

NEW JERSEY
Court of Errors and Appeals.

NOVEMBER TERM, 1886.

Between

*Almira R. Gulick et al., Administrators
of Alexander Gulick, deceased, who
was surviving Executor under the will
of William Gulick, deceased,*

Appellants,

and

*Joseph H. Bruere, Trustee for Sarah
V. D. Gulick under the will of William
Gulick, deceased,*

Respondent.

*On Appeal from
Decree of the
Prerogative
Court.*

The very able and exhaustive opinion given by the Ordinary in deciding this case, would seem to make it unnecessary for us, on behalf of the respondent, to occupy much of the time of this Honorable Court in our reply.

STATEMENT OF FACTS.

By the third section of the will of William Gulick, deceased, (the instrument is dated July 30th, 1855,) he devised to his executors and to the survivor of them, certain lands in trust, to receive the rents, issues and profits thereof, and pay them to his son,

William A. Gulick, and his son's then wife, Sarah, each and every year during their lives, and, after their death, to their children. By the residuary clause, he gave one-fifth of the residue of his estate to William. By the codicil, (dated February 14th, 1863,) he revoked that gift and gave the one-fifth of the rest and residue of his estate to his executors thereafter named, and the survivor of them, in trust for the use and benefit of William's before-mentioned wife, for life, and after her death it was to go to their children.

By the codicil he directed the executors to retain William's indebtedness to his estate out of the share, and if there should be any residue thereof, after payment of that indebtedness, they were to invest it and pay the interest to William's before-mentioned wife, for life, and the principal, after her death, was to go to the children. He revoked the appointment of executors made by the will and appointed his son, Alexander, and Job G. Olden, and the survivor of them, executors.

By this clause the testator gave the one-fifth of the residue of his estate to his executors and to the survivor of them, as executors, in trust to invest as executors, &c.

William Gulick, the testator, died in 1865, whereupon his will was duly admitted to probate in the Mercer County Surrogate's office.

The inventory, as filed by the executors, amounted to the sum of \$151,393.08.

The first account was filed by Alexander Gulick, alone, in January, 1867. (*See pages 8 to 13 of printed case.*)

He charged himself with \$164,082.21, and was allowed commissions amounting on this account to \$3,461.64.

The next account was by both executors; they charged themselves with the sum of \$31,808.94 additional, in February, 1870, upon which they were allowed commissions amounting to \$806.17. (*See pages 13 to 17 of printed case.*)

In the sixth paragraph of the testator's will was the following provision (*See page 4, line 29, of printed case*):

“ I order and direct that my black woman, Rachel, be
“ free, and should she become unable to support herself,
“ then, in that case, I order that my executors support her
“ out of my estate.”

Under this paragraph Alexander Gulick, one of the executors, claimed a credit of four thousand dollars in his account of 1870 for the support of the colored woman, Rachel.

The colored woman, Rachel, having died, Alexander Gulick, the surviving executor, filed a third account of the estate of William Gulick, deceased, in March, 1876, charging himself with the principal, \$4,000, also with the interest which had accrued thereon for six years, \$1,680. He was allowed commissions on the \$1,680 at 7 per cent., which amounted

to \$97.20. But, having had commissions on the principal, \$4,000, he did not ask commissions a second time. (*See page 18 to 20 of printed case.*)

Upon the above three accounts of Alexander Gulick he had been allowed and received commissions as follows :

On first account, passed in 1867.....	\$3,461.64
On second account, passed in 1870.....	806.17
On third account, passed in 1876.....	97.20
	<hr/>
Together amounting to the sum of.....	\$4,365.01

In his will the testator directed that his executors should each receive the sum of four hundred dollars, in lieu of commissions, for settling his estate. By the codicil to his will he revoked that provision, and directed that the commissions to be allowed to his executors for settling his estate should be fixed by the Court, according to the laws of this State.

So that, instead of the \$400 to each executor, as fixed in his will, they received the sum of \$4,365.01.

By the second account, passed in January, 1870, the one-fifth given to the executors for the use of his daughter-in-law, Sarah V. D. Gulick, was the sum of \$6,518.91; and by the third account, passed in 1876, one-fifth was \$824.17.

Alexander Gulick, surviving executor, paid the interest on said amounts to Mrs. Gulick up to April, 1881, without charging any commissions on the interest and income thereof.

By examining the above accounts and settlements made by said Alexander Gulick, executor, you will observe that his counsel was Caleb S. Green, Esq.

In the year 1882 the Legislature of this State passed an act entitled "An act respecting the Orphans' Court" (*See Pamphlet Laws of New Jersey, Session of 1882, page 230*), by which it was enacted by the Senate and General Assembly of the State of New Jersey—

"That whenever, upon the settlement of the accounts of
 "executors or trustees under a will or of commissioners in
 "partition, the usual commissions shall have been allowed
 "them according to law, and in pursuance of the provisions
 "of the will, or of the direction of the Court, any money
 "shall remain in the hands of, or to be intrusted to any such
 "person or persons for investment, the interest of which is
 "required to be paid to any legatee or other person that
 "may be entitled thereto, it shall and may be lawful, upon
 "any subsequent accounting, for the Court before which said
 "account shall be presented for settlement and allowance, to
 "consider the actual pains, trouble and risk of such account-
 "ant, and to allow such commission upon the interest and
 "income received as to the said Court shall be deemed fair
 "and just; *provided*, that said allowance shall not exceed
 "the sum of five per centum on such interest or income."

Then he rendered a bill to Mrs. Gulick for his commissions on said trust fund from 1870, down to and including April, 1882.

Amount of interest as per her receipts, \$5,544.70.

His commission thereon, at three per cent., amounted to the sum of \$166.34.

See page 33 of printed case.

Rents, as per Alexander Gulick's receipts, from August, 1865, to and including April 1st, 1882, \$8,900; which, at two per cent., made commissions amounting to \$178.

See page 34 of printed case.

He made no settlement of his accounts in the Court, but made his own charges for commissions, according to the above act of the Legislature, as long as he lived.

On April 2d, 1883, when he took a receipt for the rent of the farm, he gave a receipt for his commissions, \$8.

See page 35 of printed case, line 5.

Mrs. Gulick was in possession of the farm, and Alexander merely took her receipt for the rent, and she paid his commission.

Page 35 of the case—Receipts of July, 1883, and January 9th, 1884.

Alexander Gulick, surviving executor, died in the winter of 1884.

The interest on the \$6,518.91 of trust funds was settled to January 1st, 1884, and the commissions on same, and the interest on the \$824.17 was settled to June 1st, 1883, and commissions paid thereon.

See page 21 of the case.

Then the administrators of Alexander Gulick, deceased, filed their account and claimed commissions

again on the principal of the trust funds, as well as upon all the interest and income again.

Mr. Bruere, the newly appointed trustee, filed exceptions. (*See page 24 of printed case.*)

The Mercer County Orphans' Court overruled these exceptions and allowed commissions at the usual rate upon the principal fund and income as if such commissions had not been paid (*pages 30 and 31 of printed case*), and made a decree accordingly.

The respondent in the above entitled cause took an appeal to the Prerogative Court (*See petition of appeal, pages 35 to 39 of printed case*). Upon the hearing of the appeal in the Prerogative Court the decree of the Orphans' Court was reversed and a decree made accordingly in said Prerogative Court.

See decree, pages 46 to 49 of case.

I.

We insist that the opinion given by the Ordinary in this case is in strict accordance with the statute, practice and common law of this State, and also in harmony with the decisions of our sister States.

The testator clearly intended that his executors should hold the said one-fifth of his estate, as executors.

The executors were directed to invest such trust funds and pay the interest to his daughter-in-law dur-

ing her life, and, after her death, to pay the principal to her children, the children of his son William:

These duties were not completed until the principal was divided among the children.

See 13 Stewart, Everson vs. Pitney, in which case the same principle was involved as is raised in our branch of this case.

The decree in that case was appealed from, and was argued at the last term, and is now before this Court.

In our case, the trust devolved upon the executors as such. It was clearly the intention of the testator that the executors should distribute the trust fund, after the death of his daughter-in-law, among her children.

The administrators of Alexander Gulick were not entitled to commissions a second time, on the principal of such trust fund.

Reference is again made to the act of our Legislature, passed in 1882, allowing a commission to executors, trustees, &c., not exceeding five per cent. upon the interest or income.

I had always understood that to be the practice before the act of 1882 was passed.

In *8 C. E. Green, page 194, Lathrop vs. Smalley's Executors*, the Chancellor said, in his opinion:

“The claim of the defendant for commissions is properly
“before this Court for determination. He was clearly not

“entitled to commissions on the principal as held by the ‘Orphans’ Court. But the claim for commissions on the ‘interest is not within the principle of that decision.’”

In *Tucker vs. Tucker*, 6 *Stewart* 238, the Chancellor, in his opinion, said :

“An executor, administrator or trustee is not entitled “under the statute, to commissions more than once on the “money which comes into his hands, and, if commissions “have been allowed on an intermediate account, on part of “the estate, he will, on final account, be entitled to commis- “sion only on the balance which has come into his hands “since.”

In New York we find the law the same.

In *Valentine vs. Valentine*, 2 *Barbour, Chy.*, 430, it was decided :

“Where a trust held by an executor is inseparable from “the executorship he is not entitled to double commissions, “first in his character as executor and again in his character “of trustee.”

Page 438, in same case, the Chancellor said, in deciding the case :

“The funds in the hands of the executors for the benefit “of the lunatic and his children, were held by them in their “character as executors, and the trust and executorship “were inseparable. The appellants (the executors) were “not entitled to double commissions, first in their character “as executors and again in their character of trustees.”

See, also, Westerfield vs. Westerfield, 1 *Brad. Repts.* 198; *Lansing vs. Lansing*, 45 *Barb.* 182.

In *Mann vs. Lawrence*, 3 *Brad.* 424, it was held:

“That the investments are made by the executors in their trust capacity, and, though they cannot receive double commissions when they are both executors and trustees, yet they may receive full commissions as executors.”

Drake vs. Price, 5 *New York* 430, where it was held:

“That where executors had invested a legacy as directed by the will that they were entitled to commissions as executors and not as trustees.”

Addison B. Hall et al., Executors, vs. Annie Hall et al., 78 *New York Court of Appeals*, 535, it was held:

“That a person is not entitled to receive commissions both as executor and as trustee upon the same fund.”

In same case, also held:

“That the provision of the statute in reference to trustees appointed by will, allowing them the same commission as executors, had no application.”

We submit that the opinion by the Ordinary in this case in the Prerogative Court, refusing to allow commissions a second time on the corpus of the trust fund, is correct, and the appeal should be dismissed.

II.

If a second commission is allowed to the administrators of Alexander Gulick, deceased, (late surviving executor,) on the corpus of the trust fund, which is limited over to the children of Mrs. Sarah V. D. Gulick, it will diminish the principal of the trust fund.

This, we insist, cannot be legally done.

The principal of the trust fund is \$7,343.08. If they are allowed commissions again on the principal fund, it will leave a balance on hand, as appears by the account on file, of only \$7,203.45. The difference, therefore, of \$139.63 would come out of and diminish the principal fund to that extent.

This is contrary to law.

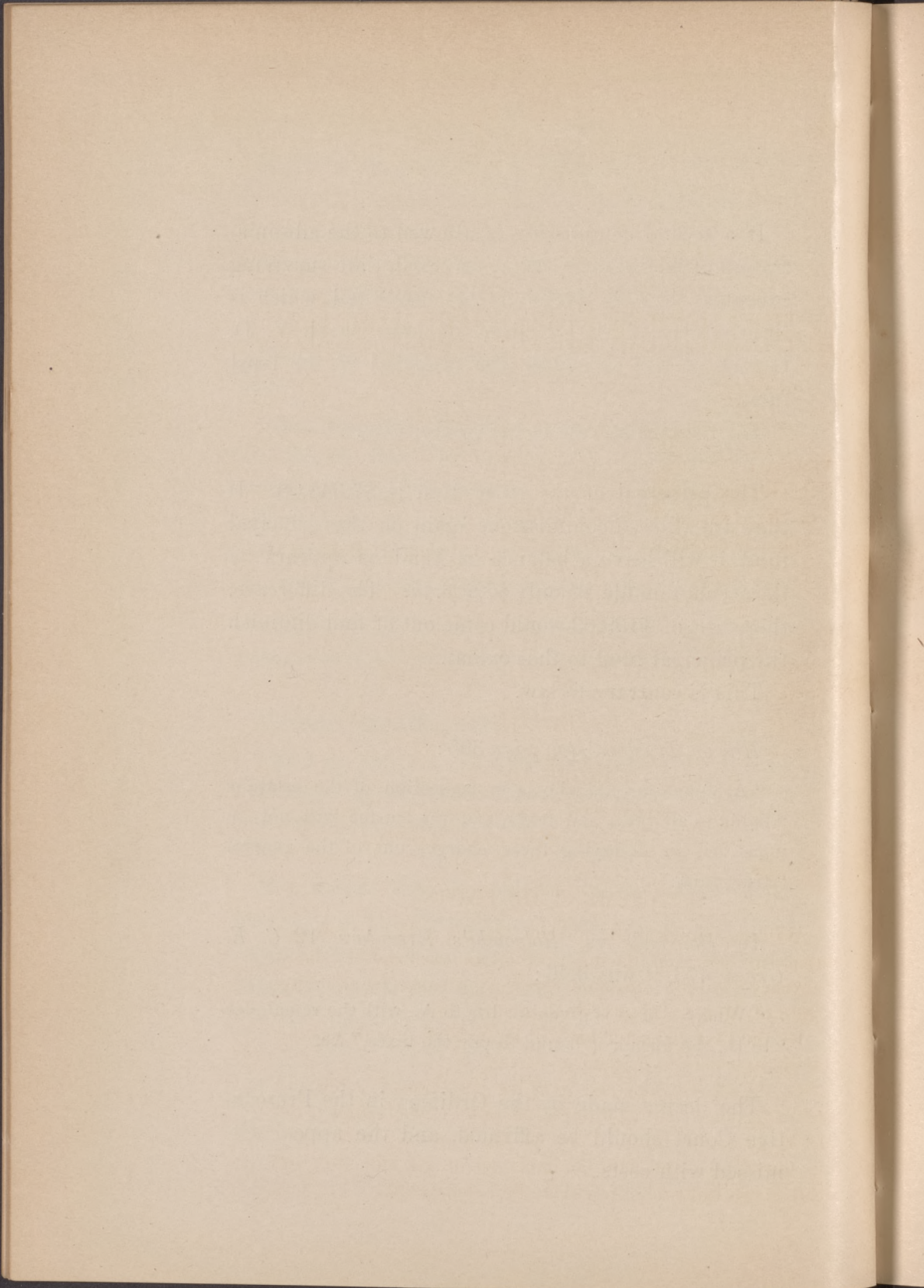
Hill on Trustees, star page 395:

“A tenant for life who is in possession of the estate is liable to all rates and taxes, and the trustee will not be justified in defraying these charges out of the general trust fund.”

In *Holcombe vs. Holcombe's Executors*, 12 C. E. Green, 473, it was held:

“Where a fund is given for life to A., with the remainder to B., the former is bound to pay the taxes,” &c.

The decree made by the Ordinary in the Prerogative Court should be affirmed, and the appeal dismissed with costs.



IN THE COURT OF ERRORS AND APPEALS.

Between

ALMIRA R. GULICK and CHARLTON
R. GULICK, administrators, etc.,
of ALEXANDER GULICK, dec'd,
who was surviving trustee, etc.,
Appellants,

AND

JOSEPH H. BRUERE, trustee for
SARAH V. D. GULICK, under the
will of WILLIAM GULICK, dec'd,
Respondent.

On appeal from the
Prerogative Court.

BRIEF OF

GEORGE O. VANDERBILT,
Counsel for Appellants.

STATEMENT OF FACTS.

William Gulick died, in 1865, leaving a will, which was dated July 30, 1855, having a codicil annexed thereto, dated February 14, 1863; the said will was probated by the Surrogate of Mercer County, September 6, 1865.

By the first clause of his will he ordered his debts and funeral expenses to be paid.

By the second clause he gives his son James \$10,000, and orders it placed out at interest on Bond and Mortgage, the Mortgage to be in the name of the Executors, other than his son James, and not be liable for debts, and after his death to go to his children share and share alike.

By the third clause he gives, devises and bequeaths to his Executors and to the survivor of them certain lands, "*In trust nevertheless that my Executors and the survivor of them should receive the rents, issues and profits of the said real estate so devised to them, and pay the same to my son William A. Gulick and his present wife Sarah each and every year during their lives,*" and not to be liable for William's debts, and after William's and Sarah's death, "I devise and bequeath all the real estate *so held in trust for my said son William and his present wife* to their children share and share alike."

By the fourth clause he gave his son Alexander certain lands during his natural life, and then to his children.

By the fifth and sixth clauses he gave his daughters Abbe and Elizabeth each \$10,000, and orders it placed out at interest on Bond and Mortgage, the Mortgage to be in the name of the Executors or the survivor of them "*in trust*" for said Abbe and Elizabeth, interest to be paid annually to them, and shall not be subject to the control or liable for their husbands' debts, after their death the principal to go to their children.

By the sixth clause he also gives two legacies to two grand-children.

By the sixth clause he also gives a black woman Rachel her freedom, and, in case she is unable to support herself, orders the Executors to support her out of the estate. *No amount is set aside for her support, no sum fixed.*

Then by the sixth clause, he finally makes the following disposition of the balance of his estate in words as follows, viz.: "*All the rest and residue of my estate, both real and personal, I give, devise and bequeath to my five children, James, William, Alexander, Abbe Maria, and Elizabeth H., in fee simple, to be equally divided among them share and share alike.*"

He then, further, appoints his sons, James, Alexander, and his son-in-law, Edward Armstrong, his Executors.

By the codicil he revoked his gift of one-fifth of the rest and residue to his son William which he had given him absolutely, and devised said one-fifth as follows: "*And I do hereby give, devise, and bequeath the one-fifth part of all the rest and residue of my estate, both real and personal, to my Exe-*

cutors hereinafter named, and the survivor of them, BUT IN TRUST NEVERTHELESS FOR THE USE AND BENEFIT OF SARAH, the present wife of my said son William, during her life, and after her death to go to her children."

He also directs the Executors to return and pay to the estate "out of the said one-fifth of the residue of my real and personal estate so given them IN TRUST for the use and benefit of Sarah, wife of my son William, and her children, as above mentioned," all that William may owe him at the time of his decease.

And he further revokes the appointment of his sons James and Alexander, and his son-in-law Edward Armstrong as his executors, and appoints his son Alexander Gulick and Job Olden as his executors. And further says, "And it is my will, and I do direct that the commissions to be allowed to my executors for settling the estate shall be fixed by the Court according to the laws of this State."

The inventory appears by the account to have been \$151,393.08, and was filed August, 1865. About January, 1867, Alexander Gulick alone files, and has passed by the Court, an account wherein he charges himself with \$164,082.21, and was allowed \$3,401.64 as commissions; the account also shows a balance in his hands of \$86,013.48.

February 23, 1870, both executors file and have passed by the Court a second account; they charge themselves with balance in their hands at the last account to wit: \$86,013.48, and also additional sums, amounting in the whole to \$31,808.94; upon this latter sum they were allowed \$806.17 commissions.

A third account was passed May 5, 1876. This was the account of Alexander Gulick, alone, as surviving executor, Job G. Olden having died since the last account. This was an account in reference to the Negress Rachel who had died. By the will she was ordered free, and in case she was unable to support herself, the executors were ordered to support her out of the estate. It seems the executors set aside \$4,000 for her support. There is no sum fixed by the will, and in the second account appears this item, "retained for Rachel's support \$4,000." He charges himself with \$4,000,

and \$1,680 being six years' interest on the same, and commissions are allowed him on \$1,680, to wit: \$97.20.

Alexander Gulick died in 1884. His administrators, Charlton R. Gulick and Almira R. Gulick, in January, 1885, filed their account of his dealing with the trust under the will in favor of William A. Gulick and his wife Sarah. They charge themselves with \$6,518.91, being William A. and Sarah's share of the residue (under the sixth section of the will and codicil), after deducting William A.'s debts to the estate. This account runs from January 1st, 1870. They also charge themselves with the interest on said \$6,518.91, amounting to \$6,241.80. They further charge themselves with \$824.17, being William A. and Sarah's share of the \$4,000 set apart for the Negress Rachel, and the interest thereon to wit: \$422.38. They also charge themselves with the rent money received from the farm devised to the executors in trust for William A. and Sarah under the third section of said will and codicil. This last charge is from 1866 to 1883, and amounts to \$7,300.00; they further charge themselves with \$500 received from an insurance company for one of the buildings burned on the farm, making the total amount, which they charge themselves with, of \$22,807.26. They charge commissions on said \$22,807.26, being commissions on the corpus as well as income. The amount of commissions so charged is \$636.14, less the amount received by the decedent in his life time \$362.67, leaving an amount due the estate of \$273.47.

Joseph H Bruere was appointed trustee by the Mercer County Orphans' Court in lieu of Alexander Gulick, deceased, to manage, preserve and invest the one-fifth of the residue and the farm devised by the third section and codicil, and receive the income thereof for the benefit of William Gulick and his wife Sarah.

The said new trustee excepted to the said account of said administrators of said Alexander Gulick, deceased, filed as aforesaid, because they charged commissions on the corpus as well as the income.

The Mercer County Orphans' Court overruled the exceptions and decided that Alexander Gulick was both executor and trustee under the will of William A. Gulick, and that

as trustee he was entitled to commission on the corpus as well as the income (see opinion of Judge Stewart, page 25). Appeal was taken to the Prerogative Court, and chancellor reverses the Orphans' Court of Mercer, deciding that Alexander Gulick's estate is only entitled to commissions on the income.

THE QUESTION AT ISSUE.

The question before us for consideration is whether the estate of Alexander Gulick, who was in his life time executor (and as we allege trustee) under the will of William Gulick, is entitled to commissions on the one-fifth of the residue of his estate devised in trust to the executors for the benefit of William A.'s wife, Sarah, as well as on the income thereof and the rental from the farm.

That he is entitled to full commissions on the income and rental is well settled. The real question at issue then is, is he entitled to commissions on the principal as trustee, having received commissions on said principal as executor?

DUTIES OF AN EXECUTOR DEFINED.

In the consideration of this question it may not be amiss to consider in general the duties of an executor and trustee for the question at issue is, whether he was acting as executor or trustee.

Bouvier thus defines duties of an executor, page 496, vol. 1 :

1. Within a convenient time after testator's death to collect the goods of the deceased.
2. To bury the deceased in a manner suitable to the estate he leaves behind him.
3. The executor should prove the will in the proper office.
4. He should make an inventory of the goods of the intestate which should be filed in the office.
5. He should ascertain the debts and credits of the estate, and endeavor to collect all claims with as little delay as possible.
6. He should advertise for debts and credits.

7. He should reduce the whole of the goods not specifically devised into money.

8. Keep the money of the estate safely, but not with his own.

9. Be at all times ready to account, and actually file an account within a year.

10. Pay the debts and legacies in the order required by law.

In *Dixon vs. Homer*, 2 *Metcalf*, p. 422, it is said :

“The great duty of an executor or administrator is to collect the assets of an estate and make distribution of the same. In doing this he receives the money once and disburses it once, and his compensation is not fixed until he settles his account of such receipts and disbursements as far as they have been actually made. It is then a compensation for services actually done.”

DUTIES OF A TRUSTEE DEFINED.

Trustee is thus defined by Bouvier, p. 607, vol. 2 :

“A trustee is one to whom an estate has been conveyed in trust.”

In *Prall vs. Tilt*, 1 *Stewart*, p. 484, it is further defined, as follows :

“The common duty of a trustee is not administration or sale, but custody and management for his cestui que trust.”

In *Dixon vs. Homer*, 2 *Metcalf*, p. 422 (already cited), the judge in contrasting the duties of an executor with those of a trustee, of the latter says :

“The case of a trustee is more analogous to that of a guardian. He takes the property to preserve, manage, invest, reinvest, and take the income of it, perhaps for a short period, perhaps for a long course of years, depending on various contingencies.”

In the case of *Drake vs. Price*, 5 *N. Y. (Selden's Rep. Vol. 1)*, p. 432, *Justice Paige* thus defines and contrasts the duties and office of an executor and trustee :

“The office of an executor is to take possession of all the goods and chattels and other assets of the testator ; to collect the outstanding debts, and sell the goods and chattels

so far as is necessary to the payment of the debts and legacies, to pay the debts and legacies, and under the order of the surrogate to distribute the surplus to the widow and children, or next of kin of the deceased. These acts embrace all the duties which appropriately belong to the executorial office.

If any other duty is imposed upon the executor, or any power conferred, not appertaining to the duties above enumerated, a trust, or trust power is created, and the executor becomes a trustee, or the donee of a trust power. And such powers are conferred and such duties imposed upon him, not as incidents to his office of executor, but as belonging to an entirely distinct character—that of a trustee. And in all such cases the trust- and executorship are distinguishable, and separate.”

APPLICATION OF THE DEFINITIONS, AND THE RULES GOVERNING, THE OFFICE OF AN EXECUTOR AND TRUSTEE.

Applying these rules and definitions of the office of executor and trustee, we say that the duties of executorship of Alexander Gulick under the will of William Gulick ended when he and Job G. Olden filed and had passed their final accounts as said executors in the Mercer County Orphans' Court, and further that the duties of trusteeship under said will began when said executors took charge of the one-fifth of the residue, and the farm devised to the executors in trust, and invested the said one fifth of the residue, and received the income thereof, and managed, preserved, and cared for the said farm, and also received the income therefrom for the benefit of William A.'s wife Sarah; or in other words the will of William Gulick, conferred both offices upon Alexander Gulick, and he should be paid for his services for both.

I take the bold ground, that when an executor files and has passed his final account, and distributed the moneys of the estate according to the will or law, his office of executorship ends; that the two offices are separate and distinct; that there cannot be an enlargement of the executorial func-

tions so as to include the functions of a trustee. The duties of each are so radically different, that if an executor by the terms of will is required to hold any portion of the estate, manage, preserve, and invest it for the benefit of anyone, that the office of trusteeship then begins, and he should be paid therefor. All guardians are paid for managing, preserving and investing moneys for anyone. ^{On both Corpus and income} If an executor refuses to serve any longer, after having his account passed, though there may be moneys to be held by him under the will either as executor or trustee for the benefit of some legatee, a new trustee is appointed, and he is entitled to commissions on settlement of his account upon the corpus as well as upon the income. If the new trustee is thus entitled to commissions, why should not the executor or trustee under the will be equally so entitled for like services? Must he serve for years performing the duties of a trustee (or if you please to call it, the enlargement of executorial functions); and simply because he is nominated and appointed by a will, he can only receive ^{commissions} ~~compensation~~ on the income, whereas the trustee who performs the very same duties is entitled to commissions on the corpus as well as the income, because he happens to be appointed by the Court. Then, too, an administrator of an estate receives full commissions on the corpus, and his duties end with the settlement of the estate. He may then be appointed guardian for some person entitled to a part of the estate which he has settled as administrator, and again receives the commissions on the corpus as well as the income. *Witherspoon's Case*, 3 *Rich. Eq.*, p. 13. While the trustee receives only commissions on the income, I can see no justice or equity in the application of such a rule of law, and hence I claim an executor named in a will for performing the duties and office of a trustee should receive commissions upon the corpus as well as the income thereof.

RULE ADOPTED BY THE COURTS.

But the Courts seem to have adopted another rule; the decisions seem to hold, that it depends upon the language of the will. That to invest a legacy and pay over income to some one

specified in the will, does not always necessarily imply trusteeship, that it may be only an enlargement of executorial functions, or one of the incidents of executorialship, and in that case double commissions can not be charged.

In *Johnson v. Lawrence*, 95 N. Y. p. 16, Judge Finch (who has written two opinions on the subject deciding both ways, see *Phoenix vs. Livingston*, 101 N. Y. p. 451, as distinguished from *Johnson vs. Lawrence*), after an elaborate review of all the cases says :

“Taking the adjudged cases together, they appear to establish that, to entitle the same persons to commissions as executors and trustees, the will must provide either by express terms or fair intendment for the separation of the two functions and duties, one duty to precede the other and to be performed before the latter is begun, or substantially so performed, and must not provide for the co-existence continuously from the beginning of the two functions and duties ; and that where the will does so provide for the separate and successive duties, that of trustee must be actually entered upon and its performance begun either by a real severance of the trust fund from the general assets or a judicial decree which wholly discharges the executor and leaves him acting and liable only as trustee.”

In the *Rossett's Case* 5 Redfield p. 601, the rule is thus stated :

“The question whether trust duties enjoined by a will are a mere enlargement of executorial functions or involve the existence of a trustee as such, may be tested by a consideration of the effect of the resignation, or removal of the executor.”

In *Layton vs. Davison* 29 Hun. p. 612-615, the doctrine is still further stated to be,

“If a testator convey a title to a sum of money to the executors to invest and reinvest for the benefit of another during his life, there is an additional duty as trustee separate from executor, imposed upon him and should be paid for as trustees are paid. There would scarcely be a question made if the will had provided that at the settlement the executor shall pay over the trust funds to persons other than the executors.”

THE WILL OF WILLIAM GULICK INTERPRETED.

In accordance with the rule thus laid down (which seems to be the established doctrine to be applied, as to whether a will confers both the powers of executor and trustee, or only executorial powers and duties), let us examine the will of William Gulick.

In the third clause of his will (see page 3 state of the case) he uses the following language :

“I give, devise and bequeath to my executors and to the survivor of them the farm on which the family of my son William A. Gulick now lives—(then follows the description of several other tracts).

In trust nevertheless that my said executors and the survivor of them, should *receive the rents, issues, and profits* of the said real estate *so devised to them*, and pay the same to my son William A. Gulick and his present wife Sarah, each and every year during their lives, to their sole and separate uses, and in no wise liable for the debts of my said son William, and after the death of my said son William and his present wife, I devise and bequeath all the real estate *so held in trust* for my said son William and his present wife to their children share and share alike.”

By the sixth clause (page 4) he says :

“*All the rest and residue of my estate*, both real and personal, I give, devise and bequeath to my five children James, William, Alexander, Abbe Maria, and Elizabeth H., in fee simple to be divided among them share and share alike.”

And in the codicil (page 6) he says :

“Now I do hereby, as regards my said son William, not the other children named in said clause, revoke the said gift, devise and bequest, and I do hereby give, devise and bequeath the one equal fifth part of *all the rest and residue of my estate*, both real and personal, to my executors hereafter named and the survivor of them, *but in trust nevertheless for the use and benefit of Sarah, the present wife of my son William*, during her life, and to be in no wise subject to his debts or control, and after her death the same to go to the children of my said son William and his said wife Sarah in fee simple in equal parts.”

He further says as to the debts that his son William may owe him at his decease :

“Shall by my said executors be retained and paid to my estate, *out of the said one-fifth of the residue of my real and per-*

sonal estate so given them IN TRUST for the use and benefit of Sarah, wife of my said son William, and her children, as before mentioned."

According to the rules laid down in the cases cited, it seems to me that William Gulick, by the terms of his will, and the language therein used, clearly conferred upon Alexander Gulick and Job G. Olden the functions, powers and duties of both executor and trustee. That the duties of executor ended when they settled and had passed their final accounts with the Orphans' Court, paid the debts and legacies directed by the will, and ascertained the residue and divided the same among James, Alexander William, Abbe Maria, and Elizabeth respectively.

At this stage the duties of executors have all been performed, the estate settled, and executorial functions ended.

All the estate is disposed of but one-fifth of the residue, due the son William A., and that is devised to the executors in trust for the benefit of his wife Sarah. The ONE-FIFTH OF THE RESIDUE presupposes an ending, a settling of all the rest of the estate; the duties of trustees here begin, and they are to take charge of, manage, preserve, and invest the said one-fifth for the benefit of Sarah.

It is immaterial whether it is paid over to them as trustees, from themselves as executors, or from some other person. *Wood vs. Ford*, 4 *Redfield*, p. 46. *Michel vs. Holmes*, 1 *Md. Ch.* p. 242.

No specific sum is set apart, but *one-fifth of the residue* is devised to the executors IN TRUST NEVERTHELESS FOR THE USE AND BENEFIT OF SARAH. Mark the language. Do not the very words of the will as to this particular share make them trustees when compared and tested by the definition of the duties and functions of executors and trustees according to the cases already cited? Are not the duties thereby imposed upon them the duties of trustees? Is not the language employed such as is used to confer upon anyone the office of trustee? What else could the testator have meant by the use of such terms? I submit that such is a fair and correct construction of the will, that it provides for the separation of the duties of executors and trustees both by its terms,

and fair intendment; that the duties of one were substantially performed, before the others began.

It is here, I think, his Honor the Chancellor erred. If he is wrong, then his conclusions are wrong, and his decision should be reversed, and Alexander Gulick's estate should be given commissions, not only on the income, but the corpus as well. *Carman Case*, 3 *Redfield*, p. 46, is a case in point. The residue is devised to executors in trust, one-third of this residue to a son Charles who was to receive the benefit of it for his life and then to go to his children, commissions were charged on settling the estate as executor, commissions allowed on corpus as well as income on settling of this share at the death of Charles.

Layton vs. Davison 29, *Hun* 622. *Blake vs. Blake* 30, *Hun* 469. In the last of these cases, after making certain bequests, the language of the will is, "All the rest, residue and remainder is devised in trust."

Perkins vs. Lewis, 41 *Ala.*, p. 649 (discusses all cases at great length). *Hulburt vs. Durant*, 88 *N. Y.*, p. 121. *Waad vs. Ford*, 4 *Redf.*, p. 34. *Roosevelt's Case*, 5 *Redf.*, p. 601. *Michel vs. Holmes*, 1 *Md. Ch.* p. 287. *Ashton Case*, 5 *Whart*, p. 228, particularly pages 241 and 242. *Phoenix vs. Livingston* 101 *N. Y.*, p. 451, (the latter is a late case, and the Judge giving the opinion has already decided otherwise in *Johnson vs. Lawrence* 95 *N. Y.* p. 121).

THE BAKER CASE.

Baker vs. Johnson, 12 *Stewart*, p. 493. In this case the Chancellor has taken the opposite view to that held by him in the case now in question, yet on examination I find the facts are nearly the same.

The following is a synopsis of the will of William H. Baker:

(The words between the quotation marks are in the words of the will.)

"3. I give and devise to my executors hereinafter named, and to the survivors or survivor of them, and the heirs and assignees of the survivor of them, all the following described land and real estate, viz: "

(Then follow the description of land.)

“ To have and to hold the said seven tracts or parcels of land and premises to my said executors, and the survivors and survivor of them upon the following and no other trusts and confidence, viz : ”

(Then follow bequests in reference to wife and children enjoying the same, and disposition of rents and issues, and final disposition of the same.)

“ 7. All the rest and residue of my estate, not hereinbefore disposed of, real, personal, and mixed, and all I may be seized or possessed of at the time of my death, I give, devise and bequeath to my executors hereinafter named, the survivors and survivor of them, and the heirs and assignees of the survivor of them, upon the following and no other trusts and purposes, viz : ”

To convert it all into money, and to invest and keep invested the whole of said residue and the interest after paying for repairs, insurance, taxes, and other necessary expenses, pay over the interest annually, or oftener, to each of my children share and share alike, until the youngest attains the age of twenty-one years, then the sons to have their share, and the daughters' share to be invested as directed in the sixth section of the will.”

“ 9. I hereby nominate, constitute and appoint my friends Samuel S. Halsey, and Edmund D. Halsey, and my son William H Baker Executors of this my last will, and authorize so many of them as may act, the survivors and survivor of them, to do any act or exercise any discretion all said executors could do or exercise together.”

The Chancellor by his opinion under this will in 12 *Stew.* holds that the will itself confers both the powers of executor and trustee, and that the executors are entitled to double commissions on the corpus, one as executor and another as trustee. I have examined this will, and had printed in this brief the clauses in reference to the trust powers conferred by it in order to compare it with the will of William Gulick, and I submit that, if the Baker executors are entitled to double commissions, the Gulick executors certainly are, for upon a comparison of the language of this will creating a trust, with the will of William Gulick, I can see

no such distinction as his honor the Chancellor makes. The terms used to create a trust are if anything stronger in the will of William Gulick. I fail to see how the Chancellor reconciles these two opinions where the facts and language creating the trust are similar in substance, and yet his opinion in the Baker case is directly opposite to his opinion in this case.

THE REQUA CASE.

The Chancellor cites in his opinion in this cause the case of *Everson vs. Pitney*, 13 *Stew*, p. 589 (now pending before this Court), called the Requa Case.

I think the case not parallel, that the facts and language used are different. The testator devises the whole estate to the executors during life of widow, with the exception of a legacy of \$3,000 to the widow, and in addition to the income she is receiving \$500 annually out of the *corpus*. The executor simply settles this estate to ascertain the debts and claims due the estate and the amount of the same. There is no distribution, no winding up, or ending of the estate, that cannot be done until the widow's death, then the estate is to be closed, and distributed; until that time the whole corpus of the estate is in the hands of the executor, there is no separation of the fund.

In the case before us, the estate has been settled, and the *residue* ascertained and divided. The Requa case belongs to that class of cases where certain trust duties and responsibilities are incident to executorship, and particularly is *Johnson vs. Lawrence*, 95 *N. Y.*, p. 121 such a case. Judge Finch (who wrote the opinion in both cases) draws the distinction between the two class of cases, in *Phoenix vs. Livingston*, 101 *N. Y.*, p. 451. The line of distinction between these two class of cases is sometimes slight, but the difference between the Requa case, and this one, it seems to me is well defined—is marked, and they should be distinguished.

Valentine vs. Valentine, 2 *Barb*, *Ch.* is much cited. But there the executor had never filed his account as executor, or settled as such, or invested the fund said to be left in trust.

Westerfield vs. Westerfield, 1 *Bradford*, p. 198. A specific sum to wit \$6,000 already invested, is set aside for some one's benefit.

The same is true of *Lansing vs. Lansing*, 45 *Barb.*, 182, and *Drake vs. Price*, 5 *N. Y.* 430.

Hall vs. Hall, 78 *N. Y.*, p. 535. The devise is to executors, survivors and survivor of them, and their successors or successor. Judge Church puts great stress on the words *successors or successor*, as showing that the testator meant them to serve as executors and not trustees, and hence the trust was attached to the office and not to individuals. These last cases cited are in a line with the decision of the *Requa Case*, and are based in general upon the same principles.

THE SUPPLEMENT TO ORPHANS' COURT ACT OF 1882.

As to the act of 1882 referred to by the Chancellor, which is as follows :

“ That whenever, upon the settlement of the accounts of executors or trustees under a will, the usual commissions shall have been allowed them according to law, and in pursuance of the provisions of the will, or of the direction of the Court, any money shall remain in the hands of or be intrusted to any such person or persons for investment, the interest of which is required to be paid to any legatee or other person that may be entitled thereto, it shall and may be lawful upon any subsequent accounting for the Court before which said account shall be presented for settlement and allowance, to consider the actual pains, trouble, and risk of such accountant and to allow such commissions upon the interest or income received as to the said court shall be deemed fair and just; provided that said allowance shall not exceed the sum of five per centum on such interest or income.”

I am inclined to the view taken by Judge Stewart in his opinion on page 30, state of the case (which opinion I commend to the consideration of the Court), viz: That “ this statute does not touch the question of the allowance of commissions to trustees upon the *principal* fund in their hands, it only

gives the Court power (it is not mandatory) in a proper case to increase the rate of commissions upon the *income* of such funds over the amount previously fixed by statute."

But the statute, even if applicable, is retroactive. *Ramsey vs. Ellis*, 3 *Desauss.* p. 79. *Dakin vs. Denning* 6, *Paige* 95. *Patrick Case 5th Phila.*, p. 478. The latter case was under a Pennsylvania statute which forbade an executor and trustee from receiving more than one commission on the principal fund, and the judge deciding used the the following strong language, "Every construction which goes to introduce a retroactive effect, and by altering the engagement of men, defeat justice, is contrary to the principles of enlightened jurisprudence."

CAN THE PRINCIPAL FUND BE LESSENED BY DEDUCTING COMMISSIONS ?

As to the question whether the principal can be impaired or lessened by payment of commissions on the corpus, there can be no question, if it is settled that the fund in question is a trust fund, for it has never paid a commission as a *trust* fund, and must come within the rule and be subject to trust burdens. Besides, no specific sum has been set apart by the testator, but an unknown sum, which might be little or great, being one-fifth of the residue. *Burney vs. Spear* 17 *Ga.* 228. *Mount's Case*, 2 *Redf.* 405. *Pedrick Case*, 5 *Phila.* 478.

RECEIPTS OF ALEXANDER GULICK.

By the exhibits in the cause, pages 33, 34 and 35, Alexander Gulick has taken receipts from Sarah V. D. Gulick for the income on the one-fifth of the residue, and rental from the farm, from which he has deducted certain commissions. But this in no wise precludes him from being allowed commissions on the corpus. Neither can it be construed as a waiver of his right or his intention to charge commissions on the principal, for he had not distributed the one-fifth of the residue and could not until the death of Sarah. He only settles with her as to income. As to commission on the principal, that would be a proper

charge to make upon a settlement with Sarah's children after her death, that question could not arise until then.

Alexander Gulick is dead, Sarah, William A.'s wife, is still living. Joseph H. Bruere, the respondent, is the trustee of this fund, appointed in the place of Mr. Gulick. As such trustee he will be entitled to *commissions* on the *corpus* as well as the income. Revision, sec. 109 and 110, page 776. Alexander Gulick managed this trust fund for almost fifteen years. Now, upon what principles of justice and equity must he be denied commissions upon the corpus, and yet the same be allowed the new trustee Joseph H. Bruere?

I submit that upon the statement of the foregoing facts, and the rules laid down in the cases cited, that the decision of the Chancellor should be overruled, and the decision of the Mercer County Orphans' Court be affirmed with costs to the appellants.

Respectfully submitted,

GEORGE O. VANDERBILT,

Counsel of Appellants.

Dated Princeton, N. J., Nov. 20, 1886.

The first part of the book is devoted to a general survey of the history of the United States from its origin to the present time. It is divided into three parts: the first part deals with the early history of the country, the second part with the history of the Republic, and the third part with the history of the United States in the world.

CHAPTER I

THE EARLY HISTORY OF THE UNITED STATES

The early history of the United States is a story of discovery and exploration. It begins with the first European settlers who came to the New World in search of gold and other precious metals. The story continues with the discovery of America by Christopher Columbus in 1492, and the subsequent exploration of the continent by other European navigators. The early history of the United States is a story of the struggle for independence and the establishment of a new nation.

C. S. ROBINSON & Co., Printers, Princeton, N. J.

IN THE COURT OF ERRORS AND APPEALS.

BETWEEN

ALMIRA R. GULICK

AND

CHARLTON R. GULICK,

Administrators of Alexander Gulick, deceased, who was surviving Trustee under the will of Wm. Gulick, dec'd, *Appellants*.

AND

JOSEPH H. BRUERE,

Trustee for Sarah V. D. Gulick, under the will of Wm. Gulick, dec'd, *Respondent*.

ON APPEAL

FROM

PREROGATIVE COURT.

GEORGE O. VANDERBILT,
Counsel for Appellants.

A. G. RICHEY & SON,
Counsel for Respondent.

The Record certified from the Mercer County Orphans' Court.

I, John W. Cornell, Surrogate of the County of Mercer, do certify the annexed to true copies of the last will and testament of William Gulick, deceased; of the three accounts of Alexander Gulick as Executor of the said William Gulick, deceased; the account of Almira R. Gulick and Charlton R. Gulick, as administrators of the said Alexander Gulick, now deceased, who was surviving Trustee, &c., of the said William Gulick, deceased; of the the exceptions to the said last mentioned account as filed by Joseph H. Bruere, Trustee for Sarah V. D. Gulick, under the will of William Gulick, deceased; of the opinion of the Mercer Orphans' Court and the decree of the said Court overruling such exceptions, and that the accompanying are the original papers, viz: vouchers for moneys paid by the said Sarah V. D. Gulick to the said Alexander Gulick for commissions, &c., (3 in number), and for amounts of rents received and interest by the said Alexander Gulick, (3 in number).

In testimony whereof I have hereunto set my hand and affixed my official seal, this first day of June A. D. 1885.

20

[Seal.]

J. W. CORNELL,
Surrogate.

In the name of God. Amen. I, William Gulick, of the township of Princeton, in the County of Mercer and State of New Jersey, do make and publish this my last will and testament.

1. I do order and direct all my just debts and funeral expenses to be first paid out of my estate.

2. I give and bequeath to my son James the sum of Ten Thousand dollars to be placed out at interest on Bond and Mortgage as soon my estate can be collected without sacrifice, the bonds and mortgages to be taken in the name of my executors, other than my said son James, and the interest to be paid annually to my said son James, by my said executors, for his sole and separate use, and in no wise liable for the debts of my said son James, and after his death to go to his children share and share alike.

3. I give, devise and bequeath to my executors and to 10 the survivor of them the farm on which the family of my son William A. Gulick now lives, also the lot I bought of the administrators of Dr. James Ferguson, deceased, opposite the still house containing thirty-four acres; also a wood lot on the Sand Hill bought of the executors of Jacob Van Dyke, deceased, and James McLure, containing ten acres; also a wood lot, called the Still House lot, bought in part of the estate of Henry Gulick, adjoining lands of Robert Baylis and the estate of Ephraim Yates, deceased, all the foregoing premises are situate in the Township of South Brunswick, 20 in the County of Middlesex, except the Still House lot which is situate in the County of Somerset, also a lot on Rocky Hill adjoining lands of Peter Vannote, Robert Baylis, John Gulick Vantilburgh and others, containing about seventy acres, situate in the Township of Franklin, in the County of Somerset. In trust nevertheless that my said executors and the survivor of them should receive the rents, issues and profits of the said real estate so devised to them, and pay the same to my son William A. Gulick and his present wife Sarah each and every year during their lives, to their sole 30 and separate uses, and in no wise liable for the debts of my said son William, and after the death of my said son William and his present wife, I devise and bequeath all the said real estate so held in trust for my said son William and his present wife to their children share and share alike.

4. I give, devise and bequeath to my son Alexander the farm upon which I now live, containing about seventy acres, adjoining lands of Jacob Gulick, Jacob Scudder and others, to have and to hold the same during his natural life, and after his death to go to his children share and share alike. 40

5. I give and bequeath to my daughter Abbe Mariath e sum of ten thousand dollars, to be placed out at interest on Bond and mortgage so soon as my estate can be collected without sacrifice, the bond and mortgages to be taken in the names of my executors or the survivor of them in trust for my said daughter Abbe Maria, and the interest to be paid annually to her by my said executors or the survivor of them for her sole and separate use, and in no way liable for the debts or subject to the control of any man she may
10 marry, should she marry and have a child or children then after her death I give the said ten thousand dollars to such child or children.

6. I give and bequeath to my daughter Elizabeth H. the sum of ten thousand bollars to be placed out at interest on Bond and Mortgage as soon as my estate can be collected without sacrifice, the bonds and mortgages to be taken in the names of my executors, other than my son-in-law Edward Armstrong, and of the survivor of them in trust for my said daughter Elizabeth H., and the interest to be paid
20 annually to her, by my said executors, for her sole and separate use and in no wise liable for the debts or subject to the control of her present or any future husband, and after her death to go to her children share and share alike. If my grandson William H. Gulick, son of James H. Gulick, should attain his age of twenty-one years, I order and direct my executors to pay him Five Hundred dollars. If my grandson Symmes H. Gulick, son of William A. Gulick, should attain his age of twenty-one years, I order and direct my executors to pay him Five Hundred dollars. I order and
30 direct that my black woman Rachel be free, and should she become unable to support herself, then in that case I order that my executors support her out of my estate. All the rest and residue of my estate, both real and personal, I give, devise and bequeath to my five children James, William, Alexander, Abbe Maria and Elizabeth H. in fee simple to be equally divided among them share and share alike. It is my will that nothing herein contained shall be so construed as to discharge either of my said children from any claim or bond, judgment note, book account, or otherwise, which I
40 may have against him or her at the time of my death, but

that the said claim shall be inventoried as part of my estate, and I do hereby constitute and appoint my sons James and Alexander and my son-in-law Edward Armstrong executors of this my last will and testament, investing them or the survivors or survivor of them with full power to sell that part of my real estate which is not devised by me in this my last will and testament, and they are each to receive the sum of four hundred dollars in lieu of commissions for settling my estate.

In witness whereof I, Wiliam Gulick, have hereunto set 10 my hand and seal this thirtieth day of July, eighteen hundred and fifty-five (1855).

Signed, Sealed, Published,
Pronounced and declared by
the Testator William Gulick
as and for his last will and
testament in our presence
who at his request, and in the
presence of each other have
subscribed our names as wit-
nesses hereto.

WILLIAM GULICK. { L. S. }

20

WM. L. MACTIER.
JAMES L. GREEN.
ROBERT S. GREEN.

[CODICIL.]

Whereas I, William Gulick, of the Township of Princeton, in the County of Mercer and State of New Jersey, have 30 made and duly executed my last will and testament in writing, bearing date the thirtieth day of July in the year of our Lord eighteen hundred and fifty-five, now I, the said William Gulick, being desirous of altering my said will in the particulars hereinafter mentioned, do for that purpose make this present writing which I direct to be annexed to my said will as a codicil thereto, and taken as a part thereof. Whereas by my said last will and testament I give, devise and bequeath all the rest and residue of my estate, both real and personal, 40

to my five children James, William, Alexander, Abbe Maria, and Elizabeth H., in fee simple to be equally divided among them, share and share alike. Now I do hereby as regards my said son William, not the other children named in said clause, revoke the said gift, devise and bequest, and I do hereby give, devise and bequeath the one equal fifth part of all the rest and residue of my estate, both real and personal, to my executors hereinafter named, and the survivor of them, but in trust nevertheless for the use and benefit of Sarah, the
10 present wife of my said son William, during her life, and to be in no wise subject to his debts or control, and after her death the same to go to the children of my said son William and his said wife Sarah in fee simple in equal parts, and in case any of said children should die in the life time of their said mother leaving issue then such issue shall take the same share their parents if living would have taken. And it is my will and I do declare that whatsoever debts my said son William shall or may owe to me at the time of my decease, whether on judgment, bonds, note, book account, or other-
20 wise, shall by my said Executors be retained and paid to my estate, out of the said one fifth of the residue of my real and personal estate so given them in trust for the use and benefit of Sarah, wife of my said son William and her children, as before mentioned, and in case it should be necessary or advisable in the opinion of my said executors or the survivor of them to sell all or any part of said one fifth of said residue of real and personal estate in order to pay such indebtedness of my said son William, then and in that case I give to my said executors and the survivor of them full power to sell the
30 same or such part thereof, as they may deem advisable for the purpose aforesaid: and if after paying said indebtedness there should remain any moneys of the proceeds of such sale, the same shall be invested by said executors and the interest thereof be paid to said Sarah during her life, and after her death the principal shall go to the children of her and my said son William in equal parts as aforesaid. And whereas I, the said William Gulick, do in and by my said will and testament constitute and appoint my sons James and Alexander, and my son-in-law Edward Armstrong executors of
40 my said last will and testament, investing them with full

power to sell that part of my real estate which is not devised by me in my said last will and testament, and they are each to receive the sum of four hundred dollars in lieu of commissions for settling my estate, now I do hereby revoke the said clause of my said will, and I do hereby constitute and appoint my son Alexander and my friend Job G. Olden, and the survivor of them, executors of my said last will and testament and of this codicil thereto, and I do hereby give to my said executors and the survivor of them full power to sell that part of my real estate which is not specifically devised by me in my said will or in this codicil. And it is my will, and I do direct that the commissions to be allowed to my said executors for settling my estate shall be fixed by the court according to the laws of this State. And I do hereby revoke all and every codicil and codicils to my said will heretofore executed, and do declare this present instrument of writing to be a codicil to my said will and to be a part thereof.

In witness whereof I, the said William Gulick, have hereto set my hand and seal this fourteenth day of February in the year of our Lord, eighteen hundred and sixty-three.

Signed, Sealed, Published and declared by the said William Gulick, as and for a codicil to his last will and testament, and to be added thereto and considered a part thereof, in presence of us who in his presence and in the presence of each other have hereto set our names as witnesses, all of us being present at the same time, (the words "the principal" being first interlined on the third page).

WILLIAM GULICK. { L. S. } 30

THOMAS LAVENDER.
 JAMES H. HUNT.
 WILLIAM HUNT.

The account of Alexander Gulick, one of the Executors of the last Will and Testament of William Gulick, late of the County of Mercer, deceased, as well of and for such and so much of the estate of said decedent as hath come into their hands as for and concerning their payments and disbursements out of the same.

These Accountants charge themselves :

Dr.			
1865.			
10	Aug.	To amount of inventory and appraisement	
		on file in Surrogate's office	\$151,393 08
	"	Excess of Vendue	459 00
	" 8	Interest on C. & N. W. R. R. Bonds	166 25
	"	Cash of John Magee	3,000 00
	" 16	Interest on N. P. R. R. Bonds	54 00
	"	" " " Scrip	33 89
	Sept. 4	H. De Hart's Interest.	150 00
	" 6	on D. & B. R. R. Bonds	10 50
	Oct. 2	Cow and calf sold for more than ap- praisement	29 50
20	" 9	J. P. Norris, Interest on Mortgage . .	35 00
	Nov. 1	Six mo. Interest on U. S. Bonds . .	56 00
	"	Premium on same	49 95
	" 2	D. M. Robison's sale of N. P. R. R. Stock, at advance of Inventory . .	467 35
	" 10	Six mos. Interest on C. & N. W. R. R. Bonds	15 75
	" 17	New Brunswick Fire Insurance Divi- dends	90 00
30	Dec. 22	Interest on U. S. Bonds 7-30	72 35
	" 30	" Do. Do. 5-20	100 00
	"	Premium on same	48 00
1866.			
	Jan. 26	Interest on U. P. R. R. Scrip	33 89
		Do. Do. Bonds	44 00
		Interest on Rome & Watertown R. R.	65 00
	" 6	" C. & N. W. R. Bonds	166 25
	" 6	Advance on Rome & W. R. R. Stock	91 00
	March 1	Interest on U. S. Bonds	25 00
40	"	Premium on same	7 85
	"	Interest on B. & D. R. R.	85 50
	"	Dividend on C. & A. R. R. Stock . .	60 00
	"	Advance on 120 shares of N. B. Fire Ins. Co.	56 40
	April 6	J. P. Norris, Interest	105 00
	" 10	Cash received on Wm. Baker's Mort- gage	45 90

April	27	Interest on U. S. Bonds	111 00	
		Premium on same	30 52	
May	3	C. & N. W. R. R. Interest	33 25	
		U. S. Tax from W. H. Gulick	10 00	
June	13	Interest on U. S. 7-30 Bonds	474 00	
July	11	" " 5.20 "	120 00	
		Premium on same	57 60	
Aug.	17	Interest on C. & N. W. R. R. Bonds	166 25	
"	23	" on William Baker's Mortgage	112 00	
"	27	" on N. P. R. R. Scrip	33 89	10
		" " " Bonds	54 00	
		C. & A. R. Road Dividend	60 00	
"	29	Interest on U. S. Bonds	25 00	
		Premiums on same	11 25	
Sept.	4	Amount received of Dr. Johnston as per contract	150 00	
"	15	Interest on H. De Hart's Mortgage	162 50	
		" on B. D. R. R. Bonds	85 50	
		U. S. Tax of S. H. Gulick	10 00	
Nov.		Interest on U. S. 5-20 Bonds	111 00	20
		Premium on same	47 73	
		C. & N. W. R. R. Interest	33 25	
		Premium on \$2,700 U. S. Bonds (sold)	135 00	
Dec.	21	Interest on U. S. 7-30 Bonds	474 50	
"	29	Premium on \$8,000 U. S. Bonds (sold)	320 00	
		J. P. Norris, Interest	105 00	
		Interest received on Ground rent Prin- cipal as per Inventory, \$991.66	21 32	30
		Ground rent not included in Inventory	3,416 66	
		Amount received as per E. Armstrong account rendered from Aug. 1, 1865 to May 16, 1866	694 58	
			<u> </u>	\$16,4082 21

These Accountants pray allowance :

Cr.

1865.

July	31	For Telegraphing at Trenton	1 50	
Aug.	1	Sundries for Funeral	5 85	40
"	4	John B. Hamilton, account	11 28	
		Paid man for services	5 00	
"	5	Shoes for Rachel (Slave)	2 50	
		Dr. Parker for services	10 00	
"	8	N. Y. Observer	7 00	
		Premium on U. S. Bonds	36 15	
		Expenses to New York	4 00	
"	9	Telegraphing	1 75	
		Paid Rachel	1 00	

	Aug.	10	Stamps and Paper	2 00
	"	14	Miss Harterick's bill	3 65
			Cash paid Margaret	4 20
			Washing, etc.	2 00
	"	16	Expenses to Philadelphia	4 00
	"	23	Abby M. Gulick	1 52
	"	24	Wm. Dolton, account	139 88
			Coal bill	7 00
	"	28	Silver cup ordered by deceased	38 00
10			Paper and Books	1 25
			Revenue Stamps	87 50
			S. A. Hammlton's account	46 50
			Expenses to Trenton	3 00
	"	7	J. G. Van Dyke's account	50 25
	"	8	Freight Bill	2 33
	Sept.	14	Princeton Press	4 50
			Acknowledgement of Deeds, etc.	2 37
	"	18	Surrogate as Pec't	32 57
			Expenses to Trenton, witnesses, etc.	4 50
20	"	19	Vendue bills, Printing	2 00
			Printing Notice	6 00
	"	25	Expenses to Trenton	2 12
	"	26	W. Baker & Bro., Bill	24 71
			Book and Paper	1 00
			Expenses to Trenton	2 00
	"	28	Basket for Corn	0 75
	"	31	Note Book, Paper Stamp, etc.	2 86
	Oct.	2	Sundries for Vendue	15 62
			Book	1 00
30			Help in- and out-doors	4 50
	"	4	Cox & Minit's Bill	16 00
			S. H. Gulick	6 00
	"	6	H. Van Dyke, Exr. (Note)	347 35
			F. Reading (James' Note)	103 75
			A. F. Allen	210 00
			Bills taken at Vendue (worthless)	5 00
			Cash paid Internal Revenue Tax	114 75
	"	17	Expenses to Philadelphia	4 00
	Nov.	1	Do. Do.	4 00
			Acknowledgment of Deeds	1 00
40	"	3	A. L. Rowland's Bill	501 22
			Government Tax on Vendue Sales	10 50
	"	10	Expenses to New York	4 00
	"	17	" to New Brunswick	2 00
	"	18	2 Notes of Anna and Helen Gulick	82 60
	"	27	Clothing for Rachel	8 13
	"	28	Board bill of Do. to J. Wright	119 40
			J. Margerum's Bill	34 00
			Margaret Scully	32 00

Dec.	1	Freight Bill on Tomb	2 00	
"	5	Exp. of Stone and putting up Tomb	23 86	
"	6	Catharine Jennie, Services	54 50	
"	11	Bill for Rachel	3 30	
"	20	Bill for Tax, H. B. Duryee	375 35	
"	22	Expenses to New York	4 00	
		Theodore Titus, account.	119 99	
		Rachel	2 00	
		Expenses to Philadelphia	4 00	
1866.				10
Jan.	1	Robert Gulick's Note	90 35	
"	2	Expenses to New York	4 00	
"	6	" "	4 00	
"	9	Dr. Baker's Bill	5 50	
"	11	Jno. Murphy (Monument)	192 74	
"	12	Expenses to Trenton	2 00	
"	15	J. Baker's Bill	8 05	
		C. Marsh	14 51	
		W. H. Gulick (by Will)	500 00	
		Catharine Scully, balance on account	16 00	20
"	13	Jno. Conover's Bill	7 00	
		W. L. Hankins	11 56	
		Pew Rent to Aug. 1, 1865	12 67	
		E. Baker & Co.	6 30	
		S. H. Gulick (by Will)	500 00	
		Do. Account	15 40	
		E. Margetum	8 00	
		A. Martin's (Coal Bill)	42 04	
"	24	J. C. Withington	62 50	
"	27	Deed for Blacksmith Shop	2 00	30
"	26	Expenses to Philadelphia	4 50	
Feb.	1	" New York	4 00	
"	29	Jas. Higgin's Bill	61 33	
"	5	Flannel for Rachel	4 00	
		Expenses to New York	4 00	
		Making Clothes for Rachel	50	
		Jno. H. Scudder, Surrogate	6 36	
March	10	A. Provost, Bill	18 50	
		Judge Runyan for Bond	1 50	
		Expenses to New Brun-wick	5 70	40
"	24	A. Mount	132 58	
"	27	Jas. Hunt and W. G. Baylis (App.) .	6 00	
April	1	Isaac Suydam, Services	41 39	
		John Haggerty	113 59	
		Bounty Tax	352 80	
"	19	A. Beekman's Note and Interest . .	313 17	
		C. B. Moore's Bill	44 00	
"	21	Hay Bills	2 40	
		Jno. Conover's Bill	25 50	

	May	10	Surrogate (Copy of Will)	7 00
	"	14	Paper and Envelops	0 75
	"	16	Jno. Hunt, account	23 80
	"	28	Jacob Wolf, "	67 82
	July	11	Expenses to New York	4 00
	"	13	Dr. Woodhull's Bill	70 00
			Assessment on Insurance	1 30
			C. Conover's Bill	40 66
	"	17	Expenses to New York	4 00
10	Sept.	1	J. B. Wright	64 50
	"	3	Expenses to Trenton	2 00
	"	4	David Johnston	130 41
			James Shaw	107 38
	"	10	A. L. Martin's (Col.) Tax	178 75
	"	18	Expenses to Trenton	1 00
	Oct.	3	" Philadelphia	4 00
			Coal for Rachel	4 00
			Bond and Mortgage as directed by Will on Entailment	5,000 00
20			Expenses getting and record	3 50
20	Nov.	1	Dress and Making for Rachel at Hampton	2 75
			Exps. to Trenton and Philadelphia	4 00
	Dec.	15	" " "	1 00
	"	17	Four Weeks' Board for Rachel	8 00
	"	19	Tax for 1866	315 00
			Expenses to Trenton and New York	5 00
	Nov.	19	Board of Rachel at Hampton	12 00
	Dec.	28-29	Exps. to Trenton and Philadelphia	6 00
30	1867.			
	Jan.	2	A. M. Gulick, Note and Interest	29 52
			Expenses to Trenton	1 50
			A. V. Ackerman	10 00
	"	10	Caleb S. Green, Counsel Fee	50 00
			Expenses to Trenton	2 00
			Amount paid as per Edw. Armstrong account rendered from Aug. 1, 1865, to May 16, 1866	576 00
			Cash paid J. G. Olden, Expenses	4 75
			John V. Cornell	5 49
40			Doctor Roberts	4 00
			Chas. Hodge, Jr.	2 00
			Amount of Principal and Interest of Notes against J. H. Gulick, appd. \$33,425.63, and remaining un- settled, he claiming offset against the same	33,425 63
			Notes held by the children of J. H. Gulick, \$522.00; of William A.	

Gulick, \$1,800.00; of Alexander Gulick, \$1,000.00, and of Eliz. H. Gulick, \$454.00	3,776.00	
Interest as per Inventory allowed on Ground Rent (principal) \$991.66	4 87	
Cash paid J. N. Woodhull, M.D.	12 00	
Amount of Hay less sold at Vendue	80 00	
Overcharge on lot of Books at Vendue	10 00	
Error in appt. of Clock	10 00	
Amount of property in hands of Executors to be retained for the children of said heirs as directed by Will	25,000 00	10
Expenses to Trenton (3 trips)	6 00	
Advertising Settlement	2 00	
Court, Surrogate and Criers' Fees	100 00	
Commissions on \$164,082.21	3,461 64	
Balance in hands of Accountants	\$86,013 48	

The second account of Alexander Gulick and Job G. Olden, executors of the last will and testament of Wm. 20 Gulick, late of the County of Mercer, deceased, as well of and for such and so much of the estate of said decedent as hath come to their hands to be administered as for and concerning their payments and disbursements out of the same.

These Accountants charge themselves :

DR.

Balance on hands upon settlement of former account	\$ 86,013 48	
James H. Gulick's Notes, dated Nov. 6, '72, respectively 10,000 00		30
Nov. 6, '72, 10,000 00		
" " 8,716 46		
<u>28,716 46</u> Int. to Aug. 1, '65	4,709 17	
J. G. H.'s admitted claims . . 10,973 73		
Principal due . . . 17,742 73 Int. to Jan. 1, '70	4,701 82	40
Above Principal due	17,742 73	
	<u>27,153 72</u>	
Interest deducted	2,543 67	24,610 05
Alexander Gulick's Note dated Jan. 24, 1863, 6,218 19, Int. from Aug. 1, 1865	1,647 82	

	Note dated Jan. 24, 1863, 3,551 22,		
	Int. from Aug. 1, 1865	941 07	
	Note dated Jan. 13, 1863, 404 25,		
	Int. from Aug. 1, 1865	107 12	
	Note dated Jan. 13, 1863, 1,031 20,		
	Int. from Aug. 1, 1865	273 26	
	Note dated Jan. 13, 1863, 1,101 22,		
	Int. from Aug. 1, 1865	291 82	
	Note,	500 00,	
10	Int. from Aug. 1, 1865	132 50	
		<hr/>	
		3,393 59	
	Interest deducted	2,543 67	849 92
	William A. Gulick's.		
	Due on acct. March 31, 1852, 3,122 31,		
	Int. from Aug. 1, 1865	827 40	
	Judgment due Jan. 24, 1857, 2,766 34,		
	Int. from Aug. 1, 1865	733 09	
	Account due April 1, 1859, 981 84,		
20	Int. since Aug. 1, 1865	260 18	
	Account due April 1, 1865, 1,051 71,		
	Int. from Aug. 1, 1865	278 70	
	Account due April 1, 1863, 300 00,		
	Int. from Aug. 1, 1865	79 50	
	Account due April 1, 1864, 300 00,		
	Int. from Aug. 1, 1865	79 50	
	Account due April 1, 1865, 300 00,		
	Int. from Aug. 1, 1865	79 50	
	Account due Aug. 1, 1865, 100 00,		
30	Int. from Aug. 1, 1865	26 50	
	Judgment dated June 23, 1857, 453 00,		
	Int. from Aug. 1, 1865	121 04	
		<hr/>	
		2,485 41	
	Interest deducted	2,543 67	
	Elizabeth H. Armstrong's.		
	Account due May 15, 1845, 650 00,		
	Int. from Aug. 1, 1865	172 24	
	Account due Nov. 5, 1847, 570 00,		
40	Int. from Aug. 1, 1865	151 05	
	Acct. by Edw. due Feb. 23, '56, 530 58,		
	Int. from Aug. 1, 1865	140 60	
	Note due Sept. 24, 1857, 483 49,		
	Int. from Aug. 1, 1865	128 12	
	Note due Oct. 29, 1858, 361 04,		
	Int. from Aug. 1, 1865	95 67	
	Note due Dec. 23, 1858, 982 50,		
	Int. from Aug. 1, 1865	260 36	
	Note due by Edw. Aug. 1, '65, 3,053 86,		
	Int. from Aug. 1, 1865	809 27	

Note due March 1, 1861,	812 75,		
Int. from Aug. 1, 1865		223 33	
Note due Dec. 9, 1861,	4,500 00,		
Int. from Aug. 1, 1865		1,192 50	
Note due May 14, 1862,	330 25,		
Int. from Aug. 1, 1865		87 51	
Note due June 18, 1863,	64 30,		
Int. from Aug. 1, 1865		17 04	
Note due Oct. 5, 1863,	738 48,		
Int. from Aug. 1, 1865		195 69	10
Note due May 11, 1864,	5,132 50,		
Int. from Aug. 1, 1865		1,360 11	
Note due Jan. 13, 1865,	765 14,		
Int. from Aug. 1, 1865		202 75	
Indebtedness to Aug. 1, 1865,	284 32,		
Interest		75 34	
		<hr/>	
		5,111 58	
Interest deducted		2,543 67	2,567 91
Abby M. Gulick.			20
Advanced Aug. 7, 1865,	200 00,		
Interest		52 80	
Advanced Oct. 9, 1865,	100 00,		
Interest		25 37	
Advanced Aug. 1, 1866,	1,000 00,		
Interest		201 67	
Advanced Nov. 27, 1866,	500 00,		
Interest		92 83	
Advanced Dec. 31, 1866,	8,000 00,		
Interest		1,440,00	30
Advanced May 20, 1867,	1,507 85,		
Interest		251 56	
Advanced May 25, 1867,	3,073 34,		
Interest		479 44	
		<hr/>	
Insurance Feby. 4, 1867,	20 50,	2,543 67	
Interest deducted		2,543 67	114,041 36
To increase of stock of C. & A. R. R.			73 00
Premium on U. S. Bonds			39 60
" " " 7-30s			80 00 40
Interest on Magee's Check			125 00
Excess of U. S. Bonds of 1881			360 00
" " " Do 5-20s			80 00
Int. recd. on Wm. Baker's Bond and Mortgage of \$2,000 00 to January 1, 1870			530 00
Int. received on J. B. Morris' Bond and Mortgage of \$3,500 00 to January 1, 1870			927 50

	Int. received on Daniel Kirwan's Bond and Mortgage of \$2,500 to January 1, 1870	662 50
	Int. received from Frank Reading's \$150.00 on ground rent to Jan. 1, 1867, as per Edward Armstrong's Account	564 75
	Cash received on Belvidere Bond.	64 07
	" " " Chicago & N. W.	
10	R. R. do	124 64
		<hr/>
		\$117,822 42

These Accountants pray allowance :

	Cr.		
		By error in 6 months interest credited 1867 in Henry DeHart's Mortgage	150 00
	1861.		
	Feb. 12.	Loss on premium Scrip	125 00
	March 4.	Cash paid Rachel's board as directed by Will 11 weeks at \$2 per week.	22 00
20	" 14.	Int. on entailment of James H. Gulick's from Jan. 1, 1866 to January 1, 1867 \$600 00	
		Less U. S. Tax on Legacy	100 00
		Int. on entailment of Abby M. Gulick from Jan. 1, 1866 to January 1, 1867 \$600 00	
		Less U. S. Tax on Legacy	100 00
30		Int. on entailment of Abby M. Gulick and Edward Armstrong guardians for children of Elizabeth H. Armstrong from Jan. 1, 1866 to Jan. 1, 1867 \$600 00	
		Less U. S. Tax on Legacy	100 00
		Cash paid S. H. and W. H. Gulick by overpayment by them of legacy tax	10 00
		Losses on Ground rents sold	1,923 09
		" " Belvidere Bonds, 15 per cent discount	450 00
40		Losses on C. & N. W. W. Bonds, 16 per cent discount	800 00
		Losses on C. & N. W. W. Bonds, 6 per cent discount	60 00
		Losses on U. S. 10-40 Bonds, 2 per cent discount	20 00
		Commissions as per Edward Armstrong's Account	371 18
		Cash paid, Princeton Township Bounty Tax	235 50

March 16.	Mayor for Deed	1 00
" 25.	" " 2 Deeds	2 00
" 27.	Edward Armstrong for Deed	1 12
	Retained for Rachel's support	4,000 00
April 30.	Internal Revenue Tax	840 00
May 29.	Mayor for 4 Deeds	4 00
" "	Paid James Wilson for Receipt	20 00
" "	" Expenses of suit in Phila. for the claims against the estate of E. H. Armstrong, compromised by agreement of heirs	10 411 30
	Loss of estate by compromise with Elizabeth H. Armstrong's repre- sentatives	2,300 00
Nov. 5.	Cash paid C. S. Green, professional services and fees	50 00
	Cash paid travelling expenses of Ac- countant to Philadelphia, Trenton, New York, &c., from Jan. 1867 to Jan. 1870	141 88 20
	Cash paid for certified copy of Will .	4 50
	Paid W. A. Gulick difference of inter- est between Dr. and Cr.	58 26
	Paid James Wilson as per Receipt . .	50 00
'70, Jan.	3 trips to Trenton	3 00
	Expenses to Do	4 75
	Do " Do	5 20
	Copying 2 Accounts	4 00
Feb. 23.	Expenses to Do	7 55
	Advertising Settlement and Notices .	4 00 30
	Court, Surrogate and Crier's fees . .	30 88
	Commissions on \$31,808 94	806 17
		<hr/>
		14,416 38
	Balance in hands of Accountant to be distributed according to Will	103,406 04
		<hr/>
		\$117,822 42

STATE OF NEW JERSEY, }
MERCER COUNTY. } ss.

40

Alexander Gulick and Job G. Olden, Executors of Wil-
liam Gulick, deceased, being duly sworn according to law
on their oaths say, that the within and foregoing account
is in all things just and true both as to the charge and dis-
charge there of according to the best of their knowledge,
memory and belief.

ALEXANDER GULICK.

Sworn and subscribed the 23d day of February, A. D.,
1870.

JOHN H. SCUDDER,
Surrogate.

WILLIAM GULICK.

The account of Alexander Gulick, surviving executor of the last will and testament of William Gulick, late of the County of Mercer, deceased, as well of and for such and so much of the estate of said decedent as hath come to his
10 hands to be administered as for and concerning his payments and disbursements out of the same.

This Accountant chargeth himself:

Dr.			
1870.			
Feb'y 25.	To amount in hands of Executors retained for Rachel's support, as of record in Surrogate's office	4,000 00	
	Interest received for 6 years on \$4,000 00	1,680 00	5,680 00

20 This Accountant prays allowance:

Cr.			
1867.			
April 1.	By cash paid moving Rachel	2 50	
	Medicine	1 00	
Oct.	Muslin and making	2 50	
" 25.	6 yards Canton Flannel	2 10	
	Making, &c.	1 00	
Nov. 4.	1 Bonnet	3 00	
	Cash	1 00	
30	Shoes	1 75	
	for Tax	30 00	
'68, Feb. 24.	Slippers	1 00	
	Making Clothes	3 50	
April 1.	Board 1 year \$2.50 per week	130 00	
" 10.	Clothes	2 25	
" 18.	Clothes making	1 75	
Oct. 10.	Aprons	1 00	
	Cash	1 00	
" 20.	Flannel	3 60	
40 Nov. 9.	Medicine	75	
'69, Jan. 26.	Clothes	1 82	
April 20.	Tax	36 00	
	Making Clothes	1 50	

June 4.	Clothes and Stockings	2 50	
" 7.	Board 1 year, \$2.50 per week . . .	130 00	
July 12.	Shoes	3 00	
	Moving Rachel, &c.	3 00	
" 30.	Church	1 00	
Sept. 10.	Cash	50	
Oct. 1.	Medicine	40	
'70, Feb. 3.	Dress and Making	5 50	
April 1.	Making Clothes	1 50	
June 15.	Tax	26 00	10
	James Wilson, Counsel fee	50 00	
	Board 1 year, \$2.00 per week . . .	104 00	
	Making Clothes	4 50	
Aug. 2.	Cash	75	
" 30.	Slippers	1 00	
Oct. 8.	During sickness	5 00	
Nov. 15.	J. Priest, Medicine	2 50	
	During sickness	3 00	
	Making Clothes	2 86	
	Muslin and Cotton	1 00	20
'71, Jan. 21.	Cash	50	
April 1.	Blankets, &c.	5 75	
July	Tax 1869	26 80	
Aug. 29.	Bedstead	3 00	
Oct. 17.	Board 1 year, \$2.00 per week . . .	104 00	
Dec.	Dr. Styles, on account	3 00	
	Medicine, &c.	2 50	
	Making Clothes	4 50	
	Medicine	25	
	Tax	40 80	30
	Cash	1 50	
'72, Feb. 16.	During Sickness	5 00	
" 24.	Stockings	2 50	
Mar. 13.	For Shoes	1 50	
April 2.	Board 1 year, \$2.00 per week . . .	104 00	
May 2.	During sickness	5 00	
Aug. 22.	Extra	3 00	
Oct. 10.	Clothing	2 90	
Nov. 14.	Making Clothes	75	
Dec. 13.	Comfortable	3 00	40
" 27.	Aprons and Making	1 36	
'73, Jan. 24.	Tax	43 20	
Feb. 14.	Clothing, &c.	1 50	
	2 Capes	2 00	
	Cash	50	
April 1.	Muslin	1 85	
May 1.	Board 1 year, \$2.00 per week . . .	104 00	
" 9.	During sickness	2 00	
June 17.	Underclothes	2 88	
July 29.	Shoes	2 50	

	Aug. 12.	Sheets, &c.	5 40	
		Making Clothes	1 25	
	Aug. 27.	Cash	75	
	Sept. 23.	Medicine	75	
	Nov. 19.	Making Clothes	1 00	
		Clothes and Making	3 75	
		Tax	50 80	
	Dec. 25.	Cash	1 00	
		Shoes	1 50	
10		Pillow Cases,	63	
		Funeral Expenses	5 00	
		Mrs. Leonard, services	3 50	
		Grave	3 50	
		Jane Shaw's bill	47 00	
		Grave Stone	15 00	
		Carriages for Funeral	10 00	
		For Capes	1 00	
	March 27.	Dr. Styles, on account	3 00	
		Board, 48 weeks, \$2.00 per week	96 00	
20		Board, &c.	12 00	
	Dec. 9.	Recording Releases	3 50	
		Tax	45 60	
	1875.	"	44 00	
	1876.	Expenses to Trenton on business for estate	3 00	
		Caleb S. Green, Counsel fee	20 00	
		Advertising settlement, posting notices, recording and copying account	8 00	
		Court, Surrogate and Crier's fees	15 94	
30		Commissions on \$1,680	97 20	1,559 14
		Balance in hands of Accountant		4,120 86
				<u>\$5,680 00</u>

The account of Almira R. Gulick and Charlton R. Gulick, administrators of Alexander Gulick, deceased, late of the County of Mercer, who was trustee under will of William Gulick, deceased, for William A. Gulick and Sarah V. D. Gulick, as well of and for such and so much of the
40 said estate as hath come to their hands as for and concerning their payments and disbursements out of the same.

These Accountants charge themselves :

Dr.

1870.

Jan. 1 To Amount received upon settlement of
estate of William Gulick, deceased \$ 6,518 91

Interest 6 months, due	July 1, 1870,	\$ 228 16	
"	Jan. 1, 1871,	228 16	
"	July 1, 1871,	228 16	
"	Jan. 1, 1872,	228 16	
"	July 1, 1872,	228 16	
"	Jan. 1, 1873,	228 16	
"	July 1, 1873,	228 16	
"	Jan. 1, 1874,	228 16	
"	July 1, 1874,	228 16	
"	Jan. 1, 1875,	228 16	10
"	July 1, 1875,	228 16	
"	Jan. 1, 1876,	228 16	
1 year	" 1, 1877,	456 32	
"	" 1, 1878,	456 32	
"	" 1, 1879,	456 32	
"	" 1, 1880,	391 13	
"	" 1, 1881,	391 13	
"	" 1, 1882,	391 13	
"	" 1, 1883,	391 13	
"	" 1, 1884,	391 13	20
from January 1, 1884, to June 15, 1884,		179 27	
Cash from Trust Fund invested under Will of William Gulick for Rachel Gulick			824 17
Int. on above 1 year, to June 1, 1877,		57 69	
"	" 1, 1878,	57 69	
"	" 1, 1879,	57 69	
"	" 1, 1880,	49 45	
"	" 1, 1881,	49 45	
"	" 1, 1882,	49 45	30
"	" 1, 1883,	49 45	
1 year and 15 days . . .		51 51	
the following amounts, of rent from farm, etc. :			
Rent of Farm for 1866		425 00	
" 1867		275 00	
" 1868		500 00	
" 1869		500 00	
" 1870		500 00	
" 1871		500 00	40
" 1872		500 00	
" 1873		500 00	
" 1874		500 00	
" 1875		500 00	
" 1876		500 00	
" 1877		500 00	
" 1878		500 00	
" 1879		500 00	
" 1880		400 00	
" 1881		400 00	

Rent of Farm for 1882	400 00	
" 1883	400 00	
Cash rec'd from Insurance Company,	500 00	
		15,464 18
		\$ 22,807 26

These Accountants pray allowance :

		Cr.		
	1877, Aug. 17	By Cash paid Sarah V. D. Gulick		
10	1878, "	Interest	\$	57 69
	1879, July 23	" Do.		57 69
	1880, Aug. 4	" Do.		49 45
	1881, July 30	" Do.		49 45
	1882, 29	" Do.		49 45
	1883, 30	" Do.		49 45
	1870, 1	" Do.		228 16
	1871, Jan. 2	" Do.		228 16
	July 1	" Do.		228 16
20	1872, Jan. 1	" Do.		228 16
	Aug. 9	" Do.		228 16
	1873, Jan. 1	" Do.		228 16
	July 1	" Do.		228 16
	1874, Jan. 1	" Do.		228 16
	Aug. 27	" Do.		228 16
	1875, Jan. 1	" Do.		228 16
	Oct. 6	" Do.		228 16
	1876, Jan. 4	" Do.		228 16
	1877, Jan. 20	" Do.		456 32
30	1878, Jan. 1	" Do.		456 32
	1879, 22	" Do.		456 32
	1880, 12	" Do.		391 13
	1881, 17	" Do.		391 13
	1882, "	" Do.		391 13
	1883, "	" Do.		391 13
	1884, "	" Do.		391 13
	1866, W. A. and S. V. D. Gulick, rent,			425 00
	1867, "			275 00
	1868, "			500 00
40	1869, "			500 00
	1870, "			500 00
	1871, "			500 00
	1872, "			500 00
	1873, "			500 00
	1874, "			500 00
	1875, "			500 00
	1876, "			500 00
	1877, "			500 00
	1878, "			500 00

1879,	W. A. and S. V. D. Gulick, rent,	500 00	
1880,	"	400 00	
1881,	"	400 00	
1882,	"	400 00	
1883,	"	400 00	
1881, Jan. 15	Robert R. Gulick and W. Howard Gulick, rec'd from Insurance Co., as per agreement of heirs, Advertising settlement, posting notices, recording and copying account	500 00	10
	Court, Surrogate and Crier's fees .	30 94	
	Commissions on \$22,807.28, \$636.14; less amount received by decedent in his lifetime 362.67, leaving amt. due his estate of	273 47	
	Traveling exp. in filing account, etc.,	5 00	
		<hr/>	15,553 81
	Counsel fees as per order of Court, \$25 00 each	50 00	20
	Balance in hands of Accountant .		7,203 45
			<hr/>
			\$ 22,807 26

STATE OF NEW JERSEY, }
 MERCER COUNTY, } ss.

Charlton R. Gulick, one of the Administrators above named, being by me duly sworn according to law, on his oath saith that the foregoing account is in all things just and true, both as to the charge and discharge thereof, according to the best of his knowledge and belief. 30

CHARLTON R. GULICK.

Sworn and subscribed this ninth day of January A. D. 1885, before me.

J. W. CORNELL,
Surrogate.

To the Judges of the Orphans' Court of the County of Mercer:

The above account being by me audited and restated, I now report the same to the Court for settlement and allowance.

Dated November 10th, 1884. 40

JOHN H. SCUDDER,
Surrogate.

MERCER COUNTY ORPHANS' COURT.

In the matter of the account of Almira R. Gulick and Charlton R. Gulick, Administrators of Alexander Gulick, deceased, who was the surviving Trustee under the will of William Gulick, deceased, for Sarah V. D. Gulick.	}	Exceptions -to- Account.
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10 Joseph H. Bruere, of the township of Princeton, in the County of Mercer, who was appointed by the Mercer County Orphans' Court, as Trustee for the above named Sarah V. D. Gulick, under the last will and testament of William Gulick, deceased, in the place and stead of the above named Alexander Gulick, deceased, hereby excepts to the account of the above named Almira R. Gulick and Charlton R. Gulick, as Administrators of the said Alexander Gulick, late surviving Trustee as aforesaid, deceased, for the following reasons; that is to say:—

20 *First.* Because the said Alexander Gulick, as such Trustee did not make all of the payments of interest to the said Sarah V. D. Gulick, cestui que trust, that the above named accountants have prayed allowance for in their said account.

Second. Because the said accountants have improperly and unlawfully asked to be allowed their commissions on the principal fund of said trust moneys, when the said Alexander Gulick, as Trustee aforesaid, had already been allowed his commissions on said trust fund in his original account, and
 30 such commissions are not properly chargeable upon the principal fund in this account.

Third. Because commissions were annually charged and collected by the said Alexander Gulick, as such Trustee, and were paid over to him by the said Sarah V. D. Gulick, cestui que trust, from the interest on said principal fund on all moneys received by him as such Trustee to January first, A. D. eighteen hundred and eighty four; and all commissions on rents collected from real estate by the said Trustee were allowed and paid over to the said Alexander Gulick,
 40 Trustee, by the said Sarah V. D. Gulick, cestui que trust, up

to the first day of April, A. D. eighteen hundred and eighty-three: And this exceptant insists that no commissions whatever are due or should be allowed the said accountants, excepting upon so much of the interest which has accrued on the said trust funds since the last payment of interest to the said cestui que trust.

Fourth. Because the said account is in many other respects erroneous, improper and unlawful, both as to the charge and discharge thereof, and should not be allowed as stated; and this exceptant further insists that the whole 10 amount of said trust funds should be paid over to him as such Trustee for Sarah V. D. Gulick, under the said will of William Gulick, deceased, without any diminution whatever.

Dated July 8th, 1884.

JOSEPH H. BRUERE,
Exceptant.

MERCER ORPHANS' COURT.

In the matter of Almira Gulick and Charlton R. Gulick, ad- ministrators of Alexander Gu- lick, surviving trustee, under the will of William Gulick, dec'd.	}	On Exceptions to Admrs' Account.	20
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Mr. A. G. Richey, for Exceptants.

Mr. G. O. Vanderbilt, for Administrators.

Stewart, P. J.

William Gulick's will, which was executed July 30th, 1855, and the codicil thereto, which was executed February 14th, 1863, were duly admitted to probate on Septem-30
ber 6th, 1865, by the Mercer County Surrogate.

By the third section of the will, he devised to his execu-
tors (his sons James and Alexander, and his son-in-law,
Edward Armstrong), and the survivor of them, certain lands,
"In trust nevertheless that my said executors and the sur-
vivor of them should receive the rents, issues and profits of
the said real estate so devised to them, and pay the same to
my son William A. Gulick, and his present wife Sarah, each
and every year, during their lives, to their sole and separate 40

use, and in no wise liable for the debts of my said son William, and after the death of my said son William and his present wife, I devise and bequeath all the said real estate so held in trust for my said son William and his present wife, to their children, share and share alike."

By the fifth and sixth clauses of his will, he gave to his daughter Abbe Maria, and to his daughter Elizabeth H., the sum of \$10,000 each, to be placed out on bond and mortgage to be taken in the names of his executors or that of
10 their survivor, in trust for said daughters respectively, the interest to be paid to each of them annually, for their sole and separate use, and after their deaths the principal to be paid to their children severally.

By the sixth clause, he appointed the above named executors, and provided that, "they are each to receive the sum of four hundred dollars, in lieu of commissions for settling my estate," and also gave the residue of his estate both real and personal to his five children, including William A. by name. in fee simple, to be equally divided among them,
20 share and share alike.

By his codicil he revoked the gift of one-fifth of his residuary estate to his son William A. Gulick, and provided, "I do hereby give, devise and bequeath the one equal fifth part of all the rest and residue of my estate, both real and personal, to my executors hereinafter named, and the survivor of them, but in trust nevertheless for the use and benefit of Sarah, the present wife of my said son William, during her life, and to be in no wise subject to his debts or control, and after her death the same is to go to the children
30 of my said son William and his wife Sarah, in fee simple in equal parts," with a proviso that all of William's debts to himself should be retained and paid to his estate out of the said one-fifth of the residue, with power to sell all or any portion of said one-fifth of the residue in order to pay William's said indebtedness to himself; and he then provided that, "if, after paying said indebtedness, there should remain any moneys of the proceeds of such sale, the same shall be invested by said executors, and the interest thereof be paid to said Sarah during her life, and after her death the prin-
40 cipal shall go to the children of her and my said son Wil-

liam, in equal parts as aforesaid." He then revoked the appointment of the executors named in his will and also the amount of commissions to be received by them, and appointed his son Alexander and his friend Job G. Olden, and the survivor of them executors, and continued, "And it is my will, and I do direct, *that the commissions to be allowed to my said executors for settling my estate, shall be fixed by the Court, according to the laws of this State.*"

The Inventory, amounting to \$151,393.08, appears to have been filed in August, 1865. The *first* account, filed 10 and allowed January 30, 1867, was rendered by Alexander Gulick, alone, and he therein prays allowance, as of the date of October 3, 1866, "for bond and mortgage as directed by will, on entailment, \$5,000," and as of the date of January 10th, 1867, "Amount of property in hands of executors to be retained for the children of said heirs as directed by will, \$25,000," and also prayed and was allowed commissions of the total amount of the estate then received (\$164,082.21) the sum of \$3,461.64.

The *second* account, passed February 25th, 1870, purports to have been "the second account of Alexander Gulick 20 and Job G. Olden, executors, etc.," but was sworn to by Alexander Gulick alone, and accountants therein charge themselves with William A. Gulick's indebtedness to testator on account of notes, accounts and judgments, amounting to \$9,375.20 for principal, and \$2,485.41, interest, *i. e.* \$11,860.61 altogether, and then say, "Interest deducted, \$2,543.67."

Similar charges and allowances are inserted on account of the interest of Elizabeth H. Armstrong, and of Abby M. Gulick, under the will. Commissions on the amount that 30 had come into the accountants' hands since their first account (\$31,808.94) were allowed.

The *third* account was that of Alexander Gulick, *surviving* executor, (Job G. Olden having died meanwhile) passed May 5th, 1876, and was an account in respect to a negress, Rachel, for whose support testator had made provision, on which commissions on six years' interest on the sum set aside for Rachel's support (\$4,000), amounting to \$1,680, were allowed.

Alexander Gulick is now dead, and his administrators have presented for allowance their account of his dealings as surviving executor or trustee under the will of William Gulick so far as concerns the interest or share of William A. Gulick and his wife Sarah (both of whom are still living) in the estate of the said William Gulick. As such administrators they charge themselves with the amount of said William A. and Sarah's share of the residue (after deducting said William's indebtedness to the testator), viz: \$6,518.91, received by their intestate, Alexander, on January 1, 1870. They also charge themselves with the amount of interest received by said Alexander between January 1, 1870, and January 1, 1884, on said \$6,518.91, amounting to \$6,062.53, and besides accounting for the principal (\$824 17) and interest on the fund held by Alexander for Rachel (\$370.87); they also charge themselves with the moneys received by said Alexander as rents from the lands devised to him and Job G. Olden, and their survivors, in trust for William A. Gulick, under the third section of the will, above quoted, between the years 1866 and 1884, amounting to \$7,890.32, which, added to said \$6,062.53 and 6,518.91, makes Alexander's total receipts in this behalf \$24,561.76. They also claim allowance for the sum of \$500 received and paid on account of the insurance on a barn on part of the said devised premises, which was destroyed by fire.

The administrators insist that their intestate was entitled not only to commissions on the rents and income from the funds and lands in his hands for the benefit of William A. Gulick and his wife Sarah, but also on the *principal* of that fund, to wit, \$6,518.91, *as trustee*, and to this claim exceptions have been filed, whereon it is contended that Alexander, having in his first account, received commissions on the *whole* estate, including the \$6,518.91, *as executor*, is not to be again allowed commissions on this sum, *as trustee*.

The law ordinarily discourages and refuses the allowance of double commissions to executors, trustees, etc., and therefore, where one is appointed executor, he cannot, where the trust is attached to his office of executor, by gratuitously assuming other fiduciary functions, such as trustee, claim another commission on funds in his hands whereon he has

previously been allowed a commission as executor. *Lathrop v. Smalley*, 8 C. E. Gr. 194; *Hall v. Hall*, 78 N. Y. 535; *Haglar v. McCombs*, 66 N. C. 345; *Valentine v. Valentine*, 2 Barb. Ch. 430; *Holley v. S. G.*, 4 Edw. Ch. 284; *Blake v. Pegram*, 101 Mass. 592; *Lansing v. Lansing*, 45 Barb. 182; *Meeker v. Crawford*, 5 Redf. 450; *Sanderson v. Pearson*, 45 Md. 483; and in Pennsylvania, and perhaps in other states, such allowances are forbidden by statute. *P. L.*, 1864, p. 53, 1 *Brightly's Purd.*, 445 sec. 197; *Hepburn's Estate*, 11 Phila. 80; *Barclay's Estate*, *Id.* 123. 10

But the mere fact that *the same person* is executor and also trustee under a will, does not, although he may have received a commission on the whole estate as executor, deprive him of another commission as trustee on that part of the estate which he has been directed by the will to hold as a trust fund for the benefit of the *cestui que trust* named therein, where the trust has been explicitly created by the will itself, and the services, as trustee, rendered. *Carman's Case*, 3 Redf. 46; *Ward v. Ford*, 4 Redf. 34; *Roosevelt's Case*, 5 Redf. 601; *Laytin v. Davidson*, 29 Hun. 622; *Blake v. Blake*, 20 30 Hun. 469; *Hurlburt v. Durant*, 88 N. Y. 121; *Mitchell v. Holmes*, 1 Md. Ch. 287; *Aston's Estate*, 5 Whart. 228; *Witherspoon's Case*, 3 Rich. Eq. 13. (Where an administrator of an infant was also appointed its guardian.)

The reason is obvious, the functions of an executor and trustee are radically different, that of an executor is to collect the assets of the estate, and distribute them; that of a trustee is to hold the property, to preserve, manage, invest, reinvest and take the income of it and pay that over to the designated beneficiaries, and ultimately to pay over the prin- 30
cipal to the persons specified in the will. *Prall v. Tilt*, 1 *Stew Eq.* 479, 484; *Dixon vs. Homer*, 2 *Metc. Mass.* 420, 422, and hence a devise to executors for the use and benefit of designated legatees, in trust to sell the lands and to divide the proceeds of sale among the legatees, was held to create in the executors a personal trust only, and not to impose on them a duty as executors and consequently the sureties on their official bond as executors were held not responsible for their failure to pay over the proceeds of sale as directed by the will. *Perkins vs. Lewis*, 41 *Ala.* 649, an elaborate review of all 40

the cases. So one appointed an executor and trustee may refuse to act as executor, and nevertheless recover commissions for acting as trustee. *Pike's Case*, 2 Redf. 255.

It is insisted in the next place that *P. L. of 1882, p. 231*, forbids the allowance of a commission on the principal of this fund to Alexander Gulick as trustee. That statute provides, "That whenever upon the settlement of accounts of executors or trustees under a will * * * the usual commissions shall have been allowed them according to law, and in pursuance of the provisions of the will or of the direction of the Court, any money shall remain in the hands of, or be intrusted to, any such person or persons for investment, the interest of which is required to be paid to any legatee or other person that may be entitled thereto, *it shall and may be lawful*, upon any subsequent accounting, for the court before which said account shall be presented for settlement and allowance, to consider the actual pains, trouble and risk of such accountant, and to allow such commission upon the *interest or income* received, as to the said court shall be deemed fair and just; provided that said allowance shall not exceed the sum of five per centum on such interest or income."

But this statute does not touch the question of the allowance of commissions to trustees upon the *principal* fund in their hands, it only gives the court power (it is not mandatory), in a proper case to increase the rate of commissions, upon the *income* of such funds, over the amount previously fixed by statute, and besides such statutes are not retroactive. *Ramsay v. Ellis*, 3 *Desauss.* 79; and this rule was applied to a case arising under the Pennsylvania statute, above quoted, which forbids an executor and trustee appointed under a will to receive more than one commission on the principal fund. *Pedrick's Case*, 5 *Phila.* 478; See *Dakin v. Demming*, 6 *Page* 95.

Again, it is contended that the present trustee has not a sufficient sum in his hands to pay a commission on the principal without resorting to the principal itself, and therefore this commission should not be allowed. But, aside from the fact that this fund has not as a *trust* fund ever paid a commission to its trustee, the mere

fact that the principal of a fund must be invested in order to pay a commission, is no objection to its payment, where such a state of affairs is not caused by the neglect or waste of the trustee. *Burney v. Spear*, 17 Ga. 223; *Mount's Case*, 2 Redf. 405; *Pedrick's Case*, 5 Phila. 478. No other question was raised on these exceptions, and this, of course, is the only one that has been considered or decided. The conclusion is, that the exceptions should be overruled, and the administrators of Alexander Gulick allowed a commission, at the usual rate, upon the principal fund in his hands as trustee of William A. and Sarah Gulick. 10

MERCER COUNTY ORPHANS' COURT.

In the matter of the account of Almira R. Gulick, and Charlton R. Gulick, Administrator, &c., of Alexander Gulick, deceased, who was surviving Trustee for Sarah V. D. Gulick, under the will of William Gulick, deceased.	}	On Exceptions to Account. Decree.	20
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The exceptions filed by Joseph H. Bruere, trustee, appointed by this Court for Sarah V. D. Gulick, under the last will and testament of William Gulick, deceased, to the above stated account of Almira R. Gulick and Charlton R. Gulick, Administrators of Alexander Gulick, deceased, who was surviving Trustee, &c., coming on to be heard before this Court in the presence of A. G. Richey & Son, of Counsel with the said Joseph H. Bruere, Trustee as aforesaid, Exceptant, and of George O. Vanderbilt, Esquire, of Counsel 30 with the said accountants, and the proofs and testimony of witnesses having been heard and taken, and the arguments of the respective Counsel having been heard and duly considered by the Court; and it appearing that the said Alexander Gulick as one of the Executors of the said William Gulick, deceased, rendered three accounts of his executorship to this Court on which he was allowed commissions as follows: On first account filed and allowed January 30th, A. D. eighteen hundred and sixty-seven, the sum of three thousand four hundred and sixty-one dollars and sixty-four 40

cents; on the second account filed and allowed February 25th, A. D. eighteen hundred and seventy, being the amount that had come into the hands of Accountant since last account, the sum of eight hundred and six dollars and seventeen cents; on third account passed May 5th, A. D. eighteen hundred and seventy-six, being commissions on Negress Rachel's share under the will, the sum of ninety-seven dollars and twenty cents; and that the said Alexander Gulick, as Trustee for the said Sarah V. D. Gulick, and
10 her husband, William A. Gulick, had received on the first day of January, A. D. eighteen hundred and seventy, the sum of six thousand five hundred and eighteen dollars and ninety-one cents (6,518.91), as their share of the residue at that time; and afterwards received the further sum of eight hundred and twenty-four dollars and seventeen cents, as their share of the final account, with which said sums the said accountants charge themselves; together with the sum of six thousand and sixty-two dollars and fifty-three cents, of interest on the first named sum from the first day
20 of January, A. D. eighteen hundred and seventy to the first day of January, A. D. eighteen hundred and eighty-four, and also with the sum of three hundred and seventy dollars and eighty-seven cents, interest on the last named sum to June first, A. D. eighteen hundred and eighty-three, and that they also charge themselves with rent from the land given to him under the last will and testament aforesaid, between the years eighteen hundred and sixty-six and eighteen hundred and eighty-three, amounting to the further sum of seven thousand eight hundred and ninety dollars
30 and thirty-two cents; (and it further appearing that the said amounts of interest and rents had been paid over by the said Alexander Gulick, Trustee, in his lifetime, to the said Sarah V. D. Gulick and on all which payments of interest he had charged and been allowed a commission of three per cent, and on his payments of rent, a commission of two per cent;) and the said Court being of opinion that the functions of an Executor and of a Trustee are radically different, and that although the said Alexander Gulick, as Executor of the estate of William Gulick, deceased, may have
40 received a commission on the whole of the estate, that such

fact does not deprive him of another commission as Trustee on that part of the estate which he has held as Trustee under the will in this case; and it further appearing that the said account has been duly audited and stated by the Surrogate and that due notice of presenting the same to the court for settlement and allowance has been duly given as required by law.

It is thereupon ordered, adjudged and decreed, that the exceptions to the allowance of commissions on the principal of the said trust fund be overruled, and that the said 10 Accountants, Administrators of the said Alexander Gulick, deceased, be allowed a commission at the usual rate upon the principal fund in his hands as Trustee for the said Sarah V. D. Gulick and her husband.

Dated February 27, 1885.

J. H. STEWART,
E. T. R. APPLGATE,
WM. S. YARD.

EXHIBITS.

The amount of interest I have received as executor of 20 William Gulick, deceased, for Sarah V. D. Gulick, and paid over to her, as per her receipts, on the residue of William Gulick estate as per his will.

Interest from January 1, 1870, to July 1, 1870	\$ 228 16
July 1, 1870, to January 1, 1871	228 16
January 1, 1871, to July 1, 1871	228 16
July 1, 1871, to January 1, 1872	228 16
January 1, 1872, to July 1, 1872	228 16
July 1, 1872, to January 1, 1873	228 16
January 1, 1873, to July 1, 1873	228 16
July 1, 1873, to January 1, 1874	228 16 ³⁰
January 1, 1874, to July 1, 1874	228 16
July 1, 1874, to January 1, 1875	228 16
January 1, 1875, to July 1, 1875	228 16
July 1, 1875, to January 1, 1876	228 16
January 1, 1876, to Jan. 1, 1877	456 32
June 1, 1876, to June 1, 1877	57 69
January 1, 1877, to Jan. 1, 1878	456 32
June 1, 1877, to June 1, 1878	57 69
June 1, 1878, to June 1, 1879	50 14 ⁴⁰
January 1, 1878, to Jan. 1, 1879	456 32

January 1, 1879, to Jan. 1, 1880	391 13
June 1, 1879, to June 1, 1880	49 45
June 1, 1880, to June 1, 1881	49 45
January 1, 1880, to Jan. 1, 1881	391 18
January 1, 1881, to Jan. 1, 1882	391 18

\$5-544-79
3

Commissions \$166.34 37

MARCH 10, 1882.

10 Received the above as commissions up to date as per statement,

ALEXANDER GULICK.

The amount of money for rent of farm, &c., as per receipts held by me, Alexander Gulick, and for which I am accountable as the executor of William Gulick, deceased, have been received by William A. Gulick and his wife Sarah V. D. Gulick, and this being up to this date from the estate of William Gulick, deceased.

	1865 from August 1, 1865 to April 1, 1866,	\$200 00
20	1866 for 1 Year,	500 00
	1867 for 1 Year,	500 00
	1868 for 1 Year,	500 00
	1869 for 1 Year,	500 00
	1870 for 1 Year,	500 00
	1871 for 1 Year,	500 00
	1872 for 1 Year,	500 00
	1873 for 1 Year,	500 00
	1874 for 1 Year,	500 00
	1875 for 1 Year,	500 00
30	1876 for 1 Year,	500 00
	1877 for 1 Year,	500 00
	1878 for 1 Year,	500 00
	1879 for 1 Year,	500 00
	1880 for 1 Year,	400 00
	1881 from Insurance Company Jan. 15, '81, receipt,	500 00
	1881 for 1 Year,	400 00
	1882 for 1 Year up to date April 1, '82,	400 00

\$8,900 00
2

40 Commissions, \$178.00.00

MARCH 10, 1882.

Received the within as commission on the within up to this date as per statement.

ALEXANDER GULICK.

\$400.

KINGSTON, APRIL 2ND, '83.

Received of Robert R. Gulick, Four Hundred dollars for rent of farm from April 1st, 1882 to April 1st, 1883.

ALEXANDER GULICK.

KINGSTON, APRIL 2ND, '83.

Rec'd of Sarah V. D. Gulick Eight Dollars (\$8.00) commission for rent of farm for the past year.

ALEXANDER GULICK.

\$ $\frac{99}{100}$

KINGSTON, JULY 30TH, '83.

Received of Sarah V. D. Gulick Ninety nine cents commission on \$49.45 interest due June 1st, 1883.

10

ALEXANDER GULICK.

KINGSTON, JAN'Y 9TH, 1884.

Rec'd of Sarah V. D. Gulick, 56.40 tax for year 1883, and \$7.82 com. on \$391.13 interest due Jan'y 1st, 1884.

ALEXANDER GULICK.

PREROGATIVE COURT OF NEW JERSEY.

Between

JOSEPH H. BRUERE, Trustee for SARAH V. D. GULICK, under the last will and testament of WILLIAM GULICK, dec'd, *Appellant*,

AND

ALMIRA R. GULICK and CHARLTON R. GULICK, Administrators, &c., of ALEXANDER GULICK, deceased, who was surviving Trustee, &c.

Respondents.

20

Petition

of

Appeal.

To his Honor, Theodore Runyon, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey. 30

The petition of Joseph H. Bruere, Trustee appointed by the Mercer County Orphans' Court for Sarah V. D. Gulick, under the last will and testament of William Gulick, de-

ceased, in the place and stead of Alexander Gulick, deceased, who was surviving Trustee, respectfully represents :

That the above named Alexander Gulick, (now deceased) in his lifetime, as one of the executors of the above named William Gulick, deceased, rendered three accounts of his said executorship to the said Mercer County Orphans' Court, upon which he was allowed commissions as follows : On his first account, allowed on the thirtieth day of January, A.D. eighteen hundred and sixty-seven, the sum of three
10 thousand four hundred and sixty-one dollars and sixty-four cents ; on his second account, allowed on the twenty-fifth day of February, A.D. eighteen hundred and seventy, being the amount that had come into the hands of said accountant since his last account, the sum of eight hundred and six dollars and seventeen cents ; and on his third account, allowed on the fifth day of May, A.D. eighteen hundred and seventy-six, being commissions on negress Rachel's share under the said will, the sum of ninety-seven dollars and twenty cents.

20 And your petitioner further shows that, by reference to the account of the above named respondents, administrators of the said Alexander Gulick, deceased, who was surviving trustee for the above named Sarah V. D. Gulick, and which said account has been passed and allowed by the said Mercer County Orphans' Court, it appears that the said Alexander Gulick, as such trustee, had received on the first day of January, A.D. eighteen hundred and seventy, the sum of six thousand five hundred and eighteen dollars and ninety-one cents (\$6,518.91), and afterward received the further
30 sum of eight hundred and twenty-four dollars and seventeen cents (\$824.17), principal moneys of the said trust fund, with which the said accountants charge themselves, and that said accountants further charge themselves with the sum of six thousand and sixty-two dollars and fifty-three cents of interest on the first named sum, from the first day of July, A.D. eighteen hundred and seventy to the first day of January, A.D. eighteen hundred and eighty-four, and also with the sum of three hundred and seventy dollars and eighty-seven cents of interest on the last-named sum to June first, A.D.

eighteen hundred and eighty-three, and that they also charge themselves with rents between the years eighteen hundred and sixty-six and eighteen hundred and eighty-three, with the further sum of seven thousand eight hundred and ninety dollars and thirty-two cents (\$7,890.32); that notwithstanding the fact that the said amounts of interest and rents had been paid over by the said Alexander Gulick in his lifetime to the said Sarah V. D. Gulick, and on all of which payments of interest he had charged and been allowed a commission of three per cent., and on his payments of rent a commission of two per cent, yet the said accountants prayed allowance in their account for commissions at the usual rate not only upon the principal funds in the hands of said Alexander Gulick, as such trustee, but also upon the income and interest received therefrom as aforesaid; that your petitioner filed exceptions to the said account in said Mercer County Orphans' Court, alleging, among other things, that as the said Alexander Gulick, trustee as aforesaid, had already been allowed his commissions on the principal of said trust fund in his original accounts, that such further commissions on the principal of said trust funds were improperly asked for, and further alleged that as commissions were annually charged and collected by the said Alexander Gulick, as such trustee, and were paid over to him by the said Sarah V. D. Gulick, cestui que trust, from the interest on said principal funds received by him as such trustee up to the first day of January, A.D. eighteen hundred and eighty-four, and on the rents received by him up to the first day of April, A. D. eighteen hundred and eighty-three, that no further commissions thereon should be allowed to said accountants excepting upon so much of said income and interest as had accrued since the last payment of the same to the said cestui que trust.

And your petitioner further shows that said exceptions came on to be heard before the said Orphans' Court, and the proofs and testimony of witnesses having been heard and taken, and the arguments of the respective counsel for accountants and exceptant having been made, heard and duly considered, and the said Orphans' Court being of opinion that the functions of an executor and of a trustee were rad-

ically different, and that although the said Alexander Gulick as executor of the estate of William Gulick, deceased, may have received a commission upon the whole of the estate, that such fact does not deprive him of another commission upon that part of the estate which he held as trustee for the said Sarah V. D. Gulick, under said will, did, by a certain decree dated on the twenty-seventh day of February, A.D. eighteen hundred and eighty-five, and filed in said court on the twentieth day of March, in the year last aforesaid, over-
10 rule said exceptions, and did allow the said account in all things as reported by the surrogate, and did further allow the said accountants, as administrators as aforesaid, a commission at the usual rate not only upon the principal of the said trust funds, but also upon the interest and income derived therefrom, in addition to the commissions annually charged and collected by the said trustee in his lifetime from the said cestui que trust.

And your petitioner further represents that he verily believes such decree to be erroneous and illegal, and that by a
20 writing, signed by his proctors and counsel, and filed in the office of the surrogate of the said county of Mercer, on the fifteenth day of May, A.D. eighteen hundred and eighty-five, your petitioner demanded an appeal to this honorable Court from the said decree of said Orphans' Court, and hereby prays your Honor to grant an order requiring said Orphans' Court to return to this Court a transcript of the proceedings before said court had touching the premises, including a copy of the will of the said William Gulick, deceased, the three accounts of the said Alexander Gulick
30 as executor of William Gulick, deceased, the account of the said administrators of Alexander Gulick, deceased, the exceptions filed thereto by your petitioner, the decree of said Orphans' Court overruling said exceptions, together with all affidavits, vouchers, and other papers used in obtaining said decree of said Orphans' Court; and also an order requiring the above named respondents to answer this petition of appeal according to the practice of this honorable court, and that your honor will review and reverse the said decree of said Orphans' Court for the following reasons, viz.:

First. Because said decree improperly and unlawfully allows to the above named respondents commissions upon the principal fund of the said trust moneys, when the said Alexander Gulick, executor of William Gulick, deceased, had already been allowed his commissions on the said funds in his original accounts as such executor.

Second. Because said decree improperly and unlawfully allows to the above named respondents commissions upon the interest and income derived from said trust funds, notwithstanding the fact that commissions on such income were annually charged and collected by the said Alexander Gulick, as such trustee, and were paid over to him by the said Sarah V. D. Gulick, the cestui que trust, and that therefore no commissions whatever should have been allowed to the respondents excepting upon so much of said income and interest as had accrued upon the said trust funds since the last payment of such income to the said cestui que trust.

Third. Because if such commissions are allowed to the said respondents it will diminish the principal of said trust funds, which by the will of said William Gulick, deceased, are limited over upon the death of the said Sarah V. D. Gulick, whereas your petitioner insists that the whole of said trust funds should be paid over to your petitioner, as such trustee, without any diminution whatever.

And your petitioner humbly prays for such other and further relief in the premises as shall to your honor seem meet. And your petitioner will ever pray, etc.

A. G. RICHEY & SON,

Proctors for and of Counsel with the Petitioner and Appellant.

PREROGATIVE COURT OF NEW JERSEY.

	Between	}	On appeal from decree of Mercer County Orphans' Court.
	JOSEPH H. BRUERE, Trustee for SARAH V. D. GULICK, under the will of WILLIAM GULICK, de- ceased, <i>Appellant.</i>		
	AND		
	ALMIRA R. GULICK and CHARLTON R. GULICK, administrators of 10 ALEXANDER GULICK, who was surviving trustee, etc., <i>Respondents.</i>		<i>Order</i>

The appellant in the above mentioned cause having filed his petition of appeal, alleging (among other things) that he has appealed to the Prerogative Court of New Jersey from the decree of the Mercer County Orphans' Court, dated on the twenty-seventh day of February, A. D. eighteen hundred and eighty-five, and filed in said court on the twentieth day of March, in the same year, overruling the exceptions
20 filed by him to the account of the said respondents, administrators as aforesaid :

It is thereupon, on this nineteenth day of May, A. D. eighteen hundred and eighty-five, by his Honor, Theodore Runyon, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, *ordered*, that the Surrogate of the said County of Mercer do cause to be made, authenticated and returned to the Prerogative Court of the State of New Jersey, to be filed with the Register thereof, on or before the fourth day of June next, being
30 within twenty days from the date of entering said appeal in the court below, a transcript of the proceedings before the said Orphans' Court and Surrogate had touching the prem-

ises, including a copy of the will of the said William Gulick, deceased; the three accounts of Alexander Gulick, as executor of the said William Gulick, deceased; the account of the above named respondents, as administrators of the said Alexander Gulick, deceased; the exceptions to said last mentioned account as filed by the above named appellant; the decree of the said Mercer County Orphans' Court overruling such exceptions, together with all affidavits, vouchers and other papers used in obtaining such decree of said Orphans' Court.

THEODORE RUNYON, O. 10

PREROGATIVE COURT OF NEW JERSEY.

BETWEEN Joseph H. Bruere, Trustee for Sarah V. D. Gulick, under the Will of Wm. Gulick, deceased, <i>Appellant,</i>	}	In	
AND Almira R. Gulick and Charlton R. Gulick, Administrators of Alexander Gulick, deceased, who was surviving Trustee, etc., <i>Respondents.</i>	}	the matter of Account.	20

These respondents not acknowledging all or any of the matters which in the said appellant's petition of appeal are contained to be true, for answer thereto, say and admit, that a decree or sentence of the date, tenor and effect in the said petition of appeal set forth, was made by the Orphans' Court, of the County of Mercer; but as to both the substance, and form of said decree these respondents pray to refer thereto when the same shall be produced; and these respondents are advised, and believe and submit that such decree or sentence is just and equitable, and therefore pray

that the said sentence or decree may be affirmed by this Court, with costs to be adjudged to these respondents.

GEORGE O. VANDERBILT,

Proctor of the Respondents,

of Almira R. Gulick and Charlton R. Gulick, Trustees, etc.
Dated July 8th, 1885.

PREROGATIVE COURT.

OCTOBER TERM, 1885.

10	JOSEPH H. BRUERE, Trustee, &c.	}
	<i>Appellant,</i>	
	AND	
	ALMIRA A. GULICK <i>et al</i> , Adm'rs, &c., <i>Respondents.</i>	}

APPEAL FROM DECREE OF MERCER ORPHANS' COURT.

Mr. A. G. RICHEY for Appellant.

Mr. G. O. VANDERBILT for Respondents.

THE ORDINARY.

By the third action of the will of William Gulick, deceased, (the instrument is dated July 30th, 1855) he devised to
20 his executors and to the survivor of them, certain lands in trust, to receive the rents, issues and profits thereof and pay them to his son William A. Gulick and his son's then wife, Sarah, each and every year during their lives, and after their death to their children. By the residuary clause he gave one-fifth of the residue of his estate to William. By the codicil (dated February 14th, 1863) he revoked that gift and gave the fifth to his executors thereafter named and the survivor of them, in trust for the use and benefit of William's before mentioned wife, for life, and after her death it was to
30 go to their children. By the codicil he directed the executors to retain William's indebtedness to his estate out of the share, and if there should be any residue thereof after pay-

ment of that indebtedness, they were to invest it and pay the interest to William's before mentioned wife, for life, and the principal after her death was to go to the children. He revoked the appointment of executors made by the will and appointed his son Alexander and Job G. Olden and the survivor of them, executors. The inventory amounted to \$151,393.08. By the first account (which was filed by Alexander Gulick alone and ran from July 31st, 1865, to January 10th, 1867) the accountant charged himself with \$164,082.21 and was allowed \$3,461.64, as commissions upon ¹⁰ that sum. He was charged on that account with a balance of \$86,013.48.

The next account was that of both executors. They charged themselves with that balance and \$31,808.94 of additional receipts. They were allowed commissions to the amount of \$806.17 upon the \$31,808.94. This account was sworn to and allowed in February, 1870. The third account was passed in May, 1876, and was of the sum of \$4,000 retained under the provisions of the will, for the support of Rachel, a slave, and interest thereon. It was filed by Alex- ²⁰ ander Gulick alone. Job G. Olden, the other executor, was then dead. It charged the accountant with the \$4,000, and \$1,680 of interest and he was allowed commissions upon the latter sum alone. Alexander Gulick subsequently died and his administrators in 1885 filed their account of his dealing with the trusts under the will in favor of William A. Gulick and his wife and children. It runs from January 1st, 1870 to January 15th, 1881. It charges the amount received from settlement of the estate of William Gulick, deceased, \$6,518.91, and interest received thereon, \$6,241.80, and "cash from ³⁰ trust fund invested under the will of William Gulick for Rachel, \$824.17," and interest received thereon, \$422.38; also rents received from farm (land devised by the third section of the will for the benefit of William A. Gulick and his wife and their children) \$8,400.00. The commissions of the executor upon the interest and rents were paid thereout. The administrators claim commissions upon the principal of the two funds; that is, upon the \$6,518.91 and the \$824.17. The claim is resisted on the part of Mrs. Gulick. The Orphans' Court allowed it.

By the will the share in question was given to the executors and the survivor of them, in trust, and they were (as executors) to collect the indebtedness due the estate from William A. Gulick by retaining the amount of it from the share (and to that end the power to convert the share into cash if they should deem it necessary or advisable, was conferred upon them) and they were (as executors) to hold the balance in trust to pay the interest to William A. Gulick's wife, for life, and at her death the principal was to go to the
10 children. The provision for the slave was that she should be free and if she should become unable to support herself, the executors should support her out of the estate. These trusts devolved upon the executors as executors. In the case of the fund for the support of the slave, the principal constituted part of the residue and it could not be distributed until she ceased to need support out of the estate and then it would be the duty of the executors to distribute it. There is no evidence in the provisions of the will, that the testator intended that the executors should hold the balance not as
20 executors, but in a different capacity, as trustees. He clearly intended that the trust should be executed by the executors in that capacity. Where as in this case, the trust is inseparable from the executorship, the executor is not entitled to double commissions, first as executor and then as trustee. *Everson vs. Pitney*, 13 Stew. Eq., and cases there cited. The supplement of 1882 to the Orphans' Court Act (P. L. 1882, p. 230), supports this view of the subject. It provides that whenever upon the settlement of the accounts of executors or trustees under a will, or of commissioners in partition,
30 the usual commissions shall have been allowed them according to law, and in pursuance of the provisions of the will or of the directions of the court, any money shall remain in the hands of or to be intrusted to, any such person or persons for investment, the interest of which is required to be paid to any legatee or other person that may be entitled thereto; it shall and may be lawful, upon any subsequent accounting, for the court before which said account shall be presented for settlement and allowance, to consider the actual pains, trouble and risk of such accountant and to allow such commissions upon the interest or income received as to (by) the

said court shall be deemed fair and just; provided that said allowance shall not exceed the sum of five per centum on such interest or income. It will be seen that that act embraces such cases as this and it is quoted to show that the legislature when its attention was drawn to the subject, provided, not that there shall be double commissions on the principal, but that the accountant where he shall have once have had the usual commissions, shall receive his compensation for his further pains, trouble and risk in commissions to be allowed him upon the interest and income only and that ¹⁰ then it shall not exceed five per centum of such interest or income. It is admitted, and it so appears from the accounts also, that the executors received commissions according to law upon the principal of the fund in their accounts as executors. The accountants in this case are not entitled to commissions upon the corpus of the trust fund. It may be remarked that it seems that in the first account Alexander Gulick received commissions upon the whole amount of the inventory though he asked and obtained allowance for \$33,425.63 of it as unsettled and subject to a claim of off-set, ²⁰ and in the second account the executors received commissions again upon \$24,610.05 for the same demand which had then been settled and that sum collected upon it.

The decree of the Orphans' Court (which merely adjudges that the exceptions to the allowance of commissions on the principal of the trust fund be overruled and that the accountants be allowed a commission at the usual rate upon such principal), will be reversed. No costs either above or below will be awarded to either side.

NEW JERSEY PREROGATIVE COURT. ³⁰

I, HENRY C. KELSEY, Register of the Prerogative Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of an Opinion read by the Ordinary in the above stated cause, October Term, 1885, as the same is taken from and compared with the original (filed February 15th, 1886) now remaining on file in my office.

Witness my hand and the seal of the Prerogative Court, at Trenton, this fifteenth day of February, A. D. 1886.

HENRY C. KELSEY,
Register.

[Seal.]

PREROGATIVE COURT OF NEW JERSEY.

BETWEEN	}	
JOSEPH H. BRUERE, Trustee for SARAH V. D. GULICK, under the will of WILLIAM GULICK, decess ed, <i>Appellant,</i>		On Appeal from decree of the Mer- cer County Orphans'
AND		
ALMIRA R. GULICK and CHARL- TON R. GULICK, Administrators of ALEXANDER GULICK, decess- ed, who was surviving Trustee, etc., <i>Respondents.</i>		Court. <i>Final Decree.</i>

This cause coming on to be heard in the presence of A. G. Richey, of counsel with the appellant, and George O. Vanderbilt, of counsel with the respondents, and the papers and proceedings in the cause having been read and examined, and the arguments of said counsel having been heard and duly considered, and it appearing to the court, that by the third section of the will of William Gulick, deceased, bearing date on the thirtieth day of July, A. D. eighteen hundred and fifty-five, he devised to his executors and to the survivor of them, certain lands, in trust, to receive the rents, issues and profits thereof, and to pay them to his son, William A. Gulick, and to his son's (then) wife, Sarah, each and every year during their lives, and after their death, to their children, and by the residuary clause of his said will, and a codicil thereto, he further directed his executors to invest the one-fifth of the residue of his estate and to pay the interest thereof, to the wife of his said son, William, for life, and after her death, the principal was to go to her children, and in which said will the said testator appointed his son, Alexander, and one Job G. Olden, and the survivor of them, to be the executors thereof. The inventory amounted to the sum of one hundred and fifty-one thousand, three hundred and ninety-three dollars and eight cents. And it further appearing, that by the first account, which was filed by Alexander Gulick, alone, and ran from July thirty-first,

A. D. eighteen hundred and sixty-five, to January tenth, eighteen hundred and sixty seven, the said accountant charged himself with the sum of one hundred and sixty-four thousand, and eighty-two dollars and twenty-one cents, and was allowed three thousand four hundred and sixty-one dollars and sixty-four cents, as his commissions upon that sum, and was charged in that account with a balance of eighty-six thousand and thirteen dollars and forty-eight cents; and that by the second account of said Alexander Gulick, which was allowed and passed by the Mercer County Orphans' Court, on the twenty-fifth day of February, eighteen hundred and seventy, he was charged with said balance, and also with additional receipts to the extent of thirty-one thousand, eight hundred and eight dollars, and ninety-four cents, and on which he was again allowed commissions to the extent of eight hundred and six dollars and seventeen cents; and it further appearing, that the said testator, by a provision in his said will, directed that if his black woman, Rachel, became unable to support herself, that his executors should support her out of his estate, and in said second account so as aforesaid allowed and passed by the said Orphans' Court, the said executor retained in his hands, and prayed allowance for the sum of four thousand dollars, for the support of the said black woman, Rachel; and it further appearing that the said Job G. Olden, one of said executors, departed this life on or about the twenty-seventh day of February, eighteen hundred and seventy-six, and that the said Alexander Gulick, as surviving executor, filed his third account in said Orphans' Court, which account was passed and allowed in May in the year last aforesaid and in which account the said surviving executor charged himself with the said sum of four thousand dollars retained under the said provision of said will for the support of the said black woman, Rachel, and also with the further sum of sixteen hundred and eighty dollars of interest, and said surviving executor was allowed a commission of ninety-seven dollars and twenty cents on the latter sum alone; and it further appearing that the said Alexander Gulick, surviving executor, had in his hands, according to his said second account, so as aforesaid allowed and passed by said Orphans' Court in February,

eighteen hundred and seventy, the sum of six thousand five hundred and eighteen dollars and ninety-one cents, part of the one-fifth of the residue of said estate, which he was directed to invest and to pay the interest thereon to the said Sarah V. D. Gulick, wife of the said testator's son, William, during her life, and on which said sum he paid the interest to the said Sarah V. D. Gulick, up to the first day of January, eighteen hundred and eighty-four, and received and deducted therefrom his commissions of three per cent.

10 thereon; and it further appearing that the said Alexander Gulick, as such surviving executor, had in his hands according to his said third account, as passed and allowed by said Orphans' Court, in May, eighteen hundred and seventy-six, the further sum of eight hundred and twenty-four dollars and seventeen cents, balance of the said one-fifth of the residue of said estate, to be invested as aforesaid for the benefit of said Sarah V. D. Gulick, for life, and on which last mentioned sum he paid the interest to said Sarah V. D. Gulick up to June first, eighteen hundred and eighty-three,

20 and deducted and received his commissions thereon; and that the rents which were collected by the said Alexander Gulick, surviving executor, were all paid over to said Sarah V. D. Gulick, up to the first day of April, eighteen hundred and eighty-three, and on which rents the said executor deducted and received a commission of two per cent. And it further appearing that the said Alexander Gulick, surviving executor as aforesaid, departed this life, in March, eighteen hundred and eighty-four, and that the said respondents in this cause as administrators of said Alexander

30 Gulick, deceased, presented their account to the said Mercer County Orphans' Court for allowance, in which account, among other things, they claimed commissions at the usual rates upon the corpus of the said trust funds although commissions thereon at the usual rates had been already allowed to the said executors in their said several accounts as such accounts had been passed and allowed by the said Orphans' Court as aforesaid; to which last mentioned account of the said respondents, exceptions were filed by the said appellant to the allowance of commissions on the principal or body of said trust funds, which exceptions were overruled by said

Orphans' Court, and a commission at the usual rate allowed by said court, not only upon the corpus of said trust fund, but also upon the interest and income received thereon although commissions had been annually charged and collected by the said executors in their lifetime from the said cestui que trust and from which decree of said Orphans' Court the appellant took an appeal and has brought up the proceedings to this court for review ; and this court being of opinion, that as the said Alexander Gulick, surviving executor as aforesaid, in his lifetime received commissions 10 according to law, upon the principal funds in his hands according to his said accounts as such executor, that the accountants and respondents in this case are not entitled and should not be allowed to receive a further commission on the corpus of said trust fund as claimed by them.

It is thereupon, on this second day of March, A. D. eighteen hundred and eighty-six, on motion of A. G. Richey, of counsel with the said appellant, ordered, adjudged, and decreed, that the said decree of the Mercer County Orphans' Court, (which adjudges that the exceptions to the allowance of 20 commissions on the principal of the said trust fund be overruled, and that the said accountants be allowed a commission at the usual rate upon such principal fund) be reversed, without costs either above or below to either side, and it is further ordered that the record and proceedings be remitted to the said Mercer County Orphans' Court to be proceeded upon according to law.

THEODORE RUNYON, O.

TO THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT
IN ALL CAUSES :

30

The petition of Almira R. Gulick and Charlton R. Gulick, administrators of Alexander Gulick, deceased, who was surviving trustee for Sarah V. D. Gulick, the appellants show that your petitioners find themselves aggrieved by a decree made by the Ordinary in the Prerogative Court, dated the second day of March, A. D. eighteen hundred and eighty-six, in the matter between Joseph H. Bruere, trustee for Sarah V. D. Gulick under the last will and testament of

William Gulick, deceased, in the place and stead of Alexander Gulick, deceased, who in his lifetime was surviving trustee of Sarah V. D. Gulick, appellant, and Almira R. Gulick and Charlton R. Gulick, administrators of Alexander Gulick, deceased, who was surviving trustee for Sarah V. D. Gulick, respondents, in that the said decree of the Mercer County Orphans' Court which adjudges that the exceptions to the allowance of commissions on the principal of the said trust fund be overruled and that the said accountants be
 10 allowed a commission at the usual rate upon such principal fund be reversed.

And these petitioners appeal from that part of said decree hereinbefore stated upon the ground that the same is erroneous and contrary to law, for that the said appellants are entitled to the allowance of commissions at the usual rate upon the principal of said trust fund as well as upon the interest and income received therefrom.

They therefore pray that the said decree in the particulars aforesaid may be reversed, set aside and for nothing
 20 holden, and that they may have such relief as may be just.

GEORGE O. VANDERBILT,

Solicitor for and of Counsel with the Petitioners and Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ALMIRA R. GULICK and CHARLTON
 R. GULICK, administrators, etc.,
 of ALEXANDER GULICK, dec'd,
 who was surviving trustee, etc.,
Appellants,

AND

30 JOSEPH H. BRUERE, trustee for
 SARAH V. D. GULICK, under the
 will of WILLIAM GULICK, dec'd,
Respondent.

On appeal from the
 Prerogative Court.

The answer of the above named respondent to the petition of appeal of the above named appellants.

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

A. G. RICHEY & SON,
Solicitors for and of Counsel with Respondent.

