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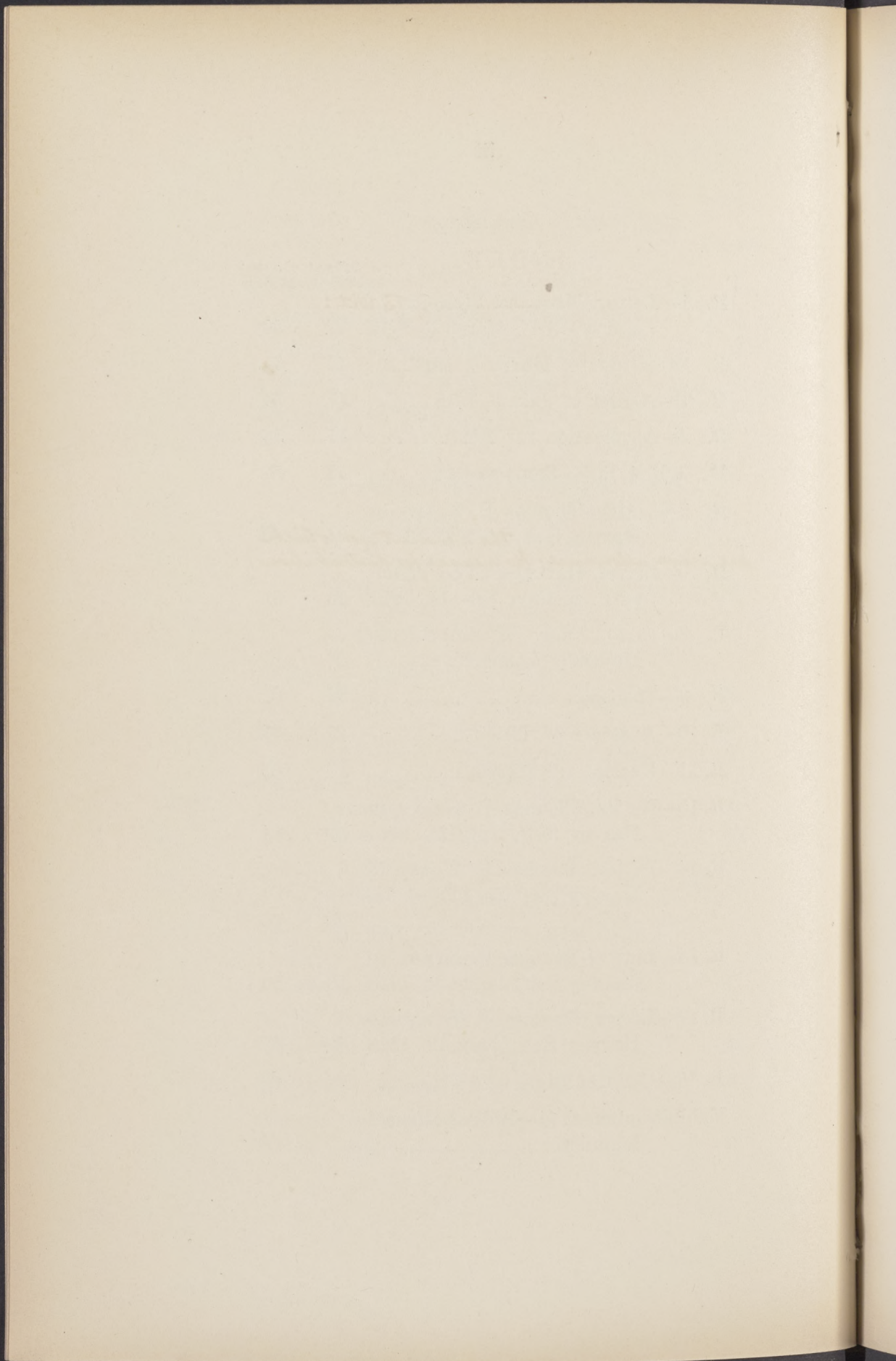
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ACCOUNT.

The appellant has only printed such parts of the accounts as are at issue here, *To Wit:*

In each account the total amount with which the accountant has charged herself; the one item of \$800.00, in each account for which the accountant prays allowance, being the amount taken on July 30, 1917, from each one of the minors' estates, to make up the \$3,200, paid to Louis W. Garrick by the guardian, supposing that it was to be loaned to Fairy W. Garrick on bond and mortgage. *The amount for which she prays allowance; the balance for distribution.* 10

The account of Margaret Leonard, guardian of Thomas Mannion, Michael Mannion, Joseph Mannion and David Mannion, minors, shows as follows: 20

This accountant charges herself as follows, as to Thomas Mannion:

Total receipts with which guardian charges herself, from July 15, 1915 to July 1, 1927.....\$4,380.32

Guardian prays allowance for the following item, July 30, 1917—By amount paid out on bond and mortgage on property on Kensington Ave., Jersey City, owned by Fairy W. Garrick. (This mortgage is now due and owing, but the mortgagor claims that the mortgage is a forgery and refuses to pay same.).....\$ 800.00 30

The total amount for which the guardian prays allowance, including the above item\$2,904.77

Account of Margaret Leonard.

SUMMARY.

	This accountant charges herself as follows	\$4,380.32
	This accountant prays allowance as follows	\$2,904.77
10	Balance in hands of accountant belonging to Thomas Mannion.....	\$1,475.55

This accountant charges herself as follows, as to Michael Mannion:

	Total receipts with which guardian charges herself, from July 15, 1915, to July 1, 1927.....	\$3,811.82
20	Guardian prays allowance for the following item, July 30, 1917—By amount paid out on bond and mortgage on property on Kensington Ave., Jersey City, owned by Fairy W. Garrick. (This mortgage is now due and owing, but the mortgagor claims that the mortgage is a forgery and refuses to pay same.)	\$ 800.00
30	The total amount for which the guardian prays allowance, including the above item	\$2,361.27

SUMMARY.

	This accountant charges herself as follows'	\$3,811.82
	This accountant prays allowance as follows	\$2,361.27
40	Balance in hands of accountant belonging to Michael Mannion.....	\$1,450.55

Account of Margaret Leonard.

This accountant charges herself as follows, as to Joseph Mannion:

Total receipts with which guardian charges herself, from July 15, 1915, to July 1, 1927.....	\$4,382.32	
Accountant prays allowance for the following item, July 30, 1917—By amount paid out on bond and mortgage on property on Kensington Ave., Jersey City, owned by Fairy W. Garrick. (This mortgage is now due and owing, but the mortgagor claims that the mortgage is a forgery and refuses to pay same.)	\$ 800.00	10
The total amount for which accountant prays allowance, including the above item	\$2,206.77	20

SUMMARY.

This accountant charges herself as follows	\$4,382.32	
This accountant prays allowance as follows	\$2,206.77	
Balance in hands of accountant belonging to Joseph Mannion.....	\$2,175.55	30

This accountant charges herself as follows, as to David Mannion:

Total receipts with which guardian charges herself, from July 15, 1915, to July 1, 1927.....	\$4,381.43	
Guardian prays allowance for the following item, July 30, 1917—By amount paid out on bond and mortgage on property on Kensington Ave., Jersey		40

Account of Margaret Leonard.

	City, owned by Fairy W. Garrick. (This mortgage is now due and owing, but the mortgagor claims that the mortgage is a forgery and refuses to pay same.)	\$ 800.00
10	The total amount for which guardian prays allowance, including the above item	\$2,214.73

SUMMARY.

	This accountant charges herself as fol- lows	\$4,381.43
	This accountant prays allowance as fol- lows	\$2,214.73
20	Balance in hands of accountant belong- ing to David Mannion.....	\$2,166.70

Dated, Jersey City, N. J., January 3, 1928.

MARGARET LEONARD,
Accountant.

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

30 MARGARET LEONARD, being duly sworn accord-
ing to law, upon her oath deposes and says:

That she is the guardian in the foregoing
account named and that the same is in all
things just and true, both as to the charges and
discharges thereof, according to the best of her
information and belief.

MARGARET LEONARD.

Sworn and subscribed to before
me this 3rd day of January,
1928.

40 DONALD M. WAESCHE,
Attorney at Law of N. J.

EXCEPTIONS TO ACCOUNT.

Filed January 19, 1928.

HUDSON COUNTY ORPHANS' COURT.

In the Matter of MARGARET LEONARD, guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors.	}	<i>On Excep- tions to Account.</i>	10
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Michael Mannion and David Mannion, two of the children above named of whom Margaret Leonard is the guardian, hereby except to the account of said Margaret Leonard of the moneys that she holds for them as such guardian, for the following reasons: 20

First. Accountant prays allowance for the sum of eight hundred (\$800) dollars in the account of Michael Mannion loaned by her to Fairy W. Garrick, for which she took as security for said loan a bond and mortgage which were forgeries and for that reason the mortgagor refuses to repay the loan. Accountant having loaned this money without good and sufficient security is negligence and it is therefore not a charge against the estate of Michael Mannion. 30

Second. Accountant prays allowance for the sum of eight hundred (\$800) dollars in the account of David Mannion loaned by her to Fairy W. Garrick, for which she took as security for said loan a bond and mortgage which were forgeries and for that reason the mortgagor 40

Exceptions to Account.

refuses to repay the loan. Accountant having loaned this money without good and sufficient security is negligence and it is therefore not a charge against the estate of David Mannion.

Dated, Jersey City, N. J., January 18, 1928.

10

DONALD M. WAESCHE,
Attorney for Exceptants.

20

30

40

Margaret M. Leonard, direct.

10 and sufficient security is negligent and it is therefore not chargeable against the estate of Michael Mannion. In view of the fact that the exceptant has made that charge, it seems to me the burden of proof is upon the exceptant to prove that the bond and mortgage is a forgery. Now, it may not make any difference so far as this accounting goes, but I would like to have that appear on the record for a ruling by your Honor—not necessarily now.

The Court: Suppose I hear your defense in the case and reserve the ruling.

Mr. Shipman: I would like that to appear on the record as part of the position that I take in the case.

20 The Court: Well, it is on the record.

Mr. Shipman: And I also want to say this, that even though the mortgage should turn out not to be a forgery then I do not think the accountant ought to be surcharged here.

30 Mr. Waesche: So far as these wards are concerned, they would not know what the transaction was with regard to the placing of this mortgage. The accountant asks for an allowance of \$800 to each one of the four wards. That is \$3,200; and she says in her account that the mortgage she believes to be a forgery. The exceptants except to that allowance. On the face of it it looks as though it ought to be explained by the accountant, and if she can explain this thing so that she is not to blame for it I suppose the Court will allow it. That is all the exceptions are filed for, for the purpose of bringing that to the notice of the Court.

40

Margaret M. Leonard, direct.

The Court: I will reserve a ruling on this until I hear what the facts are.

Mr. Shipman: I have the bond and mortgage here and I would like to have it marked later, and I would like to have a chance to submit a signature of Mrs. Garrick and the signature on the bond and mortgage to a handwriting expert. 10

Mr. Sullivan: That is perfectly satisfactory to us.

Mr. Waesche: Does the Surety Company claim this mortgage to be a forged mortgage.

Mr. Shipman: I cannot tell until after I have submitted it to a handwriting expert.

Direct examination by Mr. Sullivan. 20

Q You are the guardian who has filed the four accounts here under consideration by the Court as the guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion? A Right.

Q Where do you live? A 123 Robinson avenue, Great Kills, Staten Island.

Q The children whose accounts you are filing here, they are your children? A My children. 30

Q By a former husband? A David Mannion.

Q Will you give us the ages of those children? How old is Thomas Mannion? A Next January he is twenty-one, the 15th day of January.

Q Michael Mannion? A He was twenty-four years old the 18th day of March.

Q David Mannion? A Twenty-three, the 5th day of April.

Q And Joseph Mannion? A Sixteen the 31st of December. 40

Margaret M. Leonard, direct.

Q Then Thomas and Joseph are still minors, under 21 years of age? A Yes.

Q Michael and David are over 21? A Yes.

Q And Michael and David are the ones who have filed the exceptions in this matter? A Yes, your Honor.

10 Q Michael lives where? A With my sister in 37 Eastern Parkway, Greenville, Jersey City.

Q And David lives where? A 123 Robinson avenue, Great Kills, Staten Island, with me.

Q Have you bank accounts of these children as guardian? A Four books, yes, judge.

Q Where did the estate come from that belongs to these various children? A From my father-in-law.

20 Q As the father of your first husband, is that right? A Yes, judge.

Q Did you in and about the year 1917 have bank accounts as guardian for each of these children? A Yes.

Q Have you with you today your bank books? A Yes.

Q Will you let me have them, please? These show four accounts in the Trust Company of New Jersey, Bergen and Lafayette Branch? A Yes.

30 Q And on July 30, 1917, according to your account there was \$800 drawn from each one of these books. What was that money drawn for? A To be loaned out as a mortgage on Fairy W. Garrick's home.

40 Q Will you relate to the Court the circumstances surrounding the giving of that money? First of all, where did you live at that time? A When I gave that money out, your Honor, I was living at 18 Westervelt Place, Jersey City. In the meantime I gave birth to a baby. That was the 21st of July; and in the second week of that

Margaret M. Leonard, direct.

month Mr. Kenny came to my house and had me sign four drafts, saying Mr. Garrick was applying to the bonding company to lend out some money for my interest—for the benefit of the children; so I signed the drafts thinking they were all right.

Q What was your condition at that time; were you up and around the house? A I was in a very weak condition. I was under three doctors' care and a nurse at the time. 10

Q Were you in bed or around the house? A I was in bed, and I had left the bed.

Q How long did you remain in bed? A I could not walk from July until September.

Q Was this during that period? A That was during that period. That was in July.

Q You mentioned a Mr. Kenny. What is Mr. Kenny's first name? A Thomas P. Kenny. 20

Q What relationship did Mr. Kenny have toward this guardianship or you, if in any way? A Nothing, so far as I know, only he did business with Mr. Garrick. Mr. Garrick was in to see Mr. Kenny, I am sure.

Q Did Mr. Garrick have any connection with you as a guardian? A Yes; he had charge of the estate of my father-in-law. 30

Q He was one of the executors of your father-in-law's estate? A Yes.

Q Had he given you this money as a part of the distributive share of each of your children, that is in these books? A Yes.

Q You had received that from Mr. Garrick as executor? A Yes.

Q Did Mr. Garrick prior to this time ever discuss with you the investment of any of these moneys? A Not as I remember, your Honor. 40

Margaret M. Leonard, direct.

Q What was the first you heard of the investing of any of these moneys? A I do not really remember anything, only just signing the drafts and lending the money.

Q You say "signing the drafts." Was that on the occasion when Mr. Kenny came there? A
10 Yes.

Q What did Mr. Kenny say to you, as nearly as you can recall, at that time? A As nearly as I can recall I imagine he said it would be a good investment and everything would be all right. That is all I remember at that time.

Q How long was Mr. Kenny in your home at the time these drafts were signed? A I do not think he could be any more than five minutes or so; I do not remember.

Q Do you recall to whom the drafts were made payable? A I am sure they were made payable to the bonding people.

Q Who had your passbooks with the bank at that time? A Mr. Garrick had the books at the time.

Q Did Mr. Kenny have the books with him when he came there to have these drafts signed? A No, I do not think he did.

Q After these drafts were signed did you get the bond and mortgage? A No, I did not. I did not know anything more about it.

Q Did you ever get the bond and mortgage? A Never, that I remember.

Q As guardian of these children you had certain other bonds and mortgages, didn't you? A The bonding people had them.

Q They kept them? A Yes.

Q But you owned them as guardian? A Yes.

Q And one of these other bonds and mortgages was a bond and mortgage by Fairy W.
40

Margaret M. Leonard, direct.

Garrick, the mother of Louis Garrick, on a piece of property on the boulevard, wasn't it? A Yes.

Q That had been given to your father-in-law?
A Yes.

Q And it came to you as a part of the distribution of the estate? A Yes.

Q And the Massachusetts Bonding and Insurance Company held all these bonds and mortgages that you held as guardian? A Yes. 10

Q Now, coming back to the mortgage that Mr. Kenny came to you about, you say you never had that. Did you ever see that bond prior to the time Mr. Garrick went away? A I never saw it, never.

Q Did you receive any interest on that bond and mortgage? A No, not as I remember. I remember the following six months after—that was in July, and then in January— 20

Q July of what year? A The January following was 1918—six months interest was due, and I went down to him, and I could not see him, and then when I went down again in March his office was nailed up, he was gone away.

Q Has he ever come back since, to your knowledge? A Never. I have never heard tell of him since.

Q Did you ever receive any interest from Fairy W. Garrick? A She paid me her interest every six months, \$37.50 on \$1,500. 30

Q That was a different mortgage? A That was a different mortgage.

Q Coming back to this mortgage that Mr. Kenny got the money for, did Fairy W. Garrick ever pay you any interest on it? A Never.

Q Did you endeavor by yourself or through your attorney or in any way to collect the interest from her? A Well, she was not living here 40

Margaret M. Leonard, cross.

at the time, but I tried to find out where she was and she was away somewhere at the time—I tried to find out why she did not pay me that interest as well as she paid me the other.

Q And what was the result? A I never heard of either one of them.

10 Q She lived down at Avon at that time, did she, on the shore? A Something like that.

Q The Mr. Kenny that you speak of is this gentleman sitting back of me? A Yes, Thomas P. Kenny.

Cross examination by Mr. Shipman.

Q How long have you known Mr. Kenny? A Since I have been a little girl, I guess twenty
20 some years, as far as I remember; maybe more.

Q You had confidence in his statement to you that the investment was all right when he came to see you; you thought the investment was all right when he said so? A Yes, he said so.

Q You trusted him? A I trusted him. I trusted Mr. Garrick also.

Q When Mr. Kenny came in and asked you to sign those drafts you thought it was all right for you to sign them, didn't you? A Yes, he
30 said he was sent there by Mr. Garrick.

Q You thought it was all right if he said so, to sign the drafts? A Why, yes.

Q And didn't Mr. Kenny have charge of the insurance on the property that belonged to the Michael Mannion estate? A Yes.

Q He had had for some time? A Yes.

Q And he had been a friend of Michael Mannion's? A Yes.

Q And handled his insurance business? A Yes.
40

Margaret M. Leonard, cross.

Q And collected rents? A Yes.

Q And at that time when this money was paid out he was collecting rents for the estate?

A Yes.

Q And for you, wasn't he? A Yes.

Q You were guardian at that time? A Yes.
Mr. Kenny always collected rents.

10

Q You were guardian at the time? A Yes.

Q And had been for a couple of years? A Yes.

Q And Mr. Kenny had handled the investments you had as guardian, hadn't he—that is the mortgage—and collected the interest and rents for you? A Mr. Kenny never collected any interest for me.

Q Who did? A I did myself.

Q All the mortgages that you had— A Not 20
all the mortgages—not of 106 Kensington avenue.

Q I am just asking you about the others. You had several mortgages, didn't you, as guardian for these children? A Yes.

Q Who collected the interest on those—did you? A Mr. Garrick collected most of the interest for me, and then his mother paid the other interest to me by mail.

Q But every time the interest came due on these various mortgages that you had did you 30
go and collect the interest? A No; Mr. Garrick, and then he sent it to me, as far as I can remember.

Q Louis W. Garrick? A Yes.

Q And that had been going on ever since you were appointed guardian by the Court? A Well, it went along until 1917.

Q Until he went away? A Yes.

Q Well, he went away later than that, didn't he? A Let me see.

40

Margaret M. Leonard, cross.

Q About 1919, wasn't it? A 1917 I loaned the money, and the following January, that would be 1918, when I went to receive this interest off him he was gone, his office was all nailed up.

10 Q Do you remember when the Court appointed you guardian—in 1915, wasn't it? A Yes.

Q Do you know who was your attorney at that time? A I think Judge Tennant.

Q Are you sure of that? A Well, I am positive.

Mr. Sullivan: She does not understand.

A I do not remember.

20 Mr. Sullivan: Judge Tennant was on the bench at that time.

Q Did you have an attorney to go before the judge? A I never had any attorney, only the attorney that had charge of the estate, that was Mr. Garrick.

Q Was he your attorney? A He was not my attorney, he was my father-in-law's attorney.

30 Q I am only trying to get some information. I am not at all trying to cross examine you. What I want to find out, if possible, is did Mr. Garrick go before the Court when you came there to ask to be appointed guardian, and ask to represent you and ask the judge to appoint you? A Well, he had charge of the estate; I guess he did. You see, I cannot remember. I had so much on my mind at the time it is hard for me to think of everything.

40

Margaret M. Leonard, cross.

Mr. Shipman: I would like to have the original petition and order appointing her guardian—not necessarily now, but marked as an exhibit in this case. And also subsequent orders that were made since she has been guardian.

The Court: Don't you think you would better arrange that yourself with the Surrogate? 10

Mr. Shipman: All right.

Q Will you look at that paper. Is that your signature? A Yes, that is my signature.

Mr. Shipman: I offer that for identification.

(By consent of counsel the paper was admitted and marked Exhibit R. 1 of this date.) 20

Q I want you to look at these applications. Is that your signature? A That is mine.

Q And this? A That is mine.

Q And this? A That is mine.

Q And this? A That is mine.

Mr. Shipman: Those are the original applications, and I offer them in evidence. 30

Mr. Sullivan: No objection.

(Admitted and marked Exhibits R. 2, R. 3, R. 4 and R. 5.)

Q You said Mr. Garrick was executor of Michael Mannion's will? A Yes.

Q Had he been the attorney for Mr. Mannion for a great many years? A Yes.

Q How long had you known Mr. Garrick? A I never had any dealings with Mr. Garrick at 40

Margaret M. Leonard, cross.

all until my father-in-law died and he had charge of the estate, that is all I know.

Q Do you remember in 1919 about going over to New York to the office of the insurance company one time after Mr. Garrick left? A On what business?

10 Q You went over and I believe saw Mr. Self, this gentleman sitting in this chair? A I know Mr. Self.

Q Do you remember going over there to the office of the insurance company in New York? A If I knew what I went over about maybe I would remember.

Q You went over, I presume, to tell Mr. Self that Mr. Garrick had left town and you wanted to know what to do about it. A I do not re-
20 member ever doing anything like that.

Q Do you remember going over to New York to see Mr. Self? A When they gave me support for the children I used to go over there on different occasions, but never to speak about Mr. Garrick.

Q You went over to see Mr. Self anyway a number of times, didn't you? Do you recollect that? A I never went over on any occasion about Mr. Garrick.

30 Q But you did go over to see Mr. Self, didn't you, several times? A I think maybe it was about premiums that had to be paid on bonds or something.

Q You know him, anyway? A I know Mr. Self well, sure.

Q When did you first go to Judge Sullivan to get him to be your attorney, do you remember that? A That must be about ten or eleven years ago, as near as I can remember.

Margaret M. Leonard, re-direct—re-cross.

Cross examination by Mr. Waesche.

Q You said your child was born on July 21?

A 1917. I was married in 1916, and a year in July my baby was born—1917.

Q And it was a few days after that that Mr. Kenny came to your house and you signed these drafts? A Yes. 10

Re-direct examination by Mr. Sullivan.

Q You said something about Mr. Kenny saying the Surety Company had consented to this?

A To Mr. Garrick.

Q What? A That Mr. Garrick had applied to the bonding people to lend out this money. Then I thought it was perfectly all right when I heard that part. 20

Q You mean Mr. Kenny told you that? A Yes.

Q These applications for the bonds that you have identified your signature on, through whom were those bonds written; what agent? Who was the one who got the Massachusetts Bonding and Insurance Company to go on your bond? A Mr. Kenny and Mr. Fisher was the first ones that ever took me to the Massachusetts Bonding Company. 30

Re-cross examination by Mr. Waesche.

Q Did you understand when you signed these orders that Mr. Kenny was to get the cash from the bank on those orders? A Well, that I do not remember. You knew I was in a very weak condition at the time, and that I do not remember. 40

Arthur M. Mueller, direct—cross.

Q You do not remember either to whom those orders were paid, do you? A I understood it was to go to Mrs. Garrick for the mortgage, that is all I understood.

Q You do not know to whom the mortgages were drawn? A No, I do not remember.

10

ARTHUR M. MUELLER, sworn.

Direct examination by Mr. Sullivan.

Q You are connected with the Trust Company of New Jersey in the Bergen and Lafayette Branch? A I am.

Q Did you at our request examine the records of the bank in order to try and locate the four drafts that were drawn from accounts 29946, 29947, 29948, and 29949 on July 30, 1917, amounting to \$800, as appears by this book? A We did. We made a very diligent search for it Wednesday and Thursday.

20

Q Have you located the drafts? A No, we have not.

Q Do your records show to whom those drafts were made payable? A No, they do not.

30

Q Is there any likelihood of your being able to find them at some future time? A There is a possibility, more or less remote.

Cross examination by Mr. Waesche.

Q Do your records show whether or not the cash was paid to the person who presented those drafts? A No, they do not. The draft itself would show that. I thought probably we could

40

Thomas P. Kenny, direct.

locate something by there being a possibility of a bank draft being drawn for the entire amount, so I had that traced and we found our stub book and we could not find a draft for \$3,200.

By Mr. Sullivan.

Q In other words, I understand you are satisfied there was no bank check made out for the \$3,200? A I am satisfied of that. 10

Q Nor any other amounts with reference to those drafts of \$800 each? A Yes.

Re-cross examination by Mr. Waesche.

Q How else might this money be paid? A It may have happened in this way: The drafts might have been given to someone and the books left at the bank. In that case the drafts would come through as a check and be charged against that account on the day it came in. In other words, the drafts that would be endorsed by the parties to whom the drafts were given. 20

THOMAS P. KENNY, sworn.

Direct examination by Mr. Shipman.

30

Q You live in Jersey City? A Right.

Q How long? A Possibly 30 years.

Q What business are you in? A Real estate.

Q How long have you been in that business?

A Twenty years.

Q Do you know Mrs. Mannion? A Oh, yes.

Q Did you know Michael Mannion, her father-in-law? A Right.

40

Thomas P. Kenny, direct.

Q How long did you know him before his death? A I knew him over twenty years before his death.

Q When did he die—1914? A Yes.

Q Did you do any business for him? A Oh, yes. I collected rents for him.

10 Q And did you do any insurance business for him? A Yes.

Q How long, how many years? A Well, not very long.

Q You knew Louis W. Garrick, the attorney, didn't you? A Yes.

Q And up until the time he left what sort of a reputation did he have as an attorney around here? A Good reputation.

20 Q Did you do any business with him? A Well, yes, I did.

Q Did you do any business with Mrs. Mannion after she was appointed guardian of her children? A Yes; I have been doing business with her, collecting rents and placing insurance.

Q Rents from what? A The rents from this here property 16-18 and 27 Westervelt street.

30 Q Is that a property that the estate of Michael Mannion owns or is it a property which she has as guardian, do you know? A No, she is not guardian on that property.

Q Do you handle any insurance business or any other business or any mortgages which she might hold as guardian? A No, only this one mortgage with Garrick.

Q That is the one we have been talking about? A Yes.

40 Q Did you know anything about the mortgage on the Hudson Boulevard—the other property? A No.

Thomas P. Kenny, direct.

Q Tell us exactly what you know about this bond and mortgage that was negotiated by Fairy Garrick. A Well, Louis Garrick came into my office one morning and he told me—

Q What year was this? A This was 1917. He told me that his mother would need some money on her property on 106 Kensington avenue, and he said Mrs. Mannion has some money now and for me to find out from the bonding company if they would permit her to loan on this property. 10

Q When was that necessary?

Mr. Sullivan: I object to that. I do not see that it makes any difference.

The Court: Do you know why it was? 20

A All orders would have to be countersigned.

Mr. Sullivan: My only reason for objecting to it was this: I think all the Court is interested in is the facts—not what was in this man's mind as to what the effect of those facts might be.

The Court: I think I will hear it.

A We had to ask the bonding company before they would countersign our order. 30

Q In other words they were surety on her bond? A Right.

Q Go ahead. A Well, I took the matter up with Mr. Self and told him Mr. Garrick had submitted this here property to me and I was to go up and appraise it, and when I appraised this here property I asked Mr. Self if it would be all right for Mr. Garrick to search it. He asked me if the man was a good man, and I said yes, 40

Thomas P. Kenny, direct.

all right. So Mr. Garrick after he had it completed told me he had it completed and for me to get the money.

The Court: Did you get the approval of the bonding company?

10

A Yes, I got their approval.

Mr. Sullivan: Mr. Self is the bonding company.

The Court: Did he approve of the loan?

A Oh, yes.

Q You apprised him that the loan was all right? A Oh, yes.

20

Q You appraised the property, did you? A Right.

Q What did you appraise it at? A I disremember now, but I know I wrote a letter of my appraisal to the bonding company.

Q I show you a letter dated the 7th of July, 1917, to Mr. Self. A That is right. That is about what it would be worth at that particular time.

Q What? A Eight thousand dollars.

30

Q And you had bought and sold property there? A Yes.

Mr. Shipman: I offer that in evidence.

Mr. Sullivan: I have no objection.

(Admitted and marked Exhibit R. 6 of this date.)

Q Have you with you a letter from Mr. Self to you of July 14, 1917 of which this purports to be a copy? A I haven't got that original.

40

Thomas P. Kenny, direct.

Q But you recognize this copy? A I cannot seem to place that. It may have come through in the regular course of business.

Q Look it over and see if it refreshes your mind so that you can say whether you received such a letter as that or not. It is in reply to the letter of July 11. A Yes, I think I can remember that letter now. 10

Mr. Shipman: I offer that copy.

(Admitted and marked Exhibit R. 7 of this date.)

Q Go ahead and tell us what happened. A When Mr. Garrick had the property searched he notified me that he had it all searched and I got in communication with the bonding company and told them that everything was all right, and then we got these here orders signed. 20

Q How did you get them? A Naturally we had to have Mrs. Mannion sign those orders, and we sent to New York, or else possibly I may have brought them to New York and we had them countersigned over there.

Q No; how did you get Mrs. Mannion to sign them; what were the circumstances under which she signed them? A For to place this here mortgage on Fairy Garrick's property on Kensington avenue. 30

Q What did you do to get her to sign them? A We had taken this matter up with her about this mortgage.

Q You had personally? A Yes.

Q Had you seen her? A Yes.

Q Where? A I am in the neighborhood all the time, I would say, mostly every day. 40

Thomas P. Kenny, direct.

Q Did you speak to her about this loan? A Oh, yes, certainly.

Q Did you explain to her what it was? A Certainly.

Q Before you went for the order? A Certainly.

10 Q And she appeared to understand what it was all about? A Yes.

Q Did you tell her what you did about getting the orders? A Whenever we got the orders—

Q No; what you did when you got them. What she said, and what you said. A After we had got the orders—

Q Not after you had got them. I am trying to find out what you did when you got the orders.

A I went to Mrs. Mannion's house.

20 Q What did you tell her? A Well, we told her that Garrick was ready to pass this here title and that we needed the money and that we had to have these here orders signed, that there is the order to put out the money.

Q What did she say? A She said all right. She signed the orders.

Q Did you tell her what the money was for? A Oh, yes.

30 Q What did you tell her it was for? A I told her it was for a mortgage on Fairy Garrick's property—which she knew.

Q How much was it that you got? A We got \$3,200.

Q Do you remember to whose order the orders for the drafts were made? A They were made payable to Margaret Mannion, guardian, if I remember right.

Q Did she endorse them? A Certainly.

Thomas P. Kenny, direct.

Q Then what did you do with them? A When we got the orders then we had a check made for the entire amount, which was \$3,200.

Q Where was the check made? A It must have been made in the Trust Company of New Jersey.

10

Mr. Sullivan: I object to that.

A Well, I don't recollect.

Q What did you do with the drafts? You had the drafts, you remember that? A We had the drafts and this here money was drawn out with those drafts.

Q What money? A The money that was in the bank, the Trust Company of New Jersey.

Q Who got the money? A I got the money. 20

Q Personally? A Personally, certainly.

Q How much? A \$3,200.

Q What did you do with it? A I gave it to Mr. Garrick whenever he gave me the bond.

Q Is this the bond and mortgage which I now show you? A Right; that is the bond and mortgage—that is the bond and that is the mortgage.

Q When you received that bond and mortgage you gave Louis W. Garrick \$3,200? A Right. I got a receipt off him also. 30

Q Where is the receipt? A I think the receipt is with Judge Sullivan's papers there.

Mr. Shipman: I would like to offer the bond and mortgage and abstract of title in evidence.

(Admitted and marked Exhibits R. 8, R. 9 and R. 10 of this date.)

40

Thomas P. Kenny, direct.

Q Is that the receipt for \$3,200 which I now show you, that you received? A Right.

Mr. Shipman: I offer that in evidence.

(Admitted and marked Exhibit R. 11 of this date.)

10

Q I just want you to identify some letters. I show you some letters here, one dated May 14, 1919 addressed to Thomas P. Kenny, signed Harvey Self, and ask you if you received that letter? A Right.

20

Q Letter addressed to Massachusetts Bonding and Insurance Company, signed Thomas P. Kenny, dated July 19, 1919. Did you write that letter? A That is not my signature, but I wrote the letter.

Q Whose signature is it? A It might have been the girl in the office.

Q A letter of August 5, 1918, addressed to Harvey Self, signed Thomas P. Kenny—did you write that letter? A That is not my signature, but I wrote that letter.

30

Q And one of September 18, 1917, addressed to Harvey Self and signed Thomas P. Kenny? A Yes. You see there was some little mistake in the mortgage.

Q And one of July 27, 1917? A Right.

Mr. Shipman: I want to offer all those letters.

Mr. Sullivan: The only objection that I can see—if they are an attempt to prove something against Mrs. Mannion I want to object to them because until it can be shown that Mrs. Mannion had some knowledge of these I do not see how they would be binding

40

Thomas P. Kenny, direct.

on her. If they are for the purpose of contradicting or affirming anything that Mr. Kenny has said I have no objection to them.

Mr. Shipman: The purpose of these letters written by Kenny is to connect up this transaction—letters to the bonding company. I will not offer the letter of May 14 yet. It may have something to do with what you say—but one letter shows the value he put on the property, and the others are just that he sent some mortgages over and so on. Well, one might come under that heading; it is when Judge Sullivan was retained by Mrs. Mannion in 1919. The purpose is to show that he was retained at that time, and that prior to that time Louis Garrick was her attorney. That is the purpose of it.

Mr. Sullivan: That letter is simply information that Mrs. Mannion has retained me. I have no objection to that. All I am interested in is not having Mrs. Mannion bound by letters from Kenny to the company or from the company to Kenny.

Mr. Shipman: I am not trying to do that. The whole thing together spells out a theory which I have, which may be wrong and may be right—I do not know. I would like to have them all marked.

(Admitted and marked Exhibits R. 12, R. 13 and R. 14 of this date.)

Q Do you know whether any interest payments were made to you by Garrick? A There was no interest ever paid to me.

Q When did Mr. Garrick disappear, do you know? A I think it was in 1918.

Thomas P. Kenny, cross.

Q He has not been heard of since? A No.

Q So far as you know the bond and mortgage were perfectly all right? A Perfectly.

Q You thought they were signed by Fairy Garrick and were a valid instrument? A Yes.

10 Q And you had every reason to believe that Louis Garrick was transacting the proposition properly? A I did.

Cross examination by Mr. Sullivan.

Q Do you say that the bank drew this check for this whole amount of money? A You see, I am not sure on that.

Q That is what I want to find out. Are you sure or aren't you? A I am not sure.

20 Q Do you recall whether you took cash down to Mr. Garrick's office? A I took cash down there.

Q To whom would the check be payable then if the check were drawn? A I think we got a check.

Q What is that? A I think we got a check payable to Mrs. Mannion and she endorsed it, to the amount of \$3,200.

Q Do you mean to Mrs. Leonard? A Yes.

30 Q Let us get back again to the time you went to her house with these four drafts on each book. Do you say you went to her house on more than one occasion to get her to sign them? A No.

Q You did not have any check from the bank when you went there with the books, did you? A I did not have any check at that time, so I must have gone to her house a couple of times.

40 Q You say you must have. I ask you if you went more than once and you said only once to have things signed. Now with that in mind do

Thomas P. Kenny, cross.

you still say you went there with a check to have her sign it? A She signed the check in her house, because she could not get out, she was in bed.

Q I want to know what your recollection is. Did you go more than once? A Yes. I went more than once. 10

Q How long was it between the periods of your visits? A Maybe a couple of days.

Q You think you got the four drafts signed on one day? A Yes.

Q And you went to the bank with those drafts and got a check from the bank payable to her, and a few days afterwards went back to her house and had her endorse the check, is that so? A Right. 20

Q Now you are sure of that, are you? A Well, I am not sure, because it seems so long ago.

Q Don't you know that is not so; don't you know the money was drawn out on the 30th of July according to these books, and don't you know that the mortgage was given on the 31st of July, the next day? With that in mind do you still say that you got a check from the bank? A In fact I do not recall. 30

Q You said you recalled that you brought cash down to Garrick. Is that so? A Right.

Q Didn't you bring the cash down to Garrick the day you had these drafts signed by Mrs. Mannion? A I do not think it was the same day.

Q Do you know to whom those drafts were payable? A I think they were payable to Margaret—

Thomas P. Kenny, cross.

Q Do not guess. A I do not know.

Q Do you remember where you got the drafts? A We got the drafts, I think, in the bank.

Q Do you remember who filled them out? A I do not.

10 Q Do you remember where they were filled out? A I do not.

Q And you do not know to whom they were payable? A No, sir.

Q Do you recall whether Mrs. Mannion besides signing the drafts also endorsed them or not? A I do not recall.

Q Mrs. Mannion was in bed at that time? A Right.

Q Very ill? A Right.

20 Q In your testimony you used the word "we," at one time, referring to that visit to her house. Was there anybody else with you or did you go alone? A I went alone.

Q Now do you recall what you did with the drafts after they were actually signed by her? A I do not.

30 Q Do you recall whether they were countersigned by the Surety Company before or after she signed them? A They had to be signed by her before they would countersign.

Q Don't tell me what had to be. I am asking whether you remember. A I do not remember.

Q Do you remember whether you personally went to the insurance company with the drafts and had them countersigned? A I am not sure.

Q Do you remember where you got the bank books at the time you presented the drafts to the bank to be cashed? A I do not remember.

40 Q Do you recall definitely at the time you paid the money to Mr. Garrick and got this re-

Harvey Self, direct.

ceipt that has been put in evidence, whether at that time he gave you the bond and mortgage?

A He did not give me the mortgage, he gave me the bond.

Q And he recorded the mortgage? A He recorded the mortgage.

Q Do you remember where it was that you paid Louis Garrick the money? A 15 Exchange Place. 10

Q Down in his office? A Yes.

Q And he personally wrote that; that is in his handwriting, isn't it? A Right.

HARVEY SELF, sworn.

Direct examination by Mr. Shipman. 20

Q You were formerly associated with the Massachusetts Bonding and Insurance Company?

A I was.

Q Now you are with the Aetna Life? A Aetna Casualty and Insurance.

Q Did you personally have charge of this Mannion guardianship matter for the surety company? A Yes. 30

Q And the surety company was surety on her bond? A Yes.

Q You knew Mrs. Mannion who has just been on the witness stand? A Yes.

Q And you knew Mr. Kenny at that time? A Yes.

Q Did you know Louis Garrick, the attorney? A I never saw him.

Q I show you a paper dated July 28, 1927 and ask you if you can tell us what that is. A 40

Harvey Self, direct.

That is what we call a counter signature slip. It is a memorandum of checks countersigned or drafts.

Q Looking at that paper, does it refresh your mind as to what events took place when that paper was made out? A A draft was presented
10 to us payable to the order of the guardian for eight hundred dollars on this account.

Q Which guardian? A Margaret Mannion.

Q This lady here in court? A Yes.

Q Do you notice on the side what it says? A Mortgage on property, Kensington avenue, Jersey City.

Q Does that refresh your mind as to whether or not that was countersigned by the company for the purpose of being invested in a mortgage on
20 that property? A It was.

Mr. Shipman: I offer that in evidence.

(Admitted and marked Exhibit R. 16 of this date.)

Q Did you write this letter of May 14, 1919, to Mr. Kenny? A Yes.

Q Will you read that through and see if it refreshes your recollection as to the events described in that letter? A Yes.
30

Q Does it refresh your recollection so that you remember what took place? A Yes.

Q All right, tell us. A Mrs. Leonard called at the office.

Q That is formerly Mrs. Mannion? A Yes.

Q At the office of the Massachusetts Bonding Company? A Yes.

Q When? A May 14. She called on me and told me about Louis W. Garrick. I do not recall
40 just what was the purpose of her visit, but I do

Harvey Self, cross.

remember she told me about Louis W. Garrick. She indicated that Mr. Garrick had left town and she had not received any interest on this mortgage.

Q Did she mention anything about Louis W. Garrick with regard to herself—the relationship between them? A She mentioned him as a former attorney and indicated to me— 10

Mr. Sullivan: I ask that that be stricken out. He may state what she said.

The Court: Strike it out.

A She said that Mr. Louis W. Garrick had left town and she had not received any interest from him and she wanted to know about getting another attorney; she wanted advice as to getting another attorney, if it would be advisable to get another attorney. 20

Q Did she say anything else, did she say why she wanted another attorney? A She said because Mr. Garrick had left town and she had not received any interest from him on the mortgage.

Q What did you tell her? A I told her it was very imperative on her to get another attorney, that we would have to insist upon it. 30

Q Where did you tell her to go, if anywhere? A I think she told me she was going to consult Mr. Kenny.

Cross examination by Mr. Sullivan.

Q Did she say at that time that the mortgage was a forgery or that anyone had claimed that the mortgage was a forgery? A I do not remember that she absolutely stated that; she indicated it. 40

Harvey Self, cross.

Q You do not pretend to recollect the exact conversation, do you? A No, I do not.

Q And what you are giving us is your best recollection, and that may have happened at that time or it may have happened a few days afterwards, or the next visit when she came, or some
10 time around that period, isn't that what you mean? A I am quite clear when she came in at that time—

Mr. Shipman: What year was that?

A May 14, 1919.

Q Didn't she say anything then about this mortgage being a forgery and she not being able to collect anything upon it? A I do not think she used the word "forgery." She did not.

Q Did she say it was a bad mortgage, that it
20 was no good? A Yes.

Q In fact that was the gist of her calling upon you, wasn't it; that was the reason she had called upon you? A I do not remember the exact reason, but I remember that.

Q She has been over to see you a number of times? A Numerous times.

Q Every time that she wanted to draw money from these accounts while you were with the
30 bonding company she saw you, didn't she? A Whenever she came over.

Q You had charge of these matters? A Yes.

Q And would you say she had seen you fifty times? A No.

Q How often would you say? A I should say she had probably seen me twenty times.

Q Over a period of probably how many years? A I do not recall now. I think from 1916 or 1917.

Q Over a period of five or six years you
40 think? A Three or four years.

Harvey Self, cross.

Q She would see you about four times a year anyway, wouldn't she, about drawing interest on these accounts? Will you look at those drafts? All these withdrawals she had to see you for, didn't she? A Yes, she would have to see me.

Q All of the withdrawals? A Yes. She would have to see me. 10

Q All of the withdrawals that appear in these books? A Yes.

Q These were where the Court allowed her so much for the support of the children? A Yes.

Q And these others represent interest on the money and represent premiums that she paid to you, do they not? There is the interest and this is the premium—\$21.66 was the amount of each premium on the bond, was it? A \$21.66.

Q And you find those constantly through here? A Yes. 20

Q There is one up there and another down there, and \$31.66 was an additional premium of \$10, wasn't it? A I do not recall. It would indicate so, yes.

Cross examination by Mr. Waesche.

Q Did you write that letter R. 7 to Mr. Kenny? A Yes. 30

Q It was you that Mr. Kenny called to see with regard to this mortgage loan? A Yes.

Q Did he tell you who the owner of the property was? A I could not answer that; I do not recall.

Q You do not recall that? A No.

Q Is that your handwriting—R. 16? A No.

Q That is not your handwriting? A No.

Q Did you countersign those checks? A I did. 40

Harvey Self, cross.

Q You yourself countersigned them? A We consented to the payment.

Q The orders? A The drafts.

Q The drafts you countersigned. Did you notice that they were drawn to the order of the guardian? A Yes.

10 Q Did you notice whether or not the drafts were endorsed by the guardian? A No.

Q You do not remember? A I do not remember.

Q They may have been so far as you now remember? A So far as I now remember.

Q Do you remember who brought the drafts to the office? A Mr. Kenny.

Q And you countersigned them and handed them back to Mr. Kenny? A Right.

20 Q Did you make any comment at all about these drafts being drawn to the order of the guardian? A No.

Q You knew that they were to be paid on this mortgage loan? A Yes.

Q Why didn't you have these drafts made out to the order of the mortgagor? A I do not think the mortgagor could have drawn the money from the savings bank. The draft would have to be payable to the guardian.

30 Q Why? A The mortgagor would have had to present the pass book.

Q You knew when you handed these drafts back to Mr. Kenny that you were putting cash practically into his hands? A Yes.

Q You realized that when you gave them to him? A Yes.

Q And that that cash would be drawn from the bank and presented to Mr. Garrick? A Yes.

40 Q Nevertheless you let that go along that way? A Yes.

Hearing of April 27, 1928.

Mr. Shipman: There are certain petitions and orders in this guardianship matter that I want the Court to particularly notice. The original order appointing her guardian, dated May 3, 1915; then an order for the expenditure of a weekly amount. That was in May 1915. An order of July 9, 1915 for the same thing. An order of March 3, 1916 for the payment of part of these guardianship funds to the children and for repairs on the house. The purpose is that Louis Garrick's name appears on the papers all through the record as attorney for Mrs. Mannion. 10

Mr. Sullivan: I do not see the materiality but I have no objection. 20

Testimony closed.

(Adjourned to April 27, 1928.)

April 27, 1928.

The hearing was resumed in this case, pursuant to adjournment.

Mr. Shipman: I want the record to show that the signature of Fairy Garrick on the bond and mortgage to Margaret Mannion, dated July 24, 1917 and recorded in the Register's Office of Hudson County July 31, 1917, book 908 of mortgages, page 47, is not the true signature of Fairy Garrick who was the owner of the premises described in the mortgage, but that signature is forged. 30

Then I would like to have it appear on the record as a fact that demands have been made by Margaret Mannion of Fairy Garrick, the owner 40

Hearing of April 27, 1928.

of premises described in the mortgage, to pay the principal sum of the mortgage and interest, and that she has refused to make payment of the amount, claiming that she did not execute and deliver the bond and mortgage and she did not receive the principal money for which it was
10 given to secure \$3,200 or any part of it.

Mr. Sullivan: I think that is so.

Mr. Shipman: Also that Louis Garrick is the son of Fairy Garrick, and that the \$3,200 that Margaret Mannion invested has not been paid back to her, nor any interest on it.

Then, I have asked to have the testimony written out, and I would like to have a couple of weeks' adjournment.

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(The case was thereupon adjourned to Friday, May 11, 1928.)

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**DECREE ALLOWING ACCOUNTS AND
ADJUDICATING UPON
EXCEPTIONS.**

Filed June 22, 1928.

HUDSON COUNTY ORPHANS' COURT.

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<p>In the Matter of MARGARET LEONARD, guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors.</p>
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*Decree Allow-
ing Accounts
and Adjudi-
cating upon
Exceptions.*

The Surrogate having audited and stated the
account of Margaret Leonard, guardian of
Thomas Mannion, Michael Mannion, David Man-
nion and Joseph Mannion, minors, and placed
the same on the files of this office twenty days
previous to the seventeenth day of February,
1928, and having on the date last aforesaid re-
ported the same to this Court for allowance and
settlement; and it having been proved to the
satisfaction of the Court that the notice of her
intention to settle her account on the said seven-
teenth day of February, 1928, was given by said
accountant according to law; and exceptions hav-
ing been filed to said account by Michael Mannion
and David Mannion, two of the children of whom
accountant is the guardian, but who have now
reached their majority; and the proofs and al-
legations of the parties having been heard and
considered by the Court; and it appearing that
the accountant withdrew or caused to be with-
drawn from the account of each ward, to wit,

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Decree Allowing Accounts, etc.

Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, the sum of eight hundred (\$800) dollars to loan on a bond and mortgage and that all of said moneys, to wit, the sum of thirty-two hundred (\$3,200) dollars was lost through the negligence of the said accountant.

- 10 It is on this 22nd day of June, 1928, ORDERED, ADJUDGED AND DECREED that the disbursement of eight hundred (\$800) dollars from the estate of each ward for investment in bond and mortgage on property on Kensington avenue, Jersey City, owned by Fairy W. Garrick for which accountant prays for an allowance in her account filed herein of the administration of the estates of each of her said wards, to wit, Michael Mannion, Thomas Mannion, David Mannion and
- 20 Joseph Mannion, be and the same is hereby disallowed.

And it is further ORDERED, ADJUDGED AND DECREED that said accountant be charged in the account of each of said wards with the interest on said sum of eight hundred (\$800) dollars from July 30th, 1917, at the rate of six percent. per annum.

- 30 And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein and having found the same to be otherwise correct in all particulars;

- 40 It is on this 22nd day of June, 1928, ORDERED, ADJUDGED AND DECREED that the said account be amended in accordance with the foregoing and that after so amended the said account be allowed and that there is a balance amounting to the sum of \$2,797.55 remaining in the hands of accountant

Decree Allowing Accounts, etc.

belonging to Thomas Mannion; and that there is a balance amounting to the sum of \$2,772.55 remaining in the hands of accountant belonging to Michael Mannion and that there is a balance amounting to the sum of \$3,497.55 belonging to Joseph Mannion and that there is a balance amounting to the sum of \$3,488.70 remaining in the hands of accountant belonging to David Mannion. 10

And it is further ORDERED that said accountant be allowed no commissions until she has repaid into the estates of her wards, the amounts with which she is surcharged, at which time she may make application for the allowance of her commissions as guardian.

And it is further ORDERED that a counsel fee of \$1,500 be allowed to Mark A. Sullivan, proctor for said accountant, and that each of the aforementioned estates shall contribute equally to the payment thereof; and that a counsel fee of \$500 be allowed to Donald M. Waesche, counsel for exceptants. 20

DANIEL O'REGAN,
Judge.

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NOTICE OF APPEAL AND REASONS.

Filed July 10, 1928.

HUDSON COUNTY ORPHANS' COURT.

10	In the Matter of MARGARET LEONARD, guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors.	}	<i>Notice of Appeal and Reasons.</i>
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Massachusetts Bonding and Insurance Com-
 20 pany, a corporation of the Commonwealth of
 Massachusetts, having its principal office in the
 City of Boston, and surety upon the bond of
 the above-named guardian, and Margaret Leon-
 ard, guardian, do hereby appeal to the Preroga-
 tive Court from the following portions of the de-
 cree entered in the above-entitled cause on June
 22nd, 1928, allowing the accounts of the said
 guardian:

(a) From that part of the said decree which
 30 provides that the disbursement of eight hundred
 (\$800) dollars from the estate of each ward for
 investment in bond and mortgage on property
 on Kensington avenue, Jersey City, owned by
 Fairy W. Garrick, for which accountant prays
 for an allowance in her account filed herein of
 the administration of the estates of each of her
 said wards, to wit, Michael Mannion, Thomas
 Mannion, David Mannion and Joseph Mannion,
 be and the same is hereby disallowed.

Notice of Appeal and Reasons.

(b) From that part of the said decree which provides that said accountant be charged in the account of each of said wards with the interest on said sum of eight hundred (\$800) dollars from July 30th, 1917, at the rate of six per cent. per annum.

(c) From that part of the said decree which provides that the said account be amended in accordance with the foregoing and that after so amended the said accounts be allowed and that there is a balance amounting to the sum of \$2,797.55 remaining in the hands of accountant belonging to Thomas Mannion; and that there is a balance amounting to the sum of \$2,772.55 remaining in the hands of accountant belonging to Michael Mannion and that there is a balance amounting to the sum of \$3,497.55 belonging to Joseph Mannion and that there is a balance amounting to the sum of \$3,488.70 remaining in the hands of accountant belonging to David Mannion.

(d) From that part of the said decree which provides that a counsel fee of \$500.00 be allowed to Donald M. Waesche, counsel for exceptants.

Dated, July 6th, 1928.

CHILD, SHIPMAN & PLUMER,
Proctors for Appellant Massachusetts
Bonding and Insurance Company.

MARK L. SULLIVAN,
Proctor for Appellant Margaret Leonard.

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PETITION OF APPEAL.

Filed July 13, 1928.

NEW JERSEY PREROGATIVE COURT.

- | | | |
|----|---|---|
| 10 | In the Matter of the Appeal
from the Decree of the Hud-
son County Orphans' Court
allowing certain exceptions to
the accounts of MARGARET
LEONARD, guardian of Thomas
Mannion, Michael Mannion,
David Mannion and Joseph
Mannion, minors. | } <i>On Appeal.</i>
} <i>Petition of</i>
} <i>Appeal.</i> |
|----|---|---|

- 20 To the Ordinary of the State of New Jersey:

The petition of Margaret Leonard, of the City of Jersey City, County of Hudson and State of New Jersey, guardian, and Massachusetts Bonding & Insurance Company, a corporation of the Commonwealth of Massachusetts, with its principal office in the City of Boston, surety upon the said guardian's bond, respectfully shows:

- 30 1. On the 17th day of February 1928, Margaret Leonard, guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors, presented her account as such guardian to the Orphans' Court of the County of Hudson, and exceptions were filed thereto by Michael Mannion and David Mannion, two of the children of whom the accountant was guardian but who have reached their majority; and on the 22nd day of June, 1928, the Orphans' Court made an order and decree allowing said exceptions and ordering the said account, as
- 40 amended, to be allowed.

Petition of Appeal.

2. Your petitioners do hereby appeal from the following portions of the aforesaid decree:

(a) From that part of the said decree which provides that the disbursement of eight hundred (\$800) dollars from the estate of each ward for investment in bond and mortgage on property on Kensington avenue, Jersey City, owned by Fairy W. Garrick, for which accountant prays for an allowance in her account filed herein of the administration of the estates of each of her said wards, to wit, Michael Mannion, Thomas Mannion, David Mannion and Joseph Mannion, be and the same is hereby disallowed. 10

(b) From that part of the said decree which provides that said accountant be charged in the account of each of said wards with the interest on said sum of eight hundred (\$800) dollars from July 30th, 1917, at the rate of six per cent. per annum. 20

(c) From that part of the said decree which provides that the said account be amended in accordance with the foregoing and that after so amended the said accounts be allowed and that there is a balance amounting to the sum of \$2,797.55 remaining in the hands of accountant belonging to Thomas Mannion; and that there is a balance amounting to the sum of \$2,772.55 remaining in the hands of accountant belonging to Michael Mannion and that there is a balance amounting to the sum of \$3,497.55 belonging to Joseph Mannion and that there is a balance amounting to the sum of \$3,488.70 remaining in the hands of accountant belonging to David Mannion. 30

Petition of Appeal.

(d) From that part of the said decree which provides that a counsel fee of \$500.00 be allowed to Donald M. Waesche, counsel for exceptants.

10 3. Your petitioners complain and allege that the aforesaid order and decree of the Orphans' Court is erroneous, improper and illegal in the foregoing particulars and that your petitioners are aggrieved thereby.

CHILD, SHIPMAN & PLUMER,

Proctors for Appellant Massachusetts
Bonding & Insurance Company.

MARK A. SULLIVAN,

Proctor for Appellant Margaret Leonard.

20

Service of the within petition of appeal is hereby acknowledged this 11th day of July, 1928.

DONALD M. WAESCHE,
Attorney for Exceptants.

30

40

ANSWER TO PETITION OF APPEAL.

Filed July 18, 1928.

NEW JERSEY PREROGATIVE COURT.

<p>In the Matter of the Appeal from the Decree of the Hud- son County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors.</p>	}	<p>10</p> <p><i>On Petition of Appeal.</i></p> <p><i>Answer.</i></p>
--	---	--

The answer of Michael Mannion and David 20
Mannion, respondents, to the petition of appeal
of Margaret Leonard, guardian, and Massachu-
setts Bonding and Insurance Company, a corpor-
ation of the Commonwealth of Massachusetts,
surety upon the said guardian's bond, appellants.

1. These respondents answering admit the
allegations contained in the first paragraph of
appellants' petition of appeal filed herein.

2. These respondents are advised, believe and 30
submit that the portions of said decree com-
plained of by appellants are just and lawful and
these respondents deny that the aforesaid por-
tions of said decree or any parts thereof are
erroneous, improper and illegal and allege that
said portions of said decree are legal, proper
and correct.

Exhibit R. 1.

They therefore pray that the said petition of appeal may be dismissed with costs.

DONALD M. WAESCHE,
Proctor for Respondents.

10

Exhibit R. 1.

Commissioner of Deeds Notary Public
THOMAS P. KENNY
Mortgages, Real Estate, Investments
Care of Properties and
Insurance
686 Grand Street
Jersey City, N. J.

20

March 3rd 1916.

Harvey Self,
84 William Street,
New York City.

c/o Massachusetts Bonding & Ins Co.
Attention Mr. Self.

30

I Margaret Mannion of Jersey City, N. J. guardian of Michael Mannion, David Mannion, Thomas Mannion and Joseph Mannion authorize you to countersign enclose drafts same being for \$25.00 for Louis W. Garrick for legal services and \$484.50 as per order Judge Sullivan issued this 3rd day of March 1916, for repairs and alterations in houses No 16-18-27 Westervelt St. J. C.

MARGARET MANNION,
Guardian.

40

*Exhibit R. 1a.***Exhibit R. 1a.**

HUDSON COUNTY ORPHANS' COURT.

In the matter of the application
of MARGARET MANNION,
Guardian of MICHAEL
MANNION, THOMAS MAN-
NION, DAVID MANNION
and JOSEPH MANNION,
minors, for an order author-
izing use of principal of wards
personal estate to pay for
repairs to wards real estate.

10

*On Peti-
tion, &c.**Order.*

It appearing from the duly verified petition of
Margaret Mannion, filed herein, that the said
Margaret Mannion is the duly appointed Guard-
ian of the persons and property of Thomas
Mannion, David Mannion, Michael Mannion and
Joseph Mannion, minors, and it further appear-
ing by the will of their grandfather, Michael
Mannion, deceased, certain property known by
the street numbers as 16, 18 and 27 Westervelt
Street, Jersey City, N. J., was devised to said
minors, subject to a life interest therein of said
Margaret Mannion and which said interest is to
terminate upon her decease or remarrying, and
it further appearing that by order of the State
Board of Tenement House Commission of this
State, the said Margaret Mannion has been com-
pelled to expend for repairs and alterations to
said property, the sum of Four hundred eighty-
four dollars and fifty cents, and it further ap-
pearing that said Margaret Mannion is unable
to pay the said sum out of the income of said
property, and it further appearing that the said

20

30

40

Exhibit R. 1a.

repairs and alterations are of a permanent and lasting nature and tend to improve the value of said real estate and otherwise benefit it, and it further appearing that said Margaret Mannion as Guardian, as aforesaid, has received from the Executors of the Estate of said Michael
10 Mannion, deceased, the sum of Twenty-five Hundred Dollars on account of the share of said infants therein, and that the said Guardian will shortly receive an additional sum of approximately Fifteen Thousand Five Hundred Dollars, being the balance of said share of infants in the residuary estate of their said grandfather, and the Court having examined into the matter, and being of the opinion that the repairs and altera-
20 tions made by the said Guardian in accordance with the direction of the State Board of Tenement House Supervision are of a permanent and lasting nature and tend to improve the value of said real estate and otherwise benefit it.

It is therefore on this 3rd day of March, 1916, ordered that the said Margaret Mannion, Guardian, as aforesaid, be and she is hereby authorized to use and expend from the aforesaid principal of the personal estate of the said Thomas Mannion, David Mannion, Michael Mannion and
30 Joseph Mannion, minors, as aforesaid, the aforesaid sum of Four hundred eighty-four dollars and fifty cents, to pay the cost of the alterations and repairs made to the said premises, known by the street numbers as 16, 18 and 27 Westervelt Street, in Jersey City, aforesaid, as directed by the State Board of Tenement House Supervision of the State of New Jersey.

MARK A. SULLIVAN,
Judge.

Exhibit R. 1a.

HUDSON COUNTY ORPHANS'
COURT.

In the matter of the application of
MARGARET MANNION, Guard-
ian of MICHAEL MANNION,
THOMAS MANNION, DAVID
MANNION and JOSEPH MAN-
NION, minors, for an order
authorizing use of principal of
wards personal estate to pay for
repairs to wards real estate.

10

ON PETITION &c.
ORDER.

20

Louis W. Garrick, Proctor,
15 Exchange Place, Jersey City, N. J.

30

40

*Exhibit R. 1b.***Exhibit R. 1b.**

HUDSON COUNTY ORPHANS' COURT.

10	In the matter of the application of MARGARET MANNION, Guardian of MICHAEL MANNION, THOMAS MAN- NION, DAVID MANNION and JOSEPH MANNION, minors, for an order author- izing use of principal of wards personal estate for the sup- port of ward.	} <i>On Peti- tion, &c. Order.</i>
----	---	---

20 It appearing from the duly verified petition
of Margaret Mannion, filed herein, that the said
Margaret Mannion is the duly appointed guardian
of the persons and property of Thomas Mannion,
David Mannion, Michael Mannion and Joseph
Mannion, minors, and it appearing from said
petition that said Guardian has received from
the Executors of the last will and testament of
Michael Mannion, deceased, the sum of twenty-
five hundred dollars on account of the shares of
said minors in the residuary estate of said
30 Michael Mannion, deceased, or the sum of six
hundred and twenty-five dollars for each of said
minors on account thereof, and the court having
examined into the matter and finding that the
said Thomas Mannion, David Mannion, Michael
Mannion and Joseph Mannion are of tender
years and are unable to support themselves and
that they have no other proper means of support
and that the income derived from the monies
now in the hands of their said Guardian is in-
sufficient for the proper support, maintenance
40

Exhibit R. 1b.

and education of the said minors, and being of the opinion that it would be for the best interests of the said minors that the said Margaret Mannion, Guardian as aforesaid, be authorized to use and expend for the support, maintenance and education of said minors, at the present time, a portion of the principal of their aforesaid estate. 10

It is therefore on this ninth day of July, 1915, ordered that the said Margaret Mannion, Guardian as aforesaid, be and she is hereby authorized to use and expend from the aforesaid principal of the respective personal estate of the said Thomas Mannion, David Mannion, Michael Mannion and Joseph Mannion, minors as aforesaid the sum of five dollars per week each, for the support, maintenance and education of the said several minors, during a period of one year from the date of this order and no longer. 20

MARK A. SULLIVAN,
Judge.

A true copy.

W. J. FLANAGAN,
Clerk.

30

40

Exhibit R. 2.

HUDSON COUNTY ORPHANS'
COURT.

10 In the matter of the application of
MARGARET MANNION, Guard-
ian of MICHAEL MANNION,
THOMAS MANNION, DAVID
MANNION and JOSEPH MAN-
NION, minors, for an order
authorizing use of principal of
ward's personal estate for the
support of ward.

ON PETITION &c.
ORDER.

20 Louis W. Garrick, Proctor,
15 Exchange Place, Jersey City, N. J.

Exhibit R. 2.

(Copy)

New York Office 84 William St.,
Telephone 234 John

30 JUDICIAL DEPARTMENT
Application for Bond

Broker
Fischer & Smith,
784 Grand St., Jersey City, N. J.

Ex. 5-13-15
Prem. \$32.50
Sub. " \$21.66

40

Exhibit R. 2.

MASSACHUSETTS BONDING and INSURANCE COMPANY,

Home Office, Boston, Massachusetts.

1. Name of Applicant—Margaret Mannion
Age 37
2. Residence—18 Westervelt Street, Jersey City, N. J. 10
3. Occupation—None (widow)
4. Business Address—None
5. Amount of Bond required—\$10,000.00
Liability, \$5,000.00
6. Nature of Bond required—Guardianship
7. Has Bond been given in this estate before; if so, why is change desired? No
8. Bond filed in Orphans Court of Hudson County, State of N. J.
9. Names and Addresses of Attorneys—LOUIS W. GARRICK, 15 EXCHANGE PLACE, JERSEY CITY N. J. 20
10. In whose name are deposits kept? Margaret Mannion, Guardian, Jersey City, N. J.
11. Name of depositories—The Trust Company of New Jersey (Bergen & Lafayette Branch)
12. Will funds and securities be so ear-marked as to be identified at all times? Yes
13. Will cash coming in hand be invested during administration; if so, how? Not at present 30
14. State whether you are indebted to estate; if so, the amount and nature of indebtedness and whether secured—No
15. Do you own any property real or personal? If so, give description and VALUE of same, and if encumbered, state for what amount and to whom due—Has life interest in prop-

Exhibit R. 2.

erties #16-18 and #27 Westervelt St., Jersey City, N. J. income about \$150.00 per month when fully rented.

- 10 16. Have you any debts or liabilities, individual or otherwise? If so, give description and amount of same, and state whether you are endorser or have become security for any person or corporation. No
17. Give the names and addresses of four or more persons, not related to you, who have know you for some years past.

PLEASE WRITE NAMES AND ADDRESSES
DISTINCTLY

Names. Profession or Trade. Postal Address
in Full (Street and No. in Cities)

- 20 1. Joseph Maguire Undertaker Grand & Arlington Aves., Jersey City, N. J.
2. John P. O'Gorman Boulevard Commissioner
470 Communipaw Ave., Jersey City
3. Peter J. O'Reilly Plumer Contractor 562
Grand St., Jersey City
4. John Wall Real Estate & Ins., 375 Communipaw Ave., Jersey City
5. Thomas McFadden Saloon-keeper 14 Westervelt St., Jersey City.
- 30 35. Full names, ages and addresses of Wards or Beneficiaries of Trust:

Names	Ages	Postal Address in Full (Street and No. in Cities)
Thomas Mannion	- 7 — 18	Westervelt St., Jersey City, N. J.
David Mannion	- 10 — 18	Westervelt St., Jersey City, N. J.

Exhibits R. 3—R. 4.

Michael Mannion - 11 — 18 Westervelt St., Jersey
City, N. J.

Joseph Mannion - 3 — 18 Westervelt St., Jersey
City, N. J.

36. What is the relationship existing between Applicant and Wards, and with whom are Wards living? Applicant is mother of wards and they reside with her 10
37. How much is allowed for Support and Maintenance? Application is pending to Court for allowance of \$5.00 per week.
38. Is any portion of Estate invested? If so, under what authority? No
39. Give description of Assets of Trust Estate. \$625.00 Cash to be advanced to Guardian on account of share of wards in estate of their Grandfather, Michael Mannion, died, now in hands of Delia Byrne, and Louis W. Garrick, Executors. 20

Witness my hand and seal this 13th day of
May 1915

WITNESSES:

Andrew Fischer. Margaret Mannion (SEAL.)

Exhibit R. 3.

30

Same as R. 2. Application of Margaret Mannion for Bond as guardian of David Mannion.

Exhibit R. 4.

Same as R. 2. Application of Margaret Mannion for Bond as guardian of Thomas Mannion.

40

Exhibits R. 5—R. 6.

Exhibit R. 5.

Same as R. 2. Application of Margaret Mannion for Bond as guardian of Joseph Mannion.

Exhibit R. 6.

10 Commissioner of Deeds Notary Public

THOMAS P. KENNY

Mortgages, Real Estate, Investments
Care of Properties and
Insurance

686 Grand Street
Jersey City, N. J.

7-11-17.

20 Harvey Self,
84 William St.,
New York City.
c/o Mass. Bonding & Ins. Co.

Dear Sir:—

The following are the particulars of property which I spoke to you regarding mortgage loan of \$3200.00.

30 Property is known as #106 Kensington Ave. Lot #27, City Block 1821 Kensington Avenue. It consists of lot 25ft. front by 85 ft. deep upon which is built a one family house containing eight (8) rooms and bath and all modern improvements. The property is located the best residential section of Bergen within one half block of the West Side Park and is valued at \$8000.00. This would be less than a 50% loan upon property which is steadily increasing in value. The house is in good condition and I

40

Exhibit R. 7.

regard it as a very desirable loan.

If same meets with your approval I will have Mr. L. W. Garrick make search of same. I am

Respectfully yours,

Thomas P. Kenny.

10

Exhibit R. 7.

July 14th, 1917.

Mr. Thomas P. Kenny,
686 Grand Street,
Jersey City, N. J.

Dear Sir:—

In re:—6653-54-55-56—MARGARET MANNION,
Guardian of Joseph, Margaret, Michael and
Thomas Mannion

20

Replying to your letter of the 11th inst., beg to advise that it would appear that the mortgage in which the guardian desires to invest would be a proper one. We rely, of course, upon your approval.

When check is to be drawn, we would request that you make arrangements to deposit the papers with us after proper recording.

30

Yours very truly,

Resident Secretary

HS*GAD

40

*Exhibits R. 8—R. 9.***Exhibit R. 8.**

10 Bond, Fairy W. Garrick of Jersey City, Hudson County, New Jersey to Margaret Leonard (formerly Margaret Mannion) guardian of Michael Mannion, Thomas Mannion, David Mannion and Joseph Mannion, dated July 24, 1917 in the penal sum of \$6400 to secure \$3200 on July 4, 1920. Interest at 6% payable semi-annually. Signed "Fairy W. Garrick," witness "Louis W. Garrick."

Exhibit R. 9.

20 Mortgage of Fairy W. Garrick of Jersey City Hudson County, New Jersey to Margaret Leonard (formerly Margaret Mannion) guardian of Michael Mannion, Thomas Mannion, David Mannion and Joseph Mannion, dated July 24, 1917 to secure payment of \$3200 mentioned in bond payable July 24, 1920, interest 6% payable semi-annually. Covers premises in the City of Jersey City, County of Hudson, State of New Jersey.

30 BEGINNING at a point in the Northerly side of Kensington Avenue (formerly Linden Avenue) distant six hundred (600) feet Southeasterly from the Northeasterly corner of West Side and Kensington Avenues, and running thence Northeasterly at right angles to Kensington Avenue eighty-three and forty one one hundredths (83-41/100) feet; thence Southeasterly along the rear line of lands of said Annie J. Peppiatt twenty-five (25) feet; thence Southwesterly parallel with the first course eighty four and four one hundredths (84-4/100) feet to Kensington Avenue; thence Northwesterly along Kensington Avenue twenty-five (25) feet to
40 the place of beginning.

Exhibits R. 10—R. 11.

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

BE IT REMEMBERED, That on this twenty-fourth day of July in the year one thousand nine hundred and seventeen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Fairy W. Garrick, (widow) who, I am satisfied, is the grantor in the within Indenture named, and I having first made known to her the contents thereof, she did thereupon acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed: 10

LOUIS W. GARRICK
Master in Chancery of New Jersey.

Registered in the office of the Register, of Hudson County, July 31, 1917 in Book 908 of Mortgages for the said County page 47—"L. W. Garrick, Box." 20

Exhibit R. 10.

Abstract of Title covering property described in mortgage containing certificate of Louis W. Garrick dated July 31, 1917. 30

Exhibit R. 11.

Louis W. Garrick,
Law Office
Commercial Trust Building
15 Exchange Place

Jersey City, N. J. July 31st 1917
Rec'd of Thomas P. Kenny the sum of \$3200.00 for mortgage loan by Mrs. Margaret Leonard (formerly Margaret Mannion) Guardian on property #106 Kensington Ave. Jersey City, N. J. 40
L. W. Garrick, Atty.

Exhibit R. 15.

Exhibit R. 15.

Commissioner of Deeds Notary Public

THOMAS P. KENNY

Mortgages, Real Estate, Investments

Care of Properties and

10

Insurance

686 Grand Street

Jersey City, N. J.

7-27-17.

Harvey Self,

84 William St.,

New York City, N. Y.

c/o Mass. Bonding & Ins Co.

Dear Sir:—

20 I herewith enclose drafts for mortgage on
house #106 Kensington Ave. J. C. Same will
receive my prompt attention. I am

Respectfully yours,

Thos P Kenny

30

40

*Exhibit R. 14.***Exhibit R. 14.**

Commissioner of Deeds Notary Public
 THOMAS P. KENNY
 Mortgages, Real Estate, Investments
 Care of Properties and
 Insurance 10
 686 Grand Street
 Jersey City, N. J.
 9-18-17.

Harvey Self,
 84 William St.,
 New York City.
 c/o Mass. Bonding & Ins. Co.

Dear Sir:—

I am returning herewith the mortgage on Ken- 20
 sington Avenue property. The error in the
 amount mentioned secondly is not material and it
 will not be necessary to record the mortgage.
 The Bond I understand is in the proper amount.
 I am

Respectfully yours,
 Thomas P Kenny

30

40

Exhibit R. 13.

Exhibit R. 13.

Commissioner of Deeds Notary Public

THOMAS P. KENNY

Mortgages, Real Estate, Investments

Care of Properties and

10

Insurance

686 Grand Street

Jersey City, N. J.

8-5-18.

Harvey Self,

84 William St.,

New York City.

c/o Mass. Bonding & Ins Co.

Dear Sir:—

20

In regards Mannion premium in Guardian of bonds will take the matter with Mr. Garrick her Attorney and let you, know. Some time ago he promised to pay same when some interest of mortgage become due. Will get after him. I am

Respectfully yours,

Thomas P Kenny

30

40

Exhibit R. 12.

Exhibit R. 12.

Commissioner of Deeds Notary Public
 THOMAS P. KENNY
 Mortgages, Real Estate, Investments
 Care of Properties and
 Insurance 10
 686 Grand Street
 Jersey City, N. J.
 7-19-19.

Mass. Bonding & Ins Co.,
 16 Liberty St.,
 New York City, N. Y.

Harvey Self:

Dear Sir:—

In regards Margaret Mannion guardian she has
 retained Judge Mark A. Sullivan to look after 20
 her interest in matter of interest to both Mass.
 Bonding Ins Co and Margaret Guardian, she was
 unable to get in touch with Judge Tennant and I
 advised her to secure counsel at once. Mark A.
 Sullivan is one of most reputable attorney in
 New Jersey State I am

Respectfully yours,

Thos P Kenny 30

Exhibit R. 16.

Exhibit R. 16.

Form J. F. 997-4M-10-16-F. H. P.

July 28 1917

Bond No. J..... Approved.....

Agency No. 6653-4-5-6 Entered Folio.....

10 To Massachusetts Bonding and
Insurance Company.

77-85 State Street, Boston

Please Countersign the Following Checks:

On The Trust Co. of N. J. Trust Company

For Me As Gdn of the Estate of 4 Mannion
Minors

Respectfully Margaret Mannion, Gdn

No. of Check—Drafts

To Order of—Gdn.—Each

20 Amount—\$800

For—Mtge on property 106 Kensington Ave. J C

Entd J A G

Exhibit not Marked.

Last Will and Testament of Michael Mannion,
dated July 3, 1914.

30 Fifth, I hereby nominate and appoint my friend
Delia Byrne to be executrix and my attorney
Louis W. Garrick, executor of this my last will
and testament and I direct that they be not re-
quired to furnish bonds for the faithful perform-
ance of their duties as such.

Petition of Appeal.

(Filed December 4, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

IN THE MATTER

of

The Appeal from the decree of the Hudson County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of THOMAS MANNION, MICHAEL MANNION, DAVID MANNION and JOSEPH MANNION, MINORS.

On Appeal from Prerogative Court.

Petition of Appeal to Court of Errors and Appeals.

10

20

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Michael Mannion and David Mannion, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Prerogative Court by his Honor Edwin Robert Walker, Ordinary of the State of New Jersey, on the advice of James F. Fielder, Vice-Ordinary, bearing date June 3rd, 1929, overruling a decree of the Hudson County Orphans' Court adjudicating upon the account of Margaret Leonard, Guardian of appellants and others and the exceptions to said account filed by appellants in the Hudson County Orphans' Court. The said decree of the Ordinary sets aside the said decree of the Hudson County Orphans' Court in certain particulars and allows the account of said

30

40

Petition of Appeal.

Guardian as originally filed and dismisses the exceptions filed to said account by appellants.

And petitioners appeal from the decree of the Ordinary which decrees as aforesaid, upon the ground that the same is erroneous in that:

10 (a) It reverses and sets aside the decree of the Hudson County Orphans' Court made in this matter on June 22nd, 1928, insofar as the said decree of the Hudson County Orphans' Court disallows the disbursement of \$800.00 from the estate of each ward for investment in the bond and mortgage on the property on Kensington Avenue, Jersey City, N. J., owned by Fairy W. Garrick, for which the accountant prays an allowance in her accounts filed herein of the administration of
20 the estates of each of her said wards, Thomas, Michael, David and Joseph Mannion.

(b) It reverses and sets aside the said decree of the Hudson County Orphans' Court in so far as said decree charges the said accountant in the amount of each ward with interest on the said sum of \$800.00 from June 30th, 1917.

30 (c) It reverses and sets aside the said decree of the Hudson County Orphans' Court insofar as the said decree amends each of the said accounts and allows said accounts as amended, and fixes the amounts of the balances in each account, which remain in the hands of the accountant, to be paid to each of the wards.

40 (d) It reverses and sets aside the said decree of the Hudson County Orphans' Court insofar as the said decree orders that the accountant be allowed no commissions until she has repaid into the estates of the wards the amounts with which she was surcharged.

Petition of Appeal.

(e) It reverses and sets aside the said decree of the Hudson County Orphans' Court insofar as the said decree allows a counsel fee of \$500.00 to Donald M. Waesche, counsel for the exceptants, to be paid by the Guardian.

(f) It allows the said accounts, and each of them, in all respects as they were originally filed by the said accountant and dismisses the exceptions to the accounts which were filed on January 19, 1928, in the Hudson County Orphans' Court by appellants. 10

(g) It decrees and adjudges that the balance remaining in the hands of the accountant belonging to the ward Thomas Mannion is \$1,475.55, as shown by her account; that the balance remaining in the hands of the accountant belonging to the ward Michael Mannion is \$1,450.55, as shown by her account; that the balance remaining in the hands of the accountant belonging to the ward Joseph Mannion as shown by her account is \$2,175.55 and the balance remaining in the hands of the accountant belonging to David Mannion as shown by her account is \$2,166.70. 20

(h) It decrees and orders that the Massachusetts Bonding & Insurance Company be allowed the costs of its appeal from the said decree of the Hudson County Orphans' Court, to wit: certified copy of record from the Surrogate, \$36.70; transcribing testimony taken before Orphans' Court, \$37.50, and printing of record, \$82.80, which sums shall be paid equally from the estates of the wards. 30

Petitioners therefore pray that the said decree of the said Ordinary may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such other 40

Petition of Appeal.

relief in the premises as to this Court shall seem proper.

DONALD M. WAESCHE,
Solicitor for and of counsel
with Appellants.

10 HARRY A. STILES,
Of Counsel.

Answer to Petition of Appeal.

(Filed December 15th, 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

20

IN THE MATTER

of

The Appeal from the decree of
the Hudson County Orphans'
Court allowing certain excep-
tions to the accounts of MAR-
GARET LEONARD, Guardian of
THOMAS MANNION, MICHAEL
MANNION, DAVID MANNION and
JOSEPH MANNION, Minors.

On Appeal from
Prerogative
Court.

Answer to
Petition of
Appeal.

30

The answer of the Massachusetts Bonding and Insurance Company and Margaret Leonard, respondents, to the petition of appeal of Michael Mannion and David Mannion.

40 These respondents not acknowledging all or any of the matters in the said petition of appeal of Michael Mannion and David Mannion contained, to be true in answer thereto say:

Answer to Petition of Appeal.

1. Respondents admit that a final decree was made in the Prerogative Court by his Honor Edwin Robert Walker, Ordinary of the State of New Jersey, on the advice of James F. Fielder, Vice-Ordinary, dated June 3, 1929, which final decree did overrule a decree of the Hudson County Orphans' Court as stated in paragraph 1 of the petition of appeal, but the respondents deny that the said Michael Mannion or David Mannion are in any way aggrieved by said final decree and deny that the same or any part thereof is erroneous; and allege and believe that the said decree is in every respect proper and legal and deny that it should be reversed. 10

Further answering sub-paragraphs a, b, c, d, e, f, g, and h of the petition of appeal, respondents admit that the said final decree made on the 3rd day of June, 1929, in the Prerogative Court by the Honorable Edwin Robert Walker, Ordinary, on the advice of James F. Fielder, Vice-Ordinary, does reverse and set aside the decree of the Hudson County Orphans' Court made on the 22nd day of June, 1928, in all respects, as stated in the foregoing sub-paragraphs, and respondents allege that the said decree is in all respects legal and proper and deny that it is erroneous or that it in any way aggrieves the said petitioners. 20

Respondents deny that the said decree made by the Prerogative Court on June 3, 1929, should be reversed, and pray that the same may be affirmed in all respects and the costs to be adjudged to these respondents. 30

CHILD & SHIPMAN,
Counsel with the Respondent,
Massachusetts Bonding &
Insurance Company.

MARK A. SULLIVAN,
Counsel with Respondent,
Margaret Leonard. 40

Decree of Ordinary.

(Filed, June 3rd, 1929.)

NEW JERSEY PREROGATIVE COURT

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IN THE MATTER

of

The Appeal from the decree of the Hudson County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of THOMAS, MICHAEL, DAVID and JOSEPH MANNION, Minors.

On Appeal, etc.
Decree of
Reversal.

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This matter being brought to hearing on appeal before the Honorable James A. Fielder, one of the Vice-Ordinaries, to whom the matter was referred, in the presence of Jehiel G. Shipman, proctor for appellant, Massachusetts Bonding & Insurance Company, Mark A. Sullivan, proctor for the appellant, Margaret Leonard, guardian, and Donald M. Waesche, proctor for respondents-exceptants; and the matter having been duly heard by the Court, additional testimony having been taken and arguments of counsel having been heard, and the matter duly considered, and the Court being of the opinion that the decree of the Hudson County Orphans' Court should be reversed in so far as it holds that the sum of \$3,200.00, being \$800.00 loaned by the guardian from the estate of each of the guardian's wards, Thomas, Michael, David and Joseph Mannion, was lost by the negligence or carelessness on the part of the guardian, and that the disbursement of the

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Decree of Ordinary.

above sum be disallowed in each account, and that the guardian be personally charged with the said sum of money, together with interest thereon, and that the decree should further be reversed in allowing the counsel fee of \$500.00 to counsel for the appellants, if the same is required to be paid by the said guardian personally; 10

It is, on this 3rd day of June, 1929, ORDERED, ADJUDGED and DECREED, that the decree of the Hudson County Orphans' Court, made on the 22nd day of June, 1928, be reversed, set aside, and for nothing holden, in so far as the said decree disallows the disbursement of \$800.00 from the estate of each ward for investment in the bond and mortgage on the property on Kensington Avenue, Jersey City, New Jersey, owned by Fairy W. Garrick, for which the accountant prays an allowance in her accounts filed herein of the administration of the estates of each of her said wards, Thomas, Michael, David and Joseph Mannion; and in so far as said decree charges the said accountant in the account of each ward with interest on the said sum of \$800.00 from June 30th, 1917; and in so far as the said decree amends each of the said accounts and allows said accounts as amended, and fixes the amounts of the balances in each account, which remain in the hands of the accountant, to be paid to each of the wards; and in so far as the said decree orders that the accountant be allowed no commissions until she has repaid into the estates of the ward the amounts with which she was surcharged, and, in so far as the said decree allows a counsel fee of \$500.00 to Donald M. Waesche, counsel for the exceptants, to be paid by the guardian; and 20 30

It is further ORDERED, ADJUDGED and DECREED, 40 that the said accounts, and each of them, be in all

Decree of Ordinary.

respects allowed as they were originally filed by the accountant and that the exceptions to the accounts which were filed on January 19th, 1928, in the Hudson County Orphans' Court, be and the same are hereby dismissed;

- 10 And it is further ORDERED, ADJUDGED and DECREED, that the balance remaining in the hands of the accountant, belonging to the ward Thomas Mannion, is \$1,475.55, as shown by her account; that the balance remaining in the hands of the accountant, belonging to the ward Michael Mannion, is \$1,450.55, as shown by her account; that the balance remaining in the hands of the accountant, belonging to the ward Joseph Mannion, as shown by her account, is \$2,175.55, and the balance
 20 remaining in the hands of the accountant, belonging to David Mannion, as shown by her account, is \$2,166.70.

- It is further ORDERED, ADJUDGED and DECREED, that the appellant, Massachusetts Bonding & Insurance Company, be allowed the costs of appeal, to wit: Certified copy of record from the Surrogate, \$36.70, transcribing testimony taken before Orphans' Court, \$37.50, and printing of record, \$82.80, which sums shall be paid equally from the
 30 estates of the wards; and

It is further ORDERED, ADJUDGED and DECREED, that the record be remitted to the Hudson County Orphans' Court to proceed thereon according to law the practise of said Court.

Respectfully advised,

JAMES F. FIELDER,
 V. O.

Reasons for Decree of Ordinary.

(Filed May 17, 1929.)

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

of

The Appeal from the decree of the Hudson County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of THOMAS, MICHAEL, DAVID and JOSEPH MANNION, Minors.

3446.
On Appeal, &c.
Conclusions.

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MARK A. SULLIVAN, Esq., Proctor for Appellant Margaret Leonard, Guardian.

JEHIEL G. SHIPMAN, Esq., Proctor for Appellant Massachusetts Bonding and Insurance Company.

DONALD M. WAESCHE, Esq., Proctor for Respondents (exceptants).

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FIELDER, V. O.:

Margaret Leonard (formerly Mannion) was appointed guardian of the estate of her four infant children May 13, 1915. She filed an account dated January 3, 1928, for each child and in each account prayed allowance for, "July 30, 1917, by amount paid out on bond and mortgage on property on Kensington Avenue, Jersey City, owned by Fairy W. Garrick. This mortgage is now due and owing but the mortgagor claims that the mortgage is a forgery and refuses to pay the same—\$800". Exceptions to such allowance were filed by two

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Reasons for Decree of Ordinary.

children then of age and the Orphans' Court dis-
 allowed the item in each of the four accounts. No
 opinion was filed, but the Court's order recites
 that the money invested in the bond and mort-
 gage was lost through the negligence of the guar-
 dian. Appeal was taken by the guardian and by
 10 the Massachusetts Bonding and Insurance Com-
 pany, the surety on the guardian's bond, but on
 the hearing of the appeal no appearance was made
 by or for the guardian.

As part of the infants' estate there came to the
 guardian's hands upon her appointment, a sum
 of money which she deposited in bank, subject
 to withdrawal on her check or draft countersigned
 by the Bonding Company. Mr. Kenny, a reputable
 20 man engaged in the real estate and insurance busi-
 ness in Jersey City many years, was the broker
 in procuring the guardian's bonds and he had
 aided the guardian in various ways in connection
 with her children's estate and had collected rents
 and placed insurance for her. About two years
 after her appointment as guardian, Louis W. Gar-
 rick, a member of the bar of this state, repre-
 sented to Mr. Kenny that his mother, Fairy W.
 Garrick, desired to borrow \$3,200 on bond and
 mortgage on property owned by her on Kensing-
 30 ton Avenue, Jersey City, and suggested the loan
 as a good investment for Mrs. Leonard, as guar-
 dian. Mr. Kenny appraised the property and
 finding it ample security for the loan desired
 recommended it to the guardian and the Bond-
 ing Company, both of whom agreed to the loan
 and on Kenny's further recommendation, Garrick
 was authorized to make a title search. When he
 reported the search completed and the title good,
 the amount of the loan was withdrawn from the
 40 infants' bank accounts on checks signed by the

Reasons for Decree of Ordinary.

guardian, countersigned by the Bonding Company and given to Mr. Kenny, who turned it over to Garrick in exchange for Garrick's receipt therefor and a bond and mortgage dated July 30, 1917, purporting to have been executed and acknowledged by Garrick's mother, together with Garrick's certificate of title. The mortgage was recorded and, with the bond and certificate of title, subsequently delivered to the Bonding Company. On the face of the papers the loan was entirely regular, but it subsequently developed that Garrick had forged his mother's signature on the bond and mortgage. When the interest falling due January 30, 1918, was not paid, the guardian called at Garrick's law office but he was absent and she called again in March of that year and found the office "nailed up". Garrick had decamped and has not been heard of since.

On the question of the liability of a guardian for a loss sustained by him, what our courts have said as to administrators, executors and trustees, applies. They have said that each case must stand on its circumstances and that a general rule applicable to all cases is that "All that executors are required to do is simply what any man of ordinary prudence and caution would, under like circumstances, have done. So long as an executor acts in good faith and with ordinary discretion and within the scope of his powers, his acts cannot be successfully assailed. No man is infallible; the wisest make mistakes, but the law holds no man responsible for the consequences of his mistakes which are the result of the imperfection of human judgment and do not proceed from fraud, gross carelessness or indifference to duty. An executor may do anything within the scope of his powers without the least risk of personal liability

Reasons for Decree of Ordinary.

for the consequences of his acts, provided he exercises the care and judgment of a man of ordinary prudence and sagacity." (*Monroe v. Osborne*, 43 N. J. Equity, 248; *Heisler v. Sharp*, 44 N. J. Equity, 167; affirmed 45 N. J. Equity, 367; *Smith v. Jones*, 89 N. J. Equity, 502.)

10 The guardian had every reason to rely on and to repose confidence in Garrick's integrity. He was a licensed attorney of this state and as such he was held out to be worthy of public confidence. At the time of this transaction he had practised his profession for seventeen years and was held in good repute. He was an executor of the estate from which the infants had received their inheritance and it was he, as such executor, who paid or delivered to the guardian that inheritance in
20 cash and securities. He acted as attorney or proctor for the guardian, after her appointment, in an application to the Court for leave to use a portion of the principal of the infants' estate for their support and maintenance. Among the securities which Garrick, as executor, had delivered to the guardian was a bond and mortgage made by Fairy W. Garrick covering other property and on which interest was received regularly by the guardian. When the loan now in question was
30 brought to the guardian's attention she was ill and confined to her bed where she remained for two months thereafter and she entrusted the details of the loan to Mr. Kenny, whose business experience qualified him to handle the matter better than she could. He, too, was well acquainted with Garrick and had done business with him on other occasions and he believed Garrick to be a reputable member of the bar. When Garrick delivered to him a certificate of title and a bond and
40 mortgage purporting to have been executed and

Reasons for Decree of Ordinary.

acknowledged by Fairy W. Garrick, he had no reason to suspect that Garrick was foisting on this estate a spurious security on which he had forged his mother's signature and he paid Garrick in cash the amount of the loan, took Garrick's receipt therefor and recorded the mortgage. It was not until six months later that Garrick's knavery was discovered but he had then left for parts unknown. This was not Garrick's only criminal act, for he was subsequently indicted for stealing \$3,000 entrusted to him by another, on which indictment he has not been apprehended. It seems to me that throughout the transaction the guardian and her agent, Mr. Kenny, acted with ordinary prudence, caution and discretion. The sole criticism made by the exceptants is that the guardian should have given Garrick a check for \$3,200 drawn to the order of Fairy W. Garrick, instead of cash, but it is the experience of everyone who has engaged in transactions of this nature, that the borrower is often not present at the closing of the loan and that the loan is as frequently paid in cash as by check and that in dealing with a member of the bar, whose professional standing has never been questioned, it is the custom to trust him to apply the cash placed in his hands for the purpose for which he receives it. Our courts have said that where a person occupying the position of trustee, acts in good faith and with the sense and discretion that he would use in his private affairs in relying upon the advice or assistance of a supposedly competent attorney, he is excused from losses suffered through the error or criminal conduct of the attorney (Sharp's case, 61 N. J. Equity, 601; *In re Slater*, 88 N. J. Equity, 296; *Four Corners B. & L. v. Schwarzwaelder*, 88 N. J. Equity, 546).

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Reasons for Decree of Ordinary.

I conclude that under the circumstances of this case, the loss sustained cannot be charged to neglect or carelessness on the part of the guardian and that in this respect the order of the Orphans' Court should be reversed.

10 The Bonding Company and the guardian also appeal from so much of the order of the Orphans' Court as allows a fee of \$500 to counsel for the exceptions. The order does not specifically direct that such counsel fee shall be paid by the guardian, but if such is the intent, the order should in this respect also be reversed.

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Testimony.

NEW JERSEY PREROGATIVE COURT.

<p style="text-align: center;">IN THE MATTER of</p> <p>The Appeal from the decree of the Hudson County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of THOMAS MANNION, MICHAEL MANNION, DAVID MANNION and JOSEPH MANNION, Minors.</p>	}	10
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Transcript of shorthand notes of testimony taken on the hearing in the above stated matter, April 15, 1929, at Chancery Chambers, Jersey City, before His Honor James F. Fielder, Vice-Ordinary. 20

Appearances:

JEHIEL G. SHIPMAN, Esq., of CHILD, SHIPMAN AND PLUMER, proctors for appellant Massachusetts Bonding and Insurance Company. 30

DONALD M. WAESCHE, Esq., proctor for appellees, Thomas Mannion, *et al.*

The Court: I understand the case is submitted on the record in the Orphans Court with some additional testimony.

Mr. Shipman: Yes, your Honor; we have one additional witness.

Thomas P. Kenny—Direct.

THOMAS P. KENNY, sworn as a witness on the part of the appellant, Massachusetts Bonding and Insurance Company, testifies as follows:

Direct examination by Mr. Shipman:

10 Q. In 1915, when Mrs. Mannion was appointed guardian, what business were you in? A. Real estate business.

Q. Did you handle insurance A. Yes.

Q. In what capacity—as agent or broker? A. Broker.

Q. Did you have anything to do with the obtaining of the bond for Mrs. Mannion as guardian? A. I did.

20 Q. In what way? A. Well, I procured the bond from Mr. Fisher, the agent.

Q. The agent for whom? A. The agent for the Massachusetts Bonding Company.

Q. How did you come to do that? A. At the closing of the estate, when a guardian was to be appointed, Mr. Garrick and Mrs. Mannion both told me to go ahead and procure a bond for her, and Mr. Garrick told us the amount of the bond, and I did so.

Q. So you went ahead and got the bond? A. Right.

30 Q. (Showing witness.) I want you to look at these letters, and see if they are letters which you wrote. A. They are.

The Court: You say these are letters which the witness wrote?

Mr. Shipman: Yes, your Honor. These are all letters written to the Massachusetts Bonding and Insurance Company. They are practically all the same. They simply say this: "I herewith enclose draft for two

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Thomas P. Kenny—Direct.

weeks", and they run from July, 1915, through to August, 1916. Some of them have to do with the premiums. The purpose is to show that Mr. Kenney, during the two years previous to the time this mortgage was taken out and after Mrs. Mannion's appointment as guardian, acted as her agent, in her behalf, in writing to the bonding company to get them to countersign these checks, showing that she had a right to rely on Mr. Kenny in this particular transaction; in other words, she used him for that purpose for two years before this particular transaction; and it seems to me it would be some evidence of the fact that he was her agent and that she was justified in letting him handle this particular transaction. I offer the letters in evidence.

Q. Do you know the signature of Mr. Garrick?

A. Well, I think I could tell it. Yes; "Louis W. Garrick". That is his.

Q. And is this his handwriting? A. Yes; that appears to be.

Q. You knew him intimately? A. Oh, yes.

Q. And did a lot of business with him? A. Well, I done some business with him.

Q. You have seen his handwriting? A. Oh, yes.

Q. How many times? A. Oh, quite often.

Q. You are sure that that is his signature? A. Oh, yes.

Mr. Shipman: These are letters from Garrick to the bonding company, in which he sends the deposit slips showing that the money of the guardian was deposited in the Trust Company of New Jersey.

Thomas P. Kenny—Cross.

I want to offer these letters in evidence to show that he was attorney for Mrs. Mannion and acted as her attorney right down to the very time he disappeared.

Cross-examination by Mr. Waesche:

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Q. How did you come to send these drafts to the bonding company for counter-signature? A. Well, Mrs. Mannion would bring them over, or possibly I went up to the bank and got them, and she would come to my office and sign them.

By the Court:

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Q. I don't think you have answered the question. There are a lot of letters which you identify, sending drafts to the bonding company? A. Yes; I would send these over to the company, and she would come around to my office and sign them.

Q. How did you get them to send to the company? A. Sometimes she would get them at the bank, or sometimes I would get them. We had to get drafts for the checks; we had to get them off the bank.

Q. Why did you send in any drafts at all; at whose request? A. At Mrs. Mannion's request.

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Q. How did she come to make this request of you? A. Well, I was representing her as her agent, and I was right around the block from her.

Q. Where was your office? A. Why, just right around the corner.

Q. Tell me where it was. A. 686 Grand Street.
By Mr. Waesche:

Q. Were you in business with Mr. Fisher at that time? A. No.

Q. Did you ever represent the Massachusetts Bonding Company in placing bonds in other cases? A. No.

40

Q. Were you paid a commission for getting this bond? A. Oh, yes.

Thomas P. Kenny—Cross.

- Q. You were paid a commission? A. Yes.
- Q. By whom? A. Well, when I would turn my money in to Fisher, I would keep the amount out that would be due to me as broker.
- Q. You were a sub-agent of Fisher? A. I was a broker. 10
- Q. You were a broker? A. Yes.
- Q. And in this case you were acting as the sub-agent of Fisher? A. Well, if you want to call it that; yes.
- Q. Did the Massachusetts Bonding Company ask you to look out for the affairs of Mrs. Mannion? A. No. Mrs. Mannion asked me to look out for her affairs.
- Q. You knew Mr. Self? A. Yes.
- Q. Who was he? A. He was the secretary of the Massachusetts Bonding Company. 20
- Q. With his offices in New York City? A. Right.
- Q. Did he ask you to help Mrs. Mannion in sending in the drafts for counter-signature? A. Well, I brought Mrs. Mannion over to see Mr. Self.
- Q. When was that? A. Well, it was about the time that she was appointed guardian, and he instructed us how to go about procuring this money.
- Q. When she first got the bond? A. Right. 30
- Q. When you took Mrs. Mannion over? A. Right.
- Q. And he told Mrs. Mannion how to handle this matter? A. Yes.
- Q. And you volunteered to help Mrs. Mannion in taking care of it; is that right? A. Right.
- Q. Mr. Self knew that you were going to do that, did he? A. Oh, yes.
- Q. He thought that was a good idea that you should help Mrs. Mannion? A. He must have. 40

Thomas P. Kenny—Cross.

Q. Did he say anything about it? A. Well, he didn't say anything against it.

Q. That took place while you were with Mr. Self, in his presence? A. With Mr. Self and Mrs. Mannion.

10 By Mr. Shipman:

Q. You were not the agent of the bonding company? A. No.

Q. You could write bonds in any company you wanted to? A. In any company.

Q. Just a broker? A. Right.

CASE CLOSED.

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A motion was subsequently made by Mr. Shipman, Proctor for the appellant, Massachusetts Bonding and Insurance Company, for leave to present further evidence, to which motion consent was given by Mr. Waesche, Proctor for appellees Thomas Mannion, *et al.*, whereupon the second day of May, 1929, was fixed for the taking of further testimony on the part of either party, and on that day the following deposition was submitted by Mr. Shipman:

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Deposition Submitted by Mr. Shipman.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

of

The Appeal from the Decree of the HUDSON COUNTY ORPHANS' COURT allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of THOMAS MANNION, MICHAEL MANNION, DAVID MANNION and JOSEPH MANNION, Minors.

10

DEPOSITION on the part of the appellant, Massachusetts Bonding and Insurance Company, taken by consent this second day of May, 1929, at ten o'clock in the forenoon, at Room 1018, No. 1 Exchange Place, Jersey City, N. J., before Edward O'Byrne, Master in Chancery of New Jersey, in the presence of Donald M. Waesche, Proctor for Exceptants, and Jehiel G. Shipman, of Child, Shipman and Plumer, Proctors for appellant, Massachusetts Bonding and Insurance Company.

20

EDWARD O'BYRNE,
Master in Chancery of New Jersey.

30

THOMAS R. ARMSTRONG, sworn as a witness on the part of the appellant, Massachusetts Bonding and Insurance Company, testifies as follows:

Direct examination by Mr. Shipman:

Q. You are a counsellor at law of the State of New Jersey? A. I am.

40

Deposition of Thomas R. Armstrong.

Q. Of how many years standing? A. Twenty-four.

Q. Practising here in Jersey City? A. Yes.

Q. All that time? A. During all that time.

Q. Were you acquainted with Louis W. Garrick? A. I was.

10 Q. And he was a practising attorney and counsellor at law of the State of New Jersey? A. He was.

Q. Practising where? A. In Jersey City.

Q. How well did you know him? A. I knew him in a business way only, having various transactions with him.

Q. When was that? A. That was fifteen or twenty years ago.

20 Q. Over a period of how long? A. Well, over a period, I would say, of eight or nine years.

Q. What have you to say as to his reputation as to honesty and integrity as an attorney at law during the time that you were acquainted with him and up to the time he disappeared?

30 Mr. Waesche: I object to that. It is immaterial what his reputation was, because he was not engaged by the guardian to represent her in this transaction; he was not her agent. The undisputed facts show that he was engaged by Kenny at the instance of the bonding company, and that the guardian knew nothing at all about him.

A. I would say that his reputation was good up to the time he got into this last trouble.

Q. How did you find him in your dealings with him? A. I found him honest and reliable in any dealings I had with him.

40

Deposition of Thomas R. Armstrong.

Q. And his general reputation was that? A. I would say good.

Q. Do you know whether he has ever been heard from since he disappeared? A. I don't know.

Q. Have you ever heard from him? A. No.

Q. As far as you know has he ever been heard from around Jersey City? A. Not to my knowledge. 10

Q. Has he ever been back in Jersey City? A. Not that I know of. I have never seen him.

Q. You would probably have seen or heard of him? A. I only knew him, as I say, in a business way. I would not know whether he was here or not.

Mr. Shipman: I offer in evidence copy of indictment found in the September Term, 1919, of the Hudson County Court of Oyer and Terminer, against Louis W. Garrick. This indictment is the only record there is in the court house with reference to the said Louis W. Garrick. He was never arrested or tried because he never could be found and has not been found or arrested or tried up to the present day. 20

Mr. Waesche: No objection to the offer.

(Marked Exhibit Appellant 1, May 2, 1929.) 30

DEPOSITION CLOSED.

Taken and sworn to before me this second day of May, 1929.

EDWARD O'BYRNE,
Master in Chancery of New Jersey.

Exhibit A. 1.

(Exhibit Appellant 1, May 2, 1929.)

Indictment of Louis W. Garrick.Hudson, Oyer & Terminer,
September Term, A. D. 1919.

10 HUDSON COUNTY, to wit: The Grand Inquest of
the State of New Jersey, in and for the body of
the County of Hudson upon their respective oaths
Present that

LEWIS W. GARRICK

late of the City of Jersey City in the said County
of Hudson, on the 29th day of March, 1919, with
force and arms at the City aforesaid, County
aforesaid, and within the jurisdiction of this
Court, being the servant and agent of one Jane
20 Manning and being as such servant and agent
entrusted by the said Jane Manning with the col-
lection and care of moneys for and on behalf of
the said Jane Manning, did wilfully, unlawfully
and fraudulently take and convert Three Thou-
sand Dollars in money of the value of Three Thou-
sand, of the moneys and property of the said Jane
Manning, which he the said Lewis W. Garrick had
theretofore received and then and there had in
his possession as such servant and agent aforesaid
30 with intent to cheat and defraud the said Jane
Manning thereof contrary to the form of the Stat-
ute in such case made and provided and against
the peace of this State, the government and dig-
nity of the same.

PIERRE P. GARVEN,
Prosecutor of the Pleas.Presented October 22, 1919, and handed down
to the Court of Quarter Sessions.

40

JOHN J. MCGOVERN.

A True Bill,
H. D. GAISON,
Foreman.

Appellant's Exhibit A. 2.
Letters From Thomas P. Kenny.

Letters from Thomas P. Kenny, 686 Grand Street, Jersey City, to Massachusetts Bonding & Insurance Co., enclosing drafts, etc.

10

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

July 15th, 1915.

Mass. Bonding & Ins. Co.,
c/o Harvey Self,
84 William St.,
New York City.

20

Dear Sir:—

In regards Margaret Mannion Guardian for Michael Mannion, Thomas Mannion, David Mannion and Joseph Mannion, The Pass Books with The Trust Co. of New Jersey, are as follows:

Michael Mannion	No. 29948
David Mannion	No. 29949
Thomas Mannion	No. 29947
Joseph Mannion	No. 29946

30

I herewith enclose drafts for premium on Guardian Bond, also for maintenance two (2) weeks the same to commence July 9th, 1915. I am

Respectfully yours,

(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

COPY OF APPLICATION FOR DRAFT ENCLOSED.

Agency No. 6654

July 16, 1915.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:
On THE TRUST CO. OF NEW JERSEY FOR ME AS
GUARDIAN of the ESTATE OF DAVID MANNION, in-
fant.

Respectfully,

MARGARET MANNION,
Gdn.

29949 Margaret Mannion, Gdn. \$42.50 prem. & 2
weeks maintenance.

20

Similar drafts made for Joseph Mannion
(29946), Michael Mannion, (29948) and Thomas
Mannion (29947).

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

July 29th, 1929.

30

Harvey Self,
84 William St.,
New York City.

c/o Mass. Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenance from July 23rd, 1915 to Aug. 6th, 1915.
I am

40

Respectfully yours,

(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT.

July 30, 1915.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

Please Countersign the Following Checks: 10
On the Trust Co. of N. J. Trust Company For
Me as Gdn. of the Estate of Joseph, Thos., Michael
& David Mannion.

Respectfully,

MARGARET MANNION,
Gdn.

<i>No. of Check</i>	<i>To order of</i>	<i>Amount</i>	<i>For</i>	
	Gdn.	10.	Maintenance each	20
	Gdn.	10.	minor from 7/23/15	
	Gdn.	10.	to 8/6/15, Ct.	
	Gdn.	10.	order—\$5. per wk.	

THOMAS P. KENNY
686 Grand Street,
Jersey City, N. J.

Aug. 12th, 1915.

Harvey Self, 30
84 William St.,
New York City.

c/o Mass. Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenance from Aug. 6th, 1915 to Aug. 20th, 1915.
I am

Respectfully yours,

(Signed) THOMAS P. KENNY.

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Appellant's Exhibit A. 2.

DRAFT.

Bond No. J 6653-4-5-6

8/13/15

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:
On the Trust Co. of N. J. Trust Company For
Me as Gdn. of the Estate of Mannion infants—4.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check Drfts—4.

To order of Gdn.

Amount each \$10.

20

For Maint. 8/6—8/20/15 Ct. order.

THOMAS P. KENNY
686 Grand Street,
Jersey City, N. J.

Aug. 26th, 1915

Harvey Self,

84 William St.,

30

New York City, N. Y.

c/o Massachusetts Bonding & Ins. Co.

Dear Sir:

I herewith enclose drafts for two weeks main-
tenance from Aug. 20th, 1915 to Sept. 3rd, 1915.
I am

Respectfully yours,

(Signed) THOMAS P. KENNY

40

Appellant's Exhibit A. 2.

DRAFT.

8/27/15

Approved G. E. G.

To Massachusetts Bonding and Insurance Com-
pany
77-85 State Street, Boston 10

Please Countersign the Following Checks:

On the Trust Co. of N. J., B. & Lafayette
Branch For me as Gdn. of the Estate of 4 Man-
nion infants.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check, 4 Drfts.
To order of Gdn. (4) each. 20
Amount, \$10.
For Maint. 8/20/15 to 9/3/15—Ct. Order.

THOMAS P. KENNY
686 Grand Street,
Jersey City, N. J.

Sept. 9th, 1915

Harvey Self, 30
84 William St.,
New York City, N. Y.

c/o Massachusetts Bonding & Ins. Co.

Dear Sir:

I herewith enclose drafts for two weeks main-
tenance from Sept. 3rd, 1915 to Sept. 17th, 1915.

I am

Respectfully yours,
(Signed) THOMAS P. KENNY 40

Appellant's Exhibit A. 2.

DRAFT.

Aug. 10, 1915

To Massachusetts Bonding and Insurance Com-
pany
77-85 State Street, Boston

10

Please Countersign the Following Checks:

On the Trust Co. of N. J. For me as Gdn. of the
Estate of Mannion Minors (4).

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check, 4 checks—29946-7-8-9.

20

To order of Gdn. (4 checks \$40.) (one check
against each account).

Amount, \$10. each.

For Maint. 9/3/15 to 9/17/15.

THOMAS P. KENNY
686 Grand Street,
Jersey City, N. J.

Sept. 23rd, 1915

30

Harvey Self,
84 William Street,
New York City

c/o Massachusetts Bonding & Ins. Co.

Dear Sir:

I herewith enclose drafts for two weeks main-
tenance from Sept. 17th, 1915 to Oct. 1st, 1915.
I am

40

Respectfully yours,

(Signed) THOMAS P. KENNY

Appellant's Exhibit A. 2.

DRAFT.

Sept. 24, 1915

Approved H. S.

Agency No. 6653-4-5-6

To Massachusetts Bonding and Insurance Com-
pany

77-85 State Street, Boston

Please Countersign the Following Checks: 10

On the Trust Company of N. J. for me as Gdn.
of the Estate of 4 Mannion infants.

Respectfully,

MARGARET MANNION,

No. of Check, 4 Drafts.

To order of Guardian account.

Amount \$10.00.

For Maintenance Sept. 17 to Oct. 1st. 20

 THOMAS P. KENNY
 686 Grand Street,
 Jersey City, N. J.

Oct. 7th, 1915

Harvey Self,
84 William Street,
New York City

c/o Massachusetts Bonding & Ins. Co. 30

Dear Sir:

I herewith enclose drafts for two weeks main-
tenance from Oct. 1st, 1915 to Oct. 15th, 1915.

I am

Respectfully yours,

(Signed) THOMAS P. KENNY

P. S. In regards moneys due Margaret Man-
nion Guardian from M. Mannion Estate. The
Executors of same has not closed same yet. We
expect same will be closed next month. Will let
you know. I am 40

Respectfully yours,

(Signed) THOMAS P. KENNY

Appellant's Exhibit A. 2.

DRAFT.

Bond No. J 6653-4-5-6

Oct. 8, 1915

To Massachusetts Bonding and Insurance Com-
pany
10 77-85 State Street, Boston

Please Countersign the Following Checks:

On the Trust Co. of N. J. For me as Gdn. of the
Estate of Mannion Minors (4).

Respectfully,

MARGARET MANNION,

(4 cases)

Gdn.

No. of Check, 29946-7-8-9.

20 To order of Gdn. (4 checks—\$40.00).

Amount, each \$10.00.

For Maint. 10/1/15 to 10/15/15.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Oct. 21st, 1915.

Harvey Self,
30 84 William Street,
New York City,

c/o Massachusetts Bonding & Insurance Co.

Dear Sir:—

I herewith enclose drafts for two weeks' main-
tenance from Oct. 15th, 1915, to Oct. 29th, 1915.
I am

Respectfully yours,

40 (Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT.

Oct. 22, 1915.

Bond No. J6653-4-5-6

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston 10

Please Countersign the following checks:

On the Trust Co. of N. J., Bergen & Lafayette
Branch For me as Gdn. of the Estates of 4 Man-
nion Minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check—Draft 29946-6-8-9. 20
To order of 4 Drfts. order of Gdn.
Amount (each) \$10.00.
For Maint. 10/15/15-10/29/15.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Nov. 4th, 1915.

Harvey Self, 30
84 William Street,
New York City,

c/o Massachusetts Bonding & Insurance Co.

Dear Sir:—

I herewith enclose drafts for two weeks' main-
tenance from Oct. 29th, 1915, to Nov. 12th, 1915.
I am

Respectfully yours, 40
(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT.

Nov. 5, 1915.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10 Please Countersign the following checks:

On the Trust Co. of N. J. for me as Gdn. of the
Estate of 4 Mannion Minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check—29946-7-8-9.

To order of Gdn.—4 checks—\$40.

Amount—\$10.00 each.

20 For Maintenance 10/29/15 to 11/12/15. Ct.
order.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Nov. 18th, 1915.

Harvey Self,
30 84 William Street,
New York City, N. Y.

c/o Massachusetts Bonding & Insurance Co.

Dear Sir:—

I herewith enclose drafts for two weeks' main-
tenance from Nov. 12th, 1915, to Nov. 26th, 1915.
I am

Respectfully yours,

40 (Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT.

Nov. 19, 1915.

Approved H. S.

Agency No. 6653-4-5-6

To

Massachusetts Bonding and Insurance Company 10
77-85 State Street, Boston

Please Countersign the following checks:

On the Trust Co. of N. J. For me as Gdn. of the
Estate of 4 Mannion Minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check—29946-7-7-9.

To order of Gdn. \$40 (each).

20

Amount—\$10.00.

For Maint. 10/12/15 to 11/26/15. Ct. order.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Dec. 2nd, 1915.

Harvey Self,

84 William Street,

New York City, N. Y.

30

c/o Massachusetts Bonding & Insurance Co.

Dear Sir:—

I herewith enclose drafts for two weeks' main-
tenance from November 26th, 1915, to Dec. 10th,
1915. I am

Respectfully yours,
(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT.

Dec. 3, 1915.

Approved H. S.

Agency No. 6656

To

- 10 Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

Please Countersign the following checks:

On the Trust Co. of N. J. For me as Gdn. of the
Estate of 4 Mannion Minors.

Respectfully,

MARGARET MANNION,
Gdn.

- 20 No. of Check—29946-7-8-9.
To order of Gdn. \$40 (each).
Amount—\$10.00.
Maint. 11/26/15 to 12/10/15—2 weeks.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Dec. 16th, 1915.

- 30 Harvey Self,
84 William Street,
New York City,
c/o Massachusetts Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenance from Dec. 10th, 1915 to Dec. 24th, 1915.
I am

- 40 Respectfully yours,
(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT

Dec. 17, 1915.

Agency No. 6656.

Approved H. S.

To

Massachusetts Bonding and Insurance Com-
pany, 77-85 State Street, Boston. 10

Please Countersign the Following Checks:

On the Trust Co. of N. J.

For me as Gdn. of the Estate of 4 Mannion
Minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check, 29946-7-8-9.

To order of Gdn. 20

Amount, (\$40), each, \$10.00.

For Maint. of 4 minors from 12/10/15 to Dec.
24/15, \$5 per wk.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Dec. 29th, 1915. 30

Harvey Self,
84 William Street,
New York City,

c/o Massachusetts Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenance from Dec. 24th, 1915 to Jan. 7th, 1916.
I am

Respectfully yours, 40
(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT

Dec. 30, 1915.

Bond. No. J6653-4-5-6.

Approved H. S.

To

10 Massachusetts Bonding and Insurance Com-
pany, 77-85 State Street, Boston.

Please Countersign the Following Checks:

On the Trust Co. of N. J.

For me as Gdn. of the Estate of 4 Mannion
Minors.

Respectfully,

MARGARET MANNION,
Gdn.

20 No. of Check, 29946-7-8-9.

To order of Gdn.

Amount, (\$40), each, \$10.00.

For Maintenance of each of 4 minors, 12/24/15
to 1/7/16.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

30

Jan. 13th, 1916.

Harvey Self,
84 William Street,
New York City,
c/o Massachusetts Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenances from Jan. 7th, 1916 to Jan. 21st, 1916.
I am

40

Respectfully yours,
(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT

Jan. 14, 1916.

Agency No. 6653-56.

Approved H. S.

To

Massachusetts Bonding and Insurance Com-
pany, 77-85 State Street, Boston.

10

Please Countersign the Following Checks:

On the Trust Co. of N. J.

For me as Gdn. of the Estate of 4 Mannion
Minors.

Respectfully,

MARGARET MANNION,

Gdn.

No. of Check, Draft 29946-29947-29948-29949.

To order of Gdn.

20

Amount, (\$40), each, \$10.00.

For Maintenance of each of 4 minors from 1/7/
16 to 1/21/16.

THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

Jan. 27th, 1916.

Harvey Self,

30

84 William Street,

New York City,

c/o Massachusetts Bonding & Ins. Co.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenances from Jan. 21st, 1916 to Feb. 4th, 1916.

I am

Respectfully yours,

(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT

Jan. 28, 1916.

Agency No. 66653-56.

To

10 Massachusetts Bonding and Insurance Com-
pany, 77-85 State Street, Boston.

Please Countersign the Following Checks:
On the Trust Co. of N. J.

For me as Gdn. of the Estate of 4 Mannion
Minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check, 29946-7-8-9.

To order of Gdn.

20 Amount, (4), \$40, each, \$10.00.

For Maintenance of 4 minors 1/21/16 to
2/4/16.

THOMAS P. KENNY
686 Grand Street
Jersey City, N. J.

Feb. 24th, 1916.

30 Harvey Self,
84 William Street,
New York City

c/o Massachusetts Bonding & Ins. Co.
Attention Mr. Self.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenance from Feb. 18th 1916 to Mar 3rd 1916.
I am

Respectfully yours

40 (Signed) THOMAS P. KENNY.

Kindly send six (6) application blanks for
guardian bonds. Am expecting to have clients for
same. Above address.

(Signed) THOMAS P. KENNY.

Appellant's Exhibit A. 2.

DRAFT.

Feb. 25, 1916.

Agency No. 6653-56

Approved H. S.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:
On the Trust Co. of N. J. For me as Gdn. of the
Estate of 4 Mannion Minors.

Respectfully

MARGARET MANNION.

Gdn.

No. of Check Drfts. 29946-7-8-9.

To order of Gdn.

Amount \$40 4—each 10.

20

For Maintenance of each minor 2/18/16 to
3/3/16.

 THOMAS P. KENNY

686 Grand Street

Jersey City, N. J.

March 23rd 1916.

Harvey Self,

84 William St.,

New York City.

30

c/o Massachusetts Bonding & Ins. Co.

Attention Mr. Self.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenances from March 17th 1916 to March 31st
1916. I am

Respectfully yours,

(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT.

Bond No. J 6653-4-5-6 March 24, 1916.

To
 Massachusetts Bonding and Insurance Company
 77-85 State Street, Boston

10 Please Countersign the Following Checks:
 On the Trust Co. of N. J. For me as Guardian
 of the Estate of 4 Mannion Minors.

MARGARET MANNION.
 Gdn.

No. of Check 29946-7-8-9.
 To order of Gdn.
 Amount (each) 10.00 (\$40. in all).
 For Maintenance 3/17/16 to 3/31/16.

20

THOMAS P. KENNY
 686 Grand Street
 Jersey City, N. J.

April 20th 1916.

Harvey Self,
 84 William St.,
 New York City, N. Y.

30 c/o Massachusetts Bonding & Ins. Co.
 Attention Mr. Self.

Dear Sir:—

I herewith enclose drafts for two weeks maintenances from April 14th 1916 to April 28th 1916.
 I am

Respectfully yours,

(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT.

Agency No. 6653-56 April 21, 1916.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:

On the Trust Co. of N. J. For me as Gdn. of the
Estate of 4 Mannion Minors.

Respectfully

MARGARET MANNION.

No. of Check 22946-7-8-9.

To order of Gdn.

Amount (\$40) (4 each) 10.

For Maintenance 4/14/16 to 4/28/16.

20

 THOMAS P. KENNY
686 Grand Street
Jersey City, N. J.

May 4th 1916.

Harvey Self,
84 William St.
New York City, N. Y.

30

c/o Mass. Bonding & Ins. Co.
Attention Mr. Self

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenances from April 28th 1916 to May 12th 1916.

I am

Respectfully yours,
(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT.

Agency No. 6653-56

May 5, 1916.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:
On the Trust Co. of New Jersey For me as Gdn.
of the Estate of 4 Mannion Minors.

Respectfully

MARGARET MANNION

Gdn

No. of Check 29946-7-8-9.

To order of Gdn.

20

Amount (\$40) each 10.

For Maintenance 4/28/16 to 5/12/16.

THOMAS P. KENNY
686 Grand Street
Jersey City, N. J.

June 1st 1916.

Harvey Self,

84 William St.,

30

New York City.

c/o Massachusetts Bonding & Ins. Co.
Attention Mr. Self.

Dear Sir:—

I herewith enclose drafts for two weeks main-
tenances from May 26th 1916 June 9th 1916. I
am

Respectfully yours,

(Signed) THOMAS P. KENNY.

40

Appellant's Exhibit A. 2.

DRAFT.

Bond. No. J6653-4-5-6 June 2, 1916.

To
 Massachusetts Bonding and Insurance Company
 77-85 State Street, Boston 10

Please Countersign the Following Checks:
 On the Trust Co. of N. J. For me as Gdn of the
 Estate of Mannion Minors. 20

Respectfully

MARGARET MANNION
 Gdn.

No. of Check 29946-7-8-9.
 To order of Gdn.
 Amount (\$40) (each) 10.
 For Maintenance 5/26/16 to 6/9/16, Ct. order. 20

THOMAS P. KENNY
 686 Grand Street
 Jersey City, N. J.

June 15th, 1916.

Harvey Self,
 84 William St.
 New York City. 30

c/o Mass. Bonding & Ins. Co.
 Attention: Mr. Self.

Dear Sir:—

I herewith enclose drafts for two weeks main-
 tenances from June 9th 1916 to June 23rd 1916.
 I am

Respectfully yours,
 (Signed) THOMAS P. KENNY. 40

Appellant's Exhibit A. 2.

DRAFT.

Bond No. J 6653-4-5-6 June 16, 1916.

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

- 10 Please Countersign the Following Checks:
On the Trust Co. of New Jersey For me as Gdn.
of the Estate of 4 Mannion Minors.

Respectfully

MARGARET MANNION, Gdn.

No. of Check 29946-7-8-9.

To order of Gdn.

Amount each 21.66.

For Ren. Prem. on 4 bonds—6/9/16 to 6/23/16

- 20 Maint.

No. of Check 29946-7-8-9.

To order of Gdn.

Amount each 10.00.

For Ren. Prem. on 4 bonds—6/9/16 to 6/23/16
Maint.

 THOMAS P. KENNY,
686 Grand Street,
Jersey City, N. J.

- 30

June 29th, 1916

Harvey Self,
84 William St.,
New York City.c/o Mass. Bonding & Ins. Co.
Attention Mr. Self.

Dear Sir:

- 40 I herewith enclose drafts for two weeks main-
tenances from June 23rd, 1916 to July 7th, 1916.
I am

Respectfully yours,

(Signed) THOMAS P. KENNY

Appellant's Exhibit A. 2.

DRAFT.

Bond No. J 6653-4-5-6 June 30, 1916

To

Massachusetts Bonding and Insurance Company
77-85 State Street, Boston

10

Please Countersign the Following Checks:
On the Trust Co. of New Jersey For me as
Guardian of the Estate of 4 Mannion minors.

Respectfully,

MARGARET MANNION,
Gdn.

No. of Check, 29946-7-8-9.

To order of Gdn.—4 each (\$40).

Amount, \$10.

For Maint. 6/23/16 to 7/7/16.

20

Sept. 25th, 1916.

Dear Sir:

I herewith enclose Deposit Notices of the fol-
lowing: Michael Mannion, David Mannion,
Thomas Mannion and Joseph Mannion, deposited
with The Trust Company of New Jersey, and
oblige

30

Yours Respectfully,

(THOMAS P. KENNY)

40.

Appellant's Exhibit A. 2.

July 13th, 1916

Dear Sir:

I herewith enclose drafts for two week maintenances from July 7th, 1916 to July 21st, 1916. I am

Respectfully yours,

10

THOMAS P. KENNY

(No draft with this letter)

Aug. 2nd, 1916

Dear Sir:

In regards premium on bonds for Mannion minors, would say same has been paid to Fischer & Smith one week after your drafts were countersigned. I have receipt for same. Kindly advise if they have settled for same as yet. I am

Respectfully yours,

(THOMAS P. KENNY)

3-15-17

30

Dear Sir:

In regards Mannion Estate for further moneys of Mannion Minors. Would say the property has not been sold as yet. Will let you know when same will be sold. I am

Respectfully yours,

(THOMAS P. KENNY)

40

Appellant's Exhibit A. 2.

8-31-17

Dear Sir:

I herewith enclose Search, also Bond and Mortgage, and Fire Insurance Policy and etc.

10 Would say, Margaret Mannion was married to John Leonard and I had mortgage made to fit same. I am

Respectfully yours,

(THOMAS P. KENNY)

20

30

40

Appellant's Exhibit A. 3.

Letters From Louis W. Garrick.

CORRESPONDENCE OF LOUIS W. GARRICK, to Mass.
Bonding & Ins. Co.

LOUIS W. GARRICK,) Letterhead 10
Law Office,)
Commercial Trust Bldg.,) Jersey City, N. J.
15 Exchange Place,)

May 20th, 1915.

Massachusetts Bonding & Insurance Co.,
84 William St.,
New York City.

Gentlemen:— 20

Re: Bonds #6653-4-5-6 Margaret Mannion, Gdn.

Replying to your favor of the 19th inst., regarding the above matters, I desire to state that Mrs. Mannion deposited in the Trust Company of New Jersey (Bergen & Lafayette Branch), the sum of \$2,401.80 on Monday the 17th inst., and as you request, I enclose deposit notice. As I understand it, Mrs. Mannion has deposited the entire sum in one account as Guardian. Mrs. Mannion has paid me the sum of \$98.80 to cover my fees and the Surrogate's fees in this matter and has deposited the difference. 30

The Court will probably sign the order permitting the Guardian to use these moneys as requested in the petition, on Friday the 21st inst.

I will be pleased to notify you when this order is signed.

Yours very truly,

(Signed) L. W. GARRICK. 40

Deposit notice enclosed:

Appellant's Exhibit A. 3.

DEPOSIT NOTICE.

To
Massachusetts Bonding and Insurance Co.

Gentlemen:—

- 10 Please take notice that I have deposited in the Bergen & Lafayette Branch Trust Company of N. J. the following amounts to my credit as Guardian of the estate of Michael, Thomas, David & Joseph Mannion.

Respectfully,

MARGARET MANNION.

	<i>Date</i>	<i>Amount</i>	<i>Received From</i>
20	May 17th/15	\$2,401.80	Executors of Est of Michael Mannion.

July 12th, 1915.

Gentlemen:

Re: #6653-4-5-6 Margaret Mannion, Gdn. of Joseph, David, Thomas & Michael Mannion, minors.

- 30 I beg to notify you that on the 9th inst., Judge Mark A. Sullivan, of our Hudson County Orphans' Court, signed an order permitting Mrs. Mannion, Guardian as above, to use the sum of \$5.00 per week each, for the support and maintenance of the four minors above named, or \$20.00 per week in all, for a period of one year from the date of said order.

I have mailed a copy of this order to Mrs. Mannion directing her to forward the same to you with her first countersignature request.

Appellant's Exhibit A. 3.

This order entitles Mrs. Mannion to draw \$20.00 per week from the minors' fund beginning with July 9th.

Yours very truly,

(Signed) L. W. GARRICK.

10

HUDSON COUNTY ORPHANS' COURT.

Bonds to the Ordinary of the State of New Jersey, \$10,000.00 each. Guardian—Margaret Mannion—she is the mother of the 4 wards and she and they reside at 18 Westervelt St., Jersey City, N. J.

Names of Wards are:

- | | | | |
|--------------------|-----|---|-------|
| 1. Thomas Mannion, | age | 7 | years |
| 2. David | " | " | 10 " |
| 3. Michael | " | " | 11 " |
| 4. Joseph | " | " | 3 " |

20

\$625.00 *each* to be paid to the Gdn. *now* on account of their share under the last will and testament of Michael Mannion, dec'd. (their grandfather), which moneys are now in the hands of Delia Byrne and Louis W. Garrick, Exrs. of estate of said Michael Mannion, dec'd.

30

The share of each child in the estate of their said grandfather will amount to about \$5,000.00 but the balance of these shares will not be paid over to the Guardian until some time in January or February, 1916.

The assets are principally in the shape of bonds and mortgage all of which will remain with Executors of said Michael Mannion, dec'd.

40

Appellant's Exhibit A. 3.

Jersey City, N. J.,
Feby. 14th, 1919.

(Letterhead)

Louis W. Garrick,
Mr. Harvey Self,
10 Resident Secty.,
Massachusetts Bonding & Ins. Co.,
24 William St., New York.
Re: Bonds 6653-4-5-6 Guardian.

Dear Sir:

Replying to your favor of recent date with regard to the above matter I wish to say that the interest on this mortgage has not yet been paid but I expect to receive it shortly.

20 As soon as this matter is adjusted I will arrange with you regarding the payment of the premium on the Guardian's bond.

Yours very truly,

(Signed) LOUIS W. GARRICK,
per H. T.

30

40

Wheaton's Key-Map A. S.

Jersey City, N. J.
July, 1878

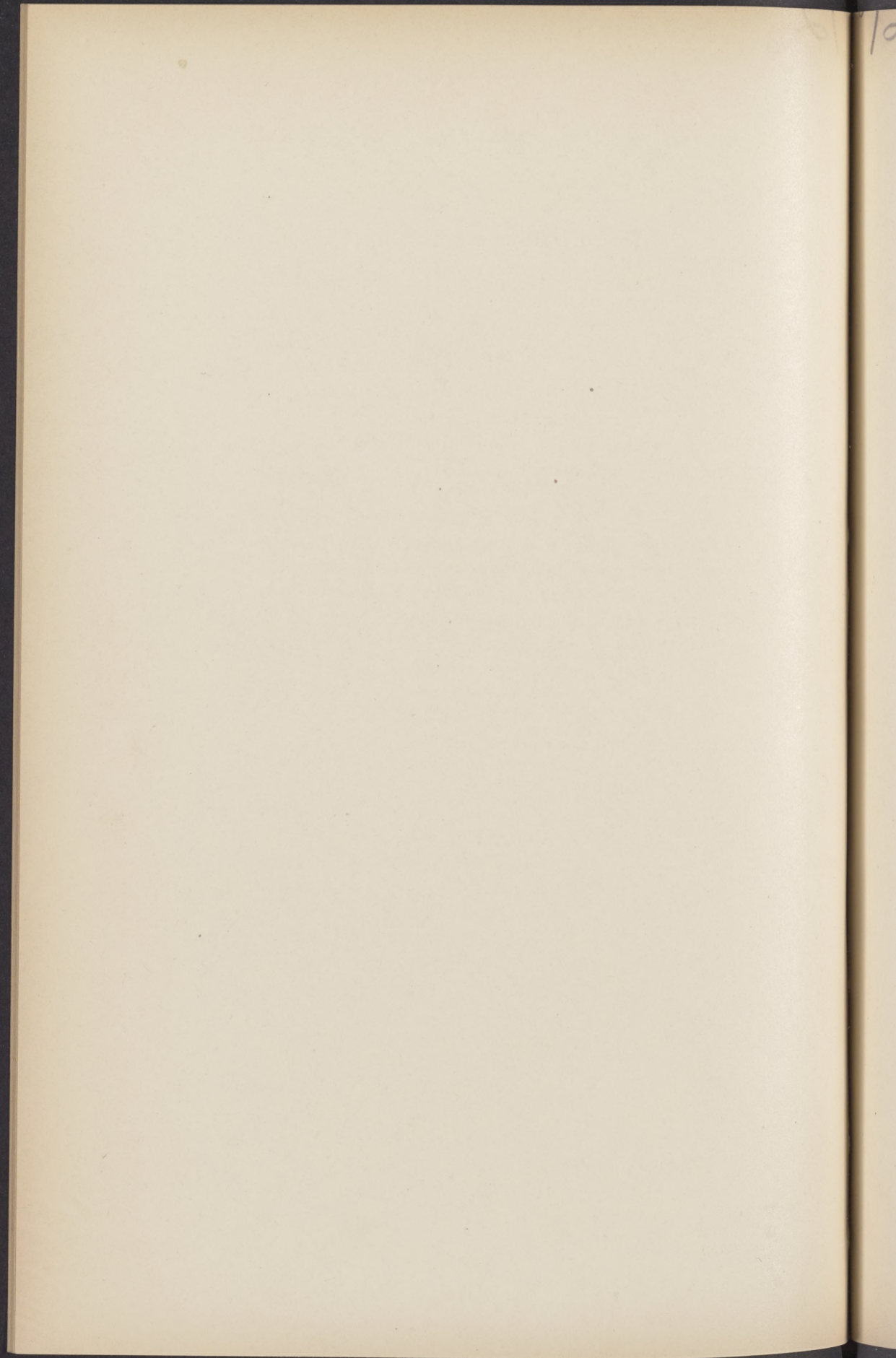
(Continued)

John W. Gould

112 Nassau St.

New York City

10



New Jersey Court of Errors and Appeals

IN THE MATTER

of

The Appeal from the Decree of the Hudson County Orphans' Court allowing certain exceptions to the accounts of MARGARET LEONARD, Guardian of Thomas Mannion, Michael Mannion, David Mannion and Joseph Mannion, minors.

On Appeal from Decree of Prerogative Court.

BRIEF OF APPELLANTS.

Statement of Facts.

This is an appeal from a decree in the Prerogative Court overruling the decree entered in the Hudson County Orphans' Court settling the account filed by Margaret Leonard as Guardian of Michael Mannion, David Mannion, Thomas Mannion and Joseph Mannion, which Orphans' Court decree allowed the exceptions to said account filed by said Michael Mannion and David Mannion, appellants here.

The said Accountant is the mother of the aforementioned children. On May 13th, 1915, Letters of Guardianship of the person and property of said children were issued to her by the Surrogate of Hudson County and were by her accepted. Since said appointment she has continued to act

as Guardian. At the time of the hearing on the exceptions to said account filed herein, to wit, April 13th, 1928, Michael Mannion was twenty-four years of age and resided at No. 37 Eastern Parkway, Jersey City, with his aunt, a sister of Accountant; David Mannion was twenty-three years of age; Thomas Mannion was twenty years of age and Joseph Mannion was sixteen years of age, and they resided with their mother at No. 123 Robinson Avenue, Great Kills, Staten Island, New York (p. 9, lines 20-40; p. 10, lines 1-12, State of Case).

On January 6th, 1928, said Margaret Leonard, as Guardian aforesaid, filed an Account covering the period from the time of her appointment as Guardian to the time of the filing of said Account. From the estate of each child she prays an allowance of \$800.00, which is set forth in said Account as follows:

“July 30. By amount paid out on bond and mortgage on property on Kensington Avenue, Jersey City, owned by Fairy W. Gerrick (this mortgage is now due and owing but the mortgagor claims that the mortgage is a forgery and refuses to pay same) \$800.00”

(pp. 1, 2, 3 and 4, State of Case).

Both Michael and David Mannion have filed Exceptions to said Account (p. 5, State of Case). They contend that the aforementioned item for which Accountant prays an allowance is not a proper charge against their respective estate and, that therefore, this sum, with interest thereon from July 30th, 1917, should be included in the balance left in accountant's hands for distribution to them.

The decree of the Orphans' Court upheld the contention of the Exceptants (pp. 41-43, State of

Case). The respondents here appealed to the Prerogative Court, which Court reversed and set aside the decree of the Orphans' Court (Decree of Reversal, pp. 74-76; Reasons of the Vice-Ordinary, pp. 77-82, State of Case). The appellants here, exceptants below, now seek to set aside the decree of the Ordinary and to have the decree of the Orphans' Court affirmed.

All of the money which accountant received as guardian of these four children came from the estate of accountant's father-in-law, that is, the father of her first husband and the grandfather of the aforementioned children. This money was deposited by accountant in the Trust Company of New Jersey, Bergen and Lafayette Branch, in four equal and separate accounts in her name as guardian of each of said children respectively (p. 10, ll. 12-30, State of Case). Louis W. Garrick, an attorney at law of New Jersey, was one of the executors of accountant's father-in-law's estate and also apparently acted as the attorney of such estate. It was from him that accountant received the money as guardian of exceptants (p. 11, ll. 25-40, State of Case). He represented accountant in having her appointed guardian of exceptants as well as in a few other matters connected with the estate of her father-in-law. *He never represented her in the making of any loans or financial investments of any kind or in any other way whatsoever outside of matters connected with the estate of accountant's father-in-law, according to her own testimony (p. 11, ll. 38-40; p. 16, ll. 20-40; p. 17, ll. 1-40, State of Case).*

Sometime around the first of July, 1917, said Louis W. Garrick called upon one Thomas P. Kenny, a real estate operator with offices in Jersey City, and told him that his mother, Fairy W. Garrick, wanted to borrow some money; that the accountant had some money now and that he,

Kenny, should find out whether the Bonding Company would permit her to loan this money on his mother's property at 106 Kensington Avenue, Jersey City (p. 23, ll. 1-30, State of Case). Kenny was well known to accountant and helped her in many ways in handling the affairs of the estate. It was through him that she applied for and received her bond from the Massachusetts Bonding & Insurance Company as guardian of the estate of the aforementioned children (p. 14, ll. 15-40; p. 15, ll. 1-15; p. 19, ll. 23-31, State of Case). Kenny went to the offices of the Massachusetts Bonding & Insurance Company in New York City and gave them Mr. Garrick's proposition and asked the Bonding Company if they would approve of the loan. The Bonding Company then instructed Mr. Kenny to make an examination of the property on which the mortgage was to be placed and to report to them whether there was sufficient security to cover the loan. This Mr. Kenny did and reported by letter to the Bonding Company. The Bonding Company then instructed Kenny to engage Garrick to make a search of the property which was accordingly done and the property was reported by Garrick free and clear of all encumbrances. The Bonding Company then instructed Kenny to carry out the details in making the loan (p. 23, ll. 30-40; p. 24, ll. 1-40; p. 25, ll. 1-40; p. 26, ll. 1-40; p. 27, ll. 1-40; p. 60, ll. 10-40; p. 61, ll. 1-40, State of Case).

About July 28th Kenny called at the home of said accountant and had her sign four drafts in the sum of eight hundred dollars each, drawn on the accounts of the four children in the Bergen and Lafayette Branch of the Trust Company of New Jersey. Mrs. Leonard, the accountant, was then seriously ill and was confined to her bed and in a very weak condition (p. 10, ll. 25-40; p. 11, ll. 1-20; p. 19, ll. 1-10, State of Case). Mr. Kenny

told her that the Bonding Company and Mr. Garrick had authorized a loan which was for the benefit of the children and that he wanted her to sign the drafts for the payment of the money. *According to accountant's own testimony this was the first time that she had any knowledge of the loan* (p. 11, ll. 1-40; p. 12, ll. 1-20, State of Case). *Accountant says that when Kenny told her that the Bonding Company had approved of the loan she thought it was all right* (p. 19, ll. 11-30, State of Case). The drafts were drawn to the order of the guardian and were endorsed by her (p. 26, ll. 35-40). Mr. Kenny took the drafts to the Bonding Company who countersigned the same (p. 34, ll. 3-14; p. 37, l. 40; p. 38, ll. 1-40). The money was then drawn from the bank by Kenny and the cash was given by him to Garrick (p. 27, ll. 11-25). Garrick absconded shortly thereafter and has never returned.

It now appears that the bond and mortgage which was given as security for this money is a forgery and Mrs. Fairy W. Garrick repudiates the instruments (p. 39, ll. 25-40; p. 40, ll. 1-20).

POINT I.

A guardian must use the same care, diligence, prudence and skill in handling the funds of his ward that an ordinarily diligent and careful man would exercise and take in respect to his own property.

The attorneys of the Bonding Company agree that the above is a correct statement of the law in this State.

In the instant case, the guardian was negligent in unnecessarily putting cash in the amount of

Thirty-two hundred (\$3,200) Dollars, money belonging to her wards, into the hands of third persons, whether they were her agents or not, to loan on a bond and mortgage. The Surety Company was equally negligent in sanctioning this method of paying out the money. The drafts should have been drawn to the order of the mortgagor and all persons connected with this transaction should have realized that important fact. An ordinarily diligent and careful man would have drawn the drafts to the order of the mortgagor especially so if he were unable to personally be present at its consummation and supervise the making of the loan.

The guardian was seriously ill at the time and was unable to look after the making of this loan. She did not negotiate the loan and had nothing to do with the arrangements of the transaction and according to her own testimony knew nothing about same. It was, therefore, gross negligence for the guardian, having herself no knowledge of the transaction and relying entirely upon others to properly complete the loan, to have drawn the drafts for the \$3,200.00 to her own order, endorsed same and then turned them over to third persons. She knew that this was equivalent to putting cash belonging to her wards in the hands of a third person and that she had no security to protect her if the money was lost. The Bonding Company was equally negligent in permitting the drafts drawn in this manner to pass through their hands into those of third persons. The Bonding Company countersigned the drafts and then gave them to Kenny knowing that he would receive the money on them at the bank. It was not necessary to have put the cash money into the hands of third persons. As previously stated an ordinarily diligent and careful man would not have done so under the

circumstances. *The drafts for this loan could have and should have been drawn to the order of the mortgagor; then no loss could possibly have been suffered.*

POINT II.

A guardian who unnecessarily turns over to an agent trust funds for investment or fails to supervise the acts of an agent, commits a breach of trust and becomes liable for any loss that may occur by reason of the negligence or wrongful act of the agent.

A guardian is charged with the duty of personally administering the trust estate. He cannot relieve himself of this responsibility as long as he remains the trustee of his ward's estate; he cannot delegate to others his personal discretion and judgment in matters concerning the trust estate; and he should not permit the funds of the estate to pass out of his control. Whenever there is a loss due to a breach of trust the guardian is personally liable.

The guardian in this case says that while she was seriously ill and weak from childbirth, Thomas P. Kenny came to her bedside and had her sign four drafts saying that Louis W. Gerrick had applied to the Bonding Company to loan out this money. She signed the drafts because as she says, "I thought it was perfectly all right when I heard that part" (p. 10, ll. 33-40; p. 11, ll. 1-21; p. 19, ll. 13-22, State of Case). On page 12, ll. 1-19, she testifies as follows:

"Q. What was the first you heard of the investment of any of these moneys? A. I do not really remember anything only just signing the drafts and lending the money.

Q. You say 'signing the drafts', was that on the occasion when Mr. Kenny came there?

A. Yes.

Q. What did Mr. Kenny say to you, as nearly as you can recall, at that time? A. As nearly as I can recall I imagine he said it would be a good investment and everything would be all right. That is all I remember at that time."

It appears that this visit of Mr. Kenny is the only time that Mrs. Leonard was apprised of the loan (p. 11, lines 38-40, State of Case). That the guardian had no knowledge of the transaction but relied entirely upon the statement of Mr. Kenny that the investment was all right also appears in her testimony under cross-examination of counsel for the respondent, Bonding Company, on p. 14, lines 20 to 30, State of Case. She did not know to whose order the drafts were drawn nor the kind of mortgage she was to receive as security for the money (p. 19, lines 35-40; p. 20, lines 1-10, State of Case).

Thus from the guardian, we learn that she had no knowledge of the kind and value of the security she was to receive for the trust money. She did not know for instance whether she was to receive a real or chattel mortgage; whether it was a first, second or third mortgage; or the nature and value of the property described in the mortgage; whether she as guardian was to be the assignee or mortgagee and consequently she did not know who the mortgagor was. All of these matters the guardian is charged with the duty of personally ascertaining and passing upon. The guardian never saw the securities and knew nothing more about the transaction until months afterwards (p. 12, ll. 29 to 33, State of Case).

Vice-Chancellor Pitney held in the case of *Keim v. Lindley*, 30 Atl. Rep. (N. J.) 1063, at p.

1074, first column, last paragraph, that a Trustee cannot delegate to another his personal discretion and judgment in the management of the trust estate, although he may delegate purely ministerial acts provided he retains supervision and control over the person so employed. This case was reviewed by the Court of Errors, but the above principle of law announced by Vice-Chancellor Pitney was not considered in the Appellate Court (54 N. J. E. 418).

In the Court of Errors and Appeals case of *Tuttle v. Gilmore*, 36 N. J. E. 617, on p. 623, line 8, it was held that it was a Trustee's duty to see that the securities he was to receive on a loan of trust funds were "good".

The California Supreme Court held in the case of *Re Estate and Guardianship of Bennett Wood*, 159 Cal. 466, 114 Pac. Rep. 992, 36 L. R. A. (N. S.) 252, at page 254, first column, last paragraph:

"There is another rule sustained by the authorities that appears to us to settle the question of the guardian's liability. That rule is well stated in the syllabus to *McCollister v. Bishop*, 78 Minn. 228, 80 N. W. 1118, as follows: 'If a trustee enters into any arrangement with reference to trust funds, which surrenders or limits his control over them, he becomes a guarantor of the fund, irrespective of his motives, or whether his surrender of control was the cause of the loss of the fund'. In such a case, in the event of loss of the fund, the Court will not enter upon an inquiry whether the loss is due to such abdication of control. While the Court there held that the facts of that case did not bring it within this rule, it upheld the principle therein stated as an eminently salutary rule. The same principle was declared by the United States Supreme Court in *Forsyth v. Woods*, 11 Wall. 484, 487, 20 L. ed. 207, 209, where the Court said: 'Letters of administration are a trust. They are

granted by the Probate Court or Ordinary, because of confidence reposed in the grantee. They require him to take exclusive charge of the personal property of his intestate, and to bring to its administration his own personal attention and judgment. He has no right to allow others to control it or to share in its administration. If he does, he exposes it to unnecessary hazards, and subjects it to the disposition of persons in whom the officer of the law has reposed no confidence”.

The Supreme Court of Errors of Connecticut in the case of *McClure, et al. v. Middletown Trust Co.*, 110 Atl. Rep. 838, second column, page 840 held:

“(4) While the trustee may not delegate his duties and powers to others, it is obvious that he must act frequently through agents or attorneys. This is not a delegation of his powers, for the trustee remains responsible for the reasonable diligence of his agent or attorney. He must select his agents with reasonable care, and he must supervise their acts with the same care. *Donaldson v. Allen*, 182 Mo. 626, 650, 81 S. W. 1151”;

and on page 841 first column:

“(7) There is no question of the diligence of the defendant in selecting Judge Pearne as the attorney to intrust this matter to. But reasonable diligence on the part of the trustee required it to know generally what the attorney was doing in the carrying out of its business. It could not commit the cause to the attorney and relieve itself of all further supervision. In a general way it should know what steps the attorney was taking, and it should use due care to have him fulfill his employment. Subject to such supervision, it might, as it did, leave to Judge Pearne the investigation of this matter, the decision of what steps to take, and then the taking of these steps. Investigation, decision, and ac-

tion it might leave to Judge Pearne. But when it did leave this matter to him it became responsible for his reasonable diligence, his decision became its decision, his acts its acts and his neglect its neglect”.

The annotation in 44 L. R. A. (N. S.) 976 under the heading “Misconduct of Agents” in part reads as follows:

“A guardian who turns over the funds of her ward to her attorney for investment is responsible for their loss through his dishonesty. *Abrams v. United States Fidelity & G. Co.* 127 Wis. 579, 5. L. R. A. (N. S.) 575, 115 Am. St. Rep. 1055, 106 N. W. 1091. The Court in this case distinguishes between the liability for employing an attorney in the collection of claims and in the investment of funds. After referring to the collection of claims it continues: ‘But the care and investment of the funds which reach his hands is one of the very things which the guardian has agreed to attend to, and if he delegates his duty to another, whether he be an attorney or a layman, he makes such other his personal agent and is responsible for his acts.’”

“A trustee who fails to make any examination or require any opinion on the title, but relies implicitly on his solicitor, is liable for the loss of trust money lent upon a mortgage of inadequate security, due to the fraudulent conduct of the solicitor who negotiated the loan as agent of both mortgagor and mortgagee. *Sutton v. Wilders*, L. R. 12 Eq. 373, 25 L. T. N. S. 292, 19 Week. Rep. 1021.”

“In *Bostock v. Floyer*, 35 Beav. 603, 35 L. J. Ch. N. S. 23, L. R. 1 Eq. 26, 11 Jur. N. S. 962, 13 L. T. N. S. 489, 14 Week Rep. 120, where a trustee had employed a solicitor of large practice and high repute to procure an investment of trust funds and turn the same over to him, and such solicitor fraudulently represented to the trustee that he had loaned

the trust funds, and turned over to the trustee fraudulent mortgages and surrender of copyhold premises, and subsequently it developed that the surrender was fraudulent and a loss resulted to the trust estate, the Court was of the opinion that since the trustee had selected the solicitor and did not take the precaution he might have taken to see whether the mortgage had been made or not, he was personally liable for the loss. The Court does not point out what further action might have been taken by the trustee."

"Trustees who turn over the trust funds to their solicitor for the purpose of investment, and rely entirely upon his assurance that the same have been invested in a mortgage in accordance with instruction, without inquiring as to the mortgage deed, are personally liable for a loss of the trust fund resulting from the defalcation of the solicitors. *Rowland v. Witherden*, 3 Macn. & G. 568, 21 L. J. Ch. N. S. 480."

The Supreme Court of California in the case of *Graver v. Early, et al.* (S. F. 9716) 215 Pac. Rep. 394, says:

"Indeed, it could not, for it is well settled that, if a trustee enters into any arrangement in relation to a trust fund which surrenders or limits his control over them, he becomes a guarantor of the fund, irrespective of his motive, or whether his surrender of control was the cause of the loss of the fund. In such case, in the event of loss, the Court will not enter upon an inquiry whether the loss is due to such abdication of control. *Estate of Wood*, 159 Cal. 466, 472, 114 Pac. 992, 36 L. R. A. (N. S.) 252.

(6, 7). When a guardian delegates the administration of the solemn trust imposed by the guardianship to another, the guardian must be held responsible for the other's action in the premises. Hence the action of the guardian's chosen agent must be, as a gen-

eral rule, imputed to the guardian in all matters relating to the administration of the guardianship trust.”

In *Perry on Trusts and Trustees*, 6th Ed. Vol. 1, Sec. 441, appears the following statement:

“But if a Trustee employs an agent and the agent steals or appropriates the property entrusted to him, the Trustee will be held responsible * * *. He is responsible for the criminal acts of agents employed by himself about the trust fund and for any loss that may fall upon the estate by the forgery of a signature upon which he pays money.”

In Section 463 appears the following statement:

“Trustees must personally see to it that the security is forthcoming, upon parting with the money, as where they allowed their Solicitors to receive the money upon representation that the mortgage was ready and there was no mortgage and the Solicitors misapplied the money, the Trustees were held to make up the loss.”

See also 28 C. J. 1129 Sec. 213; 28 C. J. 1141, Sec. 235; and annotation 50 A. L. R. 214.

From the above citations it is seen that the law generally casts upon the guardian the duty to personally manage the ward's estate. If the guardian *unnecessarily* delegates his duties to another, it is a breach of trust and the guardian is liable for the negligence or wrongful conduct of the other. So also if the guardian of necessity delegates certain ministerial duties to an agent but fails to supervise his acts with reasonable care the guardian is liable for the negligence or wrongful conduct of the agent.

In the case at bar it appears from the record that Louis Garrick called upon Thomas P. Kenny

and told him that the guardian, Mrs. Leonard, had some money to loan and that Garrick's mother wanted to borrow some money on her property at 106 Kensington Avenue. Kenny took the matter up with the Massachusetts Bonding and Insurance Company, who was the surety on Mrs. Leonard's guardianship bond. Kenny appraised the value of the property at the instance of the Surety Company and on his report to it approved of the loan. Garrick, with the approval of the Surety Company, made the search. Then Kenny got the guardian, Mrs. Leonard, to sign the drafts for the money (p. 23, ll. 1-40; p. 24, ll. 1-40; p. 25, ll. 1-40; p. 26, ll. 1-40, State of Case). At the time of the making of the loan Mrs. Leonard, the guardian, was sick and confined to her bed and on her own testimony, she had no knowledge of any of the transactions concerning the loan except the signing of the drafts. Kenny, whom she had known for many years, came to her bedside with the drafts for the money and told her that Garrick had sent him to get some drafts signed so that Garrick could invest the money for the benefit of the children. Mrs. Leonard testified that when she heard that she thought it was all right and signed the drafts. The guardian says that is all she ever knew about the loan and all she did in connection therewith (p. 10, ll. 34-40; p. 11, ll. 1-28; p. 12, ll. 1-35; p. 13, ll. 12-18; p. 14, ll. 18-31, State of Case). Kenny took the drafts to the Surety Company where they were countersigned and then he took them to the bank and withdrew the money. This money he gave to Garrick, who absconded with it (p. 27, ll. 11-40; p. 33, ll. 21-40; p. 34, ll. 1-22; p. 37, ll. 30-40; p. 38, ll. 1-40; Exhibit R-11, p. 63, State of Case).

In the present case it was the duty of the guardian to personally decide the advisability of the loan, to ascertain the kind and value of the

securities she was to receive and to pay the \$3,200.00, money belonging to her wards, to Fairy W. Garrick, the supposed borrower and mortgagor. At least the guardian could have made the drafts payable to the order of the mortgagor. It was unnecessary for her to have given the actual money to another to give to the mortgagor, but having done so she committed a breach of her trust and became responsible for the loss of the money through their negligence or misconduct. The money was lost by the negligence of Kenny in not delivering the money to the mortgagor and the wrongful conduct of Louis W. Garrick in appropriating the money to his own use.

The guardian failed to supervise the acts of those who represented her in the making of this loan. This also is a breach of her trust duties and, since it appears that a proper supervision of the acts of her agents would have prevented a loss, she is liable. Had the guardian communicated directly with Mrs. Garrick, the supposed mortgagor, as it was her duty so to do, she would have prevented the fraud.

POINT III.

Answering the contention of the Massachusetts Bonding and Insurance Company.

The brief filed for the Bonding Company in the Prerogative Court pointed out very sharply that the guardian in this case is the mother of the exceptants and that she does not seem to be very anxious about the outcome of this proceeding. Supposing it all to be true, what does it matter? In the first place it is the children who have suffered the loss and not the guardian, and in the second place the law applies to a guardian

who happens to be also a parent of the ward the same as it does to any other guardian.

Counsel for the Bonding Company contends that Louis W. Garrick was the attorney and agent of accountant, and that therefore the accountant was not negligent in executing the drafts and turning them over to Kenny, also accountant's agent, who after having them countersigned by the Bonding Company withdrew the money from the bank and turned it over to Garrick. Counsel assumes that the guardian intended that Kenny should deliver the money to Garrick instead of to the mortgagor, but there is no testimony that such is the fact. There is no evidence that either Kenny or Garrick was especially authorized by accountant to invest this money.

In this particular transaction Garrick had no conversation with the accountant whatsoever and it would appear from the evidence that Kenny was acting for the Bonding Company.

Even though it were true that accountant intended the cash to be given to Garrick as her agent and attorney, she would still be liable. (See Point II of this brief.)

Counsel for the Bonding Company relied below upon *Four Corners Building & Loan Association v. Schwarzwaelder*, 88 N. J. Eq. 545.

In that case the facts are as follows: Defendant Schwarzwaelder was one of the directors of the complainant Building & Loan Association. He was also an executor of an estate and as such executor held mortgages on certain property. The Building & Loan Association took two other mortgages on the same property which were in fact subject to the mortgages held by defendant, but the attorney for the Building & Loan Association certified that its mortgages were first liens upon the property. Said attorney, by false discharges, had procured the cancellation of the mortgage

held by Schwarzwaelder as executor. The decision of the Court in that case begins as follows :

“The complainant seeks to recover of the defendant the loss on two mortgages in which it had invested. *This loss was caused by Crocker, the complainant’s solicitor, falsely certifying that the mortgages were first liens, when, in fact, there were prior mortgages which he had procured to be cancelled of record by false discharges.*”

Further along in the decision and about in the middle of page 547, the Court says :

“The complainant is seeking to hold the defendant for the fraud of its own agent
* * * .”

Of course, the situation in the Schwarzwaelder case is, therefore, very much different to the situation in the present case. In the case at bar, according to the Bonding Company, it is the agent of the accountant that committed the fraud. Except for this question of agency, there is absolutely nothing in the Schwarzwaelder case which is similar to the case at bar.

It should always be kept in mind that the appellants, who are the injured parties herein, had nothing whatsoever to do with this transaction. Neither Garrick nor Kenny was acting for them.

In the *Leithoff v. Dennis* case, 86 N. J. Eq. 316, the complainants as the executors and trustees of an estate, owned a large number of mortgages which represented investments of the funds of such estate. These mortgages were in the possession of their attorney, who occasionally collected the interest thereon and otherwise represented the estate. The said attorney fraudulently procured the signatures of the said executors and trustees complainants to an assignment of said mortgages in his possession to the defendant and

then disappeared. Complainants are suing to set aside the said assignment. The Court, on page 318 said:

“The final disposition of this case seems to me to turn on the question of agency or no agency. If Crocker (the attorney) can be said to have been the complainant’s agent and to have acted within his authority in doing what he is charged with having done, then the case must be quickly decided against the complainants”.

Thus we see that in the *Leithoff v. Dennis* case, the Court in that part of its decision quoted above, clearly affirms the principle of law set forth in Point II of this brief, that is, that a Trustee is responsible for the misconduct of his agents.

On page 322 the Court says:

“* * * it was held, by the Court of Errors and Appeals in the case of *Heyder v. Building and Loan Association*, 42 N. J. Eq. 403, that where one gives to another the power to practice a fraud upon innocent parties, the court will not interfere for his protection at the instance of those who have been deceived and misled by such fraud * * *.”

The annotation in 50 A. L. R. 214, on page 217 says that:

“If the trustee employs an agent to invest the money of a *cestui que trust*, and a loss is caused through the fraudulent act of the agent, the situation is one simply of a person employing a servant who deceives him, and the loss occasioned must fall upon the trustee, and not upon the *cestui que trust*, under the rule that of two innocent persons the one who must suffer by the wrongful act of a third party must be the one who employed him, and who did not take all the precautions that he might have taken against being deceived, although the trustee did as a matter of fact exercise ordinary care and caution in

employing the agent. *Bostock v. Floyer* (1865) L. R. 1 Eq. (Eng.) 26''.

In the case at bar the guardian and Bonding Company unnecessarily gave to Kenny and Garrick the power to commit a fraud upon the children herein.

Except for these two points in the *Leithoff* case, both of which favor the contention of exceptants, there is nothing which is similar to the case at bar.

In conclusion I wish to point out to the Court some undisputed facts which are pertinent to the question of negligence on the part of the guardian and Bonding Company.

Mrs. Fairy W. Garrick, the supposed borrower and mortgagor, was represented as asking for a loan from the guardian through her son Louis W. Garrick. Kenny was the conveyer of this information to the guardian and to the Bonding Company. The Bonding Company through Kenny engaged Garrick to search the property, knowing at the time that Garrick was representing his mother, the supposed borrower. The Bonding Company and the guardian permitted Garrick to represent both parties to this transaction, unnecessarily gave him cash instead of a check to the order of the mortgagor and this enabled him to commit the fraud.

It is respectfully submitted that such action constituted a breach of trust and that the decree of the Prerogative Court should be reversed and set aside and that the decree of the Orphans' Court should be affirmed.

DONALD M. WAESCHE,
Attorney for Appellants.

HARRY A. STILES,
Of Counsel.

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In the case at bar the guardian and his

attorney were held liable for the

negligence of the guardian in

not having taken proper

care of the property of the

ward and the guardian was

held liable for the same.

The court held that the guardian

was liable for the same.

Attorney for Appellant
Dexter M. Watson

New Jersey Court of Errors and Appeals

In the Matter of the Appeal
from the Decree of the Hud-
son County Orphans' Court
allowing certain exceptions to
the accounts of Margaret
Leonard, guardian of Thomas
Mannion, Michael Mannion,
David Mannion and Joseph
Mannion, Minors.

BRIEF FOR RESPONDENT, MASSACHUSETTS BONDING AND INSUR- ANCE COMPANY.

Statement of Facts.

The Massachusetts Bonding and Insurance Company is the active respondent in this appeal. Counsel for the respondent, Margaret Leonard, has not filed a brief nor appeared in this court, except as counsel of record for her.

The statement of facts given by the appellants in their brief is correct, with certain exceptions which we will point out. On page 3 it is stated that Louis W. Garrick *apparently* acted as the attorney of his father-in-law's estate. This fact is undisputed and uncontradicted in the evidence, as will later be shown.

It is also stated that Garrick never represented the guardian in the making of any loans or financial investments of any kind, *or in any other way whatsoever*, outside of the matters connected with the estate of the guardian's father-in-law. This would lead to the inference that Garrick had not represented the guardian as her attorney

after she was appointed, which is uncontradicted. Proof of this appears chiefly from the exhibits R. 1, p. 50; R. 1A and 1B, pp. 51 to 55; R. 2, pp. 56 and 57; R. 11, p. 63 and Exhibits A. 2 and A. 3, pp. 119 to 122); nor does the guardian deny this fact by her testimony, as will be shown later. Her statement that Garrick had never represented her in making loans was because of the fact that no occasion had arisen before where a loan had been suggested or made.

On page 4 the appellant states that the surety company "instructed Kenny to engage Garrick to make a search of the property" and "instructed Kenny to carry out the details in making the loan," and also "to make an examination of the property on which the mortgage was to be placed." This is not the testimony. The surety company merely approved of the investment upon the recommendation of Thomas Kenny and it was Kenny who suggested that Garrick search the title and not the bonding company (testimony of Kenny, p. 23, l. 35 to p. 24, l. 5; Exhibits R. 6 and R. 7, p. 61).

It is further stated that the only time that the guardian was informed with regard to the loaning of the money was when Kenny came to her house for her to sign the drafts. This is not the testimony of the guardian and Kenny testifies that he had spoken to her about the loan before (pp. 25 and 26). We will refer more specifically to the evidence to support our statement of the facts later in the brief. In other respects, the statement of the appellants is correct.

Answer to Point I of Appellant's Brief.

The statement of law at the heading of Point I of the appellant's brief is substantially correct. A guardian is not an insurer against loss under all circumstances. If they be faithful, careful and discreet, the duty imposed upon them by law will be discharged. Reasonable care and proper diligence are required. If they exercise these qualities, they are not responsible for loss which prudent management could not foresee or avoid. The rule is well stated in the opinion filed by Vice-Ordinary Fielder (Case, p. 79, l. 28 to p. 80, l. 9) citing *Monroe v. Osborne*, 43 N. J. Equity 248; *Heisler v. Sharp*, 44 N. J. Equity 167, affirmed 45 N. J. Equity 367; *Smith v. Jones*, 89 Equity 502.

In *Smith v. Jones*, Vice-Ordinary Backes speaking for the Prerogative Court, expressed in his opinion the remarks which are quoted by Vice-Ordinary Fielder in his opinion in this case and Vice-Ordinary Backes closes his opinion by stating "That is the test which the courts are required to apply in all cases." "Each case must, however, stand on its own circumstances," is the statement made in *Monroe v. Osborne*, *supra*.

The appellant's chief argument is that the guardian should have given a check for the amount of the loan to the order of the mortgagor, Fairy W. Garrick, instead of permitting Kenny to draw the money from the bank in cash and pay it to Garrick.

The Vice-Ordinary disposes of this argument in his opinion (see p. 81, ll. 20 to 40) and cites a number of cases in support. The case of *Four Corners Building and Loan v. Schwarzwaelder*, 88 N. J. Equity 546, to which he refers, is par-

ticularly applicable and we, therefore, quote from that case. In that case the question was as to the liability of a director of a building and loan association who was at the same time executor of an estate. A bill was filed seeking to charge him with the loss of moneys invested by the association through him, which moneys were misappropriated by the attorney for the building and loan association who disappeared in exactly the same way as Garrick did in the present case. Crocker, the attorney in this case, forged a discharge of the first mortgage which was held by the estate of which Schwarzwaelder was executor, and falsely certified that the building and loan mortgage was a first lien. The Court of Errors held that there was no liability on the part of Schwarzwaelder. The Court said:

“But even if the defendant could be found guilty of negligence in this respect, there would still remain an insuperable difficulty in the complainant’s way. *It is not claimed that the defendant should have been present when the mortgage was executed and the money paid. As business is done, that would be obviously impracticable. The directors had the right to pursue the usual business custom and trust the solicitor to close the loan and record the mortgage; in fact, such were the solicitor’s duties under the by-laws. He alone could properly attend to paying off prior encumbrances and making sure that complainant’s mortgage was a first lien. The loss did not come until the solicitor turned aside the money from its proper destination, the satisfaction of the first mortgage, and either wrongfully paid it to Aschenbach or embezzled it himself. (Italics ours.)*

When the money was thus turned aside, the association had already suffered the loss without the defendant having had an opportunity to prevent it. He might, indeed, have subsequently made an examination and dis-

covered that the mortgage was not a first lien, but there is nothing in the case to show that this discovery could have made it possible for the complainant to prevent the loss. The solicitor could hardly have been solvent; his dishonesty speaks loud to the contrary; at any rate, in the absence of evidence, we cannot find that he was solvent."

The Court further says:

"The defendant had no reason to anticipate the solicitor's crime. The prior lien would have been satisfied in the ordinary course; but the complainant's solicitor, instead of taking the ordinary course, undertook to satisfy the record by a forged discharge." * * *

"If there had been proof that by prompt action the money could have been saved, the case would be different; the failure to take prompt action might be negligence of the defendant intervening between Crocker's act and the final loss to complainant. In that event, the failure to act promptly might well be the proximate cause; but in the absence of such evidence, the proximate cause is the rascality of the complainant's own solicitor."

The action of the guardian in signing the drafts as directed by Kenny and turning the cash over to him to be delivered to Garrick was in accordance with the usual business custom in such matters. She trusted them to close the loan, obtain the bond and record the mortgage. She was a woman of no business experience. Garrick was her attorney and had been the attorney of her father-in-law and had handled her father-in-law's estate and turned over her share of it to her (Case, p. 11, ll. 30 to 40). Kenny had been her lifelong friend, had his office within a block of her and whatever business transactions were necessary by her as guardian she naturally would place in the hands of these

two men. Her presence at the closing of this loan would not have changed the situation, because she would have turned over the cash to Garrick just as Kenny did; as a matter of business custom, she had the right to turn over the money to her own attorney and trust him to close the loan. The fact that she was ill at the time when Kenny called upon her to sign the drafts makes not the slightest difference, so long as she knew to whom she was loaning the money and the security. If she had been perfectly well, she would undoubtedly have done exactly the same as she did and her action was entirely proper.

The appellants also contend that the guardian knew nothing about the loan until Mr. Kenny came to her with the drafts for her signature, which they charge is negligence. The evidence of Kenny is to the contrary; and the guardian testifies she does not remember.

She says in her testimony (p. 11, l. 1):

“Mr. Kenny came to my house and had me sign four drafts, saying *Mr. Garrick* was applying to the bonding company to lend out some money for my interest—for the benefit of the children; *so I signed the drafts thinking they were all right.*”

In answer to the question (p. 12, l. 1):

“Q What was the first you heard of the investing of any of these moneys? A I do not really remember anything, only just signing the drafts and lending the money.”

She says that Mr. Kenny said to her at the time, “as nearly as I can recall I imagine he said it would be a good investment and everything would be all right. That is all I remember at the time.” She also says that she had other bonds and mortgages which were held by the

surety company under joint control and testifies as follows (p. 12, l. 39):

“Q And one of these bonds and mortgages was a bond and mortgage by Fairy W. Garrick, the mother of Louis W. Garrick, on a piece of property on the boulevard, wasn't it? A Yes.

Q And it came to you as a part of the distribution of the estate? A Yes.”

She further said on cross examination that she had known Mr. Kenny for twenty years, she had confidence in him and “I trusted him, I trusted Mr. Garrick also” (p. 14, l. 24).

This testimony shows that she did know about this loan, that she knew the money was to be loaned out on a mortgage to Fairy W. Garrick, that she already held one mortgage on that property from the estate of her father-in-law, and that she felt that everything would be handled properly if it was done by Kenny and Garrick. She was fully aware of what this transaction was and that she was loaning money of her children, to whom it was being loaned and on what security and by whom it was being handled and all of this before the matter was closed.

Kenny's testimony regarding the transaction was as follows (p. 23, l. 3 to p. 27): that Mr. Garrick came into his office, which was very near where Mrs. Leonard at that time lived, this was in July, 1917, and told him that his mother, Fairy W. Garrick, wanted to borrow some money on her property at No. 106 Kensington avenue, and that Mrs. Mannion had some money from the estate which she could loan, as guardian, and to find out whether the bonding company would be satisfied with the loan. This was necessary because the bonding company had joint control of all investments, so Mr. Kenny said he took the

matter up with the bonding company by letter (Exhibit R. 6, p. 60). The bonding company replied (Exhibit R. 7, p. 61) in which they say in part "we rely, of course, upon your approval."

He further says (p. 23, l. 35) "I asked Mr. Self (who represented the bonding company), if it would be all right for Mr. Garrick to search it. He asked me if the man was a good man, and I said, "Yes, all right." Mr. Garrick made the search and certified to it as attorney for the guardian (Exhibit R. 10, p. 63).

Contrary to what the appellants say, that Mrs. Mannion was not consulted about this loan until the time Mr. Kenny went there with the drafts, he says (p. 25, l. 35):

"A We had taken this matter up with her about the mortgage.

Q You had personally? A Yes.

Q Had you seen her? A Yes.

Q Did you speak to her about this loan? (p. 26.) A Oh, yes, certainly.

Q Did you explain to her what it was for? A Certainly.

Q Before you went for the order? A Certainly."

Then, after he had gotten the orders, which were the drafts for the money, he says he went to Mrs. Mannion's house and, "we told her that Garrick was ready to pass this here title and that we needed the money and that we had to have these here orders signed, that there is the order to put out the money" (p. 26, l. 20).

"Q Did you tell her what it was for? A Oh, yes.

Q What did you tell her it was for? A I told her it was for a mortgage on Fairy W. Garrick's property—*which she knew.*"

He then sent the signed application (Exhibit R. 16) to the bonding company and they forwarded the countersigned checks or drafts to him and he says, on cross examination, that as near as he can remember he went to the Trust Company and obtained the money in cash. The drafts were drawn to the order of the guardian, apparently. After obtaining the money he met Garrick in his office, #15 Exchange Place, Jersey City, paid it to him, and obtained a receipt (Exhibit R. 11, p. 63).

There is nothing in the handling of the matter by the surety company which can be termed negligent, as is contended by appellants (p. 6 of their Brief).

The surety company was just as much justified in relying on Kenny and Garrick to handle the transaction honestly, as was the guardian. The position of the surety company is no different from that of the guardian and the same reasoning applies. The Vice-Ordinary's opinion (see p. 81, ll. 20-40, Case) on this point, applies with equal force to the surety company. It is a matter of business custom for surety companies to rely on local agents and attorneys to carry out the details of a business transaction of this kind. The surety company did nothing more than approve of the transaction, and this approval was entirely based on Kenny's opinion as to the value of the property, the advisability of making the loan and of having the title searched by Garrick. Kenny was the broker who had obtained the bond and Garrick was the guardian's attorney. The bonding company cannot be charged with negligence under those circumstances in countersigning drafts so that Kenny could obtain cash to close the loan.

The surety company was acting to protect its own interests. It was in the same position as a private person. The law requires a trustee to act with the same discretion that a person would if he were handling his own private affairs. The surety company acted according to business custom in handling a business matter of this kind, to wit, it relied upon the principal's attorney and agent, both men of high reputation at that time, to close the transaction, and in so doing was careful and discreet. It was not negligence, nor lack of prudence or care under the circumstances, for the guardian to sign drafts and permit Kenny, her agent, and Garrick, her attorney, to handle the details of the loan transaction entirely nor for the surety company to countersign the drafts.

The law governing a situation of this kind is well stated in the case of *Speight v. Gaunt*, 22 Ch. Div. 727-761, 9 App. Cases, page 1. There the trustees had some fifteen thousand pounds to invest and bought stock in certain corporations through a broker and gave the broker a check for that amount to pay for the stock when called upon to do so. The broker embezzled the money and absconded. Jessel, Master of Rolls on appeal said: 22 Ch. Div. 739-740.

“It seems to me that on general principles a trustee ought to conduct the business of a trust in the same manner that an ordinary prudent man of business would conduct his own and that beyond that there is no liability or obligation on the trustee. It never could be reasonable to make a trustee adopt further and better precautions than an ordinary prudent man of business would adopt. If it were otherwise, no one would be a trustee at all.”

Lord Justice Lindley also wrote an opinion and said (22 Ch. Div, p. 762):

“I wish most emphatically to say that if trustees are justified by the ordinary course of business in employing agents and they do employ agents in good repute and whose fitness they have no reason to doubt, and employ those agents to do that which is in the ordinary course of their business, I protest against the notion that the trustees guarantee the solvency or honesty of the agents employed. Such a doctrine would make it impossible for any man to do anything with a trust.”

The case of *Bostock v. Floyer* (cited hereafter by the appellants) is distinguished, Lord Lindley holding that this was a case where the money was given by the trustees to a solicitor for the purpose of *general* investment. It was not a case where the money was placed in his hands to invest in a special stock which had already been determined. There the trustees surrendered control of the money to their solicitor and relied upon him to make proper investment of it. Here the guardian gave the draft to Kenny to invest in a mortgage from Fairy Garrick.

The opinion of the Lord Chief Justice on appeal of the Speight case in the House of Lords 9 App. Cases 1, 5, is in part as follows:

“In the early case of *ex parte Belchier* before Lord Hardwicke it was determined that trustees are not bound personally to transact business connected with the duties of the trust, as according to the usual mode of conducting business of a like nature persons acting with reasonable care and prudence on their own account would ordinarily conduct through mercantile agents; and that when according to the usual and regular course of such business moneys receivable or payable ought to pass through the hands of such mercantile agents that course may be

properly followed by trustees, though the moneys are trust moneys, and that if under such circumstances and without any misconduct or default on the part of the trustees a loss takes place through any fraud or neglect of the agents employed, the trustees are not liable to make good such loss. That authority has ever since been followed."

The chief question considered on the appeal was whether the money should have been paid directly to the broker and it was decided that it was the business custom and the custom of the London Stock Exchange for moneys to be paid directly to brokers for the purchase of the stock and consequently, the trustees were not liable. This is the same principle which is decided in the case of *Four Corners B. & L. v. Schwarzwaelder* regarding the closing of loans by solicitors for Building & Loan Associations.

The appellants at the top of page 7 state that if the drafts had been drawn to the order of the mortgagor, "no loss could possibly have been suffered."

As a matter of fact, this is not correct; since Garrick forged the name of his mother on the bond and mortgage it is reasonable to assume that he would have likewise forged her endorsement on any check or draft which might have come into his possession which was payable to her order. So, even though the drafts had been drawn to the order of the mortgagor, as the appellants contend should have been done, nevertheless the same embezzlement would most likely have taken place.

Answer to Point II of Appellant's Brief.

The heading under Point II of appellant's brief on page 7 is not a correct statement of the law. A guardian who *unnecessarily* turns over to an agent trust funds for investment might become liable for any loss by reason of the negligence or wrongful act of the agent, but the statement that if a guardian fails to supervise the acts of an agent a breach of trust is committed, is too general a statement of the law upon this subject. The brief cites a number of cases to support their contention and on page 13 quotes from Perry on Trusts, Sixth Edition; Volume 1, Section 441.

We call attention to the fact that this statement by Perry is qualified under a headnote marked A under Section 441, which reads as follows:

"In view of later decisions the proposition in the text cannot be considered a correct statement of the law. Of the two cases cited as authority, Hopgood *v.* Parkin has been discredited by subsequent English decisions, and Bostock *v.* Floyer has been construed to hold merely that misapplication of trust funds by an agent renders the trustee liable where he has unnecessarily entrusted the agent with the custody of trust funds. Speight *v.* Gaunt, 22 Ch. Div. 727, 761; Re Partington, 57 L. T. 654, 661."

If the appellants had examined the new edition of Perry on Trusts, the seventh edition which was published in 1929, it will be found that the statement of the law in the sixth edition is considerably qualified and changed. In the seventh edition, under paragraph 441, the author says:

"It was observed in Harden *v.* Parsons (40) that no man can require, or with reason expect, that a trustee should manage another's property with the same care and discretion as his own. But this

is neither sound morality nor good law. A trustee must use the same care for the safety of the trust fund, and in the interest of the *cestui que trust*, that he uses for his own property and interest (41). And even this will not be sufficient if he is careless in his own concern; for a trustee must in all events use such care as a man of ordinary prudence uses in his own business of a similar nature (42). Thus, where a trustee had 200 pounds of his own money, and 40 pounds of trust money, in his house, and he was robbed by his servant, he was not held responsible (43). And where a trustee deposited articles with his solicitor to be passed over to a party entitled to them, and the articles were stolen, the trustee was not held responsible (44); that is, the trustee is not responsible for the crimes of strangers. But if a trustee employs an agent and the agent steals or appropriates the property entrusted to him, the trustee will be held responsible *unless the employment of the agent is reasonably necessary for the performance of the duties of the trust and the trustee selects persons who are apparently honest and properly qualified and uses reasonable supervision over them.*" (In *re Weall*, 42 Ch. Div. 674; *Jobson v. Palmer* (1893) 1 Ch. 71; *Lord De Clifford's estate* (1900) 2 Ch. 707; *Carpenter v. Carpenter*, 12 R. I. 544. (Italics ours.)

"Although a trustee cannot properly delegate his trust to an agent 'he is justified in employing qualified persons as agents when in so doing he follows the ordinary course of business of a like nature.'" *Rochfort v. Seaton* (1896) 1 Ir. R. 18; *Speight v. Gaunt*, 9 App. Cas. 1, 5; 22 Ch. Div. 727; *McCloskey v. Gleason*, 56 Vt. 265; *Finlay v. Merriman*, 39 Tex. 56; *In re Brier*, 26 Ch. Div. 238.

"Where trust funds have been lost through embezzlement by a broker employed by trustees to purchase certain securities, and the usual business precautions were taken,

they have been held not to be responsible for the loss. *Speight v. Gaunt*, 9 A. C. 1. But where the trustee was negligent in selecting his broker and unnecessarily put the trust funds into his custody, he was held to be liable for the loss due to the broker's dishonesty. *Robinson v. Harkin* (1896) 2 Ch. 415. And where the trustee has not exercised proper supervision over his agent and has unnecessarily given him the opportunity to misappropriate the trust funds, he is liable for the loss. *McCloskey v. Gleason*, 56 Vt. 264."

"Where a loss of trust funds was due to the failure of a solicitor, employed by the trustees, to see that a certain assignment was properly executed, it was held that the trustees were not liable, since this was a matter in which they must necessarily rely upon solicitors, *Rochfort v. Seaton*, (1896) 1 Ir. R. 18."

It is apparent from the language of this author and also from the cases which he cites, that a trustee or guardian is not absolutely liable in case of a loss where he has turned over trust funds to an agent and the agent misappropriates or loses the funds.

The correct rule is that if the employment of agents is reasonably necessary for the performance of the duties of the trust and the trustee selects persons who are apparently honest and properly qualified and uses reasonable supervision over them, he is not responsible for their lack of intelligence or dishonesty. In *re Weall*, 42 Ch. Div. 674; *Jobson v. Palmer*, (1893) 1 Ch. 71; *Lord DeClifford's Estate*, (1900) 2 Ch. 707; *Carpenter v. Carpenter*, 12 R. I. 544.

Perry states that a trustee is responsible for any loss that may fall upon the estate by the forgery of a signature upon which he pays money,

but this statement is supported by a case which was not one where the trustee had delegated his powers to another. The trustee himself distributed moneys to certain heirs, relying upon a marriage certificate which was forged so that the money was paid to the wrong person. This case stands alone and should not be followed as an authority here. In that case it was a question of the trustee taking the necessary precautions to see that the certificate was genuine and identity was proper before paying out the money; while the guardian in the case at bar merely gave the cash to her attorney to complete the loan transaction.

The appellants also cite 28 C. J., page 1129, Section 213. The text there states that a trustee may employ clerks or servants "to assist him in his duties without liability for their acts, provided he has used reasonable care and discretion in the matter of selecting those whom he employs" * * * "and is required to exercise therein such diligence and prudence as reasonable men in ordinary employment in the conduct of their own affairs and will be held liable for any loss which may result from his failure to exercise such prudence and diligence."

This is a correct statement of the law and not as appellants contend.

The appellants cite several cases one from California and one from Connecticut as authority for their contention that a guardian is absolutely liable for any loss of funds by their agents. The case cited in the appellant's brief page 9 in *re Wood*, 36 L. R. A., N. S., is one where the guardian had turned over the ward's money to a surety for deposit in a bank and the bank failed—entirely different facts from the situation here. This point is covered by Perry in Para-

graph 443 of his book. The Court held that the trustee in this case was liable following the statement made by the author and the decisions which cover this situation.

In the case at bar the guardian kept control over the fund jointly with the Surety Company, and the withdrawal was for the purpose of making the loan; a ministerial act to be performed by her agent, Kenny, and Garrick, her attorney. The question is whether she showed due prudence in selecting these men to perform this act.

McClure v. Middletown Trust Company, cited on page 10, holds the law to be as it has been held in this State and in *Perry on Trusts*. The opinion says that the trustee "should use *due care* to have him fulfill his employment. * * * Investigation of the matter, the decision of what steps to take and the taking of those steps; investigation, decision and action it might leave to Judge Bearne. But when it did leave this matter to him, it became responsible for his *reasonable diligence*." This case goes no further than to hold that a trustee must use reasonable, diligent and ordinary prudence in the selection and actions of his agents, and not give an agent *unnecessary* opportunity to misappropriate funds placed in his care.

The quotation from 44 L. R. A., N. S. 976 on page 11, is not supported by the cases there cited. The case of *Abrams v. U. S. F. & G.* was a case where an attorney was employed to collect claims. The attorney brought suit for this purpose, collected the money and turned it over to the guardian who gave it back to him for the purpose of making an investment, and he put it in his own personal account and subsequently

misappropriated it. The guardian there relied upon the attorney to invest the money not knowing what the investment was to be; simply giving him general power to invest for her.

In the case of *Bostock v. Floyer*, which is cited in the annotation only goes so far as to hold that the trustee is liable where he has unnecessarily entrusted the agent with the custody of the trust funds, which is exactly his liability as stated by Perry and the decisions cited by him. An examination of the decisions which are cited under the remainder of this headnote indicates that they all hold that the trustee's liability is not absolute and that he can employ agents provided he uses due diligence in selecting them.

Bostock v. Floyer, is a similar case to *Abrams v. U. S. F. & G.* and *Graver v. Early* cited by appellants on page 12 of their brief. In each of these cases the trustees had turned over moneys to a solicitor generally for the purpose of general investment relying upon their discretion and judgment. We have already referred to the fact that this case had been distinguished in our reference to *Speight v. Gaunt*. The difference between these cases and the one at bar is readily discernible, for the trustee simply turns over the moneys to a solicitor and relies upon his discretion and judgment for investment thereby delegating his discretionary powers, whereas, if he makes a specific loan and simply hands the money to a solicitor for the purpose of closing, it is only a ministerial act which he trusts to his agent.

The appellant also cites the case of *Keim v. Lindley*, 30 Atl. Rep. 1063, N. J. This case is not an authority for the position which they take. It was a case where trustees had delegated an

agent to execute a contract of sale and the question was raised as to whether the power to execute the contract was one which could be properly delegated. Vice-Chancellor Pitney held that it could, since the execution of the contract in that particular case was merely a ministerial act, the terms of the contract having been already settled by the trustees. The case was reversed on appeal so that the decision has no bearing here.

The case of *Tuttle v. Gilmore*, 36 N. J. Equity, 617 is also cited. This decision has no application. There the trustees had invested money in second mortgages and in mortgages on land without sufficient value to warrant the investment. They were held liable for a part of the loss where they had failed to make proper inquiries to ascertain that the value was sufficient for the investment. There is no question like that in the case at bar as the property was valued at \$8,000 and the mortgage was only \$3,200 (Exhibit R. 6, p. 60).

The cases which we have cited, *Speight v. Gaunt* and *Four Corners B. & L. v. Schwarzwaelder*, settle the questions of law which are involved in this case.

All of the assets of the ward's estate which were under the control of the guardian were held by the surety company (p. 12, l. 36). Consequently, the surety company saw to it that they received the bond and mortgage presumably executed by Fairy W. Garrick to secure this loan (see Exhibit R. 14, p. 65, Exhibit R. 7, p. 61). The guardian knowing that her other bonds and mortgages were held by the surety company, knew that the surety company would also obtain possession of the bond and mortgage to secure this loan. A search was also delivered

with the bond and mortgage and all these papers are still held by the surety company so it cannot be said the guardian was negligent in failing to procure the bond and mortgage.

Following the doctrine of the decisions which we have cited, the question to be decided here is whether or not the employment of an agent was reasonably necessary in the performance of the duties of the trust with respect to the loan here in question, and whether the guardian had selected a person to carry out the transaction who was apparently honest and properly qualified to do so, and has used reasonable supervision, and acted according to business custom in the transaction.

The Vice-Ordinary found that neither the guardian nor the surety company had been guilty of neglect in any of the duties required under the circumstances, and we think that the evidence unquestionably supports his finding.

The appellants' contention under the second point is that the guardian and surety company were negligent in failing to properly supervise the agent's acts and, generally, the guardian did not know anything about the loan or the nature of the security and, therefore, had not used reasonable care to supervise the acts of the agents.

This contention is not at all supported by the evidence. The testimony which we have already quoted, given by Mr. Kenny (pp. 25 and 26, Case) and that of the guardian herself, shows that she was well informed regarding the nature of the loan and that she knew all about the transaction; that she knew it was a loan of \$3,200 to Fairy W. Garrick, to be secured by a mortgage upon her property. Further evidence of this

fact is that she went to collect the interest at the time when it became due. She says (p. 13, l. 19):

“I remember the following six months after— That was in July and then in January.

Q July or what year? A The January following was 1918—six months' interest was due and I went down to him, I couldn't see him and then when I went down again in March his office was nailed up, he had gone away.”

This she did voluntarily, so it is quite apparent that she knew all about the date of the bond and mortgage and when the interest was due.

Nor can it be said under the circumstances that the guardian failed to supervise the acts of her agents in closing the loan. What more could she have done? It certainly was not her duty to be present at the closing; such is not the custom, nor is it customary for the mortgagee to see that the cash is directly paid to the mortgagor, especially in this case in view of the relationship which existed between Garrick and Kenny and herself.

We desire to call attention to the evidence to show just what relationship had been existing between the guardian and these two men.

We have printed in the case Exhibit A. 2, pages 93 to 118, which is a series of short letters which were sent by Kenny to the company, asking the company to countersign drafts for some money to which the guardian was entitled for the support of her children under an order of the Court. The purpose of these letters is to show that Kenny had acted as an agent for the guardian, helping her in the performance of her duties from 1915 when she was appointed, down

to the time that this loan was made and considerably after that. He testifies that he sent the drafts "at Mrs. Mannion's request" (p. 86, l. 28):

"Q How did she come to make this request of you? A Well, I was representing her as her agent, and I was right around the block from her.

Q Where was your office? A Why, just right around the corner.

Q Tell me where it was? A 686 Grand street."

On page 87 he says in answer to the question:

"Q Did the Massachusetts Bonding Company ask you to look out for the affairs of Mrs. Mannion? A No, Mrs. Mannion asked me to look out for her affairs."

We also refer to his testimony on this point on page 22, line 21, etc.

Garrick's relationship with the guardian was that of attorney. He was executor of her father-in-law's will (exhibit not marked, p. 68). He represented her on her appointment as guardian (Exhibit R. 1A, pp. 51 to 53). He obtained an order as her attorney for the sum of \$5 a week to be paid for the support and maintenance of the children (Exhibit R. 1B, pp. 54 and 55); he was named as attorney upon application for the bonds (p. 5, Exhibit R. 2); he received a fee for legal services and the receipt appears as Exhibit R. 1; he delivered the money to Mrs. Mannion, which represented the estate of the children of which she was guardian (p. 11, l. 35); he deposited this money in the Trust Company of New Jersey (Exhibit A. 3, pp. 119 and 120); he wrote the company on February 14, 1918, regarding the payment of the premium on the guardian's bond.

There is also the testimony of Thomas R. Armstrong, a lawyer of high standing, as to Garrick's reputation (pp. 90 and 91).

We repeat, that in view of the fact that Garrick and Kenny had taken care of this woman's business from the time she became guardian that she was not negligent in leaving the entire matter of this loan to them, and the surety company had no reason to believe that it was necessary for them to attend to the application of the money so long as Kenny and Garrick were present to handle the matter.

We desire to point out that the position of the surety company with regard to this loan was not at all that of directing and controlling the transaction, as the appellants would have the Court believe by reference to the testimony on page 14 of the brief. The company relied entirely upon Kenny (see Exhibit R. 6, p. 60, which is a letter to the company by Kenny in which he gives the particulars of the loan). He says at the end of the letter; "If same meets with your approval I will have Mr. Louis W. Garrick make search of same." The company wrote in reply that it would appear that the mortgage would be a proper one and said; "We rely, of course, upon your approval." Kenny also testifies to the same effect.

Answer to Point III of Appellant's Brief.

The surety company is the real contender in this appeal and has been through the Orphans' Court and Prerogative Court. We stated in our brief in the Prerogative Court that the guardian was not interested in any way in aiding the surety company and, in fact, was endeavoring to collect this money from the surety company her-

self, although she was the principal. That this is the case is undoubtedly true and appears in several ways. In the first place, if the Court will examine the evidence of the guardian it will appear that her testimony is certainly not given to endeavor to show that she was not negligent in the handling of this matter, but rather to prove that she was, in order that the surety company might be held. Her counsel examined her directly and the surety company's counsel was obliged to cross examine her and had great difficulty in bringing out any evidence whatever from her. Her counsel appeared in the Orphans' Court and her testimony would indicate that it was for the purpose of endeavoring to prove that the guardian had been guilty of negligence, so that the exceptions might be sustained; he did not appear at all in the Prerogative Court nor file brief (Opinion, p. 78, l. 12) and it was only because the surety company agreed to undertake the expense of the appeal that he joined in the appeal at all. He has not appeared nor filed a brief in this court.

The appellant says, "What of it? The question is whether or not the guardian was negligent." It seems to me that the attitude which this guardian has taken with respect to her liability in this matter has a very considerable bearing upon the value of her testimony as compared with that of Mr. Kenny, particularly since the appellants endeavored to prove by the guardian that she was not consulted or told anything about this loan at all until she was asked to sign the drafts. Garrick absconded with this money in February, 1918. This guardian did not file her accounting until 1928, ten years later. She made no special attempt to collect the money until about two years prior to that time, when

she began negotiations through her attorney to try and induce the bonding company to pay the loss and failing in this, she filed an account and apparently caused her children to file exceptions.

Under these circumstances, we consider that the testimony of Mr. Kenny as to what took place respecting this loan should be considered rather than the testimony of the guardian. He is not an agent of the surety company, nor has he ever been. He was a friend and adviser of Mrs. Leonard the guardian, a man of high standing in the community and there is no doubt that he carried out this transaction as he has always done in a thoroughly reliable manner, and testified correctly as to what he did.

Certainly the Court should take into consideration in deciding this case, which depends upon the circumstances and facts, that the person against whom it is sought to charge the loss is at least indifferent as to the result and apparently is endeavoring rather to prove herself liable to the loss than not liable.

Referring to the Schwarzwaelder case which is cited on page 15 of the appellant's brief, we have already quoted from this case and we contend it is an authority for the position which we take.

Regarding the case of *Leithoff v. Dennis*, cited on page 18, the quotations are the general statements of the law of agency which apply to that case. Where an agent, is acting within his authority in doing what he is charged with having done, of course, the principal is responsible. It was held in that case that where a forgery or crime is committed, the agent was not acting within the scope of his authority, so that this decision does not change the law relating to the

liability of trustees in cases of the kind we have before us.

The appellants on page 18 quote from 50 L. R. A. 214. The law as stated in this quotation is against the weight of authority and the case which is cited to support the statement is *Bostock v. Floyer*, which we have already referred to and which the later English case of *Speight v. Gaunt* 22 Ch. Div. 761 held did not go so far as the proposition quoted, but merely decided the rule of law as stated by Perry in his seventh edition.

We submit that the guardian and the surety company exercised the diligence and prudence in this case which they ordinarily employed in the conduct of their own affairs, did not unnecessarily entrust the funds in the hands of their agents and were not guilty of negligence in acting as they did under the circumstances, and that the decree of the Prerogative Court should be affirmed.

CHILD & SHIPMAN,
Solicitors for Respondent
Massachusetts Bonding and Insurance Co.

JEHIEL G. SHIPMAN,
Of Counsel.

