel, 2 Broad St.  
Filed 24 day of Dec 1886  
Pleads, & with liberty to walk down &  
Dec 31/86

[Handwritten notes:]  
[Comparison & minute]  
[Sections 541 and 530, Penal Code].

# THE PEOPLE

15.

18

William H. Souther

(17 cases)

RANDOLPH B. MARTINE,

*District Attorney.*

## A True Bill.

S. M. Jones to H.  
 1874  
 Best dear  
 Herman.  
 In much. affection  
 Wm. G. Jones

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William H. Sawyer

The Grand Jury of the City and County of New York, by this indictment, accuse

William H. Sawyer  
of the CRIME of Grand Larceny in the first degree,

committed as follows:

The said William H. Sawyer,

late of the First Ward of the City of New York, in the County of New York afore-  
said, on the fifteenth day of March, in the year of our Lord  
one thousand eight hundred and eighty-three, at the Ward, City and County aforesaid,

being then and there a person acting  
as executor, having been theretofore  
and appointed as such by the last  
will and Testament of James H.  
Sawyer the Elder, deceased, with force  
and arms, did feloniously receive,  
withhold and appropriate to his own  
use, a large sum of money to wit:  
the sum of Ten Thousand Dollars  
in money, lawful money of the  
United States of America, and of  
the value of Ten Thousand Dollars,  
belonging to the estate of the said  
deceased, and then in the possession  
and custody of the said William



POOR QUALITY  
ORIGINAL

0973

He further says virtue of his said  
appointment and office as such  
executor, against the form of the  
Statute in such case made and  
provided, and against the peace  
of the People of the State of New  
York, and their dignity

Handwritten signature

District Attorney.

POOR QUALITY  
ORIGINAL

0974

Nov 223

Witnesses:

Ernestus Griffith  
Louis Samuels

Bailed in \$1500 on  
your indictment by  
Stephen T. White,  
14 Wall Street, or  
210 Columbia Heights  
Brooklyn

Counsel,  
Filed, 24 May of 1886  
Plends, submitted by will be made by

[Sections 511 and 530, Penal Code]  
Grand Jurors, First degree  
Commissioner of the Court

THE PEOPLE

vs.

B

William H. Sauter

(U.S.A.)

RANDOLPH B. MARTINE,  
District Attorney.

A True Bill.

W. H. Sauter

Foreman.

Sept 27/86  
Jest & Reard  
District Attorney  
Mr. Sauter



POOR QUALITY  
ORIGINAL

0975

AARON J. VANDERPOEL  
ROBERT S. GREEN  
JAMES R. CUMING  
ALMON GOODWIN  
BENJAMIN W. FRANKLIN  
AUGUSTUS H. VANDERPOEL  
DELOS M. CURDY  
HENRY THOMPSON

VANDERPOEL, GREEN & CUMING  
COUNSELLORS AT LAW  
NO. 2 WALL STREET  
NEW YORK

April 1, 1887

Hon. Randolph B. Martine,

My dear Sir:

At the time Mr. Soutter gave bail on the Indictments I gave you my opinion of the claims put forth by Sander's client. I send you a copy of the report and opinion of the Master before whom the civil case proceeded. Please read it and see if it does not justify a great deal more than I then said to you.

Thanking you again for your kindness and courtesy to me I remain

Very respectfully

Delos M. Curdy

New York Hotel  
New York City  
23<sup>rd</sup> January 1887

Randolph B. Martin  
(District Attorney)  
140 Nassau Street  
City

Dear Sir,

I have been advised  
by my many friends to write  
you these few lines - as you  
can help my cause which  
is one of justice & right.  
Which they say they are  
sure you will attend to  
if the circumstances were  
known to you.

The Sanborn executors &  
Mr W K Southern now  
hold & control my  
interests of three estates  
so my circumstances are  
very limited at present.  
In fact I am living on  
my friends, that must be

are - my best wishes for your success  
I remain  
Yours sincerely  
R B Martin



POOR QUALITY  
ORIGINAL

0977

refunded later<sup>2</sup>. So you would  
oblige me & my children's  
interests to hasten the case  
of Mr W K Santen to trial.  
If not guilty he may  
be cleared & any way,  
that he may be forced  
to pay us our long  
delayed & just dues.  
I was so ignorant of all  
business matters when  
left a widow in 1873  
with four very tenderly  
cherished children, that  
I felt an easy prey to  
the cabal, that was  
formed after my father's  
death too, & leaving me  
alone & powerless to be  
swindled of all my  
means. In vain I asked  
them, & wrote requesting  
that my share of the

POOR QUALITY  
ORIGINAL

0978

estates should be given or sent me!  
The Court in execution had always some excuse  
for delays until all my own means  
were nearly exhausted ~~that~~ I was forced to get  
law - Quite over a year ago Mr W. H. Carter  
borrowed 250 thousand dollars of his friends  
from my father's only surviving executor.  
Living is so expensive in this country I can  
not afford it so would like my own  
to invest here in my own name return  
to my country home in Belgium. Mr  
Mr Curdy Mr J's lawyer promised me  
to settle all due me last August 1886 as  
soon as the securities they held could be



POOR QUALITY  
ORIGINAL

0979

Sold - but nothing has been  
done to keep these promises  
made in a letter & verbally  
before Christmas 'thru. It is  
the same old system that  
they used up for ten  
years & while I was a  
widow seven years. I  
appeal to you Mr. Martineau  
as one of the few now  
adys of true honest  
patriots that would free  
New York State of its bad  
name & see justice done  
to all, even a long suffer-  
ing woman. I ask you  
to do for me as you would  
should be done to your  
own Margaretta under the  
same circumstances!

Pardon this long letter. I  
beg you to consider my  
request as a true hearted noble  
American gentleman that you

**POOR QUALITY  
ORIGINAL**

0980

the crimes are identical, the difference is one of nomenclature only. The Code of Criminal Procedure prescribes that the crime shall be inserted in the indictment, and then makes certain variations immaterial. I am not advised what effect the substitution of larceny for embezzlement, the facts remaining the same, will have upon the indictment and must leave that to your better information and judgment. Mr. Soutter seems more anxious to have his case tried in the newspapers than in Court. Conceding that the trial of public officers occupies a larger space in the public eye than those affecting private interests I nevertheless urge upon your consideration the importance of maintaining the integrity of private trusts which is so emphasized by the statute. The widows and fatherless are a portion of the public entitled to peculiar consideration. The position of trustees, unlike that of public officers, is beyond public scrutiny, the privacy



**POOR QUALITY  
ORIGINAL**

0981

of their acts enables them to pass unchallenged. That this is so the three estates of James T. Soutter, Senior, Robert Soutter and G. B. Lamar more or less of which were absorbed by Mr. W. K. Soutter in his speculations, remaining unsettled for over ten years each, conclusively demonstrates. I therefore ask that if you cannot give this case your personal attention that you put it in the hands of Mr. DeLancey Nichol, in whose hands the public, the chief party in interest will be satisfied that justice has been done. My client and her children are interested in the event and as I am familiar with all the details and know the personnel of the witnesses I offer my services to assist in the preparation of the case for trial. The Penal Code seems to contemplate some such action on the part of the District Attorney when it provides that the Supreme Court may award compensation out of the fine recovered for the cost of collection. That my client's stay in this

renders  
country is temporary a speedy trial ~~is~~ urgent.

Very respectfully,

*Leuis Sanders*

*W. K. Soutter*  
NS  
*He People*

**POOR QUALITY  
ORIGINAL**

0482

the crimes are identical, the difference is one of nomenclature only. The Code of Criminal Procedure prescribes that the crime shall be inserted in the indictment, and then makes certain variations immaterial. I am not advised what effect the substitution of larceny for embezzlement, the facts remaining the same, will have upon the indictment and must leave that to your better information and judgment. Mr. Soutter seems more anxious to have his case tried in the newspapers than in Court. Conceding that the trial of public officers occupies a larger space in the public eye than those affecting private interests I nevertheless urge upon your consideration the importance of maintaining the integrity of private trusts which is so emphasized by the statute. The widows and fatherless are a portion of the public entitled to peculiar consideration. The position of trustees, unlike that of public officers, is beyond public scrutiny, the privacy



POOR QUALITY  
ORIGINAL

0983

LEWIS SANDERS,  
TEMPLE COURT,  
5 & 7 BECKMAN STREET,

NEW YORK, 23<sup>rd</sup> Dec 1886

People  
vs  
W. H. Smith

Charles D. Manton Esq  
District Attorney

Sir:  
I have heard nothing  
from you in the above matter.  
If you please drop nothing  
I should like my papers again  
as they are needed in my  
proceedings before the master.

Respectfully  
Lewis Sanders

POOR QUALITY  
ORIGINAL

0984

LEWIS SANDERS,  
TEMPLE COURT,  
5 & 7 BEEKMAN STREET,

People  
W.K. Snitter }

NEW YORK, May 10. 87

Randolph B. Martine Esq.  
District Attorney

Dear Sir:

Genl. McMahon told  
me that Mr Ludy had sent you  
a copy of the Masters Report in  
d'Auxy v Snitter. I also send  
you a printed copy of the report  
with a copy of the bill of complaint  
interlocutory decree and Demogales  
decree. At page 37 folio 145 you  
will see that the Master charges  
the executor with over  
"Due from Snitter & Co., on deposit \$103,883.14"  
The master also finds (folio 146) that the



(2)

"10000 Mobile City Bonds xxx were  
"hypothecated with Small & Co. for  
"a loan evidently by mistake, and  
"are to be treated as a sale of the  
"same."

Who made the mistake and who  
the sale the master does not  
find. These two findings cover the indict-  
ments against W.K. Sutter and show  
that the estate has lost the amounts  
for which he was indicted except  
\$6,016.14 the difference between \$103,883.84  
and \$110,000. Now the master finds that  
the first sum was a deposit but the  
evidence shows that Sutter & Co.  
had nothing on deposit and that  
the amounts were loaned Sutter  
& Co. and by them lost. When  
I say the evidence I mean  
that of W.K. Sutter, his accounts  
and his books of account.  
That they were loans appears

(3)  
in many ways including the  
charging of interest thereon.  
At folios 161-2 the master finds  
that the exact amount due  
complainant cannot be found  
without an accounting between  
herself and children and her  
husband's executor. Without  
comment on the law thus mis-  
stated, by reference to pages 12 to 14  
of accompanying book it will be  
seen that the master had before  
him a decree finally settling the  
accounts between these parties  
and discharging the executor.  
A settlement had two years after  
the last payment by the defendants  
on plaintiff's account. The master's  
statement is thus shown to be delib-  
erately false. It is charitable



(4)  
to suppose that inebriate habits  
impaired the moral character  
of the master. He has been as, I am  
informed, the inmate of an  
asylum and was, on one  
occasion, too drunk to sit  
up. Judge Wallace refused  
to hear a motion to set aside  
the master's report as contrary  
to the practice and said it  
must be brought up as exceptions  
which will be done.  
Some two months since you said  
to me that you would place  
the Smith's testimony in the  
hands of some one in whom  
you had confidence and if

(5)

he reported that Mr Souther  
should be tried you would  
have him tried.

~~etc.~~ I understood this has  
not yet been done and I  
confess I am unable to  
understand why it has  
not. Every day an innocent  
man remains untied is  
an injury to him not easily  
measured and every day a  
guilty one remains unpunished  
is an injury to the community.

Any honest man whose indictment  
and arrest had the publicity  
accorded Mr Souther could have  
demanded a <sup>trial</sup> long ago.

Respectfully, Yours, Sanders



(6)

I should add that the law makes the misapplication of trust funds by an executor a felony and provides for its recovery through your office. What the intention of the executor may have been it refuses to enquire - Mr Sutter was in a position to distribute the trust funds in 1874 he kept them until 1885 when he paid out \$2,000,000.  
L.S.

POOR QUALITY  
ORIGINAL

0990

*Ralph B. Martin Esq*  
*District Attorney*

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

*Between*

CHARLOTTE, THE DUCHESSE d'AUXY,

*Complainant,*

*and*

AGNES GORDON SOUTTER and others,

*Defendants.*

NOTICE OF MOTION TO SET ASIDE THE MASTER'S  
REPORT AND PAPERS THEREON.

LEWIS SANDERS,

*Complainant's Solicitor,*

5 BECKMAN STREET,

New York City.

VANDERPOEL, GREEN & CUMING,

*Defendants' Solicitors.*

CARY & WHITTRIDGE,

*Solicitors for Julia E. Soutter, Executrix.*

TIMOTHY GRIFFITH, *Master.*

E. L. Hamilton & Co., Printers, 12 Barclay St., New York.



**POOR QUALITY  
ORIGINAL**

0991

*Circuit Court of the United States,*  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK.

Between

CHARLOTTE THE DUCHESS D'AUXY,

*Complainant,*

and

AGNES GORDON SOUTTER, and Wil-  
liam K. Soutter as Executors of  
the last Will and Testament of  
James T. Soutter, deceased.

*Defendants.*

*In Equity.*

*Sirs:*

Please take notice that on the pleadings herein the interlocutory decree, evidence, exhibits, exceptions to the executor's accounts and requests to find and report of the Master herein, I shall move the Court at a stated term to be held at 11 o'clock on the 15th of April, 1887, at the United States Court Rooms, New York City, or if no Court be held on that day, then on the 22nd of April at the same hour and place, for an order setting aside the Master's report, and referring this accounting to a new Master, and charging the expenses of the reference, and accounting to Timothy Griffiths, Esq., personally, on the ground of the gross incompetency of the Master,

**POOR QUALITY  
ORIGINAL**

0992

and the total inadequacy of his report, and his failure to comply with the interlocutory decrees in that he has not stated the accounts of the executors, defendants, with or without annual rests, in that he has not found the amount due the complainant, or the amount received by her; in that he has not stated the items of the securities, or cash on hand at the time of the death of the late James T. Soutter with which the defendants were chargeable, nor the dates, nor the amounts with which the defendants were thereafter chargeable, or to be credited; in that he has not separated nor stated the dates or amounts of the items in detail, that he has allowed or disallowed said executors; in that he has disobeyed said interlocutory decree in not finding the specific interest due complainant as ascertained by said interlocutory decree; in that he has not stated the accounts of the executors with annual rests, at the then legal rate of interest; in that he has falsified the fact in stating that he was unable to determine the interest or amount due the complainant, without an accounting between Timothy H. Porter as executor and trustee of Robert T. Soutter, and the children of Robert Soutter,

Complainant will also move for such other order and relief as to the Court shall seem proper.

Dated New York, April 2nd, 1887.

LEWIS SANDERS,  
*Complainant's Solicitor,*  
5 Beekman St.,  
New York City.

To

Messrs. TIMOTHY GRIFFITH, Esq.,  
*Master,*

VANDERPOEL, GREEN & CUMINGS,  
*Defendants' Solicitors.*

CARY & WHITTRIDGE,  
*Solicitors for Julia E. Soutter as executrix for James T. Soutter, Jr.*



POOR QUALITY  
ORIGINAL

0993

1

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE SOUTHERN DISTRICT OF NEW YORK.  
IN EQUITY.

2

BETWEEN

CHARLOTTE, the Duchesse d'Auxy,  
Complainant,

AND

AGNES GORDON SOUTTER, as Execu-  
trix of the Last Will and Testa-  
ment of JAMES T. SOUTTER, de-  
ceased; and JAMES T. SOUTTER, in-  
dividually and as Executor of the  
Last Will and Testament of James  
T. Soutter, deceased; and FRANK-  
LIN EDWARDS,

Defendants.

Bill of Complaint.

3

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK,  
SITTING IN EQUITY:

4

Charlotte, the Duchesse d'Auxy, of Neufville, Belgium, an alien,  
subject to the King of Belgium, brings this her bill against Agnes  
Gordon Soutter and William K. Soutter, both of New York City,  
and Franklin Edwards, of the City of Brooklyn, all citizens of the  
State of New York.

And thereupon your oratrix complains and says, on information  
and belief, that in the month of March, in the year of 1873,  
James T. Soutter deceased in the State of New York, leaving a

- 5 large amount of personal property, consisting mainly of stocks and bonds and a last will and testament and a codicil thereto, whereby after payment of his debts and funeral expenses he bequeathed and devised to his wife, Agnes Gordon Soutter, one-half of his estate, real, personal and mixed, and the other half to his children him surviving, and in case of their death before his, then the share of the child so dying to go to the children of such deceased child.

- 6 He appointed as the executors of said will the defendants Agnes Gordon Soutter and William K. Soutter and Robert Soutter; the said Agnes Gordon Soutter and William K. Soutter duly qualified as such executors, and letters testamentary were issued to them on the 23d day of June, 1873, by the Surrogate of Ulster County, State of New York.

- 7 Said James T. Soutter left him surviving five children, two daughters and three sons, but no children of a deceased child. Each child was entitled to one-tenth of the whole estate. Robert Soutter, one of the said sons of James T. Soutter, deceased July 15, 1873, leaving a last will and testament, which was duly probated July 31st, 1873, appointing Timothy H. Porter, Henry F. Durant, and his brother, James T. Soutter, executors and trustees of his said will, by which he gave to his wife, Agnes, real and personal, to his wife, your oratrix, the other half to the four children of said Robert Soutter and your oratrix, viz.: James, Robert, Lamar and Pauline; the said Pauline died in 1881, an infant, unmarried, without children and intestate, and your oratrix thereupon became entitled to one-quarter of her estate. The said James T. Soutter and Henry F. Durant are both deceased. The said Timothy H. Porter duly qualified as one of the executors of the said Robert Soutter, and was the active executor.
- 8 He is now a citizen of the State of Connecticut, and resides out of the jurisdiction of this Honorable Court, for which reason he is not made a party defendant herein. In March, 1884, he ceased to be such executor. By his will James T. Soutter, Senior, provided that "as a large part of my (his) estate will consist of State and other bonds I (he) desire my (his) executors to pay over the same in kind, in proper divisions, to my legatees, instead of selling the same and dividing the money."

At the time of the death of James T. Soutter, Senior, the firm of Soutter & Company, doing business as bankers and stock brokers, was



composed of the defendant William K. Soutter, Robert Soutter and Timothy H. Porter. After the death of Robert Soutter in July, 1873, the firm of Soutter & Company was continued by said W. K. Soutter and Porter, and at one time James T. Soutter, Junior, who died in the year 1883 or 1884, was a partner in said firm, and in the year 1882 or 1883, the defendant Franklin Edwards became a co-partner with the defendant W. K. Soutter and said Porter, and these three now constitute the firm of Soutter & Company. 9

And your oratrix further shows that in July, 1873, the defendants Agnes Gordon Soutter and W. K. Soutter caused an inventory of the personal property of the said late James T. Soutter to be made and appraised and filed in the Surrogate's office in Kingston, Ulster County, New York, of the stocks and bonds only, belonging to said estate, and they were appraised at the sum of six hundred and ninety-two thousand two hundred and twenty-one  $\frac{4}{10}$  dollars, which inventory omitted upwards of eight thousand dollars in cash on hand, and all his horses, carriages, household furniture and farm implements, &c., &c. 10

After the filing of said inventory the defendant Agnes Gordon Soutter entrusted the administration of the trust of her husband's estate wholly to the defendant W. K. Soutter, who assumed entire control thereof. 11

viding the stock and bonds belonging to the estate in kind among the legatees as directed as aforesaid, the defendants Soutter, after the death of the said Robert Soutter, began, through the said firm of Soutter & Company, by the defendant W. K. Soutter, to convert a large part of said stocks and bonds into money and to use the money so received in the business of Soutter & Company, merchandising with it in the purchase of stocks and other securities.

From time to time the moneys received from the said sales of the securities belonging to the estate of the late James T. Soutter, Senior, together with the dividends, income and interest received from the stocks and bonds not sold, all of which were placed by the defendants Soutter with Soutter & Company, and formed a part of their general cash account, were put through the form of loans to Soutter & Company, but your oratrix is informed and believes, and charges the fact to be, that such pretended loans, which were made without any security, were mere bookkeeper's entries and did not represent any actual transaction; that they were made by W. K. Soutter, acting on behalf of the executors, with W. K. Soutter, acting 12

- 13 on behalf of Soutter & Company, and were illegal and void. That some, if not all, of the said sales of stocks and bonds were made through Soutter & Company, and on some, if not all, of said transactions Soutter & Company charged the estate of James T. Soutter with a commission therefor contrary to law. That the said Timothy H. Porter, being a member of the said firm of Soutter & Company, had no power as executor of the estate of Robert Soutter, to bind his estate or to consent to such sales or commissions, and the same were unknown to your oratrix and were without her consent.
- 14 At the time of the death of James T. Soutter, Senior, said firm of Soutter & Company were carrying for his account eighty-five bonds of the Mobile & Montgomery Railroad Company of the par value of eighty-five thousand dollars, and fifteen hundred shares of the Harlem Railroad Company, or New York & Harlem, of the par value of one hundred and fifty thousand dollars. Instead of closing out those transactions within a reasonable time after they, the defendants Soutter, had qualified as such executors, they continued to carry the same and to speculate upon the rise or fall in the market price thereof until October 31st, 1873, when they closed out the Harlem stock at a loss of twenty-one thousand six hundred and thirteen  $\frac{4}{100}$  dollars. On the same day, according to the record, they appear to have bought eighty-eight bonds of the Montgomery Railroad Company for the sum of seventy-five thousand four hundred and twenty dollars, and said firm of Soutter & Company charged the estate on October 31st, 1873, with the sum of fifty-one thousand three hundred and sixty-seven  $\frac{4}{100}$  dollars for commissions for advances, which advances, if made, were usurious and only made necessary if at all by the aforesaid illegal carrying of said stock and bonds aforesaid, and said firm of Soutter & Company could not, by reason of W. K. Soutter being one of the executors of the estate of James T. Soutter, earn any commissions beyond those allowed by law to executors and legal interest for any advances or contract to receive or pay the same, and such commissions so charged for advances were at the rate of one dollar on the hundred or thereabouts for every day during which such alleged advances were made.
- 16 The defendants Soutter also charge the estate as of the date of December 31, 1873, with the sum of one hundred and twenty-three thousand two hundred and seventy-seven  $\frac{4}{100}$  dollars for coupons and bonds of the Mobile & Montgomery Railroad, together with



**POOR QUALITY  
ORIGINAL**

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premium on gold and interest from November 1st, 1872, to December 31, 1873, amounting to eight thousand six hundred and fourteen  $\frac{2}{100}$  dollars, which bonds and coupons are not included in the inventory nor otherwise accounted for. 17

The said defendants Soutter also diverted the moneys and securities of the estate in their hands to the payment of taxes upon and other expenses connected with the real estate belonging to said estate, of which neither the title nor the care or control thereof was vested in the executors, all of which payments and expenses to the amount of one hundred thousand dollars and upwards your oratrix prays may be disallowed. 18

Your oratrix further shows that according to the incomplete and imperfect inventory and accounts which the defendants Soutter have made, it appears that they should now have on hand stocks and bonds appraised in the inventory at the value of one hundred and fifty-seven thousand twenty-eight  $\frac{8}{100}$  dollars, besides stocks not valued.

Your oratrix further shows that before the commencement of this action she duly and frequently demanded of the defendants Soutter that they do render a full account of their trust and deliver and pay to her her proportionate share of the personal property in which they are executors, and also made a similar demand upon Soutter & Company, and that they have each and all refused and neglected to account or to pay over to your oratrix any portion of said sums except the said dividends of stocks, bonds and cash, as hereinafter set forth. 19

Your oratrix further shows that the defendants Soutter have paid four dividends to the legatees of the late James T. Soutter, Senior. The first of stock, the second and third consisting partly of stock and partly of cash and the fourth of cash, but whether the cash was the proceeds of stock and bonds which the defendants Soutter unlawfully converted into cash as aforesaid, or was the proceeds of interest and dividends and interest on the bonds and stocks unconverted, your oratrix has no means of knowing and does not know. 20

Your oratrix further shows that the defendants, Soutter received for stocks and bonds, which they so illegally converted instead of dividing in kind, as aforesaid, the sum of four hundred and thirty-two thousand eight hundred and thirty-one  $\frac{3}{100}$  dollars, and from dividends and interest the sum of three hundred and fifty-two thousand and eighty-five  $\frac{3}{100}$  dollars, of which sums they have paid out in dividends to the legatees in cash the sum of two hundred

432831.37  
352055.30

21 and sixty thousand dollars, leaving a balance of five hundred and twenty-four thousand nine hundred and sixteen <sup>100</sup>/<sub>100</sub> dollars to be accounted for, proceeds and income of said stocks and bonds.

43838.70 Your oratrix further shows that the defendants Soutter disposed of certain of said stocks and bonds at a loss of forty-three thousand eight hundred and thirty-eight <sup>100</sup>/<sub>100</sub> dollars, as compared with the inventory value thereof.

22 Your oratrix further shows that by said codicil to the said will of James T. Soutter, Senior, he directs his executors to deduct from the share of his daughter, Mrs. E. N. Bell, the sum of fifteen thousand dollars, and from the share of W. K. Soutter the sum of ten thousand dollars, for advances made to each of them in those separate amounts, but the defendants Soutter wholly failed to do so, but waited until the year 1882, when they accepted payment of those sums, without interest, from said Mrs. Bell and W. K. Soutter, whereby the estate would lose some ten years' interest or more, amounting to about seventeen thousand dollars.

23 Your oratrix further shows that the firm of Soutter & Co. are constantly engaged in large and hazardous speculations, and that they have given no security to the defendants' executors for the property in their hands belonging to said James T. Soutter's estate. That there is great danger that a part, if not the whole, of the late James T. Soutter are indistinguishably mixed up with those of Soutter & Co., and that by reason of the mixing of the funds of the said estate with those of Soutter & Co. a full, just and true accounting cannot be had without the presence of Soutter & Co.

24 In consideration, whereof and for as much as your oratrix is remediless in the premises in and by the strict rules of the common law, and is only relievable in a Court of Equity your oratrix, therefore prays the aid of this Honorable Court that the defendants, the executors, may be compelled to account, with annual rests, for all property and moneys which may or ought to have come into their possession as such executors; that the defendants Soutter & Company may be compelled to account for all property belonging to the estate of the late James T. Soutter, and the proceeds and profits thereof, and all profits which they made from the use of the same, to the end that your oratrix may elect as to whether she will take the profits or interest, with annual rests. That a receiver of all the property, rents, income and profits belonging to the estate of the late James



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T. Soutter which have come into the defendants' possession be appointed to hold the same until the final judgment of this Court, and that your oratrix have judgment for the amount and property found due her; and also that a writ of injunction may be issued out of and under the seal of this Honorable Court according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the defendants from interfering with, selling, disposing of or pledging any of the property, its proceeds and profits, of the estate of the late James T. Soutter. May it please your Honors not only to grant the writ of injunction, but also a writ of subpoena, issued out of and directed to Agnes Gordon Soutter, <sup>as executrix of the last will and testament of James T. Soutter</sup> 25  
~~William K. Soutter and Franklin Edwards~~ 26, and should he hereafter come within the jurisdiction of this Honorable Court, then also against Timothy D. Porter, therein and thereby commanding them, on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience, to the end therefore that the said defendants may, if they can show why your oratrix should not 27

relief hereby prayed, the defendants may upon their several oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, file true, direct and perfect answer to such of the several interrogations hereinafter numbered and set forth, as by the note hereunder written they are required to answer, that is to say:

1. Whether the defendants Soutter qualified as executors of the estate of the late James T. Soutter in June 23, 1873, and have ever since continued to act as such. 28

2. At what sum the inventory of the personal property of the estate of the late James T. Soutter was appraised.

3. Whether the defendants Soutter made or caused to be made an inventory of the estate of the late James T. Soutter, and if so, did it include the moneys then in hand belonging to said estate, and all horses, carriages and household furniture and effects, and all other property belonging to said estate, then in their possession or of which they had knowledge.

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- 29 4. Whether the defendants Soutter, after paying the debts of said estate of the late James T. Soutter, distributed the balance of the stocks and bonds remaining thereafter in kind among his legatees, or whether they or Soutter & Company sold a large part of them and placed the proceeds with Soutter & Company, or allowed them to retain the same, and, if so, what bonds and stocks were so sold, when and for what prices and by whom and at what loss from the inventory price, if any, and with whom, and upon what security were the proceeds left.
- 30 5. What commissions, if any, were charged by or paid to Soutter & Company, upon what transactions and when?
6. What stocks or bonds were being carried for the late James T. Soutter at the time of his death, at what price were any such stocks or bonds purchased, by or through whom were they purchased, and when and where and through whom were the transactions in such stocks or bonds closed at prices, what prices and what commissions were paid thereon, to whom were they paid and what for?
- 31 7. Did the firm of Soutter & Company have the use of the estate of the late James T. Soutter, or any part if so, by and between whom on the part of the executors and said firm were the arrangements for such use made, upon what terms and what security?
8. Did not the firm of Soutter & Company use the securities of the said estate of the late James T. Soutter, as collateral security for loans to them or otherwise, from time to time, and use such loans in their general business; if so, when and to what amount?
- 32 9. What use, if any, did the firm of Soutter & Company make of the securities of the estate of the late James T. Soutter?
10. What have been the profits of the firm of Soutter & Company, for each of the following years: 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, and to the first of September, 1885?
11. Whether your oratrix had not by her attorney, prior to the



beginning of this suit, demanded of the defendants Soutter an accounting and settlement of the estate of the late James T. Soutter and whether the defendant William K. Soutter has not frequently promised to account, and whether he has not refused to make any division in kind or payment on account or in full, until he should have accounted? 33

12. What property in kind belonging to the estate of the late James T. Soutter, the inventory and present value thereof, the defendants or any of them now have on hand?

And your oratrix as in duty bound, will ever pray, &c. 34

LEWIS SANDERS,  
Complainant's Solicitor,  
5 Beekman Street,  
New York City.

LEWIS SANDERS,  
Of Counsel.

35

SOUTHERN DISTRICT OF NEW YORK, SS.:

1. SANDERS, being duly sworn, deposes and says: I am the agent and attorney in fact of the complainant herein, in the City of New York, and have read the foregoing bill of complaint; the same is true to my own knowledge, except upon the matters which are therein stated be on information and belief, and as to those matters I believe it to be true.

Subscribed and sworn to  
before me this 9<sup>th</sup>  
day of September, 1885.

*Lewis Sanders* 36

*Timothy Griffith*  
*Clerk U. S. Circuit Court*

The defendants Soutter are each required to answer each of the above interrogatories.

LEWIS SANDERS,  
Complainant's Solicitor.

At the April Term of the Circuit 37  
Court of the United States, for the  
Southern District of New York, held  
at the United States Court Rooms,  
in the City of New York, on the  
second day of June, 1886.

Present—

Hon. WILLIAM J. WALLACE,

*Circuit Judge.*

Between

CHARLOTTE THE DUCHESSE D'AUXY,

*Complainant,*

and

AGNES GORDON SOUTTER, Executrix,  
etc., and William K. Soutter, as  
Executor of the last Will and Tes-  
tament of James T. Soutter, de-  
ceased,

*Defendants.*

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This cause came on to be heard at the February  
Term, 1886, and was argued by counsel, and there-  
upon upon consideration thereof, it was ordered, ad-  
judged and decreed as follows, viz:

That the defendants account fully for all the 40  
moneys, stocks, bonds, securities and personal prop-  
erty of all kinds belonging to the estate of the late  
James T. Soutter, and for all moneys, stocks and  
bonds paid out or distributed by them, belonging  
to said estate, and on request of counsel for both  
parties that this matter be referred to Timothy  
Griffith, Esq., Master, to take and state such ac-  
count, it is so referred, and he is hereby directed to  
state the same with annual rests, at the then legal  
rate of interest.



41 It is further adjudged and decreed, that the said defendants, Agnes Gordon Soutter, or William K. Soutter appear before said Master, and bring with them the accounts and securities on hand of said estate, and submit themselves to examination under oath, touching said accounts, and all moneys and securities received by them at any time, belonging to said estate.

42 It is further adjudged and decreed, that the complainant is entitled as devisee of the late Robert Soutter, to the one-twentieth undivided part of the estate late James T. Soutter, Senior, and as one of the next of kin of the late Pauline Soutter, daughter of the late Robert Soutter, to the one one-hundred and sixtieth (1-160) undivided part thereof, and to recover the same of the defendants, less what part thereof she has already received.

43 It is further ordered, that a writ of injunction issue herein, according to the form of the Statute, in such case made and provided, directing, commanding, enjoining and restraining the defendants, their servants, agents, assigns and transferee from selling, disposing of or pledging any of the property its proceeds or profits of the estate of the late James T. Soutter, Senior, or interfering therewith, except for the purposes of preservation.

44 It is further ordered, that a copy of this decree be served upon Eliza N. Bell, Emily W. Dix, the personal representatives of the late James T. Soutter, Junior, and on the Farmers' Loan and Trust Company, trustees of James, Robert and Lamar Soutter, children of the late Robert Soutter, under his will, and that they and each of them be, and they are hereby permitted to appear before said Master, and contest the accounts of the executors of the last will and testament of the late James T. Soutter, Senior, the same and with like effect as if they were parties to this suit.

It is further ordered, that on the coming of in the Master's report either party may be at liberty to apply for a further order or decree.

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And it is further ordered, that the complainant 45  
be at liberty to apply at the foot of this decree on  
two days' notice for the appointment of a receiver.

Present—

DANIEL G. ROLLINS,  
*Surrogate.*

IN THE MATTER

of

The estate of Robert Soutter, de-  
ceased, and the application of  
Timothy H. Porter to be dis-  
charged as Executor and Trus-  
tee thereunder, and of the jud-  
icial settlement of his account.

46

47

Timothy H. Porter, the surviving executor of  
the last will and testament of Robert Soutter, late  
of the City of New York, deceased, having hereto-  
fore made application to the Surrogate of the Coun-  
ty of New York for a judicial settlement of his ac-  
count as such executor, and also as trustee under  
said will, and that he be allowed to resign his trust  
and his letters testamentary be revoked; and the  
said Surrogate having duly considered the said 48  
petition, and having made an order that said peti-  
tion be entertained, and that a citation be issued to  
all persons interested in said estate, and a citation  
having been thereupon issued, pursuant to statute,  
directed to all persons interested in the estate of  
said deceased, citing and requiring them, and each  
of them, personally, to be and appear before the said  
Surrogate, at his office in the City of New York,  
on the fifteenth day of February, 1884, at eleven  
o'clock in the forenoon of that day, then and there



49 to attend such judicial settlement, and the said citation having been returned with proof of the due service thereof on Charlotte A. d'Auxy, James T. Soutter, Robert Soutter and Lamar Soutter, the only persons interested in said estate as creditors, legatees or next of kin or otherwise, and the said executor and trustee having appeared on the return day of said citation, by Boardman & Boardman, his attorneys, and the said James T. Soutter, Robert Soutter and Lamar Soutter, who are minors,  
50 having appeared by their special guardian, Alonzo C. Farnham, duly appointed herein, and the said executor and trustee having rendered his account, under oath, before the said Surrogate; and the said account having been filed, together with the vouchers in support thereof, and no objections having been filed thereto, and the said special guardian having examined said account and approved of the same, as appears by his statement filed with said account, and the said matter having been duly ad-  
51 journed to this day, the said Surrogate, after having examined the said account and vouchers now here, finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, made by the said Surrogate, as settled and adjusted by him, to be recorded with and taken to be a part of the decree in this matter, to wit:

52 Statement of the account of Timothy H. Porter, executor of the last will and testament of Robert Soutter, deceased, and testamentary trustee, made by the Surrogate, as judicially settled and allowed.

The said executor is chargeable as follows:

To amount of inventory,	\$51,916 56
" increase per Schedule A,	197,925 68
	<hr/>
	\$249,842 24

He is credited with—  
Amount of loss upon sales  
per Schedule B, \$ 1,035 00

14

Expenses of estate paid per		53
Schedule C,	4,169 73	
Debts of testator paid per		
Schedule D,	36,007 08	
Payment to widow and		
children per Schedule E,	\$3,737 84	\$124,946 65
		<u>\$124,895 50</u>

Leaving a balance in the hands of said executor of one hundred and twenty-four thousand eight hundred and ninety-five dollars and fifty-nine 54 cents.

And it appearing that the said executor and trustee has fully accounted for all the moneys and property of the estate of said deceased which have come into his hands as such executor and trustee, and his account having been adjusted by the said Surrogate, and a summary statement of the same having been made as above and herewith recorded, it is hereby

Ordered, adjudged and decreed, That the said account be, and the same is, hereby judicially settled and allowed as filed and adjusted; and the said executor and trustee, having waived the payment to him of any commissions to which he would be entitled on this accounting. 55

It is further ordered, adjudged and decreed, That out of the balance so found, as above, remaining in the hands of the said executor.

That he pay to said Alonzo C. Farnham, the said special guardian, the sum of one hundred dollars, as an allowance upon this accounting. 56

That the said executor be allowed for his costs, allowance and disbursements herein the sum of three hundred and eighty-five dollars.

That he pay over to Charlotte A. d'Auxy (formerly Charlotte A. Soutter), the widow of the testator, in full of her one-half of the testator's estate, as appears by said account, the sum of forty-nine thousand, six hundred and eighty-one 23-100 dol-



57 lars, to which she is entitled under the last will of said testator, and transfer to her the personal property named in said will

58 That he pay over to his successor, when duly qualified as trustee under said will, the remainder of the moneys, securities and property in his hands belonging to said estate, to be held by said trustee, as directed by the last will and testament of said Robert Soutter, deceased; and that thereupon the said letters testamentary to said Timothy H. Porter be revoked, and his resignation as such executor and trustee be accepted.

59 And the said Charlotte A. d'Auxy, the widow of said testator, and mother of said minor, having requested that the Farmers' Loan and Trust Company be appointed trustee under said will to succeed said Timothy H. Porter, and the said special guardian having consented to the same, it is hereby ordered, adjudged and decreed that said Farmers' Loan and Trust Company be, and it is, hereby appointed trustee under the last will and testament of said Robert Soutter, deceased.

DANIEL G. ROLLINS,

*Surrogate.*

Filed March 10th, 1884.

60 Entries in Schedule A of accounts and schedules of Timothy H. Porter, as Executor of and Trustee under the last Will and Testament of Robert Soutter, deceased, filed in Surrogate's Court, March 7th, 1884, upon which decree of March 10th, 1884, was entered. The following are all that relate to proceeds from estate of James T. Soutter, deceased.

" 1874.

- Jan. 2. Payment on acct. from estate of James T. Soutter, deceased, in stocks and bonds, viz.:
- (1). 60 shares of Baltimore Gas Light Co. Stock, par value \$6,000, and 200 shares of Peo-

	ple's Gas Co. of par value of \$5,000. These were sold by Executor, who rec'd for them in cash	\$11,604 89	61
	And one bond of Consolidated Gas Co. for	4,000 00	
(2).	100 shares of Laclide Gas Co. stock, par value of \$10,000, part of which were sold on reorganization of Co. by Executor, and an equal amount of new stock bought, a gain in cash of	416 43	62
	And one bond of same Co. for	1,000 00	
	The 100 shares still unsold	10,000 00	
(3).	200 shares of Nashville and Chatt. R. R. Co. stock, par value \$5,000, sold by Executor for cash,	5,893 75	
(4).	1 Nashville and Chatt. R. R. 6 per ct. bond for \$1,000 (unsold),		63
(5).	1 Richmond and Danville R. R. Co. 6 per ct. bond, \$1,000 (unsold),	1,000 00	
(6).	4 bonds of State of Georgia for \$500 each, 3 of which were sold by executor for	\$1,500 00	
	Leaving still unsold	500 00	
(6).	Louisiana State 6 per ct. bonds for \$2,000, sold upon funding same for	1,168 50	64
(7).	Madison City 7 per ct. bond for \$1,000 (unsold)	1,000 00	
(8).	Bonds of People's Gas Light Co., Balt., for \$7,000, sold for	7,000 00	
July 1.	Received from estate of James T. Soutter, dec'd, in cash,	6,000 00	
(1).	Also 10 Carolina Cent. R. R. 2d mort. bonds for \$1,000		



65		each, 4 of them were sold and 4 1st mortgage bonds of same Co. bought (see Schedule B, 10,000 00
	(2).	Madison City bond, 7 per ct. bond, unsold, for 1,000 00
	(3).	Nashville and Chatt. R. R. Co. bond, unsold, for 1,000 00
	(4).	State of Georgia bond (unsold) for 500 00
66	1876. July 1.	Received from estate of James T. Soutter, dec'd, in cash, 5,000 00
	(1).	And bonds of Mobile, and Montgomery R. R. Co. (un- sold), par value of 9,000 00
	(2).	Mobile City bond (unsold), par value of 1,000 00
	1882. March 15.	James T. Soutter, dec'd, cash, 15,000 00
67		

CIRCUIT COURT OF THE UNITED STATES, 69  
SOUTHERN DISTRICT OF NEW YORK.

Between,  
CHARLOTTE THE DUCHESS D'AUXY,  
*Complainant,*  
and  
AGNES GORDON SOUTTER, Execu-  
trix etc., and William K. Sout-  
ter as Executor of the last Will  
and Testament of James T.  
Soutter, deceased.

70

To the Judges of the Circuit Court of the United  
States, for the Southern District of New York. 71

Under the decretal order of this Court, filed June  
2d, 1886, this cause was referred to me, the under-  
signed, as Master, whereby it was ordered that the  
defendants account fully for all the moneys, stocks,  
bonds, securities and personal property of all kinds,  
belonging to the estate of the late James T. Soutter,  
and for all moneys, stocks and bonds paid out or dis-  
tributed by them, belonging to said estate, and that  
the undersigned take and state such account, with  
annual rests at the then legal rate of interest. 72

And by which decree it is adjudged that the com-  
plainant is entitled, as devisee of the late Robert  
Soutter, to the one-twentieth undivided part of the  
estate of the late James T. Soutter, Senior, and as one  
of the next of kin of the late Pauline Soutter,  
deceased, daughter of the late Robert Soutter, to  
the one hundred and sixtieth (1-160) undivided  
part thereof, and to recover the same of the defend-  
ants, less what part thereof she has already re-  
ceived.



73 In accordance with this decree I caused the respective parties to appear before me with their witnesses, and the matter has been proceeded with as rapidly as the convenience of counsel and myself permitted.

On the 25th day of June, 1886, the following parties appeared, represented by their counsel, respectively, Lewis Sanders for complainant, Charles Yates for defendants, and subsequently for defendants by Delos McCurdy, and by Messrs Cary & Whitridge, represented by William Ford Upson, for the executors of James T. Soutter, Junior, who was "permitted to appear by said decretal order before said Master and contest the accounts of the executors of the last will and testament of the late James T. Soutter, Senior, the same and with like effect as if they were parties to this suit."

*As conclusion of fact, I do find and report:*

1st. That James T. Soutter died in or about the month of March, 1873, leaving his widow, Agnes Gordon Soutter, and five children, namely, Robert Soutter, William K. Soutter, James T. Soutter, Jr., Eliza N. Bell, and Emily W. Dix, surviving him, his only heirs at law and next of kin; and that he also left a last will and testament, and a codicil thereto, of which the following is a copy:

75 "Grateful to the 'Giver of every good' that He has given me some property to bestow upon my family, and still more grateful that He has given me loved ones to whom I can transmit it, I, James Taylor Soutter, a native of the State of Virginia, a resident of the City of New York, and now in London, England, do proceed to declare this to be my last will and testament.

1. After paying my just debts and the legacies hereinafter mentioned, I give and bequeath to my beloved wife, Agnes Gordon Soutter, one-half of all my estate, real, personal and mixed, to be hers absolutely to do with as she may think proper.

2. I give and bequeath to my dear children who shall survive me, the other half of my real estate, personal and mixed, after payment of my just debts and the legacies hereinafter mentioned, to be divided equally among them, share and share alike, with this qualification however, that inasmuch as I have already given my sons Robert and William, each the sum of twenty-five thousand dollars *in money* they shall each receive thirty thousand dollars less in bonds (taking the average of the bonds) than each of my other children. Should any of my children have died leaving children, then the latter shall, at their majority receive the share which would have fallen to their deceased parent had he or she survived me, and during their minority their said share shall remain with my executors, and the income thereof used for their support and maintenance until they reach their majority, and then it shall be paid over to them. Should any of my children be minors at the time of my death, I wish my executors to keep possession, as trustees, of the share or shares of said minors, using the same for their support and maintenance until they attain their majority, and then pay the same over to them absolutely.

3. As a large part of my estate will consist of State and other bonds, I desire my executors to pay over the same in kind in proper divisions to my legatees, instead of selling the same and dividing the money, the same course I would like pursued with my Chicago, Florida and Texas lands, but this I leave to the discretion of my executors.

4. I give and bequeath to my brother Robert Soutter, or to his widow and children should he not survive me, five thousand dollars in bonds of the States of North Carolina and Tennessee at par, half of each kind.

5. I give and bequeath to my four sisters, Mrs. Margaret Bell, Mrs. Jean Broughton, Mrs. Virginia A. Know and Mrs. Charlotte Falconer, three thou-



81 sand dollars each in Tennessee State bonds, bearing five per cent. interest at par. Should any of my said sisters die before me, then the above share or legacy of said sister shall go to her daughter or daughters, if there be more than one.

6. Should my reverend and beloved mother, Mrs. Margaret Soutter survive me, then I desire my executors to provide an annuity for her out of my estate, to the amount of three hundred dollars, which of course will cease at her death.

82 7. I hereby appoint my beloved wife, Agnes Gordon Soutter, executrix, and my sons, Robert and William K. Soutter, executors of this my last will and testament, and respectfully beg the Court or other authority having jurisdiction in such cases, to permit them to qualify without giving bonds as provided for by law.

Given under my hand and seal at  
London, England, on this 13th day  
of December, 1867.

83

J. T. SOUTTER. [L. s.]

Signed and sealed by the said  
James Taylor Soutter as his  
last will and testament, in  
presence of us, who in his  
presence, at his request and  
in the presence of each other,  
have hereunto subscribed  
our names as witnesses.

G. MORGAN,

84

C. C. GOOCH, both of 22 Old Broad st.,  
London."

The codicil reads as follows:

"Whereas, I, James T. Soutter, of the city of New York, made my last will and testament, bearing date the thirteenth day of December, 1867, and whereas I intend to alter the same in the particulars hereinafter set forth, now, therefore:—

*First.*—Whereas, my sons Robert and William voluntarily repaid me the moneys loaned to them to embark in business, I revoke and cancel the de-

ductions given in the second section of my will, to 85  
deduct from each of the shares of my sons Robert  
and William thirty thousand dollars as therein  
directed.

*Second.*—Whereas, my beloved mother is dead,  
and whereas I have made such provision as I deem  
necessary for my brother Robert and my surviving  
sisters, I revoke and cancel the directions and pro-  
visions made for them in sections four, five and six  
of my said will. 86

*Third.*—To equalize the shares of my children,  
and whereas I advanced to my daughter, Eliza N.  
Bell, the sum of fifteen thousand dollars towards  
building a house in 1870, and also advanced to my  
son William the sum of ten thousand dollars  
toward paying for his house on Staten Island, I  
direct my executors to deduct the sum of fifteen  
thousand dollars from the share of Eliza N. Bell,  
and the sum of ten thousand dollars from the share 87  
of my son William in dividing my estate.

JAS. T. SOUTTER. [L. s.]

In witness whereof, we have,  
in the presence of the testa-  
tor and in the presence of  
each other, signed our names  
hereto as subscribing wit-  
nesses at the request of the  
testator, who at the same  
time declared the same to be  
a codicil to his last will and  
testament, on the first day  
of May, 1872. 88

SOPHIA HAWACK,

Residence, No. 16 W. 21st street, New York.

REBECCA H. HARVEY,

Residence, No. 15 W. 21st street, New York.

That thereafter, the said Agnes Gordon Soutter  
and William K. Soutter, duly qualified as execu-  
trix and executor of the said will and testament,  
and on the 23d day of June, 1873, letters testamen-



89 tary were duly issued to them by the Surrogate of Ulster County, New York, and they thereupon entered upon the discharge of their trust, the active management whereof was entrusted to the said William K. Soutter.

90 2d. That in or about the month of July, 1873, the said Robert Soutter died leaving a widow, Charlotte Soutter (now the complainant Charlotte the Duchess d'Auxy) and four children, viz., James Soutter, Robert Soutter, Lamar Soutter and Pauline Soutter, his only heirs at-law and next of kin, and the said Robert Soutter also left a last will and testament of which the following is a copy:

" 1st. I direct that all my just debts and funeral expenses shall be paid by my executors, hereinafter named, as soon after my death as possible.

91 2d. I give, devise and bequeath unto my dear wife, Charlotte A. Soutter, all my household furniture and *one-half* of all the residue of my property, real and personal, to be hers forever. This bequest is in lieu of dower and all other interest in my estate.

92 3d. I give, devise and bequeath unto my children the other half of my property, real and personal, in equal shares. The share of each child to be paid to such child by the trustees hereinafter named, or the survivors of them, on their respectively attaining the age of 25 years. But in case the said trustees, or the survivor of them, shall deem it advisable to pay to any child his or her share of my property, or any part thereof, on such child attaining the age of 21 years, they are hereby authorized so to do. Until the share of each child is paid over to him or her as herein provided, my said executors and trustees, and the survivor of them, are hereby directed to pay and apply so much of the income thereof as may be necessary towards the support and education of said child. In case of the death of any of my children leaving lawful issue him or her surviving, then, and in that case, I direct that

the issue of such deceased child shall take in equal 93  
shares the portion their parent would have taken if  
living.

4th. In case my said executors and trustees, or the  
survivors or survivor of them, shall at any time  
deem it advisable to sell any part of my real estate,  
I hereby give them full power and authority so to  
do, at public auction or private sale, for the best  
price they can obtain therefor, and they are hereby  
empowered to convey the same by proper deed or 94  
deeds of conveyance, and during the time they shall  
have the management of my said estate, they shall  
have power to lease and let the same on the best  
rent that can be procured, and for such period as  
they may deem best for the interest of my estate.

*Lastly.*—I hereby nominate and appoint my  
brother-in-law, Timothy H. Porter, of the City of  
New York, my cousin, Henry F. Dumont, of Wel-  
lesley, in the State of Massachusetts, and my  
brother, Jas. T. Soutter, of the City of New York, 95  
but late of Oxford University, England, to be the  
executors of this my last will and testament and  
the trustees of the estate of my children.

Executed April 1st, 1873.

ROBERT SOUTTER. [L. S.]

Signature."

3d. That the will of said Robert Soutter was duly  
admitted to probate on the 31st day of July, 1873,  
and letters testamentary thereunder were duly  
issued to Timothy H. Porter, James T. Soutter and 96  
Henry F. Durant, the executors therein named,  
who duly qualified and entered upon the discharge  
of their duties.

4th. That James T Soutter, Jr., died in 1883, and  
said Henry F. Durant is also dead, and the said  
Timothy H. Porter is still living, and is the sole  
surviving executor of the said last will and testa-  
ment of said Robert Soutter.

5th. That in July, 1873, the defendants caused  
an inventory of the personal estate of said James



97 T. Soutter, deceased, to be made and filed, and the same was appraised at the sum of \$692,228.21.

6th. That a long time prior to his death the said James T. Soutter had deposited all of his stocks, bonds and securities with the firm of Soutter & Co. (which firm was composed of his sons Robert Soutter and William K. Soutter, and Timothy H. Porter and Henry Fitzhugh), against which said stocks, bonds and securities so deposited, the said James T.

98 Soutter was accustomed to draw his checks and drafts, which checks and drafts were paid by said firm of Soutter & Co.

7th. That the drafts and checks so drawn by said James T. Soutter on the firm of Soutter & Co., amounted to hundreds of thousands of dollars at a time, to pay which the said firm of Soutter & Co. were required to, and did, borrow money on the street to meet and pay the same, and pay for such loan the ruling rates of interest for call loans.

99 8th. That the executors proceeded first of all to adjust and pay all the debts of the deceased, in order to release the bonds and securities which the testator had pledged with Soutter & Company, as aforesaid, and enable the executors to distribute the personal estate of the testator, as directed by his last will and testament.

100 9th. At the time of the death of James T. Soutter, he was indebted to the firm of Soutter & Company to the extent of \$339,065.67, on account of advances made upon various enterprises in which he had been and was interested at the time of his death; the Leclde Gas Works of St. Louis, the building of which testator was engaged in and largely interested; on account of 1,500 shares of Harlem Railway stock, carried on a margin; on account of \$5,000 Mobile and Montgomery bonds, carried on a margin; on account of 2,344 first mortgage M. and M. coupons of Nov., 1872, \$40 each.

10th. From the time of his death until the final

settlement of said accounts of the testator with 101  
Soutter & Company, Dec. 29, 1873, the foregoing  
accounts incurred further indebtedness of \$164,-  
967.07, making a total indebtedness of \$504,032.18,  
to liquidate which the executors sold securities  
through Soutter & Company, where all the securi-  
ties were held, and against which the testator had  
been in the habit of drawing for large amounts of  
money.

11th. Securities to the amount of \$136,276.27 102  
were sold of those that appear in the inventory, and  
which were inventoried at \$139,765; there were  
also sold of securities not on the inventory \$145,-  
174.08. There were receipts from other sources to  
the amount of \$188,985.96, such as loan from  
Guaranty and Indemnity Company of \$50,000;  
sale of the 1,500 Harlem Railway; receipts from  
Chicago property, dividends and coupons, from se-  
curities, odd coupons and sundry cash items due  
the testator, making in all \$170,436.31, leaving still 103  
a balance of \$33,595.87 due Soutter & Company,  
which amount the executors paid in cash Decem-  
ber 29, 1873. Upon the payment of this indebted-  
ness the following securities were released: \$95,000  
in Mobile and Montgomery bonds; 2,350, Nov., '72,  
first mortgage M. and M. coupons, \$40 each; 950  
shares Leclde gas stock of St. Louis, and 5,000  
first mortgage bonds of the same company, all of  
which had been specially pledged by the testator to  
secure the above-mentioned enterprises and specu-  
lations. 104

12th. On January 1st, 1874, the executors pro-  
ceeded to make a dividend of securities, in pursu-  
ance of the direction of the will, and did divide se-  
curities to the amount of \$400,000 at par, as fol-  
lows:

- 10,000 Richmond and Danville Bonds.
- 20,000 Louisiana State Bonds.
- 10,000 Madison City Bonds.
- 10,000 Nashville and Chattanooga Ry. Bonds.



- 105 70,000 People's Gas Co.'s Bonds (Baltimore).  
2,000 shares of the stock of the same company.  
600 shares of Baltimore Gas Co.  
2,000 shares Nashville and Chattanooga R.  
Stock.  
1,000 Leclde Gas Co.'s Stock (St. Louis), not in-  
ventoried.  
20,000 Georgia State Bonds.
- 106 \$400,000 first dividend of securities.  
The second dividend was made July 1st, 1874,  
in cash and securities.  
Cash, \$60,000  
Securities at par as follows:  
5,000 Georgia State Bonds.  
12,000 Madison City Bonds.  
8,000 Nashville and Chattanooga Bonds.  
100,000 Carolina Central Ry. Bonds.
- 107 \$125,000 second dividend of securities.  
The cash dividends made of \$60,000 was derived  
from money received from the sale of securities  
and other sources, as follows:  
1873.  
Oct. 28, 8,000 Nashville and Chatta-  
nooga Bonds, inventoried at  
\$6,000, sold for \$7,065 00
1874.  
108 Mar. 30, 2,600 Virginia Central Ry.  
Bonds, 1,840 25  
Apr. 1, 3,000 Virginia Central Ry.  
Bonds.  
5,600 inventoried at 2,800, 2,126 25
1874.  
Mar. 4, 10 shares Wilmington and  
Rutherford Stock, invento-  
ried as valueless, sold 662 50

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1874.		109
Mar. 28, 11,000 Chesapeake and Ohio Canal Bonds, inventoried as valueless. sold	16,920 98	
1873.		
Dec. 9, 1,000 People's Gas Stock, inventoried at 20,000, sold	21,923 75	
1873.		
Dec. 11, 451 People's Gas Stock, inventoried at 9,020,	9,883 84	110
1874.		
Feb. 6, Cash received from Chicago Park Com's notes,	2,567 85	
May 5, Cash received from Chicago Park Com's notes,	10,000 00	
May 20, Cash received from Chicago Park Com's notes,	6,304 73	
May 23, Cash received from Chicago Park Com's notes,	1,620 27	
The note on which the foregoing payments was made as inventoried at \$17,500, face value \$35,000.		111
Rec'd from real estate over expenditures,	8,343 00	
Income from personal property,	17,841 55	
Rec'd on account of interest,	773 46	
1873.		
Nov. 28, Rec'd on account of Georgia Bonds,	2,000 00	112
Dec. 24, \$400 Virginia Bonds Scrip,	226 08	
1874.		
Jun. 27, Rec'd from odd coupons, notes and sundry items due testator (not on inventory),	8,358 50	
Rec'd on account of sundry items,	55 45	
Total receipts to July 1, 1874,	\$118,513 46	



113	Besides the dividend of	\$60,000
	there were also the following disbursements:	
	The balance due the firm of Soutter & Co., paid Dec. 29, 1873,	33,595 87
114	Sundry miscellaneous payments, including cost of 50 shares Leclde Gas, \$4,500, purchased to make a divisible amount:	
	1 share Nat'l Bank of the Republic, \$100, purchased to make an even 50, in accordance with scaling scheme, and sundries to the amount of \$2,007.-	
115	83--in all	6,607 83
	Legal fees,	2,098 66
	Expenses,	857 11 \$103,159 67
	Cash balance July 1, 1874,	\$15,353 79
116	The next dividend was made July 1st, 1876, in cash and securities.	
	In cash,	\$50,000
	In securities as follows:	
	90,000 Mobile and Montgomery Bonds.	
	(5,000 more than inventoried).	
	10,000 Mobile City Bonds.	
	100,000 third dividend of securities.	

These M. and M. bonds were not divided until 117 July, 1876, owing to litigation of the road, foreclosure of mortgage, and consequent funding of coupons.

As to the Mobile City bonds, there had been default in interest, and delay in process of funding.

The cash dividend of \$50,000 was made from money derived as follows:

Balance after previous dividend,	\$15,353 79	118
From sale of securities, and from other sources, as follows:		
1875.		
May 1, Rich'd and Danville bonds (redeemed),	1,995 00	
inventoried at \$1,400 00		
1874.		
July 2, 3,000 City of Memphis Bonds, inventoried at \$1,650 00	1,350 00	119
Aug. 13, 50 shares Great Western Ins. Co.,	1,480 00	
Inventoried at \$1,800 00		
Dec. 19, Cash from Chicago Park Com'r's notes,	7,000 00	
Dec. 19, Cash from same source,	5,104 15	
1875.		
July 23, " " " "	4,577 68	
1875.		
Apl. 19, " " " "	10,000 00	120
Aug. 9, " " " "	8,685 00	
1876.		
Jan. 10, " " " "	16,625 32	
	<hr/>	
	\$51,992 15	

The note on which the foregoing payments were made was inventoried at \$15,000. Face value \$30,000.



121	1876.			
	July 1,	Income from personal prop-		
		erty,	\$19,927 74	
		Interest on loans,	4,715 87	
	1876.			
	Feb. 29.	Sundry cash items not inven-		
		ventoried,	605 10	
		Total receipts to July 1, 1876,	\$97,419 65	
		From which deduct dividend		
		of \$50,000.		
122	1875.			
	Oct. 8,	Legal fees	1,165 00	
		Expenses	1,563 93	
		Sundry payments,		
	1875.			
	Feb. 2,	Fees and settlement of		
		the Hawkins suit,	3,500	
	1876.			
123	Feb. 21,	Paid Brisbain on		
		acct. of Minn. bond		
		litigation,	1,228,27	
	Mar. 1,	H. C. Semple, on acct.		
		of Mobile and Mont-		
		gomery Bond liti-		
		gation,	1,000 00	
	July 1,	M. and M. Bond scrip,	116 67	
	Jun. 22,	Three assessments on		
		Cumberland Coal		
		Co.,	60 00	
124	May 25,	Five assessments on		
		Meriposa Land and		
		Mining Co., \$270		
		each,	1,350 00	
	Apl. 4,	Excess payments on		
		acct. real estate		
		over receipts,	6,111 92	\$67,095 79
		Cash bal. July 1, '76,	\$30,323 86	
		The dividend in securities of July, 1876, was the		
		last made in kind.		

On March 1st, 1882, a dividend of \$150,000 was made in cash. 125

There was a balance from the last dividends in 1876 of

\$30,323 86

Since that date there were receipts from sales and other sources, as follows:

1877.

May 16, 2,500 Louisiana Bonds inventoried, \$1,800 00

After funding and scaling, sold for 126

2,196 87

July 12, 2 shares Bank Republic,

150 00

1881.

Aug. 3, 4,000 Carolina Central, funded from 6,000 originally inventoried,

4,200 00

2,349 00

Nov. 3, 108,000 Minn. State Bonds, inventoried, 27,000 00

130,000 00 127

Nov. 22, 3,000 Rich. and Danville Bonds, inventoried,

2,100 00

Redeemed for,

3,000 00

1879.

Feb. 1, 1,000 Quincy and Palmyra Bonds, inventoried at

800 00

Redeemed at

1,000 00

1881.

Jan. 17, 1,000 University Virginia Bonds, inventoried,

900 00

Redeemed,

1,000 00

1879. NOT ON INVENTORY.

Nov. 30, Seventy-five per cent. of the proceeds of sale of scrip received for the 2,350 M. and M. coupons, 68,400 00



129	1880.		
	Jan. 3, The balance, 25 per		
	cent. of the same,	22,800 00	
	Jan. 3, M. and M. scrip,	522 27	
	Mar. 2, 400 shares Nash. and		
	Chattanooga Ry.		
	stock,	11,737 50	
	1881.		
	Jul. 6, Scrip of Mobile City		
	Bond,	252 25	
130	1876.		
	Jul. 24, Receipts from North		
	Carolina farm,	91 40	
	1876.		
	Sep. 28, Receipts from same,	160 00	
	Dec. 20, " " "	14 75	\$103,978 17
	1877.		
	Feb. 7, First dividend from		
	Falcom estate,	1,001 76	
	1880.		
131	Mar. 13, Wabash Pool,	693 99	
	1881.		
	Jan. 1, Received from H. Y.		
	Attrill, Equitable		
	Charter,	5,299 46	\$6,995 21
	1882.		
	Mar. 1, Received from Mrs. E. M. Bell,	15,000 00	
	Mar. 1, Received from W. K. Soutter,	10,000 00	
	Mar. 1, Income from securities on		
	hand after Jan., 1876,	29,277 09	
132	Mar. 1, Interest on loans,	13,324 00	
	Total receipts to Mar.		
	1, 1882,		\$348,594 55
	Mar. 1, Deduct dividend, \$150,000 00		
	Mar. 1, Expenses,	1,830 41	
	Mar. 1, Legal fees,	7,446 02	
	1876.		
	July 1, Correction of error in		
	credit of coupons in		
	previous income ac-		
	count,	592 38	

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1876.		133
Dec. 27, Assessment on Cum-		
berland Coal,	20 00	
1877.		
Jun. 20, Assessment on same,	20 00	
Apl. 30, Funding Nash. Bonds,	23 75	
1878.		
Feb. 28, Brisbain Minn. Bonds,	200 00	
1880.		
May 4, Paid acct. Alabama		134
Coal Mining Com-		
pany,	419 71	
1881.		
Jul. 5, City of Mobile scrip,	900 00	
1879.		
Jun. 9, Paid acct. of Carolina		
Central Bonds,	108 00	
Jun. 11, Paid on same,	100 00	
1880.		
May 4, " " "	6 59	
1877.		135
Nov. 21, Paid J. B. Thompson,		
acct. of Mobile and		
Montgomery Bonds	300 00	
1878.		
Aug. 31, Bible presented to Mr.		
Porter, in recogni-		
tion of his services		
in the Mobile and		
Montgomery mat.,	200 00	
Nov. 16, H. A. Semple (M. and		136
M. matter)	8 60	
Dec. 5, Printing in the M.		
and M. matter,	9 25	
1880.		
May 14, Fees paid in the M.M.		
mat.,	428 22	
From July 31st, 1876,		
to Aug. 11, 1881,		
paid 16 assessments		
on Mariposa stock,		
aggregating,	4,127 50	



137 The excess of pay-  
ments on account  
of real estate, over  
receipts from same, 27,635 29 \$194,375 72

\$154,218 83

There have been no dividends made since March  
1, 1882. Receipts from different sources since that  
date are as follows:

138	1885.	Balance of March 1, 1882,	\$154,218 83
		Jun. 16, One 1,000 Rich. and Danville, redeemed for	1,000 00
		Inventoried,	\$700 00
	1883.	Mar. 3, Two 1,000 Leclde Gas Bonds, not on inventory, re- deemed for	2,000 00
139	1882.	Jun. 21, Received from Bell Bros., in settlement	100 00
		Oct. 28, Received on acct. sale of Confederate Bonds,	240 00
	1884.	Apl. 26, Received from J. M. Payne,	2,595 70
140	1885.	Aug. 1, Sundry cash items,	171 47
		Sep. 30, Income from person- al property,	9,643 87
		Sep. 30, Interest on loans,	18,010 83
		Total receipts to Sept. 30, 1885,	\$187,980 70
		Disbursements after Mar. 1, 1882.	

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1885.			141
Sep. 30, Expenses,	\$2,620 13		
Legal fees,	2,083 12		
Excess of payments on acct. real estate over receipts from same	8,898 51		
1882.			
Jun. 29, Paid subscription to 13,000 Bonds to West Fairmount Coal Co.,	14,154 14	142	
1884.			
May 13, Paid assessments to West Fairmount Coal Co.,	2,933 33		
1885.			
Aug. 1, Taxes West Fair- mount Coal Co.,	33 33 \$30,722 56		
		\$157,258 74	143

This amount of \$157,258.14 is the balance up to the date of September 30th, 1885, of moneys derived from all sources over and above all dividends and disbursements made.

\$103,883.14 of which remained on deposit with the firm of Soutter & Co.

\$32,000 was loaned by the executors to the Cameron Coal Company, which was secured by \$40,000 in first mortgage bonds of the same company as collateral, and the interest of said loan was secured by \$10,000 more of the same bonds—\$50,000 in all. 144

\$13,125 loaned to D. T. Hotchkiss, August 21, 1880 (not secured); \$7,950 loan to H. P. Delafield in several amounts from June 18th, 1877, to September 2, 1878. Not secured.

\$300 loaned to C. G. Cooper, January 2, 1880, not secured.



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TO RECAPITULATE.

Due from Soutter & Co., on deposit,	\$103,883 14
Loan to Cameron Coal Co.,	32,000 00
Loan to Hotchkiss,	13,125 00
Loan to Delafield,	7,950 00
Loan to Cooper,	300 00

Total,	\$157,258 14
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146 (A list of the securities of the estate remaining undistributed will be found hereto attached, and marked Schedule "A." See proceedings of January 17, 1887, when they were produced before the Master.)

10,000 Mobile City Bonds, accounted for by the executors, turn out to have been disposed of, and the amount of \$5,500 is to take their place. These bonds were hypothecated with Lovell & Co. for a loan, evidently by mistake, and are to be treated as a sale of the same.

There is also a mortgage in the name of Wm. K. Soutter, as executor, on real estate, called "Retirement" for \$5,000, upon which \$1,000 has been paid.

13th. I also find that at the time of the testator's death, and subsequently thereto, there was litigation affecting the validity of some of the securities held by him, and with respect to others they were in process of liquidation.

148 14th. That in compliance with the directions of the will, the executors did distribute in kind securities such as are indicated in the will, and that said provision was practically complied with in 1874 under the then circumstances of the personal estate of the testator, and that the additional amount distributed in kind in 1876, was so distributed as early as reasonably possible owing to the litigation and liquidation in which the same were involved.

15th. That the securities sold by the executors were either odd lots, speculative holdings, or such

as were sold for the purpose of paying off indebtedness of the testator to the firm of Soutter & Co., and such sales were properly made. 149

16th. That the payments made by the executors to the firm of Soutter & Co., were properly and necessarily made, in order to release the securities of the testator from pledge, and to enable the executors to administer upon and distribute the same, and for which payments the executors received credit upon the books of the firm of Soutter & Co., and released said securities, which credit, and the surrender of said securities, are vouchers for said payment. 150

17th. That in addition to the other payments made by said executors, they paid the taxes and assessments upon the real estate of the testator, which said payments were made by and with the consent of all of the parties interested in the personal estate, including Timothy H. Porter, as executor and trustee under the will of Robert Soutter, and were properly made. 151

18th. That the interest of the complainant in said real estate was the same as her proportion of the personal estate, therefore she derived a benefit from said payments in the same proportion.

19th. That the settlement of the accounts of the testator with the firm of Soutter & Co., December 29th, 1873, was participated in and acquiesced in by Timothy H. Porter, as executor and trustee under the will of Robert Soutter. 152

20th. That after the death of said James T. Soutter, the firm of Soutter & Co., as bankers, received the moneys derived from the estate on deposit with the knowledge, consent and approval of all the parties interested, including Timothy H. Porter, as executor and trustee under the will of Robert Soutter.

21st. That the fact that the firm of Soutter & Co., as bankers, were the depositaries of the fund, or portions of it, was known to the complainant for



153 many years, she having received from Mr. Porter, as executor, moneys to which she was entitled from her husband's estate in checks drawn by him on said firm of Soutter & Co.

22d.—That between the time of the death of the testator, and the settlement of the accounts on the 29th December, 1873, the firm of S. utter & Co. were compelled to, and did, carry the stocks and bonds belonging to said estate safely through the panic of 1873, and to do so the said firm were  
154 obliged to, and did, sacrifice their own interests, thereby enabling the said executors to realize for such securities largely increased values.

23d. That by reason of the intimate knowledge of Soutter & Co. with the securities belonging to the said estate, and with the enterprises and transactions in which the testator had been engaged, the selection of said firm as bankers and brokers by the executors was wise, and judicious, and beneficent to the estate.

155 24th. That the sums paid by the executor as additional interest and expenses to the firm of Soutter & Co., were proper and just payments.

25th. I further find that all the acts and transactions of the said executors with respect to the distribution of the estate, and deposit of the securities and funds with the firm of Soutter & Co., the transactions with Soutter & Co. in respect thereto, and the disbursements on account of both  
156 the real and personal estate, were all and each of them done after consultation with, and by and with the consent and approval of, all the parties interested, namely, all the surviving legatees under the will of James T. Soutter, deceased, and Timothy H. Porter, as executor of, and trustee under, the last will and testament of Robert Soutter, deceased.

26th. I find that there has been no wrongful or negligent act committed by the said executors, or either of them, and that their management of the estate has been proper, prudent and eminently successful.

27th. That for all sums which were borrowed 157  
from the executor by the firm of Soutter & Co.,  
the said estate has received the ruling rates of in-  
terest thereon, which said interest has been credited  
to said estate, and there is no reason, therefore, for  
charging any interest as against the executors  
therefor.

28th. That there are no facts connected with the  
management of the estate to justify the imposition  
of compound interest upon the sums remaining un- 158  
distributed, or any of them, by way of a penalty  
or otherwise.

29th. That the executors are entitled to the com-  
missions allowed by the laws of the State of New  
York for administering upon said estate, and that  
there are no facts or circumstances which would  
justify the withholding of such commissions by way  
of penalty or otherwise.

30th. That said executors are entitled, therefore, 159  
to the commission allowed by the Revised Statutes  
of the State of New York for receiving and pay-  
ing out the moneys received and paid by them as  
such executors.

That the amount received by them is 1,345.-  
215.02-100 dollars, and the amount paid out by them  
is 1,187,956.88-100 dollars, and the amount of com-  
missions to be deducted therefrom and paid to said  
executors, is 24,109.14 100 dollars.

31st. That the amount to which the estate of 160  
Robert Soutter may be entitled cannot be ascer-  
tained on this accounting nor reasonably approxi-  
mated for the reason that such amount can only be  
ascertained by an accounting had between Timothy  
H. Porter, as executor and trustee under the will of  
Robert Soutter, and the executor of James T. Sout-  
ter, and any sum which might here be suggested  
as the proportion to which the estate of Robert  
Soutter might be entitled, would be subject to the  
deduction of its share of the commissions of the  
executors of James T. Soutter, the expenses of the



161 administration of that estate, together with its proper proportion of all indebtedness or expenses which have been incurred since the 25th day of September, 1885, at which time the said executors were enjoined by an order of this court from interfering with the assets of said estate.

32d. That the exact proportion of any amount which may be found to belong to the estate of Robert Soutter which would belong to the complainant cannot here be found, for the reason that the same  
162 can only be ascertained by said intermediate accounting between the said Timothy H. Porter, as executor and trustee of the estate of Robert Soutter and the complainant and her children, and the executor of the estate of James T. Soutter.

**AS CONCLUSIONS OF LAW.**

1. That the executors duly entered upon the discharge of their duties as such.  
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2. That they duly collected all the outstanding claims due the estate which were collectible.

3. That the payments of the debts of the deceased made by them were just and proper, and they have produced upon this accounting good and sufficient vouchers for the same.

4. That they have distributed the estate, as far as possible, in accordance with the testator's will.

5. That the executors have not been guilty of negligence, misconduct, or any fraudulent act in the administration of the estate.  
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6. That they should not be charged with compound interest on any sums whatever.

7. That they should not be charged with interest upon any of the sums remaining in their hands undistributed on the 29th of September, 1885.

8. That the consent and approval of the parties in interest was a sufficient justification for any departure from the express terms of the will, and

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for any act or acts done in accordance with such 165  
approval or consent of the parties in interest.

9. That the said executors were entitled to the  
commissions allowed by the law of the State of  
New York upon all sums received and paid out by  
them as such.

10. That the accounts of the executors, as pre-  
sented and modified by this report, exhibit the true  
condition of the estate and the amount in their  
hands September 29th, 1885.

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The importance of this case suggests to me the propriety of an opinion in which to set forth more fully and at large the reasons which have led me to the conclusions at which I have arrived in my report. The testator died in the spring of 1873, leaving a last will and testament, in which he appointed the defendants, the executor and executrix of his estate. Prior to his death, and for many years, all of his personal property, consisting of stocks, bonds, and other securities, were deposited by him with the firm of Soutter & Co. The testator was engaged in many enterprises and in speculation. The moneys which he required for use in his enterprises and speculations were furnished to him by said firm, under an arrangement by which he was permitted to draw his checks and drafts upon said firm for whatever sums he required, the said firm holding his securities in pledge for the repayment of the sums so advanced to him. These checks and drafts amounted to hundreds of thousands of dollars at a time to pay which the firm of Soutter & Co. were obliged to, and did borrow money on the securities pledged and their own securities, and pay the ruling rates of interest for call loan. At the time of his death, he was indebted to the firm of Soutter & Co. in the sum of \$339,065.67, for advances made to him by the firm, besides his contingent liability upon speculative accounts. Between the time of his death and the 29th day of December, 1873, his indebtedness to the firm by reason of interest and losses on speculative accounts, was increased \$164,967.07, making a total indebtedness at that time of \$504,032.18, and to secure the repayment of this indebtedness, the said firm of Soutter & Co. held all stocks, bonds and securities belonging to the testator. Before the executors could obtain the possession of the testator's property, it was necessary that this indebtedness be paid. This indebtedness was paid by the execu-

tors in the manner set forth in my report. During 173  
the period from the death of the testator to December 29th, 1873, the panic of 1873 occurred.

To carry these securities safely through this panic with the burden of indebtedness upon them, required skill and ability on the part of the executors, together with the help of the firm of Soutter & Co. That this help was accorded to the sacrifice of the interests of the firm is abundantly shown, and without this help it would have been impossible for the executors to have preserved these securities 174  
from sale at a sacrifice to discharge the indebtedness. As soon as the indebtedness was discharged and the securities reduced to possession, and in January, 1874, the executors divided \$400,000 thereof, in accordance with the provisions of the will. By this division the terms of the will were practically complied with so far as the condition of the estate at that time permitted. At the time of the testator's death there were litigations pending affecting the validity of some of the securities; with respect to some they were in process of liquidation and other securities were yet to be received as the result of the advances made by the testator in the enterprises in which he was engaged at the time of his death. In the dividend of 1876 the remainder of the securities were distributed, and this was as early as a distribution could reasonably be made, owing to the litigation and liquidation in which some were involved and the non receipt of the residue. It is difficult to see how any more of the securities belonging to the testator's estate could have been distributed in kind. To be sure some of the securities were sold, but these were odd lots or speculative holding, or such as were necessarily sold to pay the indebtedness of the estate, and therefore did not come within the reasonable interpretation of the provisions of the will, requiring the securities to be distributed in kind. Under the circumstances in which the estate was left, it would have been impossible to have distributed the testa- 175  
176



177 tor's securities in kind. Before that could be done  
it was necessary to discharge the burden of indebt-  
edness for which they were pledged, and to do that  
necessitated a sale of some of them. In addition to  
the personal estate, the testator left real estate, sit-  
uated some in Chicago and some in various other  
States and localities. At the time of his death the  
title to the property in Chicago, the most valuable  
and productive part of the real estate was in  
litigation. It seems to have been unanimously  
178 agreed by all of the parties interested, that the  
real estate should be held and not sold, and that the  
executors should use the personal estate to preserve  
and protect the title and discharge the taxes and  
expenses thereon and connected therewith. By the  
will of Robert Soutter, Mr. Porter, as the executor  
and trustee thereunder, was given full power to sell  
or lease the real estate of the children, if advisable,  
and during the time he shall have the management  
thereof, to rent the same for the best terms and for  
179 such period as he may deem best for the interests of  
the estate. This power extended to the real estate  
derived by Robert Soutter from his father. The real  
estate in question was held by all of the parties in-  
terested under the will of James T. Soutter, includ-  
ing the complainant, as tenants in common. What-  
ever payments of taxes and other expenses of the  
real estate were paid either by Timothy H. Porter,  
as executor and trustee under the will of Robert  
Soutter, or by the defendants, as executors of the  
180 will of James T. Soutter, resulted in the equal  
benefit to all of the tenants in common, for it will  
be borne in mind that the real estate was held by  
them in exactly the same proportions as their  
respective interests in the personal estate. So long,  
therefore, as the real estate was held by Mr. Porter,  
as trustee for the children, he was bound to protect  
that interest, and he could not do so without at the  
same time protecting the interest of the complain-  
ant, as one of the tenants in common. It must be  
presumed that Mr. Porter acted wisely on behalf of

his *cestuis que trust*. What he did in that respect 181  
as trustee was for the equal benefit of the claimant,  
and imposed upon her no more than her just share  
of burden, and she is therefore estopped from any  
claim to the restoration of the personal estate thus  
devoted to the maintenance and protection of the  
real estate. But, independent of this, it is clear and  
undisputed that the payment of taxes and other  
expenses of the real estate were made by the execu-  
tors after consultation with and by the consent,  
approval and direction of all of the parties interest- 182  
ed either in the personal estate or in the real estate.  
At all events, the real estate has been held and pro-  
tected by these payments, and presumably when  
disposed of, will return to the owners all the bene-  
fits naturally flowing from such payments. From  
the death of the testator down to September 29th,  
1885, the firm of Soutter & Co. appears to have  
been the depositary of the undistributed moneys  
and securities belonging to the estate. They were  
bankers and brokers, and their selection as such 183  
depositary clearly appears to have been made with  
the knowledge, consent and approval of all of the  
parties interested in the personal estate. But apart  
from that consideration, the selection seems to have  
been a wise and judicious one, and to have resulted  
in a substantial benefit to the estate. They were  
familiar with the securities, with the speculations  
and enterprises of the testator, and this knowledge  
would enable them to handle the securities with  
greater skill and success than persons wholly un- 184  
familiar with such securities and with the condition  
of the testator's estate. That the complainant had  
been for many years aware of the fact that the  
funds of the estate were deposited with Soutter &  
Co., is evidenced by the fact that the payments to  
her by Mr. Porter, as executor, were made in checks  
drawn upon Soutter & Co., or in drafts purchased  
by the checks of that firm. Indeed it does not admit  
a doubt that all of the persons interested in the per-  
sonal estate well knew where the funds and securi-



185 ties were kept, and not only acquiesced in that disposition of them, but approved of it. So far as I can see, there is very little, or if anything, pertaining to the management of the estate of which the persons interested therein had not actual knowledge at the time, or such knowledge must be fairly attributed to them. Mr. Porter, the executor and trustee under the will of Robert Soutter, was a member of the firm of Soutter & Co. from the formation of the firm down to the time of its failure, September 29th, 1885. For many years prior to the death of the testator, Mr. Porter acted for him as his attorney in the management of his affairs, and at the time of the testator's death was familiar with all his property and all his enterprises; and in all of the acts and transactions relating to the estate of James T. Soutter he was either a participant or entirely familiar therewith. I have carefully examined every detail of the accounts presented, as well as the version of them appearing upon the books of the firm of Soutter & Co., and all of the very voluminous testimony taken before me, and I am unable to perceive that the executors, or either of them, have been guilty of any neglect, misconduct or impropriety in the management of the estate. Judging from the results produced by their management it is impossible to say that that management has not in the main been wise, prudent and successful. Assuming that there is a portion of the estate remaining undistributed, of which the estate of Robert Soutter is entitled to its proper share and the complainant to her share thereof as a legatee under the will of her husband, I have been unable to state the precise amount of such shares, for the reason that since the 25th day of September, 1885, the executors have been restrained by injunction from interfering in any manner with the assets of the estate, and the amount of indebtedness which has been incurred since that time is not ascertained, and for the further reason that before the share of the complainant can be definitely ascertained and

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set apart, there must, it seems to me, be an account- 189  
ing between Timothy H. Porter, as the executor  
and trustee under the will of Robert Soutter, the  
complainant and her children and these defendants.  
Indeed, as to the complainant it is quite impossible  
to say what precise sum may belong to her after  
the sum which may belong to her children is set  
apart to them. I can only find the condition of the  
estate of James T. Soutter as it existed on the 29th  
of September, 1885, when the executors were en-  
joined, and leave the exact amounts to which the 190  
complainant and her children are entitled to be as-  
certained and stated in a subsequent accounting  
where all of the parties in interest can be brought  
in and the precise condition of the account between  
the estate of James T. Soutter and that of Robert  
Soutter accurately set forth.

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SCHEDULE "A."

	\$2,200	Currency—proceeds 2,200 Nashville City Bonds. Redeemed.
	3,000	Mobile and Ohio First Mortgage Bonds.
	2,800	" " " " Debenture "
	1,000	Georgia State "
	5,000	Mobile and Montgomery 1st Mtg. "
	36	Shares Bk. of Republic.
	250	Shares Raleigh and Gaston Ry. Stock.
194	20	Shares Cumberland Coal Co. "
	1,320	Shares West Fairmount Coal Co. "
	13,000	" " " " " Bonds.
	604	" Mariposa Mining Co. Stock.
	4,000	Richmond and York Bonds.
	3,500	Cincinnati and Chicago Bonds.
	1,000	Cincinnati, Cambridge and Chicago Bonds.
	10,000	Wisconsin Central Bonds.
	33,000	Florida R. R. "
	10,000	Cenl. Underground R. R. Bonds. Inventory calls for only 2,500.
195	14,000	Fremont and Ind. R. R. "
	18,000	Lacrosse and Milwaukee Ry. "
	750	Shares Alabama C. and M. Co. Stock.
	70	" Breckenridge Cannel Coal Co. Stock.
	50	" Lacrosse and M. Stock.
	88	" Bank of Columbus, Ga. Stock.
	50	" Bank of Commerce, Savannah, Ga.
	30	" Bank of Wilmington, No. Carolina.
196	510	" Niagara Falls Hydraulic Co.
	274	" Greenville Mfg. Co.
	250	" Zerbes Run Imp. Co.
	3,000	Laclede Gas Co. Bonds not no inventory.

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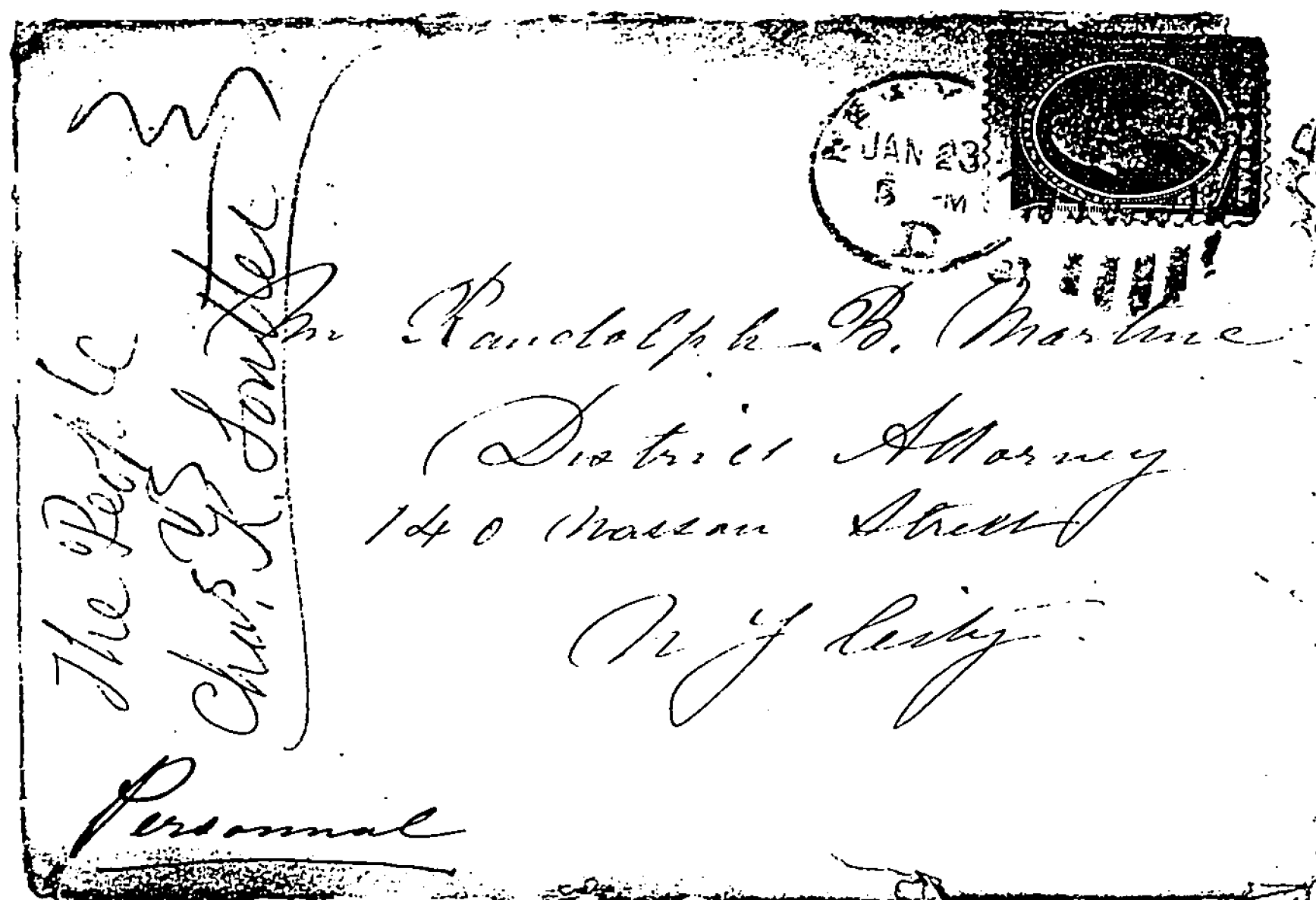
Per  
Wm R. Bond

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STATE OF NEW YORK,

City and County of New York, ss:

Lewis Sanders, being duly sworn, says: I am the attorney in fact and at law of Charlotte the Duchesse d'Auxy who was the wife of Robert Soutter who died in July, 1873, leaving a last will and testament giving her one-half of his estate. James T. Soutter, Senior, the father of Robert Soutter, died in the early part of the year 1873 leaving a last will and testament which was duly probated in the same year before the Surrogate of Ulster County, New York State, whereby he appointed Agnes Gordon Soutter, William K. Soutter and Robert Soutter his executors. William K. Soutter qualified as executor of said will in the year 1873, and has continued to act as such executor down to the present date. On the 2nd day of June 1886 Charlotte the Duchesse d'Auxy obtained a decree in the Circuit Court of the United States for the Southern District of New York against Agnes Gordon Soutter and William K. Soutter as executors of the last will and testament of James T. Soutter, Senior, deceased, adjudging the Duchesse d'Auxy to be entitled to a one-twentieth part of the estate of James T. Soutter, deceased, and that said executors account for said estate. Pursuant to said decree the executors filed an account before a Master whereby it appears that on the 24th of December, 1881, they had on hand belonging to said estate \$80,000 in cash, and on the 31st of December, 1881, \$30,000 more in cash. That it appears by the examination of said William K. Soutter had in his own behalf in such proceeding that he, William K. Sout-



ter, acting as executor of the last will and testament of James T. Soutter, Senior, deceased, appropriated to his own use the sum of \$80,000 belonging to said estate on the 24th of December, 1881, by using the same for his ~~private~~ firm of Soutter and Company, and on the 31st of December, 1881, he appropriated to his own use \$30,000 belonging to the estate of James T. Soutter, deceased, by using the same in his firm of Soutter and Company, such use not being for the true owners thereof, and such money being then in his custody as such executor. That of said sums amounting to \$110,000 no part thereof has been returned to said executors except \$10,000 on June 27th, 1882. On the 15th of March 1883 said William K. Soutter appropriated to his own use *the sum of ten thousand dollars belonging to said estate* by using the same for the firm of Soutter and Company and not for the true owners, no part of which sum of money has ever been returned to said executors. That in the month of June, 1884, said William K. Soutter, acting as such executor appropriated to his own use 10 City of Mobile bonds belonging to the estate of James T. Soutter, Senior, deceased, of the value of \$5,000 and upwards by pledging the same to Love<sup>U</sup> and Company of the City of New York as collateral security for a loan by Love<sup>V</sup> and Company to Soutter and Company, said bonds being subsequently sold by Love<sup>U</sup> and Company to pay the indebtedness of Soutter and Company and wholly lost to the estate. That on the 10th of August, 1885, said William K. Soutter acting as the executor of the estate of James T. Soutter, Senior, deceased, appropriated to his own use the sum of \$324. belonging to said estate collected by said

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William K. Soutter and deposited by him with the said firm of Soutter and Company, he then knowing said firm to be insolvent, the money being used to pay the debts of Soutter and Company and wholly lost to said estate. And it further appears by the examination of said William K. Soutter that he knew his firm of Soutter and Company to be in <sup>financial</sup> difficulties in July, 1885, and that he could have collected the amounts due by Soutter and Company to the executors up to the first of August, 1885, but took no steps to do so. Attached hereto as a part of this affidavit are extracts from the testimony of William K. Soutter herein referred to.

Sworn to before  
me this 13<sup>th</sup> day of  
December 1886  
Am. J. Mead

Lewis Sanders



William K. Soutter, being duly sworn, deposes as follows:

Q 1. You are one of the executors of the estate of James T. Soutter, deceased ? A. Yes, sir.

Q 2. As such executor you caused the inventory of the estate of James T. Soutter (Defendants Exhibit Inventory) to be made. A. I did.

x x x x x x x

Cross Examination

Q 145. Have you on hand 250 shares of Raleigh and Gaston Railway stock called for by your account ? A. I have been threatened by Complainant with criminal prosecution, and for that reason I decline to answer.

XQ 146. Do you decline to answer because your answer will tend to criminate you ? A. I do.

From page 187.

XQ 309. By account Exhibit 3, the executors appear to have loaned Soutter & Co. on December 24, 1881, \$80,000 and on December 31, \$30,000: At those dates the executors had on hand moneys belonging to the estate amounting to \$110,000 had they not ? A. Yes, sir.

XQ 310. And they loaned those moneys to Soutter & Co. on those dates ? A. Yes, sir.

XQ 311. And those moneys have never been repaid, have they ? A. No, sir.

XQ 312. Now any part of them ? A. No, sir.

From page 188.

XQ 317. There being \$10,000 to the credit of Soutter & Co. on June 27, 1882, reducing the balance to \$100,000 ? A. Apparently so.

XQ 318. And on the 15th of March, 1883, the executors loaned from the funds belonging to the estate to Soutter & Co. \$10,000 did they not ? A. Yes, sir.

XQ 319. And no part of that loan has been repaid, has it ? A. No, sir.

XQ 320. Nor has any part of the \$100,000 of the balance of the loans carried down to March 1st, 1882, as shown by your account been paid ? A. No, sir.

From page 344.

RXQ 1305. Will you look at Exhibit 1 of November 15, 1886, under the head of August 10, 1885, Dividend Bank of Republic \$324: Was that collected by Soutter & Co. ?



A. I think so; I think I collected it and passed it to my credit with Soutter & Co.

RXQ 1306. So that the executors had the money and deposited it with Soutter & Co. ? A. Yes, sir; I had an account there.

RXQ 1307. Were Soutter & Co. solvent on the first of August, 1885 ? A. I think so, sir.

RXQ 1308. Don't you know ? A. We paid all demands on us at that time.

RXQ 1309. Your firm failed for about \$2,000,000 on the 29th of September, 1886 ? A. Yes, sir.

From page 346.

RXQ 1322. When did you first commence to believe that your firm was insolvent ? A. The first of August, I should think, sir.

RXQ 1323. Why did not your firm pay up the loans of Eighty thousand dollars by the executors made Soutter & Co. on December 24th, 1881, and \$30,000 on December 31, same year ? A. I couldn't tell you, sir.

RXQ 1324. You kept those two amounts for four years nearly without making any attempt to pay them to the executors did you ? A. My account would show, sir.

From page 347.

RXQ 1333. Up to what time could the executors have collected from Soutter & Co. the amounts outstanding to them ? A. Up to the first of August.

RXQ 1334. The first of August, 1885 ? A. Yes, sir.

RXQ 1335. Have you found out what time you pledged these ten city of Mobile bonds to Lovell & Co. ? A. No, sir, I have not; it has escaped my memory.

RXQ 1336. And what they realized from the sale ?  
A. I will do that.

From page 385.

BY MR. SANDERS: RXQ 1338. Mr. Soutter, have you ascertained what time you pledged the ten City of Mobile Bonds with Lovell & Co. for Soutter & Co. ? A. I think it was about in June.

RXQ 1339. June of what year ? A. of 1885.

RXQ 1340. The ten bonds shown on your schedules here as executor ? A. Yes, sir.

RXQ 1341. And they were pledged to Lovell & Co. for a loan ? A. I think I made an error; June, 1884.

RXQ 1342. They were pledged to Lovell & Co. of this city for a loan to Soutter & Co. of \$50,000, were they not, together with other collateral ? A. I think it was something like that.

RXQ 1343. And Lovell & Co. sold those bonds ? A. Yes, sir.

RXQ 1344. To pay the amount due them from Soutter & Co.  
A. Yes, sir.

RXQ 1345. When was that ? A. After we failed.

RXQ 1346. After September 29th, 1885 ? A. Yes, sir.

RXQ 1347. In what amount did they realize of them ?  
A. They were sold from 53 to 55.

RXQ 1348. Per cent ? A. Yes, sir.



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RXQ 1349. That is from about 5,300 to 5,500 dollars ?

A. Yes, sir.

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The People

vs

William H. Smither

LEWIS SANDERS,

ATTORNEY.

TEMPLE COURT.

5 & 7 BECKMAN ST.,

NEW YORK CITY.

DUE SERVICE OF A COPY OF THE WITHIN PAPER ADMITTED

NEW YORK

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Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William H. Souther

The Grand Jury of the City and County of New York, by this indictment, accuse

William H. Souther  
of the CRIME of Grand Larceny in the first degree,-

committed as follows:

The said William H. Souther,

late of the First Ward of the City of New York, in the County of New York afore-  
said, on the fifteenth day of June, - in the year of our Lord  
one thousand eight hundred and eighty-four, at the Ward, City and County aforesaid,

during then and there a person  
acting as executor, having been  
duly appointed as  
under the last will and testament  
of James T. Souther the elder, deceased,  
with force and arms, certain goods,  
things in action, securities, evidences, etc.  
etc., and valuable things, that it is to  
pay New Bonds of the City of New York,  
of the State of Alabama (a more particular  
description thereof is to be found  
in the record of the value  
of said goods and securities, etc., the value  
of said hundred dollars each, the  
belonging to the estate of the said  
deceased, and then in the possession

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and custody of the said William H.  
Dorsey by virtue of his said ac-  
pointment and office as such executor,  
of and under his said will, and in and to  
appropriate to his said use, against  
the form of the Statute in such  
case made and provided, and against  
the peace of the People of the State  
of New York, and their dignity.

Handwritten signature: Randolph B. Smith

District Attorney.



POOR QUALITY  
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W 22-1  
Counsel, \_\_\_\_\_  
Filed 24 day of Dec 1886  
Pleads, substantially as charged Sec. 340

[Section 341 and 330 Penal Code]  
Grand Jurors, first degree  
Emerson, first degree

THE PEOPLE

vs.

B

William H. Senter

(4 cases)

RANDOLPH B. MARTINE,  
District Attorney.

A True Bill.

Alphonse  
Foreman.  
High Court  
Grand Jury  
Mr. Senter

Witnesses:

Timothy Gifford  
Louis Saurales

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William H. Soutter

The Grand Jury of the City and County of New York, by this indictment, accuse

William H. Soutter

of the CRIME of Grand Larceny in the first degree,—

committed as follows:

The said William H. Soutter,

late of the First Ward of the City of New York, in the County of New York aforesaid, on the twenty fourth day of December, in the year of our Lord one thousand eight hundred and eighty-one, at the Ward, City and County aforesaid,

being then and there a person acting as executor, having been theretofore duly appointed as such by the last will and testament of James T. Soutter the elder, deceased, with force and arms, did feloniously secrete, withhold and appropriate to his own use, a large sum of money, to wit: the sum of eighty thousand dollars in money, lawful money of the United States of America, and of the value of eighty thousand dollars, belonging to the estate of the said deceased, and then in the possession and custody of the said William H. Soutter by virtue of his said appointment and office as such executor; against the form of the Statute in such case made and provided, and against the peace of the People of the



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State of New York, and their dignity.

Handwritten signature

District Attorney.

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END  
ROLL