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New Jersey State Library

New Jersey Supreme Court.

LUKE B. CARTER and GEORGE A. ECKBERT, Executors of the Estate of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant.	On Certiorari. Petition.

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Petition.

The petition of Luke B. Carter and George A. Eckbert of Titusville, Crawford County, Pennsylvania, Executors of the last will and testament of John J. Carter, deceased, respectfully shows:

That John J. Carter, a resident of Titusville, Crawford County, Pennsylvania, died on January 3, 1917, leaving a last will and testament in and by which your petitioners were appointed executors; that said executors have duly qualified; that on January 14, 1911 John J. Carter made and executed an irrevocable Deed of Trust, a certified copy of which has been filed with the Comptroller of the State of New Jersey. Under the provisions of this Deed of Trust the settlor, John J. Carter, conveyed and assigned

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to the four trustees named in the instrument certain securities which were also specifically set forth in the said Trust Deed. At the time of the execution of the Deed of Trust, to wit: January 14, 1911, the total shares of stock of New
10 Jersey corporations included in and transferred by said instrument consisted of four hundred (400) shares of the capital stock of the National Fuel Gas Company and four hundred (400) shares of the capital stock of the Standard Oil Company of New Jersey. From time to time, as other securities transferred and conveyed to the Trustees by the Deed of Trust matured, the said Trustees, having been given by the terms of the instrument control of investing and re-
20 investing the funds of the Deed of Trust, purchased additional shares of the said National Fuel Gas Company and the Standard Oil Company of New Jersey, so that at the date of the death of the said John J. Carter the said Trustees held in their names four hundred fifty (450) shares of the capital stock of the National Fuel Gas Company and seven hundred (700) shares of the capital stock of the Standard Oil Company of New Jersey.

30 When John J. Carter died on January 3, 1917, he left a will which made disposition of any securities or properties owned by him at the time of his death. It was found that the total shares of stock of New Jersey corporations owned by him and belonging to his estate consisted of two hundred forty (240) shares of the capital stock of the National Fuel Gas Company; one hundred fifty (150) shares of the capital stock of the Standard Oil Company of
40 New Jersey, and ten (10) shares of the capital stock of the United States Steel Company.

Petition.

During the month of May, 1917, the said executors requested the Comptroller of the State of New Jersey to assess the transfer tax upon the shares of stock of New Jersey corporations owned by the decedent and, in compliance with a request from the Comptroller of the State of New Jersey, furnished the information deemed necessary to make said assessment. Subsequently, on or about July 17, 1917, the assessment of the transfer tax was issued and filed by the Comptroller amounting to $14,451.86. 10

An examination of the assessment made and filed disclosed the fact that the Comptroller of the State of New Jersey has included in the tax levied not only all the stocks of New Jersey corporations disposed of by the will of the deceased and properly a part of his estate, but also all the stocks of New Jersey corporations conveyed and assigned on January 14, 1911, by the Deed of Trust and standing in the names of the Trustees mentioned in that instrument. 20

Your petitioners requested the Comptroller of the State of New Jersey to make a new assessment of the transfer tax on shares of stock of New Jersey corporations and in making said assessment to levy a tax only upon the transfer of the shares held and owned by the deceased at the time of his death and not the shares of stock passing under the Deed of Trust. On or about the twenty-sixth of January, 1917 the Comptroller of the State of New Jersey denied said application and re-affirmed the said tax of $14,451.86. 30

Your petitioners, therefore, pray that a writ of certiorari may issue to test the validity of said action against your petitioners to the end that the said tax of $14,451.86 may be reduced 40

so that it will cover only a transfer tax on the shares of New Jersey corporations held and owned by the deceased at the time of his death.

LUKE C. CARTER,
Executor of the Estate
10 of Jno. J. Carter.
CHURCH, HARRISON & ROCHE,
Attorneys.

State of Pennsylvania, }
County of Crawford, } ss.:

Luke B. Carter of full age, being duly sworn according to law on his oath says:

That he and George A. Eckbert are the
20 executors of the last will and testament of John J. Carter, deceased, who died on January 3, 1917; that on January 14, 1911, John J. Carter made and executed an irrevocable deed of trust, the terms and conditions of which are set out in the petition hereto annexed; that during the month of May, 1917, the executors of the last will and testament of John J. Carter requested the Comptroller of the State of New Jersey to assess the transfer tax upon the shares of stock of New Jersey corporations which the
30 decedent owned at the time of his death; that the Comptroller included in said tax all the stocks disposed of by the will and also all the stocks conveyed and assigned on January 14, 1911, by the deed of trust; that your petitioners requested a new assessment, omitting the stocks conveyed and assigned by the deed of trust and that on or about January 26, 1917, the Comp-

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troller of the State of New Jersey denied the said application.

Sworn to and subscribed before me this 9th day of February, 1918.

C. R. Church,
Notary Public,

My commission expires April 17, 1919.

State of Pennsylvania,
County of Crawford, ss.:

I, C. A. Breakiron, Clerk of the Court of Quarter Sessions of the Peace, the same being the Court of Records, and having a seal, in and for the State and County above written, certify that Chas. R. Church, by whom the annexed and foregoing instrument in writing was taken, was at the date thereof, an acting Notary Public in and for said County, and residing therein, duly qualified, and as such authorized by the Laws of this Commonwealth to take the same and to take the proof and acknowledgment of deeds to be recorded in the State of Pennsylvania.

And further, that I am acquainted with the handwriting of the said Notary Public, and believe the signature purporting to be his to be genuine and that the same is executed according to the Laws of Pennsylvania.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, at Meadeville, the ninth day of February, A. D., 1918.

C. A. BREAKIRON,
Clerk.

[SEAL.]

Writ.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER and GEORGE A. ECKBERT, Executors of the Estate of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant.	Writ of Certiorari.

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New Jersey, ss.:

[SEAL.] The State of New Jersey to the Comptroller of the State of New Jersey:

We, being willing for certain reasons to be certified of and concerning a certain inheritance tax levied against the estate of John J. Carter by the Comptroller of the State of New Jersey, do command you, that the record of said tax, together with all things touching and concerning

30 the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, you do certify on or before the third Tuesday of February instant and send that we may cause to be done thereon what according to the law of this State ought to be done, and also this writ.

Witness, William S. Gummere, Chief Justice of our said Court, this fifteenth day of Febru-

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ary in the year of our Lord Nineteen Hundred and Eighteen.

WM. C. GEBHARDT,
Clerk.

Church, Harrison & Roche,
Attorneys. 10

This writ is allowed upon condition that it be brought on for argument at the February term, 1918.

WM. S. GUMMERE,
C. J.

Return.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER and GEORGE A. ECKBERT, Executors of the Estate of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant.	On Certiorari. Return to Writ.

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I, Newton A. K. Bugbee, 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 of inheritance tax levied against the estate of John J. Carter, deceased, as within I am commanded.

NEWTON A. K. BUGBEE, 40
Comptroller of the Treasury of
the State of New Jersey.

Return.

TAX ON TRANSFER OF SHARES OF STOCK IN NEW JERSEY CORPORATIONS STANDING IN THE NAME OF A NON-RESIDENT DECEDENT.

Estate of John J. Carter,
Late of Titusville, Penna.
Executors, George A. Eckbert and L. B. Carter.
10 Post-Office Address, Hugh Herndon, No. 30 Pine St., New York City.
Date of Death of Decedent, January 3, 1917.

SHARES OF STOCK IN NEW JERSEY CORPORATIONS.

No. of Shares Pfd.	Com.	Name of Company	Market Value	Total
10	...	United States Steel Corporation,	$118.00	$ 1,180.00
Cap. stock				
150		Standard Oil Company of N. J.,	703.00	105,450.00
240		National Fuel Gas Company	260.00	62,400.00
				$169,030.00

Interests taxable:

20				
Ints. of widow,—				
1/3 of estate property,		$180,289.41		
Stat. exemption,		5,000.00		
		$175,289.41		
	$ 45,000.00	1%,	$ 450.00	
	100,000.00	1½%,	1,500.00	
	30,289.41	2%,	605.79	
Ints. of 3 children and one grandchild,—				
2/3 of estate,		$360,578.83		
Stat. exemption,		20,000.00		
30		$340,578.83		
	$180,000.00	1%,	$1,800.00	
	160,578.83	1½%,	2,408.67	
			$6,764.46	
			.25887	
			$1,751.12—tax.	
Appraised Value of Estate, passing by virtue of will,		$652,942.39	$169,030.00	.25887
Deductions,		112,074.15		
Net Estate,		$540,868.24		

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Return.

Total Appraised Value of Shares in New Jersey Corporations, passing by virtue of will,	$169,030.00
Tax payable if decedent had lived in New Jersey and all the Property passing by virtue of will had been located in this State,	$ 6,764.46
Percentage of whole estate invested in New Jersey stocks, passing by virtue of will,	.25887
Tax due New Jersey, on property passing by virtue of will,	$ 1,751.12

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TAX ON TRANSFER OF SHARES OF STOCK IN NEW JERSEY CORPORATIONS STANDING IN THE NAME OF A NON-RESIDENT DECEDENT.

Estate of John J. Carter,
Late of Titusville, Penna.
Executors, George A. Eckbert and L. B. Carter.
Post-Office Address, Hugh Herndon, No. 30 Pine St., New York City.
Date of Death of Decedent, January 3, 1917.

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SHARES OF STOCK IN NEW JERSEY CORPORATIONS.

No. of Shares Cap. stock	Name of Company	Market Value	Total
700	Standard Oil Co. of N. J.,	$703.00	$492,100.00
450	National Fuel Gas Company,	260.00	117,000.00
			$609,100.00

Interests taxable:

Ints. of 3 children and granddaughter under deed of trust,—84% of property held under deed of trust plus rem. of $10,000 trust held for benefit of sister under will,	$1,317,774.96		
$239,421.17		1½%,	$3,591.31
400,000.00		2%,	8,000.00
678,353.79		3%,	20,350.61
Ints. of 4 grandchildren under deed of trust, 16% of prop-			

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Return.

erty passing under said deed
less $10,000 in trust for sister, $249,244.52
Stat. exemption, 20,000.00

$229,244.52

$180,000.00	1%,	$1,800.00
49,244.52	1½%,	738.67
		$34,480.59
		.36835
		$12,700.74—tax.

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Appraised Value of Estate, passing by virtue of deed of trust, $1,567,778.23) $609,100.00 (.36835

Total Appraised Value of Shares in New Jersey Corporations, passing by virtue of deed of trust,	$609,100.00
Tax payable if decedent had lived in New Jersey and all the Property passing by virtue of deed of trust had been located in this State,	$ 34,480.59
Percentage of whole estate passing by virtue of deed of trust invested in New Jersey stocks,	.36835
Tax due New Jersey, on property passing by virtue of deed of trust,	$ 12,700.74

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TAX ON TRANSFER OF SHARES OF STOCK IN NEW JERSEY CORPORATIONS STANDING IN THE NAME OF A NON-RESIDENT DECEDENT.

Estate of John J. Carter,
Late of Titusville, Penna.
Executors, George A. Eckbert and L. B. Carter.
Post-Office Address, Hugh Herndon, No. 30 Pine St., New York City.
Date of Death of Decedent, January 3, 1917.

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SHARES OF STOCK IN NEW JERSEY CORPORATIONS.

No. of Shares Pfd.	Com.	Name of Company	Market Value	Total
10	...	United States Steel Corporation,	$118.00	$ 1,180.00
Cap. stock				
850		Standard Oil Company of N. J.,	703.00	597,550.00
690		National Fuel Gas Co. of N. J.,	260.00	179,400.00
				$778,130.00

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Return.

Interests taxable:			
Ints. of 3 children and granddaughter under deed of trust. 84% of property held under deed of trust plus rem. of $10,000 trust held for benefit of sister under will,		$1,317,774.96	
4/6 of estate,		360,578.96	
		$1,678,353.92	
Stat. exemption,		20,000.00	
		$1,658,353.92	
	$180,000.00	1%,	$1,800.00
	400,000.00	1½%,	6,000.00
	400,000.00	2%,	8,000.00
	678,353.92	3%,	20,350.61
Ints. of widow,— 1/3 of property passing under will,		$180,289.48	
Stat. exemption,		5,000.00	
		$175,289.48	
	$ 45,000.00	1%,	$ 450.00
	100,000.00	1½%,	1,500.00
	30,289.48	2%,	605.79
Ints. of 4 grandchildren under deed of trust, 16% of property passing under deed less $10,000 in trust for sister,		$249,244.52	
Stat. exemption,		20,000.00	
		$229,244.52	
	$180,000.00	1%,	$1,800.00
	49,244.52	1½%,	738.67
			$41,245.07
			.35039
			$14,451.86—tax.

Appraised Value of Estate,	$2,220,720 82	$778,130.00	.35039
Deductions,	112,074.15		
Net Estate.	$2,108,646.67		

Total Appraised Value of Shares in New Jersey Corporations,	$778,130.00
Tax payable if decedent had lived in New Jersey and all the Property had been located in this State,	$ 41,245.07
Percentage of whole estate invested in New Jersey stocks,	.35039
Tax due New Jersey,	$ 14,451.86

Return.

State of New Jersey,
Transfer Inheritance Tax,
Non-Resident Decedents.

In the Matter of the Estate of
JOHN J. CARTER, Deceased,
Late of Titusville, Pa.
Affidavit of Executors.

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State of Pennsylvania,
County of Crawford, ss.:

Geo. A. Eckbert and Luke B Carter, Executors of the estate of the above-named decedent, being duly sworn, depose and say:

Decedent died testate January 3, 1917.
Address of deponent or deponents is Titusville, Pa.
Attorneys of estate are A. E. Young and Hugh Herndon.
Addresses of attorneys are 1508 Park Building, Pittsburgh, Pa., and 30 Pine Street, New York City.

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Total amount of real estate, less mortgages, Schedule A,	$ 25,000.00
Total amount of personal estate, Schedule B,	2,145,770.82
Total amount of estate wherever situate,	$2,170,770.82
Total amount of debts (exclusive of mortgages on real estate), including funeral, administration and other expenses, detailed in Schedule C,	112,074.15
Net estate,	$2,058,696.67

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

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Real estate, less mortgages,	$ 0.00
Personal estate,	768,680.00
Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D,	$768,680.00

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:

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Return.

Names	Relationship	Survived Decedent State Yes or No	Interest of Beneficiary in Estate
Alice Neill Carter,	Widow	Yes	1/3
Luke B. Carter,	Son	Yes	1/6
Emma Carter Sharp,	Daughter	Yes	1/6
Alice Carter Herndon,	Daughter	Yes	1/6
Mary Eliz. Carter, Infant, L. B. Carter, Guardian,	Grand-daughter	Yes	1/6

GEO. A. ECKBERT,
L. B. CARTER,
Executors.

Sworn and subscribed before me this 14th day of May, A. D. 1917.

C. R. Church,
Notary Public.

My Commission expires April 17th, 1919.

IMPORTANT—READ FOLLOWING INSTRUCTIONS

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.

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.

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.

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

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Return.

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.
- Supply certificate of appointment of executor or administrator.
- 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.

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 said full 5% tax, the Comptroller of the Treasury will return to the executor, administrator, trustee or other representative the amount overpaid.

SCHEDULE A.

State of New Jersey,
Transfer Inheritance Tax,
Non-Resident Decedents. } Attached to and part of affidavit.

Real Property WHEREVER SITUATE, with statement of liens and encumbrances upon each parcel at death of decedent.

	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity
Oakwood Farm, Oil Creek Township, Crawford County, Pa.	$8,850.00	$25,000.00	$25,000.00
Cemetery Lot & Mausoleum, Titusville, Cost $9,684.81,	0.00	0.00	0.00

IMPORTANT.

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

Return.

SCHEDULE B.

State of New Jersey,
Transfer Inheritance Tax, } Attached to and part of affidavit.
Non-Resident Decedents.

PERSONAL PROPERTY WHEREVER SITUATE.

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

(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 description of each. State the amount of accrued interest computed to the date of death of decedent.)

Cash in hand and on deposit, bonds and mortgages, promissory notes, claims, insurance, corporate bonds and stocks and all other personal property wherever situate.

	No. Shares	Par Value	Market Value	Estimated Market Value
Central Kentucky Gas Co.	500	100	21	$ 10,500.00
H. B. Edwards Co.	7¼	100	100	725.00
Jecal Co. Ltd.	5	100	60	300.00
Lake Placid Club	10	100	100	1,000.00
National Fuel Gas Co.	240	100	250	60,000.00
Ohio Oil Co.	202	25	385	77,770.00
Illinois Pipe Line Co.	67	100	240	16,080.00
Petroleum Telephone Co. Common	40	25	25	1,000.00
Petroleum Telephone Co. Pfd.	365	25	25	9,125.00
Seaboard National Bank	100	100	440	44,000.00
Galena—Signal Oil Co. Common	100	100	140	14,000.00
Galena—Signal Oil Co. Pfd.	100	100	185	18,500.00
Standard Oil Co. of N. J.	150	100	700	105,000.00
Standard Oil Co. Cal.	75	100	360	27,000.00
Standard Oil Co. N. Y.	422	100	270	113,940.00
Standard Oil Co. Ind.	100	100	400	40,000.00
Titusville Opera House Co.	198	100	75	14,850.00
United States Steel Co. Pfd.	10	100	118	1,180.00
N. McQuarrie, Note on home				298.54
Geo. E. Edgett, Note for Cash				673.46
Cash				28,650.39
				$584,592 39

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Return.

The following is a list of the Personal Property owned by L. B. Carter, Geo. A. Eckbert, Emma Carter Sharp and Alice Carter Herndon, Trustees, under Deed of Trust dated January 14, 1911, created by John J. Carter:

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	No. Shares	Par Value	Market Value	Estimated Market Value
Commercial Bank of Titusville	200	100	435	$ 87,000.00
National Fuel Gas Co. of N. J.	450	100	250	112,500.00
Seaboard National Bank of N. Y.	400	100	440	176,000.00
Union Natural Gas Co.	150	100	185	27,750.00
Standard Oil Co. of N. J.	700	100	700	490,000.00
Standard Oil Co. of N. Y.	500	100	270	135,000.00
Standard Oil Co. of Cal.	683	100	360	245,880.00
Ohio Oil Co.	558	25	385	214,830.00
Illinois Pipe Line Co.	186	100	240	44,640.00
Ohio Fuel Gas Co. Bonds	11	1,000	1,000	11,000.00
(Interest due Jan. 1st and bonds matured then.)				
Cash				16,578.43
				$1,561,178.43
				584,592.39
				$2,145,770.82

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IMPORTANT.

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

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Return.

SCHEDULE C.

State of New Jersey,
Transfer Inheritance Tax, } Attached to and part of affidavit.
Non-Resident Decedents.

DETAILS OF DEBTS, OTHER THAN MORTGAGES ON REAL ESTATE.

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

10

Debt or Claim of	Nature of Same	Amount
Executors	Funeral expenses,	$ 2,103.23
	Administration expenses (estimated),	50,000.00
	Counsel Fees, none paid,	0.00
	Executor's or Administrator's Commissions,	0.00
(Detail other debts)		
Mrs. H. B. Gibbs	Cash held for her benefit received from her children,	282.93
Mrs. Chas. Gibbs Carter	Cash received from her, on which interest at 6% was guaranteed	39,000.00
Jecal Co. Ltd.	Sundry Cash Account, Book balance,	4,109.56
Deed of Trust	Sundry Cash Account, Book balance,	16,578.43
		$112,074.15

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IMPORTANT.

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

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Return.

SCHEDULE D.

State of New Jersey,
Transfer Inheritance Tax, } Attached to and part of affidavit.
Non-Resident Decedents.

10 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
Standard Oil Company of New Jersey	150	100	700	$105,000.00
National Fuel Gas Co. of New Jersey	240	100	250	60,000.00
				$165,000.00
U. S. Steel Co. of New York, Pfd.	10	100	118	1,180.00
20				$166,180.00

Personal Property of L. B. Carter, Geo. A. Eckbert, Emma Carter Sharp and Alice Carter Herndon, Trustees, under Deed of Trust dated January 14, 1911, created by John J. Carter:

Standard Oil Co. of New Jersey	700	100	700	$490,000.00
National Fuel Gas Co. of N. J.	450	100	250	112,500.00
				$602,500.00
				166,180.00
30				$768,680.00

IMPORTANT.

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

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Return.

Settlement by Jno. J. Carter, January 14, 1911.

THIS INDENTURE,

MADE the fourteenth day of January, A. D. 1911, between JNO. J. CARTER, of the City of Titusville, County of Crawford and State of Pennsylvania, hereinafter designated as the Settlor, party of the first part, and L. B. CARTER and GEO. A. ECKBERT, of the same place, EMMA CARTER SHARP, of the City of Steubenville, County of Jefferson, and State of Ohio, and ALICE CARTER HERNDON, of the City, County and State of New York, hereinafter designated as the Trustees, parties of the second part; 10

WITNESSETH, that the said Settlor, for and in consideration of the sum of one ($1) dollar, receipt of which is acknowledged, as well as for and in consideration of natural love and affection, and for the purpose of settling and disposing of the property hereinafter conveyed, in his lifetime, hath granted, bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto said Trustees, all of the following described personal property, viz.: 20

Five (5) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. One (1). 30

Five (5) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Three (3).

Thirty (30) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Seventy-four (74).

Twenty (20) shares of stock of the Commercial 40

Bank of Titusville, Penna., represented by Certificate No. One Hundred Eight (108).

Twenty (20) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Two Hundred Sixteen (216).

10 Twenty-five (25) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Two Hundred Forty-seven ((247).

Fifty (50) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Two Hundred Forty-eight (248).

Twenty (20) shares of stock of the Commercial Bank of Titusville, Penna., represented by

20 Certificate No. Two Hundred Forty-nine (249).

Twenty (20) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Two Hundred Fifty-seven (257).

Five (5) shares of stock of the Commercial Bank of Titusville, Penna., represented by Certificate No. Two Hundred Fifty-eight (258).

30 Three hundred (300) shares of stock of the National Fuel Gas Company, represented by Certificate No. Six Hundred Forty-three (643).

Twenty-five (25) shares of stock of the National Fuel Gas Company, represented by Certificate No. Eight Hundred Eighty-three (883).

Thirty-five (35) shares of stock of the National Fuel Gas Company, represented by Certificate No. Eight Hundred Eighty-five (885).

40 Forty (40) shares of stock of the National Fuel

Gas Company, represented by Certificate No. Nine Hundred Forty-nine (949).

Bond No. Two Thousand Seven Hundred Twenty-nine (2729) of the Ohio Fuel Supply Company, in the amount of Ten Thousand ($10,-000) Dollars. 10

Bond No. Two Thousand Seven Hundred Thirty-four (2734) of the Ohio Fuel Supply Company in the amount of One Thousand ($1,-000) Dollars.

Bond No. Two Hundred Ninety-one (291) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Two Hundred Ninety-two (292) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars. 20

Bond No. Two hundred Thirty-four (234) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Two hundred Thirty-five (235) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Four Hundred Twenty-one (421) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Four Hundred Twenty-two (422) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars. 30

Bond No. Five Hundred Eighty-two (582) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Six Hundred Thirty-seven (637) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Six Hundred Thirty-eight (638) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars. 40

Return.

Bond No. Six Hundred Thirty-nine (639) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Thirty-six (736) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Thirty-seven (737) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Thirty-eight (738) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Thirty-nine (739) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty (740) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty-one (741) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty-two (742) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty-three (743) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty-four (744) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Seven Hundred Forty-five (745) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Nine Hundred Twenty-one (921) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

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Bond No. Nine Hundred Twenty-two (922) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Nine Hundred Twenty-three (923) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars. 10

Bond No. Nine Hundred Twenty-four (924) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Nine Hundred Twenty-five (925) of the Qua Paw Gas Company in the amount of One Thousand ($1,000) Dollars.

One Hundred (100) shares of stock of the Standard Oil Company, represented by Certificate No. A-Two Thousand Five Hundred Fifty-eight (A2558). 20

One Hundred (100) shares of stock of the Standard Oil Company, represented by Certificate No. A-Two Thousand Five Hundred Fifty-nine (A2559).

One Hundred (100) shares of stock of the Standard Oil Company, represented by Certificate No. A-Two Thousand Five Hundred Sixty (A2560).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. 30 Thirty Thousand Nine Hundred Seventy-three (30973).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-one Thousand Twelve (31012).

Five (5) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-one Thousand Twenty-one (31021).

Twenty (20) shares of stock of the Standard Oil Company, represented by Certificate No. 40

Thirty-four Thousand Nine Hundred Sixty-nine (34969).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Sev-
10 enty (34970).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Seventy-one (34971).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Seventy-two (34972).

Ten (10) shares of stock of the Standard Oil
20 Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Seventy-six (34976).

Ten (10) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Seventy-seven (34977).

Five (5) shares of stock of the Standard Oil Company, represented by Certificate No. Thirty-four Thousand Nine Hundred Seven-
30 ty-eight (34978).

One Hundred (100) shares of stock of the Seaboard National Bank, of New York City, represented by Certificate No. A-Three Hundred Thirty-four (A334).

Twenty-five (25) shares of stock of the Seaboard National Bank, of New York City, represented by Certificate No. A-Three Hundred Thirty-seven (A337).

Twenty-five (25) shares of stock of the Seaboard
40 National Bank, of New York City, represent-

ed by Certificate No. A-Three Hundred Thirty-eight (A338).

Two Hundred Fifty (250) shares of stock of the Seaboard National Bank, of New York City, represented by Certificate No. A-Four Hundred Two (A402). 10

Bond No. Two Thousand Six Hundred Fifty-five (2655) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Two Thousand Six Hundred Fifty-seven (2657) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Two Thousand Six Hundred Fifty-nine (2659) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars. 20

Bond No. Two Thousand Six Hundred Sixty-one (2661) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars.

Bond No. Two Thousand Six Hundred Sixty-three (2663) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars. 30

Bond No. Two Thousand Six Hundred Sixty-five (2665) of the Union Natural Gas Company in the amount of One Thousand ($1,000) Dollars.

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Seven Thousand Six Hundred Nine (7609).

One Hundred (100) shares of stock of the Union Natural Gas Company represented by Cer- 40

tificate No. Seven Thousand Six Hundred Ten (7610).

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Seven Thousand Six Hundred
10 Eleven (7611).

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Seven Thousand Six Hundred Twelve (7612).

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Seven Thousand Six Hundred Thirteen (7613).

Thirty-five (35) shares of stock of the Union
20 Natural Gas Company, represented by Certificate No. Eight Thousand Nine Hundred One (8901).

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Eight Thousand Nine Hundred Two (8902).

One Hundred (100) shares of stock of the Union Natural Gas Company, represented by Certificate No. Eight Thousand Nine Hundred
30 Three (8903).

Fifteen (15) shares of stock of the Union Natural Gas Company, represented by Certificate No. Eight Thousand Nine Hundred Thirteen (8913).

To Have and to Hold the aforesaid personal property, hereinbefore conveyed unto said Trustees to and for their only proper use, benefit and behoof forever;

In Trust, Nevertheless, for the uses and
40 purposes hereinafter declared, that is to say:

Return.

FIRST. Said Trustees are to receive and collect the income, interest and profits accruing from said property during the natural lifetime of said Settlor and pay the same over to him from time to time during said period.

SECOND. The corpus of the property conveyed to the Trustees shall be subject to their absolute control and disposition immediately upon the execution of this Deed of Settlement, without power of revocation in the Settlor and free and discharged of any encumbrance or control by him.

THIRD. At the death of the Settlor the Trustees shall

(a) Pay the income, interest and profits accruing from ten thousand ($10,000) dollars to the Settlor's sister, Honora Machale, if she be then living, in semi-annual payments during her natural lifetime and, at her death, the principal shall be paid over to the persons then the next of kin of the Settlor.

(b) Divide the entire corpus of the property, or corpus reduced by the above gift of ten thousand ($10,000) dollars, should it take effect, and dispose of the same as set forth in the paragraphs which follow.

FOURTH. (a) Said Trustees shall, at the death of the Settlor, pay over twenty-one per cent. (21%) of said corpus or principal to Emma Carter Sharp (nee Carter), if she shall survive the Settlor.

(b) In case of her death in the Settlor's lifetime, (1) Leaving issue surviving at the death of the Settlor, but no husband, said share of

twenty-one per cent (21%) shall be paid over to such issue as if they were taking by descent from her, their said mother or ancestor, under the intestate laws.

10 (2) Leaving issue surviving at the death of the Settlor and a husband also; then two-thirds of said share shall be paid over to said issue as if they were taking by descent from her, their said mother or ancestor, under the intestate laws, and the remaining one-third of said share shall be paid over to said surviving husband.

(3) Leaving no issue surviving at the death of the Settlor, but a husband, then one-third of said share shall be paid over to him and the re-
20 maining two-thirds of said share shall be distributed per capita among the grandchildren of the Settlor born on or before the date of this settlement and living at the time of his death.

(4) Leaving no issue and no husband living at the death of the Settlor, said share shall be distributed per capita among the grandchildren of the Settlor, born on or before the date of this settlement and living at the time of his death.

30 (5) In case there be no grandchildren of the Settlor surviving at his death, answering the above description, and, therefore, capable of taking the gifts limited to them in items (3) and (4) of this paragraph, then the next of kin of the Settlor shall be substituted for said grandchildren and they shall be determined and take as under the intestate laws.

Fifth. (a) Said Trustees shall, at the
40 death of said Settlor, pay over twenty-one per

cent. (21%) of said corpus or principal to L. B. Carter, if he shall survive the Settlor.

(b) In case of his death in the Settlor's lifetime; (1) Leaving issue surviving at the death of the Settlor, but no wife, said share of twenty-one per cent. (21%) shall be paid over to such issue as if they were taking by descent from him, their said father or ancestor, under the intestate laws. 10

(2) Leaving issue surviving at the death of the Settlor and a wife also, then two-thirds of said share shall be paid over to said issue as if they were taking by descent from him, their said father or ancestor, under the intestate laws, and the remaining one-third of said share shall be paid over to said surviving wife. 20

(3) Leaving no issue surviving at the death of the Settlor, but a wife, then one-third of said share shall be paid over to her, and the remaining two-thirds of said share shall be distributed per capita among the grandchildren of the Settlor born on or before the date of this settlement and living at the time of his death.

(4) Leaving no issue and no wife living at the death of the Settlor, said share shall be distributed per capita among the grandchildren of the Settlor, born on or before the date of this settlement and living at the time of his death. 30

(5) In case there be no grandchildren of the Settlor surviving at his death, answering the above description, and, therefore, capable of taking the gifts limited to them in items (3) and (4) of this paragraph, then the next of kin of the Settlor shall be substituted for said grandchil- 40

dren and they shall be determined and take as under the intestate laws.

SIXTH. (a) Said Trustees shall, at the death of the Settlor, pay over twenty-one per cent. (21%) of said corpus or principal to Alice Carter Herndon (nee Carter) if she shall survive the Settlor.

(b) In case of her death in the Settlor's lifetime; (1) Leaving issue surviving at the death of the Settlor, but no husband, said share of twenty-one per cent. (21%) shall be paid over to such issue as if they were taking by descent from her, their said mother or ancestor, under the intestate laws.

(2) Leaving issue surviving at the death of the Settlor and a husband also, then two-thirds of said share shall be paid over to said issue as if they were taking by descent from her, their said mother or ancestor, under the intestate laws, and the remaining one-third of said share shall be paid over to said surviving husband.

(3) Leaving no issue surviving at the death of the Settlor, but a husband, then one-third of said share shall be paid over to him and the remaining two-thirds of said share shall be distributed per capita among the grandchildren of the Settlor born on or before the date of this settlement and living at the time of his death.

(4) Leaving no issue and no husband living at the death of the Settlor, said share shall be distributed per capita among the grandchildren of the Settlor, born on or before the date of this settlement and living at the time of his death.

Return.

(5) In case there be no grandchildren of the Settlor surviving at his death, answering the above description, and therefore, capable of taking the gifts limited to them in items (3) and (4) of this paragraph, then the next of kin of the Settlor shall be substituted for said grandchil- 10 dren and they shall be determined and take as under the intestate laws.

SEVENTH. (a) Said Trustees shall, at the death of the Settlor, allot twenty-one per cent. (21%) of said corpus or principal to Mary Elizabeth Carter, daughter of Chas. Gibbs Carter, deceased, and hold the same in trust for her and accumulate the interest, income and profits therefrom in a separate fund until said Mary Elizabeth Carter attains her majority, or until 20 her decease at an earlier date, and at her death before majority, pay over to her estate the separate fund thus accumulated, or at her majority pay to her in person said separate fund. But, during her minority, and especially upon her attaining the age of fifteen, she shall be allowed a reasonable portion of said income for her maintenance and education, the amount thereof to be within the discretion of said Trustees. After attaining her majority, said Mary Elizabeth Car- 30 ter shall receive the entire income, interest and profits accruing from her said share, and, upon her attaining the age of twenty-five, said Trustees may then, or at any time thereafter, in their discretion, pay over to her the corpus of her said share, or said Trustees may, in their discretion, continue to hold said share in trust for her during her natural lifetime.

(b) In case the said Mary Elizabeth Carter 40 die in the lifetime of the Settlor, or after his de-

cease and before the corpus of her share has been paid to her;

(1) Leaving issue, but no mother, surviving the Settlor, said share of twenty-one per cent. (21%) shall be paid over to such issue as if they were taking from their said mother or ancestor under the intestate laws.

(2) Leaving issue and her mother surviving the Settlor, then two-thirds of said share of twenty-one per cent. (21%) shall be paid over to such issue as if they were taking from their said mother or ancestor under the intestate laws and the remaining one-third shall be paid over to such surviving mother.

(3) Leaving no issue, but her mother, surviving the Settlor, then one-third of said share of twenty-one per cent. (21%) shall be paid over to her said mother and the remaining two-thirds shall be distributed per capita among the grandchildren of the Settlor, born on or before the date of this settlement and who survive their said grandfather and the said Mary Elizabeth Carter.

(4) Leaving no issue nor her mother surviving the Settlor, then the said share of twenty-one per cent. (21%) shall be distributed per capita among the grandchildren of the Settlor, born on or before the date of this settlement and who survive their said grandfather and the said Mary Elizabeth Carter.

(5) In default of grandchildren of the Settlor answering the description given in the two items next preceding, the next of kin of the Settlor shall be substituted for such grandchildren and

Return.

they shall be determined and take as under the intestate laws.

EIGHTH. (a) Said trustees shall, at the death of the settlor, allot four per cent. (4%) of said corpus or principal to Jno. J. Carter, Second, son of L. B. Carter, if he survive the settlor and hold the same in trust for him and accumulate the income, interest and profits therefrom in a separate fund until he attains his majority, or until his death at an earlier date, and, at his death before majority, pay over to his estate the separate fund thus accumulated, or, at his majority, pay over to him in person said separate fund. But, during his minority, and especially upon his attaining the age of fifteen years, he shall be allowed a reasonable portion of such income for his maintenance and education, the amount thereof to be within the discretion of said trustees. After attaining his majority, he shall receive the entire income, interest and profits accruing from his said share and, upon his attaining the age of twenty-five, said trustees may then, or at any time thereafter, in their discretion, pay over to him the corpus of his said share, or said trustees may, in their discretion, continue to hold said share in trust for him during his natural lifetime.

(b) In case he die in the lifetime of the settlor, or after his decease and before the corpus of his share has been paid to him;

(1) Leaving issue, but no wife, surviving the settlor, said share of four (4) per cent. shall be paid over to such issue as if they were taking from their said father or ancestor under the intestate laws.

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(2) Leaving issue and a wife surviving the settlor, then two-thirds of said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said father or ancestor under the intestate laws and the remaining one-third shall be paid over to such surviving wife.

(3) Leaving no issue surviving the settlor but leaving a wife and one or more of the following grandchildren of the settlor surviving him, viz: Hugh Herndon, John Herndon and Alice Herndon; then, one-third of said share shall be paid over to said surviving wife and the remaining two-thirds shall go to and be paid over to such surviving grandchildren per capita.

(4) Leaving no issue and none of the three above mentioned grandchildren surviving the settlor, but leaving a wife so surviving, then one-third of said share shall be paid to said surviving wife and the remaining two-thirds shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

(5) Leaving no issue and no wife surviving the settlor but leaving one or more of the above named grandchildren, viz.: Hugh Herndon, John Herndon and Alice Herndon, surviving the settlor, then said share shall be paid over to said grandchildren per capita.

(6) Leaving no issue, no wife and none of the three above mentioned grandchildren surviving the settlor, then said share shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

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NINTH. (a) Said trustees shall, at the death of the settlor, allot four per cent. (4%) of said corpus or principal to Hugh Herndon, son of Alice Carter Herndon (nee Carter) if he survive the settlor and hold the same in trust for him and accumulate the income, interest and profits there- 10 from in a separate fund until he attains his majority, or until his death at an earlier date, and, at his death before majority, pay over to his estate the separate fund thus accumulated, or at his majority, pay over to him in person said separate fund. But, during his minority, and especially upon his attaining the age of fifteen years, he shall be allowed a reasonable portion of such income for his maintenance and education, the amount thereof to be within the 20 discretion of said trustees. After attaining his majority, he shall receive the entire income, interest and profits accruing from his said share and, upon his attaining the age of twenty-five, said trustees may then, or at any time thereafter, in their discretion, pay over to him the corpus of his said share, or said trustees may, in their discretion, continue to hold said share in trust for him during his natural lifetime.

(b) In case he die in the lifetime of the settlor, 30 or after his decease and before the corpus of his share has been paid to him;

(1) Leaving issue, but no wife, surviving the settlor, said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said father or ancestor under the intestate laws.

(2) Leaving issue and a wife surviving the settlor, then two-thirds of said share of four 40 per cent. (4%) shall be paid over to such issue

as if they were taking from their said father or ancestor under the intestate laws and the remaining one-third shall be paid over to such surviving wife.

(3) Leaving no issue surviving the settlor but leaving a wife and one or more of the following grandchildren of the settlor surviving him, viz: Jno. J. Carter, Second, John Herndon and Alice Herndon, then, one-third of said share shall be paid over to said surviving wife and the remaining two-thirds shall go to and be paid over to such surviving grandchildren per capita.

(4) Leaving no issue and none of the three above mentioned grandchildren surviving the settlor, but leaving a wife so surviving, then one-third of said share shall be paid to said surviving wife and the remaining two-thirds shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

(5) Leaving no issue and no wife surviving the settlor but leaving one or more of the above named grandchildren, viz: Jno. J. Carter, Second, John Herndon and Alice Herndon, surviving the settlor, then said share shall be paid over to said grandchildren per capita.

(6) Leaving no issue, no wife and none of the three above mentioned grandchildren surviving the settlor, then said share shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

TENTH. (a) Said trustees shall, at the death of the settlor, allot four per cent. (4%) of said

corpus or principal to John Herndon, son of Alice Carter Herndon (nee Carter), if he survive the settlor and hold the same in trust for him and accumulate the income, interest and profits therefrom in a separate fund until he attains his majority or until his death at an earlier date and, at his death before majority, pay over to his estate the separate fund thus accumulated, or, at his majority, pay over to him in person said separate fund. But, during his minority, and especially upon his attaining the age of fifteen years, he shall be allowed a reasonable portion of such income for his maintenance and education, the amount thereof to be within the discretion of said trustees. After attaining his majority, he shall receive the entire income, interest and profits accruing from his said share and, upon his attaining the age of twenty-five, said trustees may then, or at any time thereafter, in their discretion, pay over to him the corpus of his said share, or said trustees may, in their discretion, continue to hold said share in trust for him during his natural lifetime.

(b) In case he die in the lifetime of the settlor, or after his decease and before the corpus of his share has been paid to him;

(1) Leaving issue, but no wife, surviving, the settlor, said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said father or ancestor under the intestate laws.

(2) Leaving issue and a wife surviving the settlor, then two-thirds of said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said father or ancestor under the intestate laws and the re-

maining one-third shall be paid over to such surviving wife.

(3) Leaving no issue surviving the settlor but leaving a wife and one or more of the following grandchildren of the settlor surviving him, viz: Jno. J. Carter, Second, Hugh Herndon and Alice Herndon; then, one-third of said share shall be paid over to said surviving wife and the remaining two-thirds shall go to and be paid over to such surviving grandchildren per capita.

(4) Leaving no issue and none of the three above mentioned grandchildren surviving the settlor, but leaving a wife so surviving, then one-third of said share shall be paid to said surviving wife and the remaining two-thirds shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

(5) Leaving no issue and no wife surviving the settlor but leaving one or more of the above named grandchildren, viz: Jno. J. Carter, Second, Hugh Herndon and Alice Herndon, surviving the settlor, then said share shall be paid over to said grandchildren per capita.

(6) Leaving no issue, no wife and none of the three above mentioned grandchildren surviving the settlor, then said share shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

Eleventh. (a) Said trustees shall, at the death of the settlor, allot four per cent. (4%) of said corpus or principal to Alice Herndon, daughter of Alice Carter Herndon (nee Carter), if she survive the settlor and hold the same in

trust for her and accumulate the income, interest and profits therefrom in a separate fund until she attains her majority, or until her death at an earlier date, and, at her death before majority, pay over to her estate the separate fund thus accumulated, or, at her majority, pay over to her in person said separate fund. But, during her minority, and especially upon her attaining the age of fifteen years, she shall be allowed a reasonable portion of such income for her maintenance and education, the amount thereof to be within the discretion of said trustees. After attaining her majority she shall receive the entire income, interest and profits accruing from her said share and, upon her attaining the age of twenty-five, said trustees may then, or at any time thereafter, in their discretion, pay over to her the corpus of her said share, or said trustees may, in their discretion, continue to hold said share in trust for her during her natural lifetime.

(b) In case she die in the lifetime of the settlor, or after his decease and before the corpus of her share has been paid to her;

(1) Leaving issue, but no husband, surviving the settlor, said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said mother or ancestor under the intestate laws.

(2) Leaving issue and a husband surviving the settlor, then two-thirds of said share of four per cent. (4%) shall be paid over to such issue as if they were taking from their said mother or ancestor under the intestate laws and the remaining one-third shall be paid over to such surviving husband.

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(3) Leaving no issue surviving the settlor but leaving a husband and one or more of the following grandchildren of the settlor surviving him, viz: Jno. J. Carter, Second, Hugh Herndon and John Herndon; then one-third of said share shall be paid over to said surviving husband and the remaining two-thirds shall go to and be paid over to such surviving grandchildren per capita.

(4) Leaving no issue and none of the three above mentioned grandchildren surviving the settlor, but leaving a husband so surviving, then one-third of said share shall be paid to said surviving husband and the remaining two thirds shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

(5) Leaving no issue and no husband surviving the settlor but leaving one or more of the above named grandchildren, viz: Jno. J. Carter, Second, Hugh Herndon and John Herndon, surviving the settlor, then said share shall be paid over to said grandchildren per capita.

(6) Leaving no issue, no husband and none of the three above mentioned grandchildren surviving the settlor, then said share shall go to and be paid over to the next of kin of the settlor and they shall be determined and take as under the intestate laws.

TWELFTH. Whenever any grandchild of the settlor takes under the foregoing limitations any gift or interest which, in the first instance, would have gone to a child or grandchild of the settlor had he or she not become deceased, such gift or interest thus going over shall be added to

his or her original share, and, if said original share is still being held by said trustees, shall not belong to him or her absolutely, but, thereafter, it shall be treated and disposed of in every particular as if originally a part of his or her original share. 10

THIRTEENTH. The directions in this deed of settlement in reference to divisions and allotments of shares of the corpus at the death of the settlor and at the deaths of the first takers, where the trustees have not paid the corpus to them, are not intended to require the trustees to, in fact, divide the corpus and allot separate shares to the respective beneficiaries, but they may so divide the corpus, in their discretion, or continue to treat the same as one fund, dividing 20 only the income, interest and profits and making an actual division of the corpus only when it becomes necessary under the provisions of this instrument to pay over to any beneficiary his or her share thereof, and, after making such payment or payments, said trustees may again treat the residue of the fund as a whole and so invest and reinvest the same. And, in every case where any matter has been left to the discretion of said trustees by special provisions, or in other cases, 30 in the absence of special provisions, in case of disagreement, the opinion of the majority shall rule. In case the trustees are evenly divided, the side of the eldest child of the settlor shall prevail, except where the question involved is as to whether or not the corpus shall be paid over to a beneficiary, and, in such cases, such corpus shall be paid over.

FOURTEENTH. Said trustees, in the management 40 of said property, or division at the settlor's death,

and thereafter, and so long as they hold any portion of the same under the terms of this settlement, shall have absolute control of the same, may invest and reinvest said moneys from time to time, convert and reconvert the securities and
10 other property into money and invest and reinvest the resulting fund or funds with the same freedom and discretion as though they were the absolute owners. Said trustees are to convert and reconvert the securities and other property into money and invest and reinvest the resulting fund or funds with the same freedom and discretion as though they were the absolute owners. This power of investment and reinvestment and conversion and reconversion, hereby given to said
20 trustees, shall include investments in real estate and the right to buy, sell and convey said real estate, including the right to give purchase money mortgages.

Fifteenth. In case of the death, disability or resignation of one or more of said trustees, the remaining trustees or trustee shall elect a successor or successors, preference being given to any fit persons of the blood of the settlor, according to their seniority. In order to avoid
30 inconvenience, expense and delay in changing investments, transferring stocks, bonds, etc., and in the performance of the duties of this trust, arising from the number and residences of the trustees, the two daughters of the settlor herein named as trustees are hereby authorized to execute a power of attorney, thereby vesting in their brother, L. B. Carter, the power to act for them in their trust capacity, said daughters reserving, however, the full right at any time to revoke
40 absolutely said power of attorney.

Return.

Sixteenth. Of the Trustees named, George A. Eckbert is to act as Secretary and Treasurer and is to receive a compensation, in lieu of all commissions, of five hundred dollars per annum, to be charged as an expense, pro rata, upon the fund at the time in the hands of the Trustees, and L. B. Carter, Emma Carter Sharp and Alice Carter Herndon are to receive no compensation. 10

In Witness Whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written, and the said Jno. J. Carter has caused his signature, duly attested by two witnesses, to be affixed to each of the pages hereof.

(Signed) JNO. J. CARTER. [Seal.]

Witness: 20

(Signed) Arthur E. Young.
(Signed) Frank McC. Painter.

L. B. Carter, [Seal.]
Geo. A. Eckbert, [Seal.]
Emma Carter Sharp, [Seal.]
Alice Carter Herndon. [Seal.]

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Supplemental Affidavit of Trustee.

Before—THE CONTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY.

In re

10 Estate of JNO. J. CARTER, Deceased.

State of Pennsylvania,
County of Crawford, } SS.:

L. B. Carter, being first duly sworn, according to law, deposes and says that he is one of the
20 Trustees named in Deed of Settlement executed by John J. Carter, under date of January 14, 1911, and as supplemental to the affidavits filed in the above estate with the Controller of the Treasury of the State of New Jersey, makes this further affidavit and says:

First.—Jno. J. Carter, the Settlor mentioned in the said Deed of Settlement, died January 3, 1917, leaving to survive him all of the beneficiaries named in said Deed of Settlement and related
30 to him as follows, viz:

Second.—Honora Machale, a sister of said Settlor, who was born on the 6th day of August, 1830, and was eighty-seven years of age at the death of said Settlor, and who has since died on the eighth day of May, 1917.

Third.—Emma Carter Sharp, nee Carter, a daughter of said Settlor, who is still living.

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Supplemental Affidavit of Trustee.

Fourth.—L. B. Carter, this affiant, a son of said Settlor, who is still living.

Fifth.—Alice Carter Herndon, nee Carter, a daughter of said Settlor, who is still living.

Sixth.—Mary Elizabeth Carter, a granddaughter of said Settlor, daughter of Chas. Gibbs Carter, a deceased son of said Settlor, who died in said Settlor's lifetime, and the said Mary Elizabeth Carter, granddaughter, is still living. 10

Seventh.—Jno. J. Carter, Second, a grandson of said Settlor, and son of L. B. Carter, who is still living.

Eighth.—Hugh Herndon, a grandson of said Settlor and a son of Alice Carter Herndon, nee Carter, who is still living. 20

Ninth.—John J. Carter Herndon, a grandson of said Settlor and a son of Alice Carter Herndon, nee Carter, who is still living.

Tenth.—Alice Herndon, a granddaughter of said Settlor and a daughter of Alice Carter Herndon, nee Carter, who is still living.

Eleventh.—Geo. A. Eckbert, co-Trustee, designated as Secretary and Treasurer, and who is not related by blood or otherwise to said Settlor, who is still living. 30

L. B. CARTER (sgd.)

Sworn to and subscribed before me this 8th day of July, A. D. 1917.

(Sgd.) C. R. Church,
Notary Public.

My Commission Expires April 17th, 1919.

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WILL.

I, Jno. J. Carter, of the City of Titusville, county of Crawford and state of Pennsylvania, do make this my Last Will and Testament, hereby revoking all former wills by me heretofore made.

10 First.—I direct that all my just debts and funeral expenses be paid as soon after my death as conveniently may be.

Second.—All the rest, residue and remainder of my estate, real, personal and mixed, wheresoever the same may be situate, shall go to and be distributed among my heirs at law and next of kin as under the intestate laws of the State of Pennsylvania.

20 Third.—I hereby empower my Executors hereinafter named to sell and convey any and all real estate of which I may die seized.

Fourth.—I appoint George A. Eckart and my three children, viz: L. B. Carter, Emma Carter Sharp and Alice Carter Herndon, Executors of this my Last Will and Testament, to act as such without compensation, and hereby direct that they shall not be required to give bond or

30 file an inventory of my estate.

In Witness Whereof I have hereunto affixed my hand and seal this Nineteenth day of January, Anno Domini One Thousand Nine Hundred Eleven.

JNO. J. CARTER. [Seal.]

Signed, sealed, published and declared by the above named Jno. J. Carter as and for his Last Will and Testament in the presence of us, who

40 have hereunto subscribed our names at his

request as witnesses thereto, in the presence of the said testator, and of each other.

ARTHUR E. YOUNG.
FRANK McC. PAINTER.

Titusville, Pa. 10
HG

February 18th, 1911.

To my Wife and Children:—

When I went to Japan in 1907, knowing of the uncertainties of life in the Orient, and in harmony with my habits in life—always to keep my house in order—I made a transfer of certain bonds and stocks to my children and their children, which was reduced to a better legal form 20 only a few weeks ago; and now has passed out of my control, and into the management of a board of trustees, designated in a trust bond, to be managed during my natural life, and then distributed among my children, as provided in the bond; and managed for the grandchildren as in the said bond provided. In connection with the same transaction; and, at about the same time, I made a will, having destroyed and revoked all other wills, made by me at any time, in which 30 the property in my name, at the time of my death, should be adjudicated, as the terms of that will provides; to the end, that each heir of my body shall receive such portion of my estate as the law of Pennsylvania provides. And, also, that my wife have what the same law warrants, to the end that justice be done each, and equity be maintained with all.

A considerable number of life insurance policies are in force on my life, which on their face 40 is indicated to whom they are payable. These

policies belong to the parties in whose favor they are.

A number of life insurance policies, on the lives of sundry persons, belong to my estate, and should be collected, when due, by the estate, 10 according to their terms and the accounts on my books, which will tell the story as it is.

The Jecal Company, Limited, stock is owned by my children. The shares are already made out to the respective owners; and will stand as made.

The care, comfort and maintenance of my old sister, Honora Machale, is assigned to my children. I assign it to them, as a sacred trust, in case of my death before that of my sister.

20 I assign to my son, Luke B. Carter, the guardianship of Mary Elizabeth Carter, the daughter of my son Charles Gibbs Carter, deceased. Luke B. Carter will assume that trust, and protect the trust funds; and Mary Elizabeth Carter, my grandchild, as he would his own funds and child, as provided by law, and the love he bears to his deceased brother.

JNO. J. CARTER.

30

Office of
JOHN J. CARTER,
Titusville, Pa.

To my Wife and Children:

In the event of my death let the obsequies be simple and inexpensive—without flowers from any one, or place, not grown on my own premises. The pallbearers should be selected from among the men, who were in my service longest, 40 if conditions warrant; there should be no honor-

ary pallbearers outside of those selected from my employes.

If funeral services be required, I suggest that they be simple, and observed at my own home, if possible, and convenient; that they consist for the most part in the reading of the 23rd Psalm, and Bryant's Thanatopsis. The song selections, if suitable quartette can be had, should be—"Nearer, My God, to Thee," and "Home, Sweet Home." A short prayer should conclude the services something like the following: 10

"In peace with all the world, dear Lord, and
Thee,
No fears my soul's unerring faith can shake.
All's well, whichever side the grave, for me
The morning light may break." 20

My face should not be exposed, after death to anyone outside my family. I would be remembered as a man—not as a corpse.

Place my remains in the family mausoleum in the niche, opposite that where reposes the remains of the mother of my children, and there let me rest from my labors.

It is my desire that no mourning be worn by any one for me; it will need no badge of fashion to demonstrate how you appreciate my life's works, or to advertise my departure. If I have done anything worth remembering, you will not have to be reminded of same by wearing a badge of mourning on your backs or hats. Go about your life's work as usual without regard to my departure, and you will find that in 30

"A day or more
The winter is o'er
The summer comes tomorrow." 40

With love to each and all of you, I would be remembered as,

Yours faithfully,

JNO. J. CARTER.

10 Jno. J. Carter.

Crawford County, ss.:

By the Tenor of these Presents, I, Wm. A. Thompson, Esquire, Register for the Probate of Wills and granting Letters of Administration in and for the County of Crawford in the Commonwealth of Pennsylvania, do make known to all men, that on the day of the date hereof, at Meadville, before me was proved, approved and
20 insinuated the codicil to the last Will and Testament of Jno. J. Carter, late of the city of Titusville, in said County, deceased, said will having been admitted to probate January 8, 1917, a true copy whereof is these presents annexed, having, whilst he lived and at the time of his death, divers goods, chattels, rights and credits within the said Commonwealth, by reason whereof the approbation and insinuation of the said last Will and Testament, and the commit-
30 ting of all and singular the goods, chattels, rights and credits, which were of the said deceased, and also the auditing the accounts, calculations and reckonings of the said administration, and a final dismission from the same, to me are manifestly known to belong, and that administration of all and singular the goods, chattels, rights and credits of the said deceased any way concerning his last Will and Testa-
40 ment was committed to George A. Eckbert and

L. B. Carter, two of the executors in the Testament named, they having first been duly qualified well and truly to administer the goods, chattels, rights and credits of the said deceased, and make a true and perfect inventory thereof, and exhibit the same into the Register's office at Meadville, aforesaid, on or before the sixteenth day of March, next, and to render a true and just calculation and reckoning of the said administration, on or before the fourteenth day of February, in the year of our Lord one thousand nine hundred and eighteen, or when thereunto lawfully required.

The other two named executors having renounced their right to act.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the said office to be hereto affixed.

Dated at Meadville, the fourteenth day of February, in the year of our Lord one thousand nine hundred and seventeen.

[Seal.]
William A. Thompson,
Register.

Notice.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER and GEORGE A. ECKBERT, Executors of the Estate of John J. Carter, deceeased *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey.	On Certiorari.

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Take notice, of argument of issue joined in this cause before the Supreme Court of New Jersey, holden at the State House, Trenton, New Jersey, on the third Tuesday of February next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated, February 18th, 1918.

Yours respectfully,
CHURCH, HARRISON & ROCHE,
Attorneys.

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To
Newton A. K. Bugbee, Esq.,
Comptroller,
or whom it may concern.

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Reasons.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER and GEORGE A. ECKBERT, Executors of the Estate of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey. Defendant.	On Certiorari. Reasons.

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Now Comes Luke B. Carter and George A. Eckbert, the above named prosecutors, and assign the following reasons upon which they shall rely in support of the certiorari in the above entitled cause, namely:

1. The tax upon property passing under the Deed of Trust should be assessed under the statute in force at the date of the execution and delivery of the deed, not under an amendment in force at the grantor's death.

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2. Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, does not impose a direct tax upon property. The Act only taxes the transfer of property in certain cases.

3. At the time of the execution of the Deed of Trust there was no statute taxing property passing to lineal descendants.

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Reasons.

4. The property passing under the Deed of Trust vested irrevocably in the Trustees on the date of the execution of the Deed of Trust, to wit: January 14th, 1911.

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5. The interests of the beneficiaries became vested and indefeasible on the date of the execution of the Deed of Trust.

6. The statute cannot be construed as taxing the interests of the beneficiaries under the Deed of Trust. Such interests were vested, and having been conferred by a lawfully executed contract they became property and as such are protected from legislative encroachment by constitutional guarantees.

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7. The levy and assessment made by the Comptroller on July 17th, 1917 was erroneous in that it included the securities which passed under the Deed of Trust.

8. The levy and assessment made by the Comptroller should only have been upon the property owned by the decedent at the time of his death.

Very respectfully,

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CHURCH, HARRISON & ROCHE,
Attorneys for Prosecutors.

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Opinion.

Filed April 25, 1918.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER, *et al.*, Executors of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Defendant.	On Certiorari.

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C. executed a trust deed in 1911 conveying personal property in this state to trustees upon trust to pay him the income during his life, and at and after his death to pay the corpus, in designated portions, to his children and grandchildren, who were not to have possession or enjoyment before his death; in 1914 the legislature passed an act imposing a transfer tax on property passing to lineal descendants, and in 1917 the settlor died. Held, that the gifts to lineal descendants were subject to the statute of 1914 as a gift intended to take effect in possession or enjoyment at or after the death of the donor, and that the transfer contemplated by the statute and made subject to a transfer tax, did not take effect when the trust deed was executed and delivered but only at the death of the donor.

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Argued February Term, 1918, before Justices Bergen and Black.

CHURCH, HARRISON & ROCHE, for Prosecutors.

JOHN W. WESCOTT, Attorney General, and THEODORE RURODE, for Defendants.

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The opinion of the court was delivered by Bergen, J.

We are asked to decide whether the Act of 1914, chap. 151, imposing a transfer tax upon property passing to lineal descendants, is ap-
10 plicable to property which came to the possession of descendants of that class in 1917 by virtue of a trust deed executed and delivered in 1911, at which time our statute relating to transfer taxes on the estates of descendants did not include lineal descendants. The facts are that on January 14th, 1911, John J. Carter, a non-resident of this state, executed and delivered to trustees an absolute conveyance, not revocable, by which he conveyed to his trustees the bonds
20 and stock of divers corporations, some being organized under the laws of this state upon which latter securities the Comptroller of the state levied a transfer tax, which action has been brought before this court for review by a writ of certiorari. The conveyance was subject to certain trusts. (1) To collect the income during the life of the settlor and pay it to him. (2) "Said trustee shall, at the death of the settlor pay over" definite portions of the corpus to per-
30 sons named, if they survive the settlor, and if not but leave issue, "Shall be paid over to such issue as if they were taking by descent" from their ancestors under the intestate laws, subject to a provision, in some cases, for a spouse or mother. In other cases the trustees were to allot the portion and hold it in trust until the beneficiary arrived at the age of twenty-one years. The distribution is provided for, after the death of the settlor, with the particularity usual in a last will and testament, and disposes
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of the entire trust estate to the lineal descendants of the settlor.

The prosecutors urge that a transfer tax can only be assessed under the law in force when the trust deed was executed, and there being no statute which subjected property passing to lineal descendants when this trust deed was delivered, to any transfer tax, their status cannot be changed by legislation between that period and the death of the settlor. The soundness of this contention depends upon the determination of the question, when does the transfer contemplated by the act take place?

Our statute, chap. 228, P. L., 1909, provides for the imposition of a transfer tax on the transfer of goods, wares and merchandise within this state, or of shares of stock of corporations of this state, or of shares of national banks located here, "Made by a non-resident, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, *or intended to take effect, in possession or enjoyment, at or after such death.*"

This statute is a copy of the New York statute of 1892, in force when ours was adopted, and in such case its construction by the courts of New York will be held to have been adopted with the act. Neilson *v.* Russel, 76 N. J. L., 655.

In the case of Matter of Green, 153 N. Y., 223, 47 N. E., 292, the facts were that, on February 14th, 1899, the settlor made a deed of trust and delivered to her trustees a large amount in value of railroad bonds upon trust to collect and pay the income to her for life, and after her death to pay the corpus to her three nieces with remainder over to the issue, if any, of either dying before the donor. This deed was modified in

1891, and the question presented was whether the subsequent act of 1892 was applicable, and the only substantial matter presented in opposition, as appears from the brief printed with the case, was "The transfer became effective upon the execution of the deed and its delivery with the securities." There, as here, the trust deed and securities were delivered to the trustee before the statute imposing the tax was adopted, and the trust was, as here, to pay the income to the settlor for life, and, after death of settlor, to persons named. The conditions seem to be identical and the Court of Appeals of New York held that, conceding that upon delivery of the trust deed the nieces took a vested remainder subject to open and let in the children of a niece dying in the life time of the settlor, "The remainders were transferred to the nieces, in possession and enjoyment, by an instrument intended to take effect for that purpose, at or after the death of the donor. * * * The death of the donor was the event which made the transfer complete and effective and secured to the nieces the possession and enjoyment of the property," and, therefore, the devolution of the title was subject to the tax.

In Matter of Brandreth, 169 N. Y., 437, it was held that where there was a gift and delivery of stock with reservation of income and voting power by donor, the value of the stock, after the death of the donor, was taxable as a transfer intended to take effect in possession or enjoyment after death of donor.

In Matter of Cornell, 170 N. Y., 423, where there was a gift and delivery of securities with reservation of income it was held that the gift

was a trust and after donor's death subject to a transfer tax.

Thus it seems to have been settled by the Court of Appeals of New York that such a remainder, after a life estate, given by a trust deed, is subject to the transfer tax which the law imposes when the right to its possession or enjoyment matures. The statutes of both states make a distinction between property passing by will, and property passing by deed intended to take effect in possession or enjoyment after the death of the settlor, the latter referring to a gift *causa mortis* having the effect by a different method of a will or intestacy. A will takes effect at the death of the testator, and all estates which it creates then become fixed and subject to such taxes as are then imposable by law, and the rights of legatees thereunder have a status not to be altered for the purpose of taxation, but are subjected to any change in the law made after the execution of the will and before testator's death, and a trust deed which *donatio causa mortis,* produces the same result by another method, is governed by the same rule. See also Crocker v. Shaw, 175 Mass., 766.

As was aptly said by Judge Finch speaking for the Court of Appeals of New York, in Matter of Seaman, 147 N. Y., 69, 77, "A grantor may have conveyed and delivered his deed in 1892, in contemplation of death and to take effect upon the happening of that event, or reserving a power of revocation as well as the possession or enjoyment during his life time, and the legislature certainly intended to put such a transfer on the same footing as one by will. It is of no consequence that the will was executed before the statute, if death occurs after, and the same

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rule was intended to be explicitly applied to grants *causa mortis*. Though the deed precedes the tax law, as the execution of the will precedes that law in a possible case, yet the transfer in both instances is to date from the one
10 event which makes it operative and effective." While Mr. Justice Lamar, speaking for the United States Supreme Court in Keeney *v.* New York, 222 U. S., 525, said, "The validity of the burden must be determined by the situation as it existed in 1903 when the deed was made." This had reference to the situs of the property and not to the application of the law, and cannot be taken as overruling the Court of Appeals of New York in the construction of their own statute.

20 The prosecutor cites but two cases that we deem we are required to notice. The first is People *v.* Trust Company of America, 205 N. Y., 74, which is not applicable, for it relates not to a transfer tax, but to the taxation of a mortgage given before a new tax went into effect, and is subject to an entirely different line of reasoning. The other case is an opinion by Surrogate Cohalan of the County of New York, which apparently is contrary to the views expressed by
30 the Court of Appeals of that state, and disposes of the case of Matter of Green, *supra,* by saying that the court decided in that case that the deed was not a gift *inter vivos,* but one intended to take effect in possession or enjoyment after death. As we read the opinion of the Court of Appeals it said it was not important to decide that matter, and put the result upon the question whether the estate taken by the nieces was to take effect in possession or enjoyment at or
40 after the death of the donor, and held that it was.

It seems to us that the Surrogate, on the same state of facts, so far as laid before us, reached a conclusion different from that held and announced by the Court of Appeals of New York, and we feel it wiser to follow the highest appellate court in the construction of the statutes of that state. It is certainly more authoritative, and its reasons for the result reached in this matter appeals to us as sound.

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In the case under review we have a deed in which the remainders are intended to take effect in possession or enjoyment at or after the death of the settlor, which is within the words of the last clause of section three of the statute. It was also made in contemplation of death, because the gifts were not effective until that event happened, and thus within the terms of the next preceding sentence or clause. We are of opinion that the transfers contemplated by the statute did not take effect until the death of the settlor, and are subject to the transfer tax imposed by the statute then in force. The assessment is affirmed with costs.

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Rule for Judgment.

Filed April 29, 1918.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER, *et al.*, Executors of John J. Carter, Deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the Treasury, Defendant.	On Certiorari. Rule for Judgment.

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A writ of certiorari having heretofore been allowed in the above-entitled cause, and the court having inspected the record, returned with the certiorari in this cause, the reasons filed by the prosecutor, and having heard the argument of counsel, and having duly considered the same,

It is, on this twenty-sixth day of April, nineteen hundred and eighteen, ordered that the assessment and appraisal and transfer tax levied by the comptroller be affirmed and the writ heretofore allowed be dismissed, with costs.

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On motion of

JOHN W. WESCOTT,
Attorney General,
Attorney of Defendant.

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Notice of Appeal and Reasons.

Filed May 16, 1918.

NEW JERSEY SUPREME COURT.

LUKE B. CARTER and GEORGE A. ECKBERT, executors of the estate of John J. Carter, deceased, Prosecutors, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant.	On Certiorari. Notice of Appeal and Reasons.

10

To John W. Wescott, Attorney General of the State of New Jersey, attorney of defendant:

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1462—4

Take notice that the prosecutors appeal to the Court of Errors and Appeals from the whole of the judgment entered in the above cause on the following grounds:

1. The tax upon property passing under the Deed of Trust should be assessed under the statute in force at the date of the execution and delivery of the deed, not under an amendment in force at the grantor's death.

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2. Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, does not impose a direct tax upon property. The Act only taxes the transfer of property in certain cases.

3. At the time of the execution of the Deed of Trust there was no statute taxing property passing to lineal descendants.

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4. The property passing under the Deed of Trust vested irrevocably in the Trustees on the date of the execution of the Deed of Trust, to wit: January 14th, 1911.

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5. The interests of the beneficiaries became vested and indefeasible on the date of the execution of the Deed of Trust.

6. The statute cannot be construed as taxing the interests of the beneficiaries under the Deed of Trust. Such interests were vested and having been conferred by a lawfully executed contract they became property and as such are protected from legislative encroachment by constitutional guarantees.

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7. The levy and assessment made by the Comptroller on July 17th, 1917, was erroneous in that it included the securities which passed under the Deed of Trust.

8. The levy and assessment made by the Comptroller should only have been upon the property owned by the defendant at the time of his death.

Dated, May 13, 1918.

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CHURCH, HARRISON & ROCHE,
Attorneys for and of Counsel with
Prosecutors-Appellants.

Service of a copy of the within Notice of Appeal and Reasons is hereby acknowledged this 14th day of May, 1918.

JOHN W. WESCOTT,
Attorney for Defendant-Respondents.

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Notice of Argument.

Filed May 16, 1918.

NEW JERSEY COURT OF ERRORS AND APPEALS.

LUKE B. CARTER and GEORGE A. ECKBERT, executors of the estate of John J. Carter, deceased, Prosecutors-Appellants, and NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant-Respondent.	On Certiorari. Notice of Argument.

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To John W. Wescott, Attorney General of the State of New Jersey, attorney of defendant-respondent.

Take notice of the argument of the issue joined in this cause, before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, State of New Jersey, on the third Tuesday of June, 1918 (June 18, 1918), next, at ten o'clock in the forenoon, or as soon thereafter as the said court can attend to the same.

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Dated, May 13, 1918.

Yours respectfully,
CHURCH, HARRISON & ROCHE,
Attorneys for and of Counsel with
Prosecutors-Appellants.

Sat below:—Bergen and Black, JJ.

Service of a copy of the within notice of argument is hereby acknowledged this 14th day of May, 1918.

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JOHN W. WESCOTT,
Attorney of Defendant-Respondent.

New Jersey Court of Errors and Appeals

LUKE B. CARTER and GEORGE A. ECKBERT Executors of the Estate of John J. Carter, deceased, Prosecutors-Appellants, *v.* NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, Defendant-Respondent.	On Certiorari.

BRIEF OF PROSECUTORS.

Statement.

John J. Carter, a resident of Titusville, Crawford County, Pennsylvania, died January 3, 1917. George A. Eckbert and L. B. Carter, both also of Titusville, Pennsylvania, were duly appointed and qualified as executors of the said Carter's estate.

On January 14, 1911, John J. Carter made and executed an irrevocable deed of trust, a certified copy of which has been filed with the Comptroller. Under the provisions of this Deed of Trust the Settlor, John J. Carter, conveyed and assigned to the four trustees named in the instrument certain securities which were also spe-

cifically set forth in the said Trust Deed. At the time of the execution of the Deed of Trust, to wit: January 14, 1911, the total shares of stock of New Jersey corporation included in and transferred by said instrument consisted of 400 shares of the capital stock of the National Fuel Gas Company and 400 shares of the capital stock of the Standard Oil Company of New Jersey. From time to time, as other securities transferred and conveyed to the Trustees by the Deed of Trust matured, the said Trustees, having been given by the terms of the instrument control of investing and re-investing the funds of the Deed of Trust, purchased additional shares of the said National Fuel Gas Company and the Standard Oil Company of New Jersey, so that at the date of the death of the said John J. Carter the said Trustees held in their names 450 shares of the capital stock of the National Fuel Gas Comapny and 700 shares of the capital stock of the Standard Oil Company of New Jersey.

When John J. Carter died on January 3, 1917, he left a will which made disposition of any securities or properties owned by him at the time of his death. It was found that the total shares of stock of New Jersey corporations owned by him and belonging to his estate consisted of 240 shares of the capital stock of the National Fuel Gas Company, 150 shares of the capital stock of the Standard Oil Company of New Jersey, and 10 shares of the capital stock of the United States Steel Company.

During the month of May, 1917, the said Executors requested the Comptroller to assess the transfer tax upon the shares of stock of New Jersey corporations owned by the decedent and, in compliance with a request from the Comp-

troller, furnished the information deemed necessary to make said assessment. Subsequently, on or about July 17, 1917, the assessment of the transfer tax was issued and filed by the Comptroller.

An examination of the assessment made and filed disclosed the fact that Comptroller has included in the tax levied not only all the stocks of New Jersey corporations disposed of by the will of the deceased and properly a part of his estate, but also the stocks of New Jersey corporations conveyed and assigned on January 14, 1911, by the deed of trust and standing in the names of the trustees mentioned in that instrument.

The executors requested that a new assessment of the transfer tax on shares of stock of New Jersey corporations held by the estate of John J. Carter, deceased, be made and filed and that in making said assessment a tax be levied only upon the transfer of the shares of New Jersey corporations held and owned by the deceased at the time of his death. This request the Comptroller denied.

POINT I.

The Supreme Court erred in its conclusion that the New Jersey Legislature adopted the New York Act of 1892 with the construction put upon it in New York in the Green case.

In presenting this case in the lower court we have argued that the Transfer Inheritance Tax Act of New Jersey *as it exists to-day* is closely modeled after the statute of New York State, almost the same words and phrasing being used

in both statutes; and that the construction of the New York statute by the New York courts is the proper construction for the New Jersey Courts to adopt.

We do not, however, agree with the learned judges who rendered the decision upon this matter in the Supreme Court that the New Jersey act is a copy of the New York Act of 1892. We most emphatically contend and believe it is apparent from an examination of the two statutes that instead of the Legislature of New Jersey adopting the *New York Act of 1892* with the construction put upon it in the Green case, it did the very opposite. The New York Act as it existed when the Green case was decided read as follows:

> "When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. *Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.*"

The clause italicized above might have justified the construction put upon the act by the Green case. No question at that time as to the constitutionality of the Act was raised in the Green case. In 1902, however, the New York Court of Appeals had before it the question of the constitutionality of practically the same provision inserted in the Transfer Tax Act of 1899. This provision imposed a tax "on all estates upon

remainder or reversion which vested prior to June 30, 1880, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act."

In that case a tax was imposed under the Act of 1899 upon an estate in remainder which vested in 1863 but did not come into the actual possession or enjoyment of the persons beneficially interested therein until after the passage of the Act. The Court held that Act unconstitutional, saying:

> "This Court and the Supreme Court of the United States have held in numerous cases that the transfer tax is not imposed upon property, but upon the right of succession. It therefore follows that where there was a complete vesting of a residuary estate before the enactment of the transfer tax statute, it cannot be reached by that form of taxation. In the case before us it is an undisputed fact that these remainders had vested in 1863, and the only contingency leading to their devesting was the death of a remainder-man in the lifetime of the life tenant, in which event the children of the one so dying would be substituted. If these estates in remainder were vested prior to the enactment of the transfer tax act, there could be in no legal sense a transfer of the property at the time of possession and enjoyment This being so, to impose a tax based on this succession would be to diminish the value of these vested estates, to impair the obligation of a contract, and take private property for public use without compensation." *(In re* Pell's Estate, 171 N. Y., 255; 63 N. E., 789.)

In view of the foregoing decision, it is significant that when the New Jersey Legislature in 1909 adopted the first Tax Transfer Act, using as a basis the New York Act, it omitted the pro-

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vision of the New York Act italicized above and substituted therefore the following:

> "Fourth. When any person or corporation comes into possession or enjoyment, by a transfer from the resident or non-resident decedent when such non-resident decedent's property is within 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." (Italics mine.)

The provision of the New Jersey Act of 1909 remains unchanged in the Act of 1914. Therefore, it is readily seen that the Legislature omitted the only part of the New York statute which might have justified the Green decision and substituted a clause making vested, contingent or defeasible estates in expectancy taxable only when created by an instrument *taking effect after the passage of the act.*

It may be contended by the Attorney General that the Deed of Trust is inoperative as coming within Section 1, Paragraph 3, Chapter 228, of the Session Laws of 1909. A sufficient answer to this, we contend, is to call the attention of the Court to the fact that the entire Act of 1909 applies to collateral descendants. It had no reference to lineal descendants, and lineal descendants only are mentioned in the deed of trust.

The Honorable Attorney General in his brief opposing us in the Supreme Court conceded that, following the decision in Hopper *v.* Edwards, 88 N. Y. Law, page 476, the construction of the New York act by the Courts of that State would be controlling. He, however, also sought to modify the effect of that decision by putting

in *italics* the word *previously,* thus indicating that formerly the construction of the New York statute was different from what it is today.

If such an inference were intended, it is not borne out by the decisions. The opinion of the Court of Appeals of New York State upon this question has not changed since the first statute was adopted.

If the Honorable Attorney General meant that the New York Act of 1892 was different from the present New York act and that the New Jersey act was copied from the New York Act of 1892 and that the construction of that act controls in New Jersey, our answer is as stated above, that the New York Court of Appeals declared the Act of 1892 unconstitutional, when it was attempted to construe it the same way that the Honorable Attorney General now seeks to construe the New Jersey act. Matter of Pell, 171 N. Y., 48.

POINT II.

The tax upon property passing under the deed of trust should be assessed under the statute in force at the date of the execution and delivery of the deed, not under an amendment in force at the grantor's death.

Chapter 228 of the Laws of 1909, which governed the tax upon the transfer of property in the State of New Jersey, from its passage until March, 1914, did not provide for a tax upon the transfer of property to lineal descendents. It was only after the passage of the amendment to the act by the enactment of Chapter 151 of the Laws of 1914, that transfers of property or stocks to lineal descendents were made subject to a transfer or inheritance tax in New Jersey.

Therefore, it will, without question, be con-

ceded, we believe, that had John J. Carter, whose estate is now under discussion, died on January 14, 1911, and had he at that time disposed of his property by will, naming the same beneficiaries which were named in the deed of trust, executed by him on that date, there could have been no transfer or inheritance tax levied or imposed, as under the law existing at that time a transfer to lineal descendants was not taxable.

In People *v.* Trust Company of America, 205 N. Y., 74 (1912), Cullen, C. J., said:

> "The Legislature could not impose such a tax upon the defendant for a transaction which, at the time it was effected, was subject to no tax."

It therefore follows we contend that the decedent, John J. Carter, who died January 3, 1917, having disposed of certain securities by an irrevocable deed of trust executed January 14, 1911, and the beneficiaries named in said instrument having been lineal descendents, no transfer tax can be assessed against the property specifically mentioned in the deed of trust. This is true because the right of succession became fixed at the date of the deed of trust and it is the law in effect at that time which governs the amount of the transfer act tax.

The executors found it necessary, through their attorney, to take up the same question involved in this case, with the Honorable Comptroller of the State of New York, as there were also certain stocks and securities of New York corporations transferred by the deed of trust executed by the decedent on January 14, 1911. The Comptroller of the State of New York held that the transfers made by the deed of trust in 1911 were not taxable and issued waivers for the transfer of the stock in question and based his decision upon

Matter of Estate of W. Wallace Atterbury, New York Law Journal, March 25, 1913.

The Atterbury case is so absolutely in point that we feel justified in quoting it in full. In this case it was the Comptroller himself who pleaded that the construction of the statute here contended for, be placed upon the act and that it be held that the transfer was taxable as of the date of the deed of trust and not as of the date of the death of the decedent.

The opinion rendered by Surrogate Cohalan was as follows:

> "Decedent died on the 6th day of August, 1911. On the 9th day of January, 1904, he executed two deeds of trust by which he transferred certain personal property to trustees, the income of such property to be paid to him during life and upon his death the principal to be paid to certain persons and corporations mentioned in the deed of trust. The appraiser reported that the taxation of the transfer of this property was governed by Chapter 732 of the Laws of 1911, the transfer tax statute in force at the date of decedent's death. The Comptroller contends that the property was transferred when the trust deeds were executed by decedent and that the taxation therefore is governed by the statute in existence at that time.
>
> "If the contention of the Comptroller is correct, that part of the corpus of the trust fund which was transferred to certain religious corporations would not be exempt from taxation while the other donees would not be entitled to the exemption of $1,000 provided by Chapter 732 of the Laws of 1911.
>
> "The deeds of trust were irrevocable. The only restriction upon power of trustees was a provision in the deeds by which the trust property could not be sold without the consent of the donor. The transfer tax stat-

ute provides that a tax shall be imposed upon the transfer of property by deed or gift, given in contemplation of death or intended to take effect on possession or enjoyment at or after death. The tax is imposed upon the transfer of property and the only question to be determined in the matter is, Did the transfer of property take effect at the time of the execution of the deeds of trust or was such transfer deferred until the death of the decedent? The grantor parted with his title to the property at the time the deeds of trust were executed and it became vested in the trustees. Upon the execution of the deeds the donees took a vested remainder in the property subject to the life estate of the donor. Their interests could neither be enlarged nor diminished by the donor after the deeds had been executed. Therefore, their right to the property accrued upon the execution of the deeds of trust. It was only their right to possession that was deferred until the death of the grantor. As the tax is imposed upon the transfer of the property or the right to succeed to the property, the law in existence at the time the transfer takes place or the right accrues is the law which governs the taxability of the transfer. Therefore, the law in existence at the time the deeds of trust were executed is the law which governs the taxability of the property transferred by virtue of those deeds (Matter of Webber, 151 A. D., 539; Matter of Haight, 152 A. D., 228).

"In the Matter of Green, 153 N. Y., 223, relied upon by the respondent, the Court decided that the property transferred by a deed of trust was not a gift *inter vivos* but was a gift intended to take effect in possession or enjoyment at or after death and therefore taxable under the provisions of the transfer tax statute. The question raised by the present appeal was not before the Court in the Matter of Green and that case

therefore is not controlling upon this point. As the transfer of the property mentioned in the deeds of trust were governed by the Transfer Tax Law in force at the date of the execution of the deeds, the property transferred to the foreign religious corporations is subject to a tax and the other donees are not entitled to the exemption prescribed by Chapter 732 of the Laws of 1911. The order fixing tax will be reversed and the appraiser's report remitted to him for correction as indicated."

In the Matter of Webber, 151 N. Y. Appellate Division, 539, the learned Court also held that:

"The law in effect at the time that the right of succession under a deed of trust becomes fixed is the law which governs the amount of the transfer tax. The time when the beneficiaries actually come into the enjoyment of the fund is of no consequence.

"The tax upon property passing under such a deed should be assessed under the statute in force at the date of the delivery of the deed not under an amendment in force at the grantor's death.

"When the trust deed was made and delivered without reserving any right to change the same, the right of succession became fixed and it is this right of succession and not the property which is the subject of the tax (Matter of Swift, 137 N. Y., 77, 88)."

One of the leading cases in New York State upon this point, and the one probably most often quoted and referred to, is the Matter of Pell, 171 N. Y., page 48. Judge Bartlett, writing the opinion, in which, so far as the question raised here is concerned, the entire court concurred, said:

"This Court and the Supreme Court of the United States have held in numerous cases that the transfer tax is not imposed upon

property but upon the right of succession. It therefore follows that where there was a complete vesting of a residuary estate before the enactment of the transfer tax statute, it cannot be reached by that form of taxation. In the case before us it is an undisputed fact that these remainders had vested in 1863 and the only contingency leading to their divesting was the death of a remainderman in the lifetime of the life tenant, in which event the children of the one so dying would be substituted. If these estates in remainder were vested prior to the enactment of the Transfer Tax Act there could be in no legal sense a transfer of the property at the time of possession or enjoyment. This being so, to impose a tax based on the succession would be to diminish the value of these vested estates, to impair the obligation of a contract and take private property for public use without compensation."

Matter of Pell, 171 N. Y., 48;
Matter of Haight, 152 N. Y. A. D., 228;
Mattter of Chapman, 133 N. Y. A. D., 336;
Matter of Haggerty, 128 A. D., 479;
Matter of Keeney, 194 N. Y., 281; 222 U. S., 525;
Hoy v. *Hancock,* 20 Dick., 688.

Although we have stated that this question has not actually been decided by the courts of New Jersey, the decision given in Security Trust Co. *v.* Edwards, 89 New Jersey Law, and mentioned *supra* in this brief, indicates in a very clear manner that the construction of the New Jersey Transfer Tax Act, here urged, is the proper one.

This case held that stocks in New Jersey corporations pledged by a non-resident during his life-time as collateral security for a note are

not subject to the transfer tax at his death under the act of 1914, imposing a tax on such shares when transferred by will or intestate laws, since the rights of the unpaid pledgee in the stocks did not permit of a transfer of the stocks by the will of the deceased pledgor.

In other words, where there is no transfer at the death of a testator, there can be no tax levied at that time.

It follows then that where the actual transfer took place years before the testator's death and no statute existed at the date of the transfer imposing a transfer tax, the Comptroller cannot levy or assess a transfer tax against such securities at this time.

In the Matter of Craig, 97 New York Appellate Division, page 289, and *affirmed* in *181 N. Y.*, page 551, this question *was settled* so far as New York State is concerned by that State's highest court.

One Hector Craig, on December 20, 1875, executed a deed of all his property to certain trustees, which deed recited that it was executed in contemplation of the grantor's pending marriage with Mary W. Darrach and for the purpose of making provision for her in case the marriage took place and she survived him as his widow, and of otherwise providing for the management and disposition of his estate. By the terms of the deed the net income of the property conveyed was to be paid to the said Hector Craig during his lifetime and at his death the principal sum was to be paid over to his widow and the issue of the marriage in specified proportions. The contemplated marriage took place prior to the enactment of the first statute imposing a tax on inheritances.

Craig died May 29, 1901, leaving a widow and

children surviving him. Section 230 of the Tax Law provided that

> "all estates upon remainder or reversion, *which vested prior to June thirtieth, eighteen hundred and eighty-five,* but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act, shall be appraised and taxed as soon as the person or corporation beneficially interested therein shall be entitled to the actual possession or enjoyment thereof.
>
> "*Held,* that, as the trust deed contained no reservation of a power of revocation, the interests of Craig's widow and children in the remainder of the property conveyed under the trust deed accrued on the execution and delivery of that deed, irrespective of the time when possession of the estate was to be given, and that the Legislature had no power, by a statute subsequently enacted, to impose a transfer tax upon such interests."

The Court said:

> "In other words, the appellants contend that at least as early as May 9, 1885, they had acquired their rights by irrevocable deed; that such rights whether vested or contingent then constituted present property interest in future estates which were vested in the sense that they were secured to them by deed subject only to contingencies as to time and survivorship; that incident to the ownership of such property was the absolute right to its acquisition in possession and enjoyment at the stipulated time; and that such ultimate right of possession and enjoyment being absolute and not merely privileged, could not afterwards be taxed by the State because of well-settled principles of constitutional law. I am inclined to the view that the contention is sound. In the discussion the appellants must be re-

garded on May 9, 1885, as being in the same position as they would have been in if the remainders had been acquired by purchase instead of gift, and it cannot be that the State can levy an assessment upon the right of a citizen to enjoy the fruits of a prior purchase which when made was wholly free from such an imposition.

"I do not lose sight of the fact that the transfer tax is levied, not upon the property affected, but upon the right of succession. The underlying principle which supports the tax is that such right is not a natural one but is in fact a privilege only, and that the authority conferring the privilege may impose conditions upon its exercise. But when the privilege has ripened into a right it is too late to impose conditions of the character in question, and when the right is conferred by a lawfully executed grant or contract, it is property and not a privilege, and as such is protected from legislative encroachment by constitutional guaranties."

POINT III.

The decision of the lower court in this case is in error as to the construction of the law and decisions of the highest court of New York State upon this question.

The learned judge who wrote the opinion deciding this case in the Supreme Court, held that the New Jersey act was a copy of the New York statute of 1892 and that the construction by the courts of New York State had been adopted with the act. We have contended in another part of this brief that, although the statute is not a copy of the New York Act of 1892, it is modeled after the New York statute as it exists to-day, and the construction of the New York

courts is the proper one. These two points being admitted, it only remains for us to show what the decisions of the Court of Appeals of New York State have been when the identical question involved here has been brought before that Court. This we were confident that we had done when we cited Matter of Pell, 171 N. Y., page 48, and Matter of Craig, 97 New York Appellate Division, page 289 (affirmed in 181 New York, 551), but the opinion of the court below failed to notice these cases and based their decision upon three other New York cases, namely, Matter of Green, 153 N. Y., 223; Matter of Brandreth, 169 N. Y., 437; Matter of Cornell, 170 N. Y., 423. These cases do not control upon the question raised by this appeal. The facts in each of the cases are different from the facts of this case and the decisions rendered are easily distinguished. In the case now before you, there was *no* statute *in force* under which the transfer could have been taxed on January 14, 1911, the date when John J. Carter executed and delivered his deed of trust. The statute was passed subsequently in 1914. In the cases mentioned in the opinion of the lower court there *was* a statute *in force* at the time the instrument creating the trust was executed. Fortunately in the Matter of Craig, 97 N. Y. Appellate Division (affirmed 181 N. Y., 551), which is the latest and best authority upon this question, the cases relied upon in the opinion of the court below have been considered and distinguished and I cannot do better than quote from the opinion:

> "There seems to be no case to the contrary. Those cited by the learned counsel for the respondent (Matter of Green, 153 N. Y., 223; Matter of Brandreth, 169 *id.*, 437, and Matter of Cornell, 170 *id.*, 423) are all cases where the will or deed, as the case

may be, was either executed or took effect after the passage of the laws imposing a tax upon inheritances or transfers. In Matter of Seaman (147 N. Y., 69) it is true that something is said which may seem to be in conflict with the view I am taking, but I am sure there is nothing in the actual decision to that effect. That was the case of a will followed by the death of the testator in the year 1876, and it was held that the devise of a defeasible remainder creates a vested interest in the remainderman on the death of the testator, notwithstanding possession must await the death of the life tenant, and that if the testator died prior to the enactment of the taxable transfer act of 1892 (Chap. 399) the remainder is not taxable under that act. The decision was precisely in line with that in the Pell case. But the Court considered the effect of the clause in subdivision 3 of Section 1 of the Act of 1892 (Chap. 399), providing that the transfer tax should be imposed when the beneficiary became beneficially entitled in possession or expectancy to the property, whether the transfer was made before or after the passage of the act, and held that such clause was not retroactive, was designed to be restrictive to the case of grants or gifts *causa mortis,* and did not extend to transfers by will or by intestacy. The question of the constitutionality of the clause when applied to the case of a grant preceding the enactment was not considered, and the clause having no application whatever to the case at hand, that question could not have been determined."

In the brief of the Attorney General submitted in this matter, he cited only three cases opposing our construction of the statute. One of these, Matter of Green, 153 N. Y., 223, has already been distinguished. It might be well to point out here, however, that the Attorney General in his brief in referring to the Green case stated that

"the deed of trust was delivered in 1889 * * * and the act in force at the time of the proceeding to tax was Chapter No. 399, Laws of 1892." He failed to state that Chapter No. 399 of the Laws of 1892 was practically a re-enactment of Chapter 713 of the Laws of 1887, and that under Chapter 713 of the Laws of 1887 a deed such as was given in the Green case was taxable. The act of 1887 taxed transfers to collaterals and the donees in this case were nieces. His next case was *in re* Dobson, 73 Misc. (N. Y.), 170.

In this case which was decided in the Surrogate's Court of Oneida County, there was no question but what the statute taxing such transfers was passed prior to the execution of the deed by Helena L. Dobson, and was in force when she made the transfer. The last case cited by the Attorney General in his brief was Crocker *v.* Shaw, 174 Mass., 266. In view of the decision of the lower court that the New York construction of the statute governs in New Jersey, it perhaps is not necessary to review this case. In referring to it, however, the Attorney General stated that "the trust deeds were delivered before the statute, and the death occurred after the statute was in force." The facts of the case were as follows: Prior to Statutes 1891, C. 425, imposing a tax upon collateral successions, a married woman conveyed property to a trustee, to pay her the income for life and the principal after her death to such persons as she should *appoint* by her *last will.* She died in 1895 leaving a will by which she appointed the property to persons not exempt under the above statute. Held, that the property was liable to the tax and that the statute was constitutional.

The Court said:

"No interest vested in this case either in

> possession or enjoyment in any of the legatees till after the *death* of the grantor and that did not happen until after the passing of Statutes 1891, C. 425."

In his case the transfer actually took place at the death of the donor by the appointment in her will. There was no vested or contingent interest created at the time the deed of trust was made. A further quotation from the opinion in Crocker *v.* Shaw, 174 Mass., 266, was to the effect that "there is no difference in principle between property passing by a deed intended to take effect in possession or enjoyment on the death of the grantor, and property passing by will."

The learned court was in error in making such a statement, as there is a decided difference. A will does not take effect until the death of its maker and is revocable at the maker's pleasure. It is also governed by laws passed subsequent to its date but prior to the maker's death. A *deed* takes effect *immediately* upon its execution and delivery and if, as in the present case, it is by its terms *not* revocable, it creates an interest either vested or contingent which is of value to the beneficiary.

It is, however, to the closing paragraph of the brief submitted in the Supreme Court by the Honorable Attorney General and the learned counsel for the defendant, that we desire to direct *particularly* the attention of the Court. When we examine the paragraph in question, it is evident to our minds that the theory upon which the Attorney General is seeking to uphold the taxation of a deed or grant made prior to the enactment of the statute, is contained and set forth in that paragraph which is as follows:

> "The cases in New York relied upon by the prosecutors go upon the theory that the

right of succession became fixed by the deed and that it is the right of succession which is taxed; but in dealing with estates of non-resident descendents, we tax, not necessarily the succession or right of succession, but the transfer in possession or enjoyment, and which transfer we submit did not take place until donor's death and when the donees by statutory enactment were subject to this tax."

The construction then, of the New Jersey law, according to the Honorable Attorney General, and set forth in the above quotation, is that New Jersey proposes to tax the actual coming into possession and enjoyment, no matter when the real deed of transfer was made.

This theory has been tried in New York State and declared unconstitutional.

The New York State Legislature attempted to do this by the passage of Chapter 76 of the Laws of 1899, which reads as follows:

"All estates upon remainder or revision, which vested prior to June thirteenth, eighteen hundred and eighty-five, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act, shall be appraised and taxed as soon as the person or corporation beneficially interested therein shall be entitled to the actual possession or enjoyment thereof."

In both the act of 1892, referred to in the opposing brief, and the act quoted, it was provided that transfers by deed or gift made in contemplation of the death of the grantor or donor, or intended to take effect in possession or enjoyment, at or after his death, shall be taxed when the grantee or donee becomes beneficially

entitled in possession or expectancy to the property given by the transfer, whether made before or after the passage of the act.

The Court of Appeals of New York State in the Matter of Pell, 171 N. Y., page 48, held that the statute was unconstitutional. Therefore, it hardly seems reasonable that a tax can be unheld under the New Jersey statute upon the theory that the tax is levied upon the actual coming into possession and enjoyment, although the interest was created years before the enactment of the statute.

POINT IV.

Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, is so worded as to clearly indicate that no transfer made prior to the passage of the act is intended to be taxed.

His Honor, Mr. Justice Bergen, in delivering the opinion of the court below in this case, said:

> "This statute is a copy of the New York statute of 1892, in force when ours was adopted, and in such case its construction by the courts of New York will be held to have been adopted with the act. Nelson *v.* Russell, 76 N. J. Law, 655."

And the learned Attorney General, arguing for the State, as appears from his printed brief, says:

> "As was said in Hopper *v.* Edwards, 88 N. J. Law, 476; 'It is presumed that the Legislature intended that its provisions should be understood and applied in accordance with the construction previously placed thereon by the New York courts.'"

But the fact is, the one law is not a copy of the other in particulars very essential to the decision of this case. For it appears by comparing them that the New York Law of 1892 classifies all transfers to be taxed in three classes (L 1892,, Ch. 399, Section 1):

> "1. When the transfer is by will or by the intestate laws of this state from any person dying, seized or possessed of the property while a resident of this state.
>
> "2. When the transfer is by will or intestate law of property within the state and the decedent was a non-resident of the state at the time of his death.
>
> "3. When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within the state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or about such death. *Such tax shall also be imposed when such person or corporation becomes beneficially entitled in possession or expectancy to any property, or the income thereof by any such transfer whether made before or after the passage of this act.*"

And Chapter 228 of the New Jersey Laws of 1909, which is not changed by the amendment by Chapter 151 of the Laws of 1914 in this particular, classifies all transfers to be taxed in four classes as follows:

> "First.—When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State.
>
> "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 non-resident of the State at the time of his death.

"Third.—When the transfer is of property made by a resident, or is 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, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

"Fourth.—When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a non-resident decedent, when such non-resident 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.*"

We see that the first two classes under both laws are the same; that the third class under the New York law was clearly intended to be more extensive than the third class under the New Jersey law, as is evidenced by its closing words, not found in the third class under the New Jersey law:

"Such tax shall also be imposed when such person or corporation becomes beneficially

> entitled in possession or expectancy to any property, or the income thereof by any such transfer *whether made before or after the passage of this act.*"

The legislatures of both States intended to tax transfers of, or successions to, property at the death of the owner. They did not intend to tax a transfer made *bona fide inter vivos* or for a valuable consideration. It was, of course, obvious to the draughtsmen of both laws that the third class of taxable transfers was necessary, or otherwise decedents would see to it that no property, or very little, subject to tax, should pass under their last wills and testaments or under the intestate laws. So that there are grouped in the third class under both laws transfers *inter vivos,* made in contemplation of death, that is, with death threatening or believed to be impending, and transfers of gifts to take effect in possession or enjoyment at the death of the grantor or donor. But our main point is that while the New York Legislature, by its enactment of 1892, expressly includes in its third class such estates or interests created "by any such transfer *whether made before or after the passage of this act,*" the New Jersey Legislature impliedly, if not expressly, excluded from the tax all such transfers, whether coming within its third or fourth classes, by the closing words of the fourth class, reading:

> "transferred by an instrument taking effect *after the passage of this act* or of any property transferred pursuant to a power of attorney contained in any instrument taking effect *after the passage of this act.*"

This distinction, the New Jersey Legislature intended to make, and did make, and its reason for so doing becomes very apparent as we study

the subsequent legislation in New York and the trend of the decisions which had already been delivered by its court of last resort prior to the enactment of the New Jersey Law of 1909.

Preliminary to this, it may be well to bear in mind that transfers in contemplation of death or to take effect in possession or enjoyment at death are properly divided, first, into transfers in fact made before the enactment of 1909, and those made after the enactment of this law; and also, in the case of transfers made before the enactment of 1909, into vested estates or interests on the one hand, and contingent or defeasible estates on the other.

Turning now to the New York Law and the decisions there, even if the New York Legislature intended by the words annexed to its third class, "whether made before or after the passage of this act," to subject to tax remainders and interests as well as contingent remainders or interests, the law was apparently not so construed, for by Chapter 76 of the Laws of 1899 the New York Legislature amended the Act of 1892 expressly imposing a transfer tax upon remainders and reversions which had been vested prior to June 30, 1885. And in the case of the Matter of Pell, 171 N. Y., 48 (1902), the Court of Appeals of the State of New York was called upon to consider the constitutionality of this act. Its exact words were:

> "All estates upon remainder or reversion which vested prior to June 30, 1885, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act, shall be appraised and taxed * * * as soon as the person beneficially interested therein shall be entitled to the actual possession or enjoyment thereof."

And Mr. Justice Bartlett, delivering the opinion of the Supreme Court of Appeals in the Pell case, *supra,* said:

> "If these estates in remainder were vested prior to the enactment of the transfer tax act, there could be in no legal sense a transfer of the property at the time of possession and enjoyment. This being so, to impose a tax based upon the succession would be to diminish the value of these vested estates, to impair the obligation of the contract and take the property for public use without compensation."

This decision was rendered in 1902, is a leading case, and has been many times followed by the same court and the other courts of New York State. The same principle was later announced by the same court *In re* Craig, 181 N. Y., 551; 74 N. E., 1116 (affirming 97 N. Y. App. Div., 289; 89 N. Y. Supp., 971). The New York and other state cases and English authorities are collected and cited in support of this text, which appears in 37 Cyc., 1557:

> "In the case of an estate in remainder or reversion which vests at the time of the testator's death, although the possession is postponed, the transfer or succession, which is the subject of the tax rather than the estate itself, is referred to the death of the testator, and if not taxable under any law then existing cannot be taxed under a statute enacted thereafter, although before the vesting of the estate in possession."

The decision in the Pell case was rendered over five years before the New Jersey Transfer Tax Law of 1909 was enacted, and many of the other decisions in that State following the Pell case had then been rendered. So that, it must be assumed that the draughtsmen of our New Jer-

sey Law of 1909 understood, and intended to make, a distinction between transfers made *before* the enactment of the law and transfers made *after* the enactment of the law, and between transfers made before the enactment of the law which created vested remainders or interests and those which created but contingent or defeasible remainders and interests. With these distinctions in mind, our Legislature nowhere assumes in the act of 1909 to tax any transfer made *before* the enactment of the law, whether creating a vested remainder or interest or a contingent or defeasible remainder or interest. It then, intelligently and purposely omitted from its third class the words of the New York Statute of 1892 which read:

> "By any such transfer, whether made before or after passage of the act,"

thus expressing a plain intent to not tax transfers made *before* the enactment of the law; an intent which is made still more plain by the fact that in dealing with contingent or defeasible interests in its fourth class of transfers, it even expressly limits those made taxable to the ones "transferred by an instrument taking effect *after the passage of* this act, or of any transferred pursuant to a power of appointment contained in any instrument taking effect *after the passage of this act.*"

In other words, in view of the decisions which had been rendered in construing the New York enactment of 1892 and the latter enactment of 1899, the New Jersey Legislature understood in 1909 that vested remainders or interests created before the passage of the act could not be constitutionally taxed. And that such contingent or defeasible interests might possibly be taxed, but nevertheless elected to tax only such of these

contingent and defeasible interests as were *"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."*

There was reason back of this decision on the part of the New Jersey Legislature, for no one could fairly be said to have intended prior to 1909 to avoid the payment of a transfer tax under a law which had not been enacted. And even if contingent or defeasible interests could have been taxed the New Jersey Legislature decided not to tax them, was not bound to tax them, and in justice should not have taxed them, because by so doing its tax law would have been retroactive, a not very desirable characteristic, it will be conceded, even in a tax law.

But, besides going astray and erroneously finding that the New Jersey Law is a copy of the New York Law of 1892, the very learned Supreme Court has misunderstood and misapplied the decision of the Court of Appeals of the State of New York in the Matter of Green, 153 N. Y., 223; 47 N. E., 292. The effect of the decision in that case was to find there was *no transfer in fact prior to the death of decedent.* And this finding was due to these facts: Sarah Ellen Green, a resident of New York, died on May 21, 1893, leaving a will. Previous to her death, on February 14, 1889, she had delivered to a trustee bonds and other property under a deed or instrument bearing date on that day, which in terms purported to assign and transfer the property to a trustee and his successors in trust,

> "1. To collect the income and apply the same to her during her lifetime.

> "2. After her death to divide and pay over the same and the profits among her three nieces, who were named, the issue of either who might die before the donor to receive the share to which the mother would have been entitled, if living, and in case of the death of either of the nieces before her death her share to go to the survivor."

Of this instrument in this case, Mr. Justice O'Brien, speaking for the Court, said:

> "Power was reserved to modify the instrument at any time with the consent of the trustee, and to appoint a successor in case of his death.
>
> "The instrument was modified by another executed November 14, 1890, and by another dated October 28, 1891, both of which were in substantially the same form as the original."
>
> "The changes made related to the distribution of the remainders among the nieces and their heirs at the death of Mrs. Green."

In other words the settlor in the Green case reserved the right to modify the settlement at any time with the consent of the trustee and reserved the right to appoint a successor to the trustee in case of his death; and did in fact twice modify the settlement made by the original instrument, in respect to the distribution of the property among her nieces and their heirs. That is to say, with the single exception that she must have the consent of the trustee (who was not a beneficiary, and she could appoint his successor), and she undoubtedly "knew her man," she was just as free to change or revoke the settlement as though she had made a last will and testament. So that, in the Green case it could be said, and was said, and properly so, that

"The death of the donor was the event which made the transfer complete and effective, and secured to the nieces the possession and enjoyment of their property."

Comparing now, with the facts in the Green case, those in the case before the Court, we find John J. Carter, who died January 3, 1917, under date of January 14, 1911, "granted, bargained and sold" the securities in question "unto said trustees"

"To have and to hold the aforesaid personal property hereinbefore conveyed unto said trustees to and for their only proper use and behoof forever;

"In trust, nevertheless, for the uses and purposes hereinafter declared, that is to say,

"*First.*—Said trustees are to receive and collect the income, interest and profits accruing from said property during the natural lifetime of said settlor, and pay the same over to him from time to time during said period.

"*Second.—The corpus of the property conveyed to the trustees shall be subject to their absolute control and disposition immediately upon the execution of this deed of settlement without power of revocation in the settlor and free and discharged of any encumbrances controlled by him.*"

The Court will please note that there were four trustees, three of whom were children of the settlor, and to each of whom at his death the trustees were directed to "pay over 21% of said principal or corpus" if they survived the settlor.

So that, while it is true that in the Green case, *supra*, the transfer to the nieces did not become effective and their interests were not finally secured until the death of the settlor, for she might change her mind at any time before her death,

and her deed of settlement, in no proper sense can this be said in the case of the settlement involved in this case. The interests following the life interest reserved to the settlor were vested interests for all practical purposes. They could only be lost to the beneficiaries, three of whom were of the trustees and who had actual joint possession of the securities with their co-trustee, by their deaths in the lifetime of the settlor. True, their interests were defeasible, but they were vested and valuable. Any beneficiary could have sold his interest, and the purchaser's title would have been absolute, except that it might be defeated by the death of the beneficiary in the lifetime of the settlor, but not otherwise.

The other cases cited by the learned Supreme Court below and by the learned Attorney General are no more in point than this decision in the Green case, because they too involve only or primarily the question, whether a transfer such as is made taxable, had in fact been made entirely without regard to the time of any such transfer in respect to the enactment of the transfer tax law. We have already shown that the construction placed by the learned Supreme Court below upon the decision in the Green case is not the law in New York State, nor considered to be in any court or in the actual application of the transfer tax law and the assessment of taxes.

POINT V.

Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, does not impose a direct tax upon property, the act only taxes the transfer of property in certain cases.

This point has been raised in so many cases where the courts have been called upon to construe the various Inheritance Tax laws passed by the various states and has been decided so often that it would appear needless to go at length into the question here. It would seem to be too clear for argument that the legislative intention in this regard was to deal with taxable transfers and with nothing else.

The very title of Chapter 228 of the Laws of 1909, as amended, is as follows:

> "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."

We are of the opinion that under the decisions of the United States Supreme Court it would be impossible to uphold the validity of an Inheritance Tax Act such as the New Jersey Statute, upon the theory that it imposes a direct tax upon property, or in fact upon any theory other than the theory that the Legislature intended to tax *transfers* of property. In United States *v.* Perkins, 163 U. S., 629, it was held that an inheritance tax is not a tax upon property but upon its transmission.

This question was gone into at length in Knowlton *v.* More, 178 U. S., 41, and in Matter of Pell, 171 New York, page 48.

In the Matter of Keeney, which was appealed

to the United States Supreme Court, from the State of New York, the Court decided that

> "the statute imposing a tax on the transfers of property intended to take effect in possession or enoyment at or after the death of the grantor, is not a property tax but in the nature of an excise tax on the *transfer of property.*"
>
> 222 U. S., 535.

It is contended, therefore, for the above reasons that the assessment should be set aside.

Very respectfully,

CHURCH, HARRISON & ROCHE,
Attorneys and of Counsel with
the Prosecutors-Appellants.

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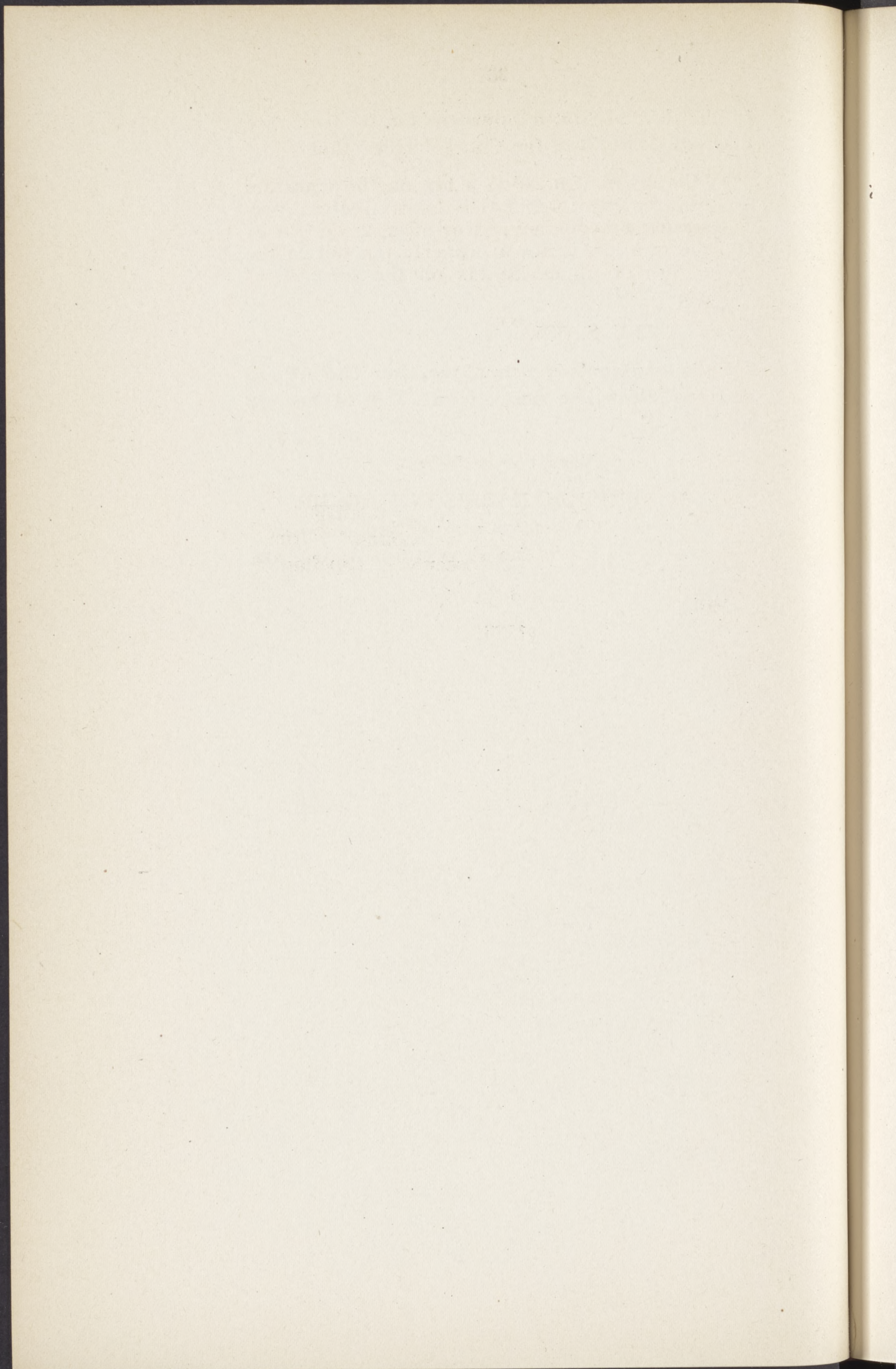

New Jersey Court of Errors and Appeals.

Luke B. Carter and George A. Eckbert, Executors of the Estate of John J. Carter, deceased, *Prosecutors-Appellants,* *v.* Newton A. K. Bugbee, Comptroller of the state of New Jersey, *Defendant-Respondent.*	*On Certiorari.*

BRIEF OF DEFENDANT-RESPONDENT.

This appeal involves the legality of an assessment of a tax upon a non-resident decedent's transfer of property by a gift made in contemplation of death, and intended to take effect in possession and enjoyment at or after his death.

The assessment is made pursuant to Chapter 228, Laws of 1909, as amended, the particular sections applicable to the case in hand being Section 1, par. third of Section 1, and the Third paragraph of Section 12.

The State's right to tax this transfer is conceded, if, at the death of the donor the persons then becoming entitled to the possession and enjoyment of the property had been in the taxable class at the time of the delivery of the deed of trust; but its right to tax under this statute in force at donor's death is denied, because by the law in force at the delivery of the deed the persons who at donor's death became entitled to the possession and enjoyment of the property were not in the taxable class.

As the pertinent provisions of our Act of 1909 were taken from the New York Act of 1892, "it is presumed that the Legislature intended that its provisions should be understood and applied in accordance with the construction previously placed thereon by the New York Courts."

Hopper vs. Edwards,
88 N. J. Law p. 476.
Neilson v. Russel.
76 N. J. Law, 655.

In our brief in the Supreme Court, we directed the attention of the court to the cases, in re Green, 153 N. Y. 223; Crocker v. Shaw, 175 Mass. 776.

In the Green case the deed of trust was delivered in 1889. The donor died in May, 1893. The Appellate Division held that it was an irrevocable deed, and the Court of Appeals treated it as such. The donor reserved the income during her life, and directed that at her death the corpus be divided

in specified amounts among her three nieces, and the issue of any who might predecease the donor. The act in force at the time of the proceedings to tax was Chapter 399, laws of 1892. The provisions of the New York statute with reference to the taxation of gifts to take effect in possession or enjoyment at death, were similiar to those in the New Jersey transfer tax act. The court said "The real question is whether the remainders which the nieces took under the deed were intended to ' take affect, in possession or enjoyment ' at or after the death of the donor. Until her death, they had no actual possession, or right to the possession, of the property.

Since they could not receive any part of the principal or the income till her death, their right of enjoyment was postponed till the happening of that event. *Whatever interest they may had before, the right to the possession and enjoyment depended upon the death of the donor.* * * * * The death of the donor was the event which made the transfer complete and effective, *and secured to the nieces the possession of the property.* (The italics are ours.)

In Crocker v. Shaw, 175 Mass. 266, a statute provision, taxing gifts, similiar to our statute, was before the court; the trust deeds were delivered before the statute, the death occurred after the statute was in force. The donor reserved a life estate. The Court said: "We see no difference in principle between propery passing by a deed intended to take effect in possession or enjoyment on the

death of the grantor, and property passing by Will. In either case it is the privilege of disposing of property after the death of the grantor or testator which is taxed. * * * * It is immaterial, it seems to us, in this case, as it would be in the case of a Will, that the indenture was dated and executed before St. 1891, c. 425 took effect. It is the *vesting of the property in possession and enjoyment on the death of the grantor and after the statute took effect,* that renders it liable to the tax, and both of these thing happened in this case." (the italics are ours).

The opinion of the Supreme Court clearly states the law upon which the taxing authorities relied in imposing this tax. The cases cited inthe opinion are controlling and should be followed here.

In the Craig case cited in the appellant's brief, the deed was not made in contemplation of death but of marriage, and the other case cited have either been differentiated by the court below, or are not sufficient authority to overrule the Green case.

We ask that the judgment of the Supreme Court be affirmed.

John W. Wescott,
Attorney General.

Theo. Rurode
of Counsel.