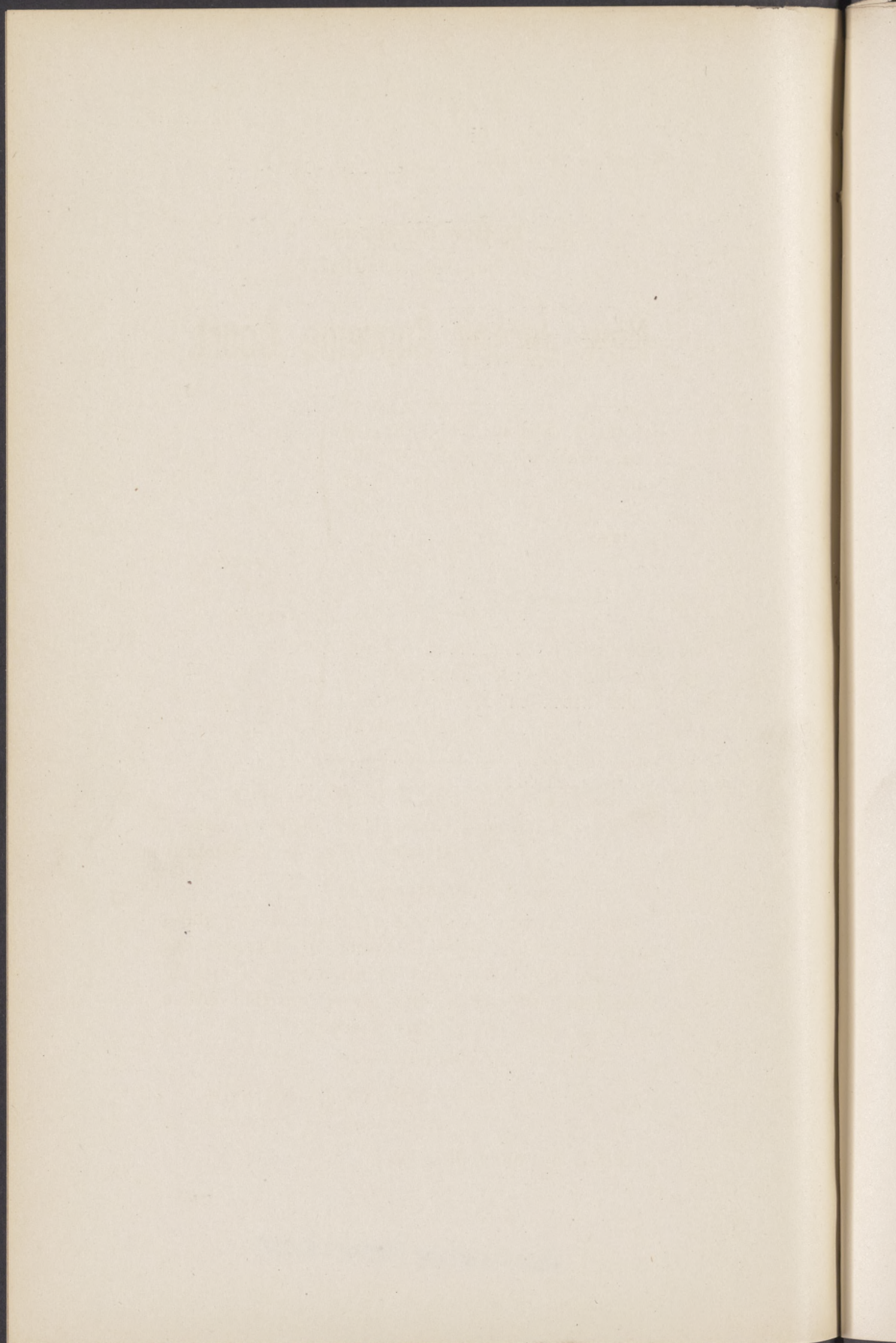


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Notice of Appeal.

Notice of Appeal.

(Filed Jan. 13, 1917.)

New Jersey Supreme Court.

10

SECURITY TRUST COMPANY, a
corporation, Executor of the
last will and testament of
HOWARD S. COLLINS, de-
ceased,

Prosecutor,

vs.

EDWARD I. EDWARDS, Comp-
troller of the Treasury of
the State of New Jersey,
Defendant.

*On
Certiorari.
Notice of
Appeal.*

20

To the Honorable JOHN W. WESCOTT,
Attorney-General of New Jersey,
Attorney for the Defendant,

Or to whom it may concern:

30

TAKE NOTICE that the Prosecutor above
named appeals to the Court of Errors and
Appeals, the last resort in all causes, from the
judgment entered in the above entitled cause,
and each and every part thereof.

Yours, etc.,

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

Dated January 9th, 1917.

40

Notice of Appeal.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 11th day of January, 1917.

JOHN W. WESCOTT,
Attorney-General,
Attorney for Defendant.

10

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Grounds of Appeal.

4. Because the Comptroller of the State of New Jersey who made the said assessment had no authority or jurisdiction to make the same, and the act of the said State Comptroller in making said assessment is void for want of jurisdiction.

10 5. Because said assessment is illegal, invalid and void for the reason that the same does not allow for the exemption of property to the amount of five thousand dollars passing and transferred to each child of decedent.

20 6. Because said assessment is illegal, invalid and void for the reason that there has been no transfer within the purview of the Transfer Tax Act of New Jersey of the estate in remainder created by the will of decedent after the life estates of the said children of decedent in the residuary estate of said decedent.

7. Because said assessment is illegal, invalid and void in that said tax upon said estate in remainder should not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizing or possession thereof.

30 8. Because said assessment is illegal, invalid and void, in that said estate in remainder is subject to the exercise of power of appointment, and appraisal and taxation thereof (if taxable) should be suspended until the exercise of the said powers of appointment.

9. Because the assessment herein is in violation of Article 12, Section 7, Paragraph 4 of the Constitution of the State of New Jersey, which provides that property shall be assessed for taxes under general laws and by uniform rules, according to its true value.

Grounds of Appeal.

10. Because said assessment herein violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

11. Because said assessment is unconstitutional in that it attempts to subject to taxation property rights and the succession thereto and transfer thereof, which cannot be subjected to taxation by the State of New Jersey. 10

12. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they and the assessment made thereunder subject the prosecutor herein to unreasonable searches and seizures in violation of Article 1, Section 6 of the Constitution of the State of New Jersey. 20

13. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Section 2, Subdivision 1, Article IV of the Constitution of the United States, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." 30

14. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 40

Grounds of Appeal.

58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Article 14 of Amendments to the Constitution of the United States, Sub-division 1, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914, and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Article IV of Amendments to the Constitution of the United States, providing the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, etc.

16. Because the transfer tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of Howard S. Collins, late a non-resident of New Jersey, is assessed pursuant to the third or last paragraph of Section 12 of an act, entitled "An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended

Grounds of Appeal.

by Chapter 151, P. L. 1914, as amended by Chapter 392 of the Laws of 1915, entitled "An Act to amend an act, entitled, 'An Act to tax the transfer of property of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain case,' " and said paragraph of said Section 12 is inoperative as against the transfer of the aforesaid stock because the assessment of tax pursuant to the said paragraph denies to Howard S. Collins and his estate, his executors, the beneficiaries under his will and his residuary legatees, all citizens and residents of the United States and the citizens and residents of other States of the United States than New Jersey and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey, and therefore contravenes Article 4, Section 2, Paragraph 1 of the Federal Constitution, and the prosecutor claims the protection thereof. 10

17. Because the assessment of the tax referred to in the foregoing reasons is assessed under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating cor- 30 40

Grounds of Appeal.

porations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution.

- 10 Art. IV, Sec. 7, Paragraph 3.
 Art. IV, Sec. 7, Paragraph 4.
 Art. IV, Sec. 7, Paragraph 12.

18. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

- 20 19. Because Chapter 228 of the Laws of 1909 and as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

- 30 20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I, Section 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

Yours, etc.,

LUM, TAMBLYN & COLYER,
Attorneys for and of Counsel
with Plaintiff-Appellant.

40 RALPH E. LUM,
Of Counsel.

Grounds of Appeal.

Service of a copy of the within grounds of appeal is hereby acknowledged this 11th day of January, 1917.

JOHN W. WESCOTT,
Attorney-General,
Attorney for Defendant-Respondent.

10

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February 25, 1880

Dear Mother
I received your letter of the 20th and was
glad to hear from you. I am well and
hope these few lines will find you the same.
I have not much news to write at present.
I am still in the same place and
doing the same work. I will write again
when I have more news to tell.

Writ of Certiorari.

Writ of Certiorari.

Allowed January 26, 1916.

Returnable February 15, 1916.

New Jersey Supreme Court. 10

The State of New Jersey to Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey.

We, being willing for certain reasons to be certified of a certain appraisement, assessment or fixing of the transfer inheritance tax upon the transfer of shares of stock in New Jersey corporations standing in the name of Howard S. Collins and passing under his last will and testament to the beneficiaries therein named, made upon the twenty-first day of July, nineteen hundred and fifteen, do command you that you send, under your hand and seal, to our Justices of our Supreme Court of Judicature at Trenton, on the Third Tuesday of February next, said appraisement, assessment and order fixing said taxes, together with all things touching and concerning the same, as fully and entirely as they remain before you, together with this writ, that we may cause further to be done thereon what of right we shall see fit to be done. 20 30

Writ of Certiorari.

WITNESS WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, the day of January, A. D. nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

10

LUM, TAMBLYN & COLYER,
Attorneys.

Allocatur, January 26, 1916.

SAMUEL KALISCH,
J. S. C.

20

30

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Return.

Return.

(Filed February 15, 1916.)

New Jersey Supreme Court.

10

SECURITY TRUST COMPANY, a corporation, executor of the last will and testament of HOWARD S. COLLINS, deceased,

Prosecutor,

vs.

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey,

Defendant.

*On
Certiorari.*

*Return
to Writ.*

20

I, EDWARD I. EDWARDS, pursuant to the command of the within writ and for a return thereto, do hereby annex copies of all the papers relating to the transfer or inheritance tax levied against the estate of HOWARD S. COLLINS, deceased, as within I am commanded.

30

E. I. EDWARDS,
*Comptroller of the Treasury of
the State of New Jersey.*

40

Transfer Tax.

TAX ON TRANSFER OF SHARES OF STOCK
IN NEW JERSEY CORPORATIONS STAND-
ING IN THE NAME OF A NON-RESI-
DENT DECEDENT.

Estate of Howard S. Collins.

Late of Hartford, Conn.

10

Executor, Security Trust Company.

Postoffice address, Hartford, Conn., P. O.

Drawer 58.

Date of Death of Decedent, June 22, 1914.

SHARES OF STOCK IN NEW JERSEY CORPORATIONS.

Number of Shares.			Market	
Pfd.	Com.	Name of Company.	Value	Total
160	Central Leather Co.....	\$102.00	\$16,320.00
50	National Lead Co.....	107.00	5,350.00
125	Pressed Steel Car Co.....	102.00	12,750.00
				\$34,420.00

20

Interest taxable:

Life interest of 2 daughters in

residue \$38,178.38

Stat. exemption 10,000.00

\$28,178.38	1%	281.78
-------------	----	--------

Remainder of estate passing to

5% beneficiaries 28,726.96

28,726.96	5%	1,436.34
-----------	----	----------

\$1,718.12

.5032

TAX \$ 864.56

Appraised Value of Estate, \$ 68,407.90 \$34,420.00 (.5032

Deductions, 1,352.56

Residue \$66,905.34

30

Net Estate, \$ 67,055.34

Bequests, etc. 150.00

Life Int.

of 2 dau-

ghters, 38,178.38

Residue, \$66,905.34

Remainder \$28,726.96

Total Appraised Value of Shares in New

Jersey Corporations..... \$34,420.00

Tax payable if decedent had lived in New

Jersey and all the property had been

located in this State..... \$ 1,718.12

Percentage of whole estate invested in

New Jersey stocks..... .5032

40

Tax due New Jersey..... \$ 864.56

Affidavit of Executor.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.

In the matter of the Estate of HOWARD S. COLLINS, deceased, late of Hartford.	}	<i>Affidavit of Francis Par- sons, Trust Officer of Se- curity Trust Co., Executor.</i>	10
---	---	---	----

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD. } ss.

Francis Parsons, Trust Officer of Security Trust Co., Executor of the estate of the above-named decedent being duly sworn, deposes and says:

Decedent died testate June 22, 1914. 20

Address of deponent or deponents is P. O. Drawer 58, Hartford, Conn.

Attorney of Estate is _____

Address of Attorney is _____

Total amount of real estate, less mortgages, Schedule A.....	\$	
Total amount of personal estate, Schedule A.....	\$68,407.90	
Total amount of estate wherever situate.	\$68,407.90	30

Total amount of debts (exclusive of mortgages on real estate), including funeral, administration and other expenses, detailed in Schedule C.....	\$ 1,352.56
Net estate.....	\$67,055.34

Property owned by decedent at date of death and subject to the jurisdiction of State of New Jersey:

Real estate, less mortgages.....	\$	
Personal estate	\$	40

Affidavit of Executor.

Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D..... \$34,420.00

10 Deponent further says that the decedent was not possessed of any other property subject to the jurisdiction of the State of New Jersey.

THE NAMES OF BENEFICIARIES AND RELATIONSHIP OF EACH TO DECEDENT, ETC., ARE AS FOLLOWS:

Names	Relationship	Survived	Age of Life	Interest of Beneficiary in Estate
		Decedent State Yes or No	Tenants or Annuitants at Death of Decedent	
Helen R. Collins,	wife	yes	about 70	\$50. watch for life \$100. household furniture absolutely.
20 Dr. R. H. Potter	no relation	yes		\$50. watch if living on death of Helen R. Collins.
Rev. Benjamin Swift	" "	yes		\$50. watch on death of Helen R. Collins if Dr. R. H. Potter is not living.
Faith W. Collins,	daughter	yes	52 yrs.	Life int. in half of residue with power of appointment.
Alice Collins	daughter	yes	50 yrs.	Ditto as above

Deponent further says that all of the above-named beneficiaries survived the decedent and are still living, with the exception of

30 Names. Date of Death. Residence

(Signed) FRANCIS PARSONS,
*Vice-President and Trust Officer,
Security Trust Co., Executor.*

Sworn and subscribed before me
this 18th day of June, A. D. 1915.

40 EARLE E. DIMON,
Notary Public.

Read these instructions. They are important.

Affidavit of Executor.

IMPORTANT.

If decedent died TESTATE attach Certified Copy of Will and Certificate of Qualification of Executors.

If decedent died INTESTATE attach Certificate of Appointment of Administrator.

10

If this affidavit is made by an administrator strike out the word "Executor" wherever found herein, and if by an executor strike out the word "administrator" wherever found.

Administrators with will annexed will use the letters "C. T. A." and forward certified copy of will.

All papers must be certified by the public official under whose jurisdiction the estate is, whether it be surrogate, probate judge or by whatever title such official may be designated.

20

ALL DOCUMENTS REMAIN ON FILE IN DEPARTMENT OF THE STATE COMPTROLLER as his authority and voucher for action taken.

Unauthenticated statements are not acceptable. Answer each question in detail. Make each schedule in full detail.

Relationship of Beneficiaries to decedent, whether or not such beneficiaries survived decedent and the interest of the beneficiary in the estate, are the important factors respecting Transfer Inheritance Tax. The age at time of death of decedent, of Beneficiaries who are life-tenants or annuitants, is information absolutely necessary.

30

Notaries public must affix seal or Certificates of Appointment to Affidavit.

NOTE.—When decedent died prior to April 20, 1909. In lieu of above form.

Establish this fact by certificate of public official authorized by law to so certify.

40

Affidavit of Executor.

Supply certificate of appointment of executor or administrator.

10 Supply affidavit of executor or administrator setting forth in detail the following data: Description of any and all property, real or personal, subject to the jurisdiction of the State of New Jersey and owned by the decedent at date of death; a recital stating whether or not the beneficiaries are still living; if any have died, give names, dates of death, and places of residence at date of death. Attach certified copy of will, if decedent died testate.

20 If a tax is due, consent permitting the transfer of shares of stock of New Jersey corporations will not be granted unless and until said tax is paid. Security is not acceptable in lieu thereof. However, consent to transfer will be granted upon payment of 5% of the full market value of the stock or property. If, after said transfer, it shall be ascertained by the Comptroller of the Treasury that said stock or property was not liable to full 5% tax, the Comptroller of the Treasury will return to the executor, administrator, trustee or other representative the amount overpaid.

30

40

Schedule A.—Schedule B.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE A.

Real property wherever situate, with statement
of liens and encumbrances upon each parcel at
death of decedent. None. 10

Assessed value for year of decedent's death.

Estimated market value.

Value of equity.

Important.—The proceeding will receive no at-
tention whatsoever unless this schedule is complete
in every detail.

20:

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE B.

PERSONAL PROPERTY WHEREVER SITUATE.

(Corporate Stocks.—State the correct corporate
title, the number and kind of shares, the par and
market values. 30

(Corporate Bonds.—State correct corporate title,
nature of bond, year due, and rate of interest.
State the amount of accrued interest computed to
the date of death of decedent.

(Bonds and Mortgages, Notes, Etc.—Short de-
scription of each. State the amount of accrued
interest computed to the date of death of decedent.)

Cash in hand and on deposit, bonds and mort-
gages, promissory notes, claims, insurance, corpor-
ate bonds and stocks and all other personal prop-
erty wherever situate. 40

Schedule C.

		ESTIMATED MARKET VALUE	
STOCKS			
	100 shs. American Locomotive Co. pfd.	@ 100	\$10,000.00
	160 " Central Leather Co., pfd.	@ 102	16,320.00
	100 " The Collins Company,	@ 210	21,000.00
	50 " National Lead Co., pfd.	@ 107	5,350.00
	125 " Pressed Steel Car Co., pfd.	@ 102	12,750.00
	200 " Scientific American Compiling Dept. pfd. (par. \$10.)		Value unknown
10	100 " Scientific American Compiling Dept. com. (par \$10.)		" "
CASH AND CASH ITEMS:—			
	Deposit Security Trust Co., Hartford,	\$420.52	
	" Henry Clews & Co., New York,	2,137.38	
	Dividend Central Leather Co.,	280.00	2,837.90
PERSONAL EFFECTS:			
	Watch,	50.00	
	Household furniture, &c.	100.00	150.00
			<u>\$68,407.90</u>

20 Important.—The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE C.

30 DETAILS OF DEBTS, OTHER THAN MORTGAGES ON
REAL ESTATE.

(If any claims are secured by collateral, state what property has been pledged.)

Debt or claim of.	Nature of same.	Amount.
	Funeral expenses.....	\$268.50
	Counsel Fees.....	
	Executor's or Administrator's Com- missions	
40	Administration expenses (estimated)..	

Schedule D.

(Detail others debts.)

ADMINISTRATION EXPENSES:		
Hartford Courant Co.....	\$3.50	
Services of appraisers.....	20.00	
Probate fees.....	53.70	
Taxes paid Treasurer of Con-		
necticut on securities and cash	12.27	10
(disallowed)		
Services of executor.....	750.00	1095.70

Edwin R. Lewis, M.D.....	56.00	
William Porter, Jr., M.D.....	14.00	
W. P. Hall.....	54.20	
L. S. McNeil.....	55.71	
Helen R. Collins.....	76.95	

	\$1352.56	20

Important.—The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.

Attached to and part of
affidavit.

SCHEDULE D. 30

Details of real and personal property subject to the jurisdiction of the State of New Jersey. Consents to transfer will be granted only on property included in this schedule.

	Estimated Market Value.	
160 shares Central Leather Co., pfd.@102	\$16,320.00	
50 shares National Lead Co., pfd.@107	5,350.00	40

Will of Howard S. Collins.

125 shares Pressed Steel Car Co.,		
pfd.@102	12,750.00	
	\$34,420.00	

10 Important.—The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF CONNECTICUT, }
 PROBATE DISTRICT OF HARTFORD, } ss.

20 I, Frank M. Mather, Clerk of the Court of Probate for the District of Hartford, in said State, and keeper of the seal thereof, do certify that the within constitutes a true copy of the last will and testament, and codicils, thereunto, of Howard S. Collins, late of Hartford, in said District, deceased, as appears by the records and files of this court.

IN TESTIMONY WHEREOF, I have hereunto affixed the seal of said Court, and subscribed my name at Hartford, this 10th day of June, 1915.

(L. S.) FRANK M. MATHER,
Clerk.

30 STATE OF CONNECTICUT, }
 PROBATE DISTRICT OF HARTFORD, } ss.

I, L. P. Waldo Marvin, sole Judge of the Court of Probate for the District of Hartford, in said State, do hereby certify that Frank M. Mather, whose name is subscribed to the above attestation, was, at the time of signing the same, and still is, Clerk of said Court, and that said attestation is in due form of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name at Hartford, this 10th day of June, 1915.

40 L. P. WALDO MARVIN,
Judge.

Will of Howard S. Collins.

STATE OF CONNECTICUT,
 PROBATE DISTRICT OF HARTFORD, } ss.

I, Frank M. Mather, Clerk of the Court of Probate for the District of Hartford, in said State, and keeper of the seal thereof, do certify that the signature of L. P. Waldo Marvin, to the preceding certificate is genuine and that he is the duly elected and qualified Judge of said Court of Probate for the District of Hartford. 10

IN TESTIMONY WHEREOF, I have hereunto affixed the seal of said Court, and subscribed my name at Hartford, this 10th day of June, 1915.

FRANK M. MATHER,
Clerk.

I, Howard S. Collins, of the City and County of Hartford and State of Connecticut, being of sound and disposing mind and memory, make my last will as follows, hereby revoking all wills heretofore made by me:— 20

I. I give and bequeath all my wearing apparel, personal effects, household furniture, furnishings and stores, pictures, books, china and plate, or any interest of mine in any such articles, to my wife Helen R. Collins and my daughters Faith W. and Alice Collins, or to the survivors, should any of the said persons have died before me, to be divided among them, or the survivors of them, as they may agree. I desire that no detailed inventory be made of said property, but that it be appraised in gross at One Hundred (100) Dollars. 30

II. Should either of my said daughters Faith W. and Alice survive me, I give, devise and bequeath all the rest, and residue of the property and estate of every description, and wherever located which I may own at the time of my death 40

Will of Howard S. Collins.

to Security Company, a duly organized corporation located in said Hartford, for itself, its successors and assigns, but nevertheless in trust, for the following uses and purposes:—

(a) To divide said rest and residue into two equal parts or halves:—

- 10 (b) To hold, manage, sell, transfer, invest and reinvest said residue so divided at its discretion, free from any legal restrictions as to trust investments; and I expressly empower said Trustee to hold such so-called industrial securities as may be distributed to it under this will on the settlement of my estate so long as the respective incomes therefrom do not fall below six per cent (6%) on their respective par values, and I request said Trustee in the reinvestment of said fund from
- 20 time to time to give preference to the better class of so-called industrial securities, provided said securities may be purchased with such a reasonable prospect of safety as an ordinarily prudent man would recognize in the management of his own affairs, and I direct that said Trustee be not held responsible for any losses to said fund due to following in good faith my authorizations and requests as herein expressed, said authorizations and requests, however, being permissive and in no
- 30 sense mandatory.

- (c) To pay over the net income from one of said equal parts or halves to my said daughter Faith in quarterly payments during her life, and on her death to pay over, transfer and convey said half of said residue, with any income not paid to her, to the person, persons, corporation or corporations that *she* may have designated and appointed by her last Will to take the same, or, in default of a valid exercise by her by will of the power of appointment herein conferred, to those persons who
- 40

Will of Howard S. Collins.

under the Statutes of Distribution of the State of Connecticut in force at the time of her death would be entitled to succeed to her intestate estate in the proportions therein specified;

(d) To pay over the net income from the other of said equal parts or halves to my said daughter Alice in quarterly payments during her life, and on her death to pay over, transfer and convey said part of said residue, with any income not paid to her, to the person, persons, corporation or corporations that she may have designated and appointed by her last will to take the same, or, in default of a valid exercise by her by will of the power of appointment herein conferred, to those persons who under the Statutes of Distribution of the State of Connecticut in force at the time of her death would be entitled to succeed to her intestate estate in the proportions therein specified.

(d) Provided however, that should either of said daughters die before me, in that event I relieve said Trustee of the duty of dividing said residue as aforesaid, and in this case I desire my surviving daughter to succeed to all the beneficial interest and other rights in and over said half of said residue said deceased daughter would have taken under this will, in addition to the interest and rights above expressly given to her; that is to say, I direct said Trustee to pay to such survivor the net income of all of said residue during her life, and I give her the power of disposing by will as aforesaid of the whole thereof and any unpaid income, and in default of such valid disposition by her by will I give all of said residue and unpaid income, on her death, to those persons who under the Statutes of Distribution then in force would be entitled to succeed to her intestate estate as aforesaid.

Will of Howard S. Collins.

10 III. Should both of my said daughters die before me I give, devise and bequeath all of said residue of my estate to my said wife Helen R. Collins absolutely, or, if she shall not be living, I give, devise and bequeath said residue as follows: One half thereof to the American Missionary Association and one half thereof in equal shares or portions to the Rev. Benjamin Swift of Orwell, Vermont, and Helen R. Mason of said Hartford, or wholly to the survivor of them should either have previously died.

IV. I make no further gifts in this will to my said wife as I have already otherwise provided for her sufficiently in my judgment.

20 V. I constitute and appoint said Security Company executors of this will and Trustee as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this seventh (7th) day of July, A. D. 1906.

HOWARD S. COLLINS,
(L.S.)

30 Signed and sealed by the above named testator, and by him declared to be his last will, in the presence of us, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses:—

JONATHAN B. BUNCE, of Hartford, Conn.

D. W. C. SKILTON, of Hartford, Conn.

FRANCIS PARSONS, of Hartford, Conn.

First Codicil.

I, Howard S. Collins, of Hartford, Connecticut, having made my last will dated July 7, 1906, do now make this codicil thereto:—

I hereby revoke the entire first clause of my said will in which I gave to my wife and daughters certain personal effects, household furniture and other chattels, and in lieu thereof I provide as follows:— 10

I. (a) I give and bequeath my watch to my said wife Helen Raymond Collins for her use during her life, and on her death to my friend, the Rev. Rockwell Harmon Potter, D.D., of said Hartford, if then living; if he is not then living I give said watch upon my wife's death to the Rev. Benjamin Swift of Woodstock, Vt.

(b) My wearing apparel, personal effects (except said watch), household furniture, furnishings and stores, pictures, books, china and plate and any interest of mine in any such articles I give absolutely to my said wife, and should she die before me I give said articles and interest therein to Helen Raymond Mason, now residing in said Hartford. 20

(c) I am confident that my daughters Faith and Alice will understand that the revocation of said gifts to them in my said will is not due to any lack of affection for them, but solely to other circumstances. Neither of my said daughters now has any permanent home in Hartford and neither could make in my opinion, practical use of the aforesaid property, the value of which is small, and most of which is situated in the dwelling house No. 99 Farmington Avenue, in said Hartford, where I now reside, which house is owned by my wife and will, I hope, be eventually the home of said Helen Raymond Mason. 30 40

Second Codicil.

II. Except as modified by this codicil I hereby ratify and confirm my said will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at said Hartford this 13th day of April, A. D. 1911, hereby declaring this instrument to be a codicil to my last will.

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HOWARD S. COLLINS,
(L.S.)

Signed, sealed, published and declared by the above named Howard S. Collins as and for a codicil to his last Will, in the presence of us, who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses this 13th day of April, A. D. 1911.

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EARLE E. DIMON, of Hartford, Conn.
ALICE CHOYCE, of Hartford, Conn.
FRANCIS PARSONS, of Hartford, Conn.

I, Howard S. Collins, of Hartford, Conn., having made my last will dated July 7, 1906 and added a codicil April 13, 1911, do hereby revoke this codicil, and in lieu thereof I provide as follows:—

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I give my watch to my said wife Helen R. Collins for her use during her life and on her death to my friend Dr. R. H. Potter, of said Hartford, if then living. If not living I give it to Rev. Benj. Swift of Woodstock, Vt., upon my wife's death.

My wearing apparel, personal effects, household furniture, furnishings and stores, pictures, books, china and plate—any interest of mine I give absolutely to my said wife and should she die before me I give said articles to Rev. Benj. Swift and wife Mary S. Swift now of Woodstock, Vt.

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Neither of my two daughters Faith or Alice have a permanent home in Hartford and most of it,

Second Codicil.

(the property value of it small) is in the dwelling house 99 Farmington Avenue in Hartford, which house is owned by my wife and will be the home eventually of the said Benj. Swift and wife.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Watch Hill, R. I., this 25th day of September, 1911, hereby declaring this to be my last codicil to my will of July 7, 1906. 10

HOWARD S. COLLINS.

Signed, sealed, published and declared by the above named Howard S. Collins as his last codicil, in the presence of us, who at his request, in his presence and in the presence of each other subscribe our names.

September 25, 1911. 20

SOPHIE MOEN, of Boston, Mass.

MARGARET BROUCHER, of Hartford, Conn.

ALICE CHOYCE, of Hartford, Conn.

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Stipulation.

Stipulation.

(Filed May 10, 1916.)

New Jersey Supreme Court.

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ESSEX COUNTY

SECURITY TRUST COMPANY, a corporation, Executor of the Last Will and Testament of HOWARD S. COLLINS, deceased,

Prosecutor,

vs.

20 EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey,

Defendant.

On Certiorari.

Stipulation.

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It is hereby stipulated and agreed by and between the attorneys for the prosecutor and the defendant respectively in the above entitled cause that the following is a statement of additional facts to be used upon the final argument upon the return of the writ of certiorari granted herein:

1. That the statement of facts set forth in the affidavit and schedules annexed thereto of Francis Parsons, Vice-President and Trust Officer of Security Trust Company, the prosecutor herein, copies of which are annexed to the return in this action, shall, for the purposes of this action, be taken as true.

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2. That the Comptroller of the Treasury of the State of New Jersey has refused to give his consent in writing to the transfer of the shares of

Stipulation.

stock of the New Jersey corporations a list and description of said shares being set forth in the affidavit mentioned in Paragraph 1 of this stipulation, although requested at various times so to do by the prosecutor herein and its attorneys, unless and until certain taxes or assessments, levied upon said shares of stock and computed in the manner set forth in the return herein, marked, "Tax on transfer of shares of stock in New Jersey corporations standing in the name of a non-resident decedent," be first paid. 10

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

JOHN W. WESCOTT,
Attorney for Defendant. 20

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Rule.

Rule.

(Filed May 10, 1916).

New Jersey Supreme Court

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SECURITY TRUST COMPANY, a corporation, Executor of the Last Will and Testament of HOWARD S. COLLINS, deceased,

Prosecutor,

On Certiorari.

vs.

Rule.

20 EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey,

Defendant.

It appearing that the attorneys for the prosecutor and Attorney-General on behalf of the defendant have entered into a stipulation as to additional facts to be used upon the return of the writ of certiorari granted herein:

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It is thereupon ORDERED that the said stipulation entered into as aforesaid be made part of the record of this action and be used as evidence on the hearing and determination thereof.

Rule dated, May 10, 1916.

SAMUEL KALISCH,
J. S. C.

On motion of

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LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

*Reasons.***Reasons.**

(Filed March 15, 1916.)

New Jersey Supreme Court.

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SECURITY TRUST COMPANY, a corporation, Executor of the Last Will and Testament of HOWARD S. COLLINS, deceased,

*Prosecutor,**On Certiorari.**vs.**Reasons.*

EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey,

Defendant.

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The said prosecutor by Lum, Tamblyn & Colyer, its attorneys, comes and prays that the assessment of the transfer tax in the above entitled matter be set aside, reversed and for nothing holden for the following reasons:

1. That the rights and property assessed and taxed in this case were not subject to taxation or assessment. 30

2. That the Comptroller of the State of New Jersey who made the said assessment had no authority or jurisdiction to make the same, and the act of the said State Comptroller in making said assessment is void for want of jurisdiction.

3. That said assessment is illegal, invalid and void for the reason that the same does not allow for the exemption of property to the amount of 40

Reasons.

five thousand dollars passing and transferred to each child of decedent.

10 4. That said assessment is illegal, invalid and void for the reason that there has been no transfer within the purview of the Transfer Tax Act of New Jersey of the estate in remainder created by the will of decedent after the life estates of the said children of decedent in the residuary estate of said decedent.

5. That said assessment is illegal, invalid and void in that said tax upon said estate in remainder should not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof.

20 6. That said assessment is illegal, invalid and void, in that said estate in remainder is subject to the exercise of power of appointment, and appraisal and taxation thereof (if taxable) should be suspended until the exercise of the said powers of appointment.

30 7. That the assessment herein is in violation of Article 12, Section 7, Paragraph 4 of the Constitution of the State of New Jersey, which provides that property shall be assessed for taxes under general laws and by uniform rules, according to its true value.

8. That said assessment herein violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

9. That said assessment is unconstitutional in that it attempts to subject to taxation property rights and the succession thereto and transfer thereof, which cannot be subjected to taxation by the State of New Jersey.

Reasons.

10. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they and the assessment made thereunder subject the prosecutor herein to unreasonable searches and seizures in violation of Article I, Section 6 of the Constitution of the State of New Jersey. 10

11. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Section 2, Sub-division 1, Article IV of the Constitution of the United States, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." 20

12. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Article 14 of Amendments to the Constitution of the United States, Sub-division 1, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." 30
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Reasons.

13. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914, and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Article IV of Amendments to the Constitution of the United States, providing the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, etc.

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14. Because the transfer tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of Howard S. Collins, late a non-resident of New Jersey, is assessed pursuant to the third or last paragraph of Section 12 of an act, entitled "An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution of statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended by Chapter 151, P. L. 1914, as amended by Chapter 392 of the Laws of 1915, entitled, "An Act to amend an act, entitled, 'An Act to tax the transfer of property of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases,'" and said paragraph of said Section 12 is inoperative as against the transfer of the aforesaid stock because the assessment of tax pursuant to the said paragraph denies to Howard S. Collins and his estate, his executors, the beneficiaries under his will and his residuary legatees, all citizens and residents of the United States and the citizens and residents of other States of the United States than New Jersey and non-residents of the State of New Jersey, privileges and immunities enjoyed by citi-

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Reasons.

zens of the State of New Jersey, and therefore contravenes Article 4, Section 2, Paragraph 1 of the Federal Constitution, and the prosecutor claims the protection thereof.

15. Because the assessment of the tax referred to in the foregoing reasons is assessed under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.

Art. IV, Sec. 7, Paragraph 4.

Art. IV, Sec. 7, Paragraph 12.

16. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

Reasons.

17. Because Chapter 228 of the Laws of 1909 and as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more
10 than one object in contravention thereof.

18. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I, Section 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

LUM, TAMBLYN & COLYER,
20 *Attorneys for Prosecutor.*

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Opinion.

Opinion.

(Filed Dec. 4, 1916.)

New Jersey Supreme Court. 10

June Term, 1916.

SECURITY TRUST COMPANY, a
corporation, Executor of the
last will and testament of
HOWARD S. COLLINS, de-
ceased,

Prosecutor,

vs.

EDWARD I. EDWARDS, Comp-
troller of the Treasury of
the State of New Jersey, *et*
al.,

Defendants.

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Argued June term, 1916; decided November
term, 1916.

LUM, TAMBLYN & COLYER, 30
Attorneys for Prosecutor.

JOSEPH F. McCLOY,
(Of the New York Bar.)

RALPH E. LUM,
Of Counsel.

JOHN W. WESCOTT,
Attorney for Defendants.

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Rule for Judgment.

Per Curiam:

The questions presented by the briefs of the prosecutor, in this case, have been determined by this Court, in the case of *Maxwell, Executor vs. Edwards, Comptroller*, in an opinion of Mr. Justice Minturn, filed at this term.

10 The tax under review will therefore be affirmed.

Rule for Judgment.

(Entered January 3, 1917.)

NEW JERSEY SUPREME COURT.

June Term, 1916.

20 SECURITY TRUST COMPANY, a
corporation, Executor of the
last will and testament of
HOWARD S. COLLINS, de-
ceased,

Prosecutor,

vs.

30 EDWARD I. EDWARDS, Comp-
troller of the Treasury of
the State of New Jersey,

Defendant.

*On
Certiorari.
Rule.*

The court having inspected the return, ap-
praisalment and assessment of the transfer or
inheritance tax upon the transfer of property
left by the above named Howard S. Collins,
deceased, and the proceedings thereon, and
having heard and considered the arguments of
counsel for the respective parties,

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Rule for Judgment.

IT IS ORDERED that the appraisement and assessment of the said transfer or inheritance tax be and it hereby is in all things affirmed.

Rule actually entered

January 3rd, 1917.

On motion of

JOHN W. WESCOTT,
Attorney-General of New Jersey.

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Revised

NEW JERSEY Court of Errors and Appeals

MARCH TERM, 1917.

No. 97.

SECURITY TRUST COMPANY, A COR-
PORATION, AS EXECUTOR OF THE
LAST WILL AND TESTAMENT OF
HOWARD S. COLLINS, DECEASED,

Appellant-Prosecutor,

vs.

EDWARD I. EDWARDS, COMPTROLLER
OF THE STATE OF NEW JERSEY,

Respondent-Defendant.

} On Certiorari.
} On Appeal.

Respondent
Brief for Defendant ~~in Certiorari.~~

Howard S. Collins, the nonresident decedent in this case, by his last will gave, devised and bequeathed all the rest and residue of his property to the prosecutor, Security Trust Company, in trust, to divide the same into two equal parts or halves, to pay over the net income from one of said equal parts or halves to his daughter, Faith, during her life and, on her death, to pay over the said one-half to the person or persons designated and appointed by her last will, or, in default of such appointment, to her next kin under the statute

of distribution of the State of Connecticut, and made a similar devise as to the remaining half in favor of his daughter, Alice. At the time of his death the decedent owned shares of stock in New Jersey corporations to the value of \$34,420. The Comptroller assessed the inheritance tax upon the stock of the New Jersey corporations. He first ascertained the value of the life interest of the two daughters and assessed that, allowing exemptions, at the rate of one per cent. He then ascertained the value of the residue and assessed that at the rate of five per cent., the total tax amounting to the sum of \$864.56.

The validity of the tax is questioned by the appellant upon two grounds:

First. That the acts under which it is assessed—the Inheritance Tax Act of 1909 and the amendment thereto of 1914—are unconstitutional as against the estates of nonresident decedents;

Second. That the tax upon the remainder is invalid under section three of the Inheritance Tax Act of 1909.

As to the first ground, the unconstitutionality of the acts, the whole question is fully discussed in the brief submitted on behalf of the Comptroller in the case of *Maxwell et al., Executors, vs. Edwards*, argued at this term of court (No. 108), and need not be here discussed or considered.

As to the second ground, as to the tax upon the remainder, it was admitted in the Supreme Court on behalf of the Comptroller that this tax was clearly invalid and should be set aside. But the Supreme Court seems to have overlooked this concession and sustained the whole tax upon the questions determined by it in the case of *Maxwell, Executor, vs. Edwards*, already referred to.

See per curiam opinion of Supreme Court in this case, State of Case, p. 30.

Section 3 of the Inheritance Tax Act of 1909 reads as follows:

“Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of death of the creator of the power,”

It cannot be denied that the will created a power of appointment in the daughter, Faith, and also a power of appointment in the daughter, Alice. Under the section above quoted it must be admitted that the appraisal and taxation of the interests in remainder to be disposed of by the donees of the power cannot be taxed until the exercise of the power of appointment. The attempt of the Comptroller, therefore, to tax the remainder at this time at the rate of five per cent. was contrary to the statute and invalid. It, probably, resulted from the understanding on the part of the Comptroller that the executor wished at this time to pay the tax, in order to secure a waiver and certificate, so that the New Jersey stocks could be transferred upon the books of the several corporations.

The tax upon the life interest has been paid by the executor without question and without protest, and it is submitted that no question could be raised under certiorari proceedings as to the validity of that tax.

If the interest of the life tenants is valued and assessed upon an incorrect principle or by an incorrect method, the tax having been paid voluntarily and without protest, it is submitted that the assessment cannot be reviewed by certiorari.

The difference in the amount of the tax upon the life estate between the method adopted by the Comptroller

and paid without dispute and the method contended for by the prosecutor, should the act be found constitutional, would be less than forty dollars (\$40.00).

The only question remaining for consideration is the fact that section 12 of the act prohibits the transfer of New Jersey stock owned by nonresidents until the tax be paid, and that these shares of stock cannot be transferred until the exercise of the power of appointment, as the tax cannot be legally fixed until that time, and that this is arbitrary and works great hardship.

But the law makes provision for this by the supplement of 1914 to the Inheritance Tax Act of 1909, passed before the amendment of 1914 and quoted in full in prosecutor's brief on page 10, providing for the issue of a waiver for the transfer of stock upon payment by the executor of a five per centum tax based upon the full value of the shares of stock or property. If, after the transfer, it is ascertained that the stock or property was not liable to the full five per centum, the Comptroller is authorized by his check to pay to the executor the amount overpaid to the State Comptroller. Under this provision, the executor can now pay five per centum tax upon the *remainder value* of the New Jersey shares of stock, to be held by the Comptroller until the exercise of the power of appointment when the tax will be properly adjusted and the overplus, if any paid, returned to him, thus releasing all of the New Jersey stock.

Section 3 of the Act of 1909, P. L. 1909, p. 328, also contains the following provision:

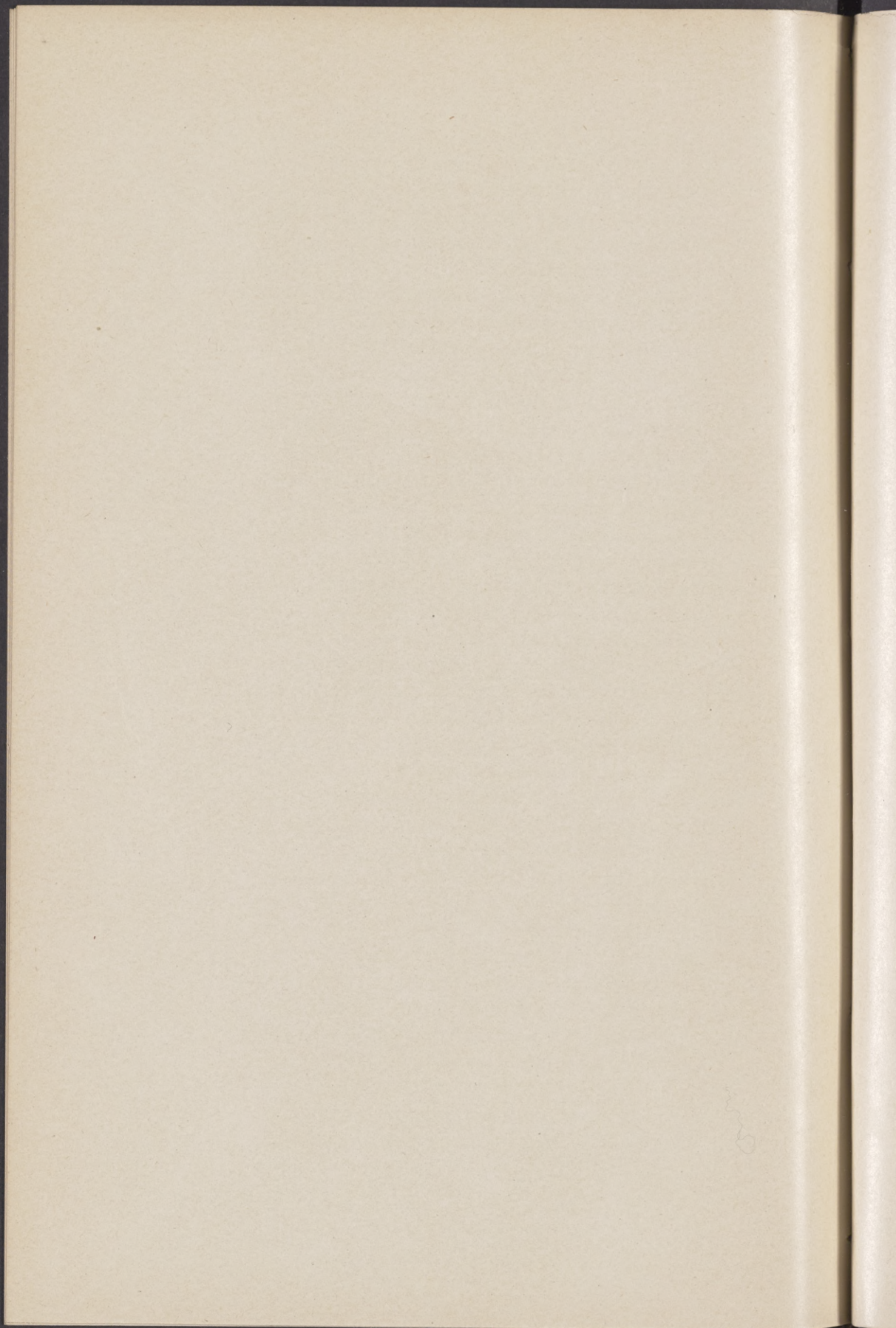
"The Comptroller of the Treasury of this State, by and with the consent of the Attorney-General, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the

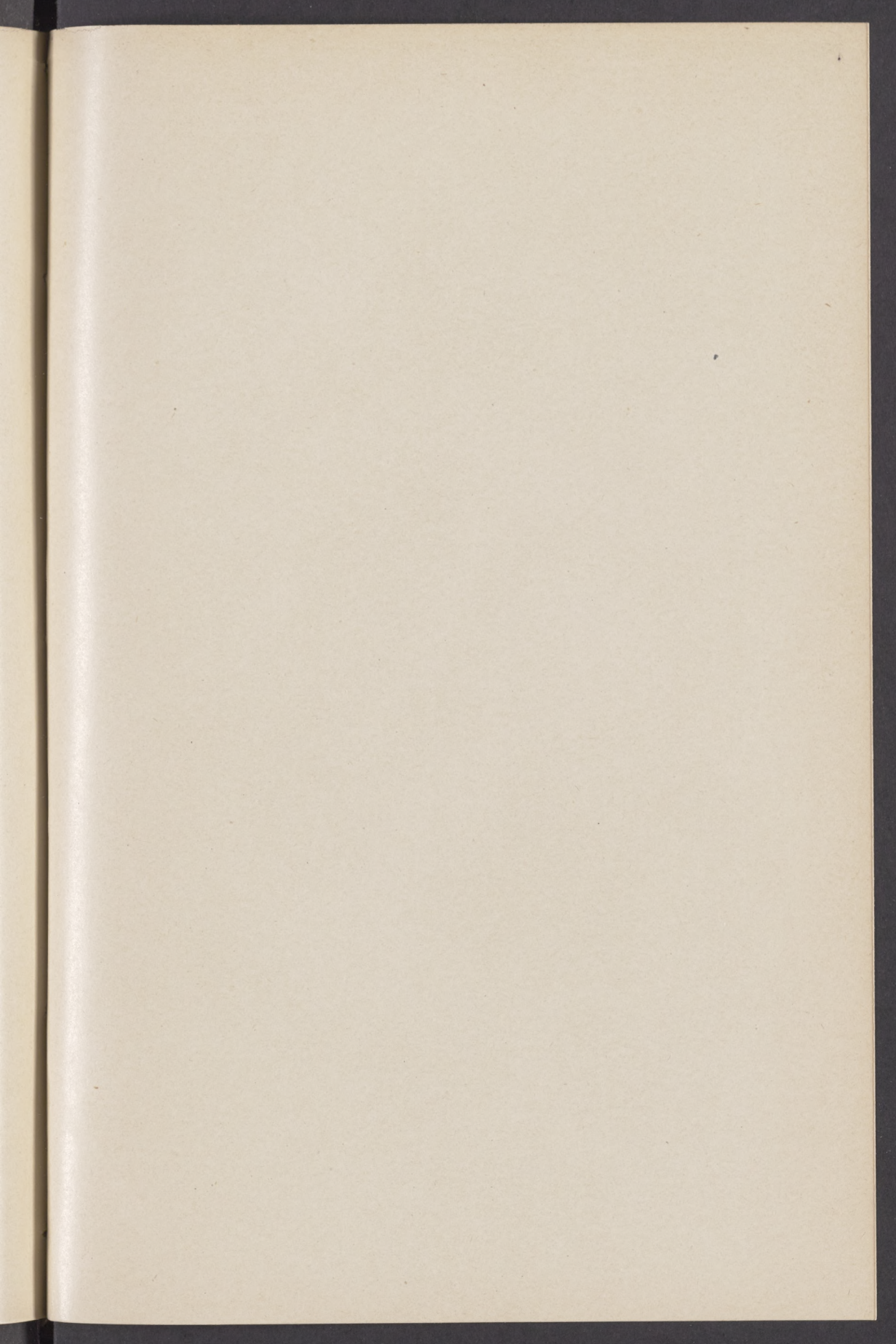
legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; provided, however, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such *cestuis que trust* as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee."

Under this clause, the tax upon the remainder can be compounded upon an equitable basis and the stock at once released and its transfer effected. This section is resorted to continually in the settlement of inheritance tax upon estates to facilitate the settlement of the estates and to prevent the necessity of paying in the full five per centum under the provisions of the supplement of 1914. It is equitable to both parties; the State receives its tax at once upon an equitable adjustment, and the estate is relieved from future liability and from the necessity of tying up its securities.

It appears, then, that the tax upon the life estates should be sustained and that the tax levied upon the remainders contingent upon the exercise of the powers of appointment should be set aside, unless the executor is willing to pay a five per cent. tax properly calculated under the provisions of the supplement of 1914, in order to effect a release of his estate.

Respectfully submitted,
 THEODORE BACKES,
*Second Assistant Attorney-General,
 Counsel for Respondent.*







New Jersey Court of Errors and Appeals.

SECURITY TRUST COMPANY, a
corporation, as Executor of
The Last Will and Testament
of Howard S. Collins, De-
ceased,

Prosecutor-Appellant,

v.

EDWARD I. EDWARDS, Comp-
troller of the State of New
Jersey,

Defendant.

On Certiorari.

On Appeal from
Supreme Court.

BRIEF FOR PROSECUTOR- APPELLANT.

This appeal is taken by Security Trust Company, a corporation, as executor of the Last Will and Testament of Howard S. Collins, deceased, a non-resident, from an order or judgment of the Supreme Court affirming the appraisement and assessment of transfer inheritance tax theretofore imposed and reviewed under a writ of *certiorari* brought by the prosecutor-appellant.

This writ was brought to review an assessment of transfer inheritance tax by Edward I. Edwards,

Comptroller of the State of New Jersey, in the sum of \$864.56, made on or about the 21st day of July, 1915.

The decedent, Howard S. Collins, died on or about the 22nd day of June, 1914, a resident of the City of Hartford, State of Connecticut, leaving a Last Will and Testament, which was thereafter duly admitted to probate by the Court of Probate in and for the District of Hartford, in the State of Connecticut, and Letters Testamentary thereupon issued to said prosecutor, Security Trust Company, as Executor. No Letters Testamentary, ancillary or otherwise, have been issued in the State of New Jersey, nor is it necessary to apply for or to have issued such letters within the State of New Jersey in order to administer the estate of said decedent.

Decedent, at the time of his death, owned no real estate within the State of New Jersey.

The total appraised value of the estate of said decedent wheresoever situated was \$68,407.90.

The testator disposed of the residue of his estate by Will as follows:

“II. Should either of my said daughters Faith W. and Alice survive me, I give, devise and bequeath all the rest and residue of the property and estate of every description and wherever located which I may own at the time of my death to Security Company, a duly organized corporation located in said Hartford, for itself, its successors and assigns, but nevertheless in trust, for the following uses and purposes:

(a) To divide said rest and residue into two equal parts or halves:—

(b) To hold, manage, sell, transfer, invest and reinvest said residue so divided at its discretion, free from any legal restrictions as to trust investments: and I expressly empower said Trustee to hold such so-called industrial securities as may be distributed to it under this will on the settlement of my estate so long as the respective incomes therefrom do not fall below six per cent. (6%) on their respective par values,

and I request said Trustee in the reinvestment of said fund from time to time to give preference to the better class of so-called industrial securities, provided said securities may be purchased with such a reasonable prospect of safety as an ordinarily prudent man would recognize in the management of his own affairs, and I direct that said Trustee be not held responsible for any losses to said fund due to following in good faith my authorizations and requests as herein expressed, said authorizations and requests, however, being permissive and in no sense mandatory;

(c) To pay over the net income from one of said equal parts or halves to my said daughter Faith in quarterly payments during her life, and on her death to pay over, transfer and convey said half of said residue, with any income not paid to her, to the person, persons, corporation or corporations that she may have designated and appointed by her last will to take the same, or, in default of a valid exercise by her by will of the power of appointment herein conferred, to those persons who under the Statutes of Distribution of the State of Connecticut in force at the time of her death would be entitled to succeed to her intestate estate in the proportions therein specified;

(d) To pay over the net income from the other of said equal parts or halves to my said daughter Alice in quarterly payments during her life, and on her death to pay over, transfer and convey said part of said residue, with any income not paid to her, to the person, persons, corporation or corporations that she may have designated and appointed by her last will to take the same, or, in default of a valid exercise by her by will of the power of appointment herein conferred, to those persons who under the Statutes of Distribution of the State of Connecticut in force at the time of her death would be entitled to succeed to her estate in the proportions therein specified."

Both daughters survived testator and are now alive.

The report of the assessment made herein reads as follows:

“Shares of Stock in New Jersey Corporations:

Number of shares Pfd. Com.	Name of Company	Market Value	Total
160 ...	Central Leather Co.....	\$102.00	\$16,320.00
50 ...	National Lead Co.....	107.00	5,350.00
125 ...	Pressed Steel Car Co.....	102.00	12,750.00
			<u>\$34,420.00</u>

Interests taxable:

Life int. of 2 daughters in residue.....	\$38,178.38		
Stat. exemption.....	10.		
	<u>\$28,178.38</u>	1%	\$281.78
Remainder of estate passing to 5% beneficiaries.	\$28,726.96	5%	1,436.34
			<u>\$1,718.12</u>
			.5032
			<u>\$864.56</u>
			Tax.

Appraised Value of Estate.....\$68,407.90) \$34,420.00 (.5032 Residue \$66,905.34

Deductions..... 1,352.56 Life int. of 2 daughters. 38,178.38

Net Estate.....\$67,055.34 Remainder \$28,726.96
Bequests, etc.... 150.00

Residue..... \$66,905.34

Total Appraised Value of Shares in New Jersey Corporations..... \$34,420.00

Tax payable if decedent had lived in New Jersey and all the property had been located in this State.... \$1,718.12

Percentage of whole estate invested in New Jersey stocks..... .5032
Tax due New Jersey... \$864.56”

The assessment was made under the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and such sections thereof as are relevant to the issue are set forth following for convenient reference:

“Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred

dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided in the following cases:

First: * * * * *

Second: When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a nonresident of the State at the time of his death.

Third: * * * * *

Fourth: When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a nonresident decedent, when such nonresident decedent's property consists of real property within this State or of shares of stock of corporations of this State or of national banking associations located in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, except as hereinafter provided, to be paid to the Treasurer of the State of New Jersey, for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the State of New Jersey.

Property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, organized under the laws of this State, or operating solely within this State, shall be exempt from taxation under this act and also property to the amount of five

thousand dollars passing to a father, mother, husband, wife, child or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind or character shall be allowed.

Property transferred to any child or children, husband or wife, of a decedent, or to the issue of any child or children of a decedent, shall be taxed at the rate of one per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars; one and one-half per centum on any amount in excess of fifty thousand dollars, up to one hundred and fifty thousand dollars; two per centum on any amount in excess of one hundred and fifty thousand dollars, up to two hundred and fifty thousand dollars; and three per centum on any amount in excess of two hundred and fifty thousand dollars."

Section 3 of the Act reads as follows:

3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate or estate for a term of years, created by such instrument, the tax on such life estate or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable, shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest

or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of death of the creator of the power.

A tax on an estate for life or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the Treasurer of this State, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the State of New Jersey.

The Comptroller of the Treasury of this State, by and with the consent of the Attorney-General, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in

such composition; provided, however, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estate, unless they consent thereto, either personally, when competent, or by guardian or committee."

Section 5 provides, in part, as follows:

"5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided." * * *

Section 12, safeguarding the State's claim for taxes in certain cases, and including the Ratio Provision, in part reads as follows:

"12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or standing in the joint names of such decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the Treasurer of this State on the transfer thereof. * * *

A tax shall be assessed on the transfer of property made subject to tax as aforesaid, in this State of a non-resident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such taxable property within this State bears to the entire estate, wherever situated; provided, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State."

Section 15, providing for the refund of taxes erroneously paid, provides in full as follows:

“When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to him of such erroneous payments, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same for the amount of such tax so paid in error; provided, that all such applications for the repayment of such tax shall be made within two years from the date of such payment.”

Chapter 58, P. L. 1914 in effect March 26, 1914, supplements the statute under consideration as follows:

“1. Whenever a foreign executor, administrator or trustee shall desire to transfer stock in a New Jersey corporation, owned by a non-resident decedent, it shall and may be lawful for the Comptroller of the Treasury of this State to issue a waiver for the transfer of said stock upon such foreign executor, administrator or trustee paying to the Comptroller of the Treasury a five per centum tax, based upon the full value of the said shares of stock or property. If after said transfer it shall be ascertained by the Comptroller of the Treasury that the said stock or property was not liable to said full five per centum tax, said Comptroller of the Treasury shall by his check pay to said executor, administrator or trustee, the amount overpaid to the State Comptroller. For the purpose of carrying into effect the provisions of this act, the Comptroller of the Treasury is hereby expressly authorized to maintain a separate fund into which shall be paid the amount of taxes as aforesaid, and when the exact or precise tax which the stock or property in New Jersey is liable for shall have been ascertained, the Comptroller of the Treasury shall pay to the Treasurer of the State of New Jersey, the amount of said tax so ascertained to be due.”

The opinion of the court below upon which the judgment appealed from was entered was rendered *per curiam*:

“The questions presented by the briefs of the prosecutor, in this case, have been determined by this Court, in the case of *Maxwell, Executor, vs. Edwards, Comptroller*, in an opinion of Mr. Justice Minturn, filed at this term.

The tax under review will therefore be affirmed.”

The attention of the Appellate Court is respectfully drawn to the fact that in the case at bar there was an additional question not raised or determined in the Maxwell case above referred to, to wit: *the question of the taxability of remainder interests subject to the exercise of powers of appointment.*

The objections of the prosecutor-appellant to the assessment made herein are based upon the following grounds:

FIRST: That the statute enacting the foregoing ratio provision in connection with the provisions according exemptions in certain cases and imposing taxes upon graduated amounts at progressive rates is in contravention of the Constitutions of the United States and of the State of New Jersey in that it does not constitute due process of law and denies equality under the law based upon arbitrary distinctions.

(a) As between estates, successions or property of resident and non-resident decedents, and

(b) As between estates, successions or property of non-resident decedents in like case involving illegal classification.

SECOND: That the tax imposed upon the transfer of so much of the property of the decedent herein as is measured by 5 per cent. of the value of the remainders after the life estates of testator's daugh-

ters, said remainder estates being contingent and subject to the exercise of powers of appointment, is illegal, unconstitutional and void:

(a) By reason of the fact that the statute provides that no tax shall be assessed in such case until the power is exercised or the remainders vest in possession or enjoyment.

(b) By reason of the fact that such tax is a taking of property without due process of law within the prohibitions of the Constitution of the United States and of the Constitution of the State of New Jersey.

(c) By reason of the fact that such tax denies to the citizens of each state the privileges and immunities of citizens in the several states within the prohibitions of the Constitution of the United States and of the Constitution of the State of New Jersey.

(d) By reason of the fact that such tax denies the equal protection of the laws to persons within the jurisdiction of the state within the prohibitions of the Constitution of the United States and of the Constitution of the State of New Jersey.

POINT I.

There is no statute for the tax assessed upon the remainder interests after the life interests of decedent's daughters.

The statute will be searched in vain for any authority for the assessment upon the remainder interests. The statute specifically provides that no such tax shall be assessed until the powers are exercised. The assessment made by the Comptroller's pencil in this instance constitutes an attempt to evade a grave *casus omissus* in the statute.

No doubt can remain that the instant statute,

if it is to stand, must be considered as imposing a tax upon the transfer of or universal succession to the property within the jurisdiction passing by will or otherwise, *but it is equally clear that the amount of the tax is nevertheless determinable, first with reference to the relationship of the beneficiary to the decedent and second with reference to the value of the separate beneficial interests created in the property or estate transferred.* This being so it follows that in case there is any uncertainty in regard to either of these determining facts the tax cannot be measured until they have become certain.

The framers of the statute recognized in Section 2 of the act that where the possession or enjoyment of beneficial interests in remainder is deferred although vested indefeasibly, the burden of the tax very properly should be deferred likewise and so provided therein that so much of the tax in such case as might be measured by the value of such interests in remainder should not be *payable* until "the time or period arrives when said remainder-man or his representatives shall become entitled to the actual possession or enjoyment of such property and shall then become due and payable immediately."

With equal foresight the law-makers provided in Section 3, quoted *ante*, that where the interests in remainder were defeasible or contingent so that neither the character or number of the beneficiaries nor the value of their interests could be ascertained, that no tax should *accrue* inasmuch as there was no provision for measuring the tax until certainty of beneficiaries and certainty of their number as subject to exemptions and certainty of relationship made assessment possible.

There would be no controversy here if Collins had been a resident of the state, but the fact is otherwise, and if the New Jersey shares are transferred without payment of a tax the state loses its jurisdiction to compel payment upon the vesting of the remainders. On the other hand, the

prosecutor is confronted with the apparently irreconcilable provisions of Section 3 and Section 12, the latter section being peculiarly applicable to the estates of non-residents in certain respects. The prosecutor is in a quandary. Section 5 declares that all taxes imposed by the act shall be due and payable at the death of the testator unless otherwise provided. Section 3, as has been seen, provides that when property passes with the remainders contingent or defeasible or where remainders are subject to the exercise of a power of appointment, the tax upon the transfer of so much of the property as is measured by the value of the remainder thereafter shall not be levied or assessed until the remainders vest in actual possession or enjoyment of the beneficiary. Or, in other words, that when the tax *cannot be ascertained* it *cannot be assessed*. But Section 12 prohibits transfer of the New Jersey shares of a non-resident unless the tax be first paid. Therefore Collins' New Jersey shares under the circumstances are forcibly held as a pledge for payment of a tax not yet due and which cannot now be assessed and which may never accrue! If the statute requires such a pledge from non-residents, no argument is necessary to show its invalidity. The legislature equally must be credited with the intention of requiring payment of tax before permitting the transfer. Likewise the taxability of the transfer of shares of New Jersey corporations under certain circumstances is declared plainly enough in the statute. Those circumstances cannot now be determined in this case. But it is not enough to declare the taxability of the transfer or to deny consent to the transfer without payment of the tax. If no mode of ascertaining the tax is provided in cases like that under consideration the statute is defective and cannot be executed as to such cases.

If the prosecutor pays the tax arbitrarily fixed by the assessment complained of at 5 per cent. of the value of the remainder interests and more

than two years elapse from the date of the payment there can be no recovery in the event of the remainders vesting in default of exercise of the powers in persons or corporations exempt from tax or taxable at a lower rate than that imposed (Section 15). Furthermore, if the New Jersey shares so taxed be still held in the trust and the power be exercised another tax may accrue upon that transfer as provided by the statute. It cannot be denied that the law makers have failed to foresee and provide for the present situation unless the supplement to the statute quoted in full *ante* (C. 58, Laws 1914) be invoked. The language of that supplemental section is susceptible of a construction which might solve the present difficulty. The suggestion is advanced for what it is worth. *One danger of applying the provisions of that section to cases like the present, it is believed, lies in the fact that so construed it discriminates unlawfully between residents and non-residents.* At all events the assessment in the case at bar does not purport to be made according to its provisions which it will be noted call for a payment of 5 per cent. of the *full value of the shares transferred*. The value of the life estates has been found and the tax measured upon a portion of the value of the shares at 1 per cent. thereof. To tax the same portion of the property over again would be anomalous, to say the least.

It has been held upon a somewhat similar state of facts in *Senff v. Edwards*, 85 N. J. L. 67, that it is quite proper to require immediate payment of tax at 5 per cent. in a non-resident estate as a condition precedent to the transfer of the New Jersey shares even though no similar requirement obtains in the case of a resident decedent, and that the distinction is justified by our control of our own citizens and our lack of control of foreigners. However that may be the facts in the case at bar serve to distinguish it from the case just cited, for *there*, while the tax was arbitrarily required to be paid without any provision of statute, once

paid, even though it should subsequently transpire that no tax was due at all and the same could not be recovered *it need not be paid again*, but *here* if the tax is paid once and the right of recovery lost, the tax may be again demanded upon the exercise of the powers as happened under the New York statute.

Matter of Buckingham, 106 N. Y. App. Div. 13.

Matter of Stuart, New York Law Journal, May 10, 1913.

Whether it be seriously contended or not upon the authority of *Senff v. Edwards* that the present statute imposes a tax upon the singular succession as regards resident estates and merely a transfer duty in case of non-residents, the fact is indisputable as has been pointed out, that the rate of the tax in either case is to be ascertained with reference to the value of each beneficial interest and the relationship of the beneficiary and the amount of the tax measured accordingly.

It is respectfully submitted that neither Sections 2 or 3 of the statute *imposes* a tax as suggested in the opinion of *Senff v. Edwards*, *supra*. Section 2 *defers the burden* of the tax until vested remainders come into possession or enjoyment. Section 3 necessarily *defers assessment and postpones accrual of tax* upon the transfer of property subject to contingencies or to the exercise of a power. Section 1 of the Act is the only section declaring the imposition of the tax. The other sections are concerned with the ascertainment of the amount of the tax so imposed and with the procedure to be followed to insure its collection.

The New York statute, which, it has been frequently observed, has served as a model for the New Jersey statute, provides that in cases like the present the tax shall be paid forthwith at the maximum rate which upon the happening of any of the contingencies or condition would be possible

under the provisions of the act with the proviso that on the happening of any contingency whereby the property is transferred to a person or corporation exempt from taxation or to any person taxable at a rate less than the rate so imposed and paid a return of the difference between the amount paid and the amount which should be paid shall be made. The New York statute in this respect applies to resident and non-resident estates alike.

Matter of Vanderbilt, 172 N. Y. 69.

Matter of Zborowski, 213 N. Y. 109.

In Matter of Howe, 86 App. Div. 286, affirmed, without opinion, 176 N. Y. 570, *supra*, page 284, it was held, where the testator created a life estate and gave a POWER OF APPOINTMENT over the remainder, that the taxation of said remainder should be postponed until the death of the life tenant. In the later case of Matter of Burgess, 204 N. Y. 265, *supra*, page 380, the court laid down the rule that the taxation of the remainder should not be suspended unless the power of appointment was an absolute one.

It would seem that similar provisions should have been made in the New Jersey statute. The failure of the Legislature to incorporate such provisions, it is respectfully submitted, cannot be remedied by judicial action.

Representatives of non-resident estates could have no valid objection to the payment of a tax at the rate of 5 per cent. upon the value of contingent remainders in cases like the present, if there were some provisions entitling them to a refund when the correct amount of tax, if any, became ascertainable. Justice would require that to the refund, if any, should be added interest at a low rate. The New York statute once allowed 6 per cent. and later 3 per cent. The constitutionality of such an act would not be free from doubt unless its provisions were applicable to resident and non-resident estates alike. Such a statute might be retroactive so as to include

cases like the one at bar and no reasonable objection could be made on that score.

In conclusion it is submitted that the assessment considered under this point is illegal, unconstitutional and void for the reason stated.

The question is important. Although the amount of tax in the case *subjudice* is small, the decision of the question under this point is important in its bearing upon a large number of estates similarly circumstanced.

POINT II.

The unconstitutionality of the enactments in question covered by the first ground of objection hereinbefore stated has been argued at length in the brief of appellant as administrator of Hillyer's estate submitted at this term of Court, and appellant herein respectfully refers to the points covered by that brief and prays for their consideration upon the same point involved in this appeal.

Another obvious consideration under this point:

If the tax is to be arrived at under the ratio provision by assuming Collins a resident and all his property here, thereupon fixing a tax accordingly to be pro rated, no tax would be fixed or claimed if he were a resident upon the transfer of the remainders subject to the contingency of exercise of powers of appointment.

POINT III.

The order of the Supreme Court appealed from should be reversed, and

FIRST: The assessment made herein upon the remainder interest subject to the exercise of the powers of appointment should be vacated and set aside as being without statute, and

SECOND: The assessment made upon the balance of the property within the jurisdiction should be set aside because of the unconstitutionality of the statute by reason of the employment of the ratio provision.

Respectfully submitted,

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