

In Chancery of New Jersey.

10

To the Honorable ABRAHAM O. ZABRISKIE,

Chancellor of the State of New Jersey :

Humbly complaining, show unto your Honor, your orators, JOHN W. GRAYDON, JOSEPH GRAYDON and JOHN WHITLEY MOORE, executors of the last will and testament of SAMUEL GRAYDON, late of the Township of Franklin, in the County of Bergen and State of New Jersey, deceased, that on or about the seventeenth day of August, in the year one thousand eight hundred and sixty-nine, the said Samuel Graydon departed this life, having first, in due form of law, made and executed his last will and testament, a copy whereof is hereto annexed, marked "Schedule A," and forming part of this bill of complaint : And said testator, at the time of his death, left him surviving his children, Caroline Graydon, John Graydon, Ida Graydon and Samuel D. Graydon, his next of kin and heirs at law ; and the said testator's mother and Mrs. Amanda Field, the persons named in the second and third item of said will, are also alive at the time. 20

Your orators further show unto your Honor, that said Ida Graydon and Samuel Graydon are infants under the age of twenty-one years, and that said Samuel D. Graydon (who is younger than said Ida), is in his eighteenth year. 30

Your orators further show unto your Honor, that said

10 will was duly admitted to probate by the Orphans' Court of the County of Bergen, on the sixteenth day of October, in the year one thousand eight hundred and sixty-nine, and letters testamentary thereon were in due form of law issued to your orators, who took upon themselves the burthen of the duties and trusts imposed and conferred by the said will, and that said letters testamentary, bearing date the day and year last aforesaid, are now in the possession of your orators, ready to be produced when and where this Honorable Court shall
 20 direct.

And your orators further show unto your Honor, that shortly after they qualified as executors as aforesaid, they made an inventory of all and singular the goods and chattels, rights and credits, moneys and effects of the said testator, and filed the same in the office of the Surrogate of said County of Bergen, a copy whereof is hereto annexed and forms part of this bill of complaint, and is marked "Schedule B."

30 And your orators further show, that said testator died seized of a large real estate, situate in the Township of Franklin, in the County of Bergen aforesaid, whereon his family resided and still do reside, except his son John Graydon, who resides in the State of California; that although the same is of large value, there is only one dwelling house upon it, and the same could not be let for any considerable sum per annum.

40 Your orators further show, that on the tenth day of November, in the year one thousand eight hundred and sixty-nine, the said John Graydon did marry Jessie Cameron, one of the daughters of A. J. Cameron, the person named in the eighth item of said will, and that said John Graydon gives out and declares that said item of said will is void and of no effect whatever, and that when the youngest of his father's children shall have attained the age of twenty-one years, he will claim and exact from your orators a full share of the estate of his father, said testator, notwithstanding his said marriage, and notwithstanding the provisions of said will, which exclude him in terms from all share or shares in said

estate in case of such marriage, by reason whereof your orators are in great doubt and perplexity as to their duty, and therefore pray the direction of this Honorable Court in the premises. 10

Your orators further show, that they are in great doubt and perplexity with reference to the provisions of the fifth item of said will, which, after payment of debts and charges, provided for by item first, the annuity to testator's mother, bequeathed by item second, the bequest of one thousand dollars to Mrs. Field in item third, the power to sell the real estate at discretion, contained in item fourth, reads thus, to wit: "Fifth.—All the rest of my estate, not already in money or securities, I order my executors to convert into money, and invest properly and securely at interest, and the interest accruing thereon, or so much thereof as may be necessary to apply to the education and maintenance of my said children respectively, until the youngest of said children shall arrive at the age of twenty-one years; then the said principal to be divided between them, share and share alike, said children being Caroline Graydon, John Graydon, Ida Graydon and Samuel D. Graydon; inasmuch as it is contended that said item carries with it the interest on all the personal property which said testator left, while on the other hand, it is contended that your orators can pay over only the interest of the proceeds of that part of the testator's estate which, at his death, was not in money or securities; and it is further contended that none of the assets of said testator are securities except those which are secured by some pledge; so that if your orators can only pay over the interest of such portion of said assets as were not, at testator's death, in money or secured by pledge, they will be debarred from paying over the dividends which are constantly arising from the bank and insurance stocks mentioned in said inventory, and which could not be sold and reinvested, so as to produce so large an income as they do now produce; and your orators show, that in order to maintain the family of said testator suitably at his homestead, they will need the whole income of said estate, and it will be necessary to 20 30 40

10 allow them the use of the household furniture and im-
 plements of husbandry which were on said homestead at
 the time of testator's decease, and which are set forth in
 said inventory, and which will perish in the using, so as
 to make your orators, as they apprehend, chargeable
 with the value thereof.

Your orators further show, that they would, for the re-
 lief of the family of said testator, sell a part or the whole
 of said real estate, if it were not contended that your
 orators in that case could pay over no part of the interest
 20 arising on the purchase money till the youngest child is
 of age, while, if the land is unsold under said power of
 sale, the children at home are at liberty, it is claimed, to
 enjoy the same rent free.

And your orators show, that said testator at the time of
 his death had a large interest in stocks and bonds of the
 Wilson and Cass Gold Mining Company; that he was, at
 the time of his death, the second largest stockholder in
 said Company, and the principal manager thereof; that
 after your orators qualified, the said Company were
 30 greatly pressed by the want of means with which to finish
 a mill in progress of construction, and to develop their
 mines; and your orators being impressed with the be-
 lief that if such pecuniary aid were not furnished to said
 Company, the stock and bonds of said Company would be
 greatly injured in value, if not made entirely worthless,
 applied to the Orphans' Court of the County of Bergen,
 for leave to invest a portion of the moneys of said estate
 in the bonds of said Company; and upon said applica-
 tion said Court did, on the twenty-seventh day of Novem-
 40 ber, eighteen hundred and sixty-nine, order that your
 orators have the leave and direction of said Court to in-
 vest of said moneys a sum not exceeding six thousand
 five hundred dollars, in the principal of bonds of the Wil-
 son and Cass Gold Mining Company, at the rate of sixty-
 five cents for each dollar of said bonds, as will fully ap-
 pear by the records of said Court; and your orators fur-
 ther show, that immediately thereafter your orators did
 invest sixty-five hundred dollars and annual interest of
 the moneys of the said estate in said bonds at that rate;
 which said bonds for ten thousand dollars and interest

your orators now hold for the said estate, in considera- 10
 tion whereof, and for as much as your orators can only
 have adequate relief in the premises in a Court of Equity,
 where matters of this nature are properly cognizable and
 relievable, to the end, therefore, that the said Caroline
 Graydon, John Graydon, and Jessie, his wife ; Ida Gray-
 don, Samuel D. Graydon, John N. Graydon, Joseph Gray-
 don, and Martha, his wife ; William Graydon, James
 Graydon, and Mary, his wife, and Jane G. Sherrerd, the
 persons interested, or who claim to be interested in the
 estate of said testator under said will, and their con- 20
 federates, when discovered, may upon their several and
 respective corporal oaths, to the best and utmost of their
 several and respective knowledge, remembrance, infor-
 mation and belief, full, true, direct and perfect answer
 make to all and singular the matters aforesaid, and that
 as fully and particularly as if the same were here re-
 peated ; and they and every of them distinctly interro-
 gated thereto. And that your orators may be directed by
 this Honorable Court as to their duties in the premises.
 And that your orators may have such further and other 30
 or other relief in the premises as the nature and circum-
 stances of the case may require, and as to your Honor
 shall seem meet, and shall be agreeable to equity and
 good conscience, may it please your Honor to grant
 unto your orators the State's most gracious writ of sub-
 poena, to be directed to the said Caroline Graydon, John
 Graydon, and Jessie, his wife ; Ida Graydon, Samuel D.
 Graydon, John N. Graydon, Joseph Graydon, and Martha,
 his wife ; William Graydon, James Graydon, and Mary,
 his wife ; and Jane G. Sherrerd, thereby commanding 40
 them at a certain day, and under a certain penalty, therein
 to be named, to be and appear before your Honor, in this
 Honorable Court, and then and there full, true, direct and
 perfect answer make to all and singular the premises, and
 further to stand, to perform and abide such further order,
 direction or decree therein as to your Honor shall seem
 meet, and shall be agreeable to equity and good con-
 science. And your orators shall ever pray, &c.

CHAS. H. VOORHIS,

Sol. for & of Counsel with Compl'ts.

10

Schedule A.

I, SAMUEL GRAYDON, of Ridgewood, Bergen County, New Jersey, considering the uncertainty of this mortal life, and being of sound mind and memory, blessed be God for the same, do make and publish this writing, as and for my last will and testament; that is to say:

1st.—I desire that the executors of this, my last will and testament, and the survivors of them, shall, with all convenient speed after my decease, settle all my business affairs, pay all my just debts, and all charges against my estate, and then dispose of my property and effects as hereinafter directed.

2d.—I give and bequeath to my Mother two hundred dollars, yearly, during her natural life, to be paid in semi-annual payments, computing from the day of my death.

3d.—I give and bequeath to my sister-in-law, Mrs. Amanda Field, the sum of one thousand dollars, to be paid to her, if alive, within twelve months of my death.

4th.—I empower my executors to sell and convey all lands and real estate belonging to me, at the time of my death, at public or private sale, at their best discretion, but I do not order them to sell the same; I leave it to their best judgment.

5th.—All the rest of my estate, not already in money or securities, I order my executors to convert into money and invest, properly and securely, at interest, and the interest accruing thereon, or so much thereof as may be necessary, to apply to the education and maintenance of my said children, respectively, until the youngest of said children shall arrive at the age of twenty-one years, then the said principal to be divided between them, share and share alike, said children being Caroline Graydon, John Graydon, Ida Graydon and Samuel D. Graydon.

The shares of Caroline and Ida must be held by my executors, and put out at interest by them, at their discretion, and the interest accruing thereon must be paid

to them semi-annually, so long as they live ; and if either 10
of them die, leaving lawful issue, the interest on such de-
cedent's share shall be applied to the education and
maintenance of such issue, until the youngest of them
shall attain the age of twenty-one years, when the whole
of the share of the parent shall be divided among such
issue, share and share alike.

The share of John Graydon shall be subject to the
provisions, limitations and provisions of the item hereof,
hereinafter contained and numbered 8th, and subject
thereto. 20

I desire that the sum twelve thousand dollars, of the
share of John Graydon, and a like sum of the share of
Samuel D. Graydon, shall be held and put out at interest
by my executors, at their discretion, and the interest ac-
cruing thereon paid to them, respectively, semi-annually,
so long as they shall live ; and if either of them shall die,
leaving lawful issue, then the said interest of the one so
dying shall be applied to the education and maintenance
of such issue, until the youngest of them attain the age
of twenty-one years, when the whole of the parent's prin- 30
cipal of twelve thousand dollars shall be divided among
such issue, share and share alike.

The remainder of the shares of my said sons, John
Graydon and Samuel D. Graydon, to be paid to them, re-
spectively, at the time of the division above mentioned,
when the youngest of my said children arrive at the age
of twenty-one years.

6th.—If my said children shall all die before a division
of the property be made under foregoing provisions, 40
leaving no lawful issue, then, and in that case, I give and
bequeath all the said rest of my estate, including said
money and securities, and real and personal estate of
every kind and nature, to my brothers, John W. Graydon,
Joseph Graydon, William Graydon and James Graydon,
and to my sister, Jane G. Sherrerd, share and share
alike.

7th.—In case any of my said children shall die before

10 a division as aforesaid, leaving lawful issue, my will is that said issue shall take the share which the parent thereof would have been entitled to receive, had such parent lived until a division could have been made, as is hereinbefore provided for, and at the same time, and under the same conditions, the parent would have been entitled thereto.

8th.—If my son, John Graydon, shall marry a daughter of A. J. Cameron, of Ridgewood, Bergen County, New Jersey, prior to December 1st, 1879, then my will is, and I order, that he take no part or share of my estate, either of principal or interest, and the provision hereinbefore made for him is made upon condition that he do not marry a daughter of said A. J. Cameron, and before December 1st, 1879; if he do, I hereby declare such provision void and revoked; and in case my son, John Graydon, do marry a daughter of A. J. Cameron, aforesaid, before December 1st, 1879, then I order my said executors to dispose of my estate as if my son John were dead
 20 in my lifetime, intestate and without issue, but subject in
 30 other things to the provisions of this my will.

9th.—I hereby empower the survivors and survivor of my executors to exercise all the rights and powers conferred upon the whole of them, and to do all acts that the whole of them could do, and whether the same lie in discretion or under this will.

10th.—I hereby revoke, annul and make void every
 40 will and codicil by me at any time heretofore made.

11th.—I hereby appoint my brothers, John W. Graydon, Joseph Graydon, and my nephew, John Whitley Moore, and the survivors and survivor of them, to be the executors and executor of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this eleventh day of July, A. D. eighteen hundred and sixty-eight.

SAMUEL GRAYDON. [SEAL.]

Signed, sealed, published and declared by the said 10
 testator to be his last will and testament, in our presence,
 who, at his request, in his presence and in presence of
 each other, have hereto set our hands, as witnesses, this
 eleventh day of July, A. D. 1868. The words "prior to
 December 1st, 1879," once; and words "before Decem-
 ber 1st, 1879," twice, interlined on page 4th and 5th,
 above, before execution hereof.

JAMES BLAUVELT,
 W. GLEDHILL.

20

NEW YORK, August 5th, 1869.

I desire my executors to pay to Mrs. Elizabeth Mc-
 Creery, wife of Thos. A. McCreery, for her individual use
 and benefit, the sum of ten thousand dollars, provided
 that his note for \$5,160 75, now running to maturity, is
 paid by him.

If it is not so paid by him, the amount thereof is to be
 deducted from the above sum of ten thousand dollars.

And I desire my said executors to pay to my brother,
 James Graydon, the sum of five thousand dollars.

30

I shall owe my son John one thousand dollars on his
 next birthday, which I wish paid to him.

SAMUEL GRAYDON.

Schedule B.

An inventory of the personal estate of Samuel Gray-
 don, late of Ridgewood, Bergen County, deceased,
 made this third day of November, A. D. 1869, by John
 W. Graydon, Joseph Graydon and John Whitley Moore,
 executors, &c., of said deceased; and Garret S. Demar- 40
 est and B. F. Robinson, two disinterested freeholders of
 said County:

DRAWING ROOM.

1 Mahogany Sofa,	\$25 00
7 " Chairs,	25 00
1 Arm Chair,	7 00
1 Rosewood Table,	30 00
1 Pier Glass,	30 00

10	3 Imitation Rosewood Cornices,	\$10 00
	3 Sets Lace Curtains,	100 00
	2 Landscape Paintings,	10 00
	1 Punch Bowl,	2 50
	1 Porcelain Transparency,	2 50
	3 Gilt Candelabras,	10 00
	1 Velvet Carpet,	50 00

DINING ROOM.

	1 Rosewood Beaufet,	150 00
20	1 Mahogany Extension Table,	15 00
	1 Mahogany Sofa,	25 00
	1 Mahogany Dumb Waiter,	2 00
	12 Chairs,	12 00
	1 Hanging Lamp,	2 00
	1 Carpet, poor,	12 00
	1 Set China and Glass, partly broken,	40 00

HALL.

	1 Hanging Lamp,	1 00
30	1 Mahogany Table,	2 00
	1 Mahogany Hat Rack,	3 00
	3 Chairs,	3 00
	1 Engraving,	1 00
	5 Mats,	1 00
	1 Velvet Table Cloth,	2 00
	Oil Cloth,	20 00
	Bed and Table Linen,	32 00
	8 Arm Chairs,	8 00

40

PARLOR.

	1 Piano and Stool,	100 00
	1 Mahogany Sofa,	25 00
	5 Mahogany Chairs,	20 00
	2 Rosewood Chairs,	5 00
	1 Sewing Chair,	2 00
	1 Camp Chair,	2 00
	1 Mahogany Table,	7 50
	2 Mahogany Stands,	2 00
	1 Pier Glass,	30 00

2 Black Walnut Cornices,	\$10 00	10
2 Bronze Candelabras,	5 00	
1 Bronze Card Receiver,	25	
1 China " "	25	
1 Stool,	25	
1 Hanging Lamp,	3 00	
1 Velvet Carpet,	75 00	

LIBRARY.

1 Black Walnut Desk,	25 00	
1 Ink Stand,	50	20
2 Mahogany Stands,	2 00	
2 Bronze Vases,	4 00	
1 Map,	3 00	
1 Ash Cup,	50	
1 Brussels Carpet,	50 00	
1 Harper's Pictorial Bible.		
13 Vols. American Encyclopedia.		
7 " Shakespeare.		
5 " Plutarch's Lives.		
4 " Rawlinson's Herodotus.		30
2 " History United Netherlands.		
3 " Bese Dutch Republic.		
3 " U. S. Japan Expedition.		
2 " Illustrated Natural History.		
2 " Pictorial Gallery.		
6 " Gibbon's Rome.		
3 " Hallam's Constitutional History of England.		
3 " " Hist. of Europe.		
3 " " Literary Hist. of Europe.		
5 " Humboldt's Cosmos.		40
7 " Macaulay's Essays.		
2 " Tytler's History.		
2 " Boswell's Johnson.		
3 " Life of Edward Burke.		
2 " Arabian Nights.		
1 " Koeppen's Middle Ages.		
1 " Appleton's Biography.		
1 " Wirt's Bible Analysis.		
1 " Moral Emblems.		

10	1	Vols. Carthage.	
	1	" Book of Gems.	
	1	" Poets, &c., Ancient Greeks.	
	1	" Draper's Physiology.	
	70	" Miscellaneous, small and old Magazines.	
	3	" Spanish Literature.	
	1	" Paton's United States.	
	1	" Life of Franklin.	
	1	" " Lincoln.	
	2	" Wesley's Sermons.	
20	1	" Life of Napoleon.	
	1	" Pilgrim's Progress.	
	1	" Fryreg's Commentary.	
	1	" British Eloquence.	
	1	" Biography of Women.	
	1	" Abbot's Lives.	
	10	" Spark's American Biography.	
	29	" British Poets.	
	2	" Lossing's Field Book.	
	5	" History of Spain and Portugal.	
30	11	" Family Library.	
	110	" Miscellaneous, &c.	
	1	Double-barrel Gun,	\$20 00
	1	Cabinet of Curiosities,	1 00

THIRD FLOOR.—S. E. ROOM.

	1	Bureau,	5 00
	1	Bedstead, Bed and Bedding,	30 00
	1	Wash Stand and Toilet Set,	1 50
		Chair,	1 00
40		Looking Glass,	50
	1	Bath (Sitz) Tub,	1 00
	1	Ingrain Carpet,	2 50

S. W. ROOM.

	1	Mahogany Bedstead, Bed and Bedding,	20 00
	1	do. Table,	5 00
	1	do. Bureau with Glass,	7 00
	1	Pine Wash-stand and Toilet Set,	1 50
		Carpet,	2 50
	4	Chairs,	4 00

N. W. ROOM

10

1 Bedstead,	.	.	.	.	\$2 00	
1 Clock,	.	.	.	.	1 00	
2 Wash-stands,	.	.	.	.	1 00	
2 Chairs,	.	.	.	.	1 00	

N. E. ROOM.

2 Desks,	.	.	.	.	4 00	
1 Mahogany Table,	.	.	.	.	3 00	
1 Stove,	.	.	.	.	2 00	
1 Basket,	.	.	.	.	1 00	20

HALL.

1 Bureau,	.	.	.	.	3 00	
1 Table,	.	.	.	.	3 00	
Ingrain Carpet and Oil-cloth,	.	.	.	.	2 50	

THIRD FLOOR, EAST ROOM.

1 Cedar Chest,	.	.	.	.	15 00	
1 Ottoman,	.	.	.	.	50	30
1 Chest of Drawers,	.	.	.	.	2 00	
1 Commode,	.	.	.	.	1 00	
1 Fire-screen,	.	.	.	.	2 00	
1 Bedstead,	.	.	.	.	5 00	
1 Looking-glass,	.	.	.	.	3 00	
1 Basket,	.	.	.	.	50	
2 Buffalo Robes,	.	.	.	.	40 00	
4 Feather Beds,	.	.	.	.	75 00	

SECOND FLOOR, SOUTH-EAST ROOM.

40

1 Table,	.	.	.	.	4 00	
1 Chair,	.	.	.	.	1 00	
1 Toilet Set,	.	.	.	.	1 00	
1 Ingrain Carpet,	.	.	.	.	10 00	
1 Revolver,	.	.	.	.	5 00	

SOUTH-WEST ROOM.

1 Bedstead,	5 00	
-------------	---	---	---	---	------	--

10

EAST ROOM.

1 Rosewood Bedstead, Bed and Bedding	\$45 00
1 do. Wash-stand and Toilet Set,	15 00
1 Mahogany Bureau,	4 00
1 do. Work Table,	2 00
1 do. Glass,	10 00
4 Pictures and Frames,	5 00
1 Chintz covered Table,	50
1 Brussels Carpet,	50 00
1 Fixed Lamp,	2 00

20

SECOND FLOOR, SMALL EAST ROOM.

1 Chest Drawers,	1 00
1 Single Bedstead and Mattress,	7 00
1 Wash-stand and Toilet Set,	5 00
1 Brussels Carpet,	8 00
1 Looking-glass,	50

NORTH-EAST ROOM.

30 1 Mahogany Bedstead, Bed and Bedding,	30 00
1 do. Wash-stand and Toilet Set,	5 00
1 do. Table,	5 00
1 Bureau,	5 00
3 Chairs,	3 00
2 Ottomans,	2 00
1 Lamp,	2 00
1 Looking-glass,	2 00
2 Engravings, framed,	2 00
1 Ingrain Carpet,	15 00

40

HALL.

1 Oil Cloth,	10 00
1 Mahogany Side-board,	8 00
2 Chairs,	3 00
1 Clock,	10 00
1 Brussels Stair Carpet and Crash,	10 00

NORTH ROOM.

1 Mahogany Wardrobe,	25 00
----------------------	-------

1 Mahogany Bedstead, Bed and Bedding,	\$55 00	10
1 do. Bureau and Glass,	15 00	
1 do. Wash-stand and Toilet Set,	6 00	
1 do. Table,	3 00	
1 Mahogany Bench,	1 50	
1 do. Sofa,	5 00	
4 Chairs,	6 00	
1 Sitz Bath Tub,	2 00	
1 Set Wearing Apparel, 1 Watch and Chain,	95 00	
5 bottles Gin,	3 75	
1 do. Cologne,	1 00	20
18 do. Port Wine,	10 00	
2 gallons Brandy,	10 00	
6 Demijohns,	4 00	
1 Work-basket,	1 00	
9 bottles Claret,	2 50	
3 Decanters,	3 00	

BATH ROOM.

1 Child's Bath Tub, 1 Soap Dish,	50	
1 Looking-glass,	50	30
1 Wash-stand,	50	

SAM'S ROOM.

1 Single Bedstead, Bed and Bedding,	4 00
3 Chairs,	3 00

STORE ROOM.

1 Closet,	1 00	
3 Wooden Buckets,	1 00	40
8 bottles Olive Oil,	4 00	
1 Kerosene Stove,	4 00	

KITCHEN.

2 Pine Tables,	2 00
2 Hand Bells,	1 00
1 Lot of Pots, Pans and Kettles,	10 00
7 Lamps and 2 Lanterns,	5 00
1 Dresser,	50

10		CELLAR.	
	6	Wash Tubs,	\$6 00
	1	Clothes Boiler,	15 00
	1	Table,	25
	7	Baskets,	2 00
	1	Row Shelves and Table,	2 50
	1	Kerosene Oil Can,	5 00
	1	Old Dutch Oven,	50
	3	Clothes Horses,	3 00
	2	Wash Boards,	1 00
20	1	Set Preserves and Jars,	20 00
	12	Milk Pans and 2 Pails, 2 Benches, 1 Churn,	10 00
	1	Lot of Potatoes,	50 00
	1	Barrel Cider,	5 00
	1	Lot of Coal,	15 00

IN CARRIAGE HOUSE, BARN, OUT-HOUSES, &c.

	1	Phaeton,	400 00
	1	Carriage,	75 00
		Open Wagon,	40 00
30	1	Buggy,	100 00
	1	Old do.	25 00
	2	Farm Wagons,	40 00
	1	Ox Cart,	15 00
	1	Water Barrel Cart.	20 00
	2	Harrows,	15 00
	1	Horse Hoe,	7 00
	1	Cutwater,	5 00
	4	Plows,	20 00
	1	Seed Sower,	4 00
40	1	Winnowing Machine,	15 00
	1	Mower,	60 00
	1	Tedder,	60 00
	2	Corn and Turnip Cutters,	15 00
	1	Horse Rake,	12 00
	2	Wheel-barrows,	5 00
	1	Grindstone	2 00
	1	Six-seat Sleigh	225 00
	1	Four-seat Sleigh	100 00
	1	Horse Hay-fork	2 00

1 Set Double Harness	\$25 00	10
2 Sets Working Harness	20 00	
1 Set Buggy Harness	15 00	
2 Sets Buggy Single Harness	10 00	
1 Set Cart Harness	6 00	
2 Saddles	8 00	
1 Set Bells, Blankets, Old Bridles, &c.	15 00	
1 Brown Horse	160 00	
1 Grey do.	180 00	
2 Mules	250 00	
3 Milch Cows	125 00	20
1 Heifer	40 00	
1 Steer	40 00	
1 Calf	15 00	
2 Pigs	30 00	
30 Chickens	20 00	
1 Lot of Hay in Carriage-house and Barn	135 00	
3 Barracks of Hay	270 00	
1 Lot of Corn	60 00	
1 Lot of Rye	100 00	
1 Lot of Roots for Feed	75 00	30
1 Lot of old Spades, Hoes and Forks	10 00	
300 Bundles of Straw	9 00	
1 Lot of Corn Stalks	5 00	

The following securities are considered good :

50 Shares National Union Bank Stock, par value \$50 each	2,500 00	
40 Shares American Ex., par value each \$100	4,000 00	40
200 Shares Phoenix Bank, par value each \$20	4,000 00	
60 Shares Home Fire Insurance Co., par value each \$100	6,000 00	
40 Shares Lenox Fire Insurance Co., par value each \$25	1,000 00	
23 Shares New York and Providence and Boston R. R. Preferred Stock, par value each \$100	2,300 00	

10	34 Shares N. Y., N. F., L. and London Telegraph Co., par value each \$100	\$3,400 00
	2 Shares Southern Minnesota R. R. Bonds, par value each \$1,000	2,000 00
	6 Shares Southern Minnesota Land Certi- ficates, par value each \$1,000	6,000 00
	100 Shares N. Y. Central, with 80 per cent. Certificates, par value each \$100	18,000 00
	200 Shares Harlem, par value each \$100	20,000 00
	E. A. Walton's Memorandum Note	2,762 82
20	H. K. Parson's Note, due Dec. 3-6, 1869	1,360 00
	John Crees' and Alexander Crees' Note, due Dec. 15-18, 1869	7,400 00
	B. F. Darrogh's Note, due Jan. 15-18, 1870	1,000 00
	C. H. Utters' Note, due Feb. 11-14, 1870	500 00
	John S. Reid's and Maggie Reid's Note, due Feb. 12-15, 1870	500 00
30	John S. Reid's and Maggie Reid's Note, due March 6-9, 1870	500 00
	C. H. Utters' Note, due March 10-13, 1870	500 00
	C. H. Utters' Note, due April 21-24, 1870	500 00
	Townsend & McMurdy's Note, due April 26-29, 1870	500 00
	L. Whitford's Note, due Nov. 24-27, 1869	1,000 00
	D. T. Griffith's Note, due July 4-7, 1870	700 00
40	Cash received by executors, proceeds of 100 shares of Hudson River R. R. Stock, after paying loan of testator, through Mr. E. A. Walton, at Union Trust Co.	7,066 05
	Cash received by executors from Cameron & Co., on account of sales of 130 shares of Hudson River R. R. Stock, at 174 per cent. per share	13,500 00
	Cash in hands of Cameron & Co., belong- ing to estate, about	8,926 28

Cash due testator by Phoenix Bank at his death, and collected by executors	\$150 50	10
Cash collected by John N. Graydon, administrator, <i>pendente lite</i> , and paid to executors	97 24	
Cash received for apples sold	23 00	
Cash dividend, American Exchange Bank	160 00	
Cash, two coupons of Southern Mich. R. R. Bonds	80 00	
	<hr/>	
	\$121,362 14	20
	<hr/> <hr/>	

The following securities are considered doubtful:

300 Shares of Erie Railroad Stock, at \$100 each	30,000 00	
100 Shares of Erie Railroad Stock in account E. A. Walton	10,000 00	
200 Shares Washoe Tool Co., par value at \$10	2,000 00	30
300 Shares Ralmio Mill Co., par value at \$25	7,500 00	
500 Shares City of Brunswick, par value at \$100	50,000 00	
1 Share Clinton Hall Association, par value at \$100	100 00	
20 Shares Union Hall Stock, par value at \$5	100 00	
263 Shares Ophir Gold Mining Co., par value at \$10	2,630 00	40
300 Shares Kanaha and Ohio Coal Company, E. A. Walton, entitled to quarter profits; stock paid by S. G, par value at \$100	30,000 00	
300 Shares Am. Oil Mining Co., par value at \$5	1,500 00	
338 Shares Eagleton Coal and Iron Co., par value at \$25	12,830 00	

10	1,500 Shares Central Gold Mining Co., par value at \$5	\$7,500 00
	Shares New Diggings and Shenklng Mg. Co., par value at \$100	40,000 00
	50 Shares American Graphite Co., par value \$100	5,000 00
	8,200 Shares Wilson & Cass Gold Mining Co., par value \$10	82,000 00
20	200 Shares N. Y. and Boston Silver Lead Co., par value \$10	2,000 00
	100 Shares New York and Passaic Cop- per Co., par value \$1.	
	2,800 Shares Bucks Co. Lead Co.	
	5 Shares Am. Graphite Co. Bonds (Cou- pons) in all	900 00
	1 Wilson & Cass G. M. Co. Bonds	250 00
	12 Wilson & Cass G. M. Co. Bonds, each \$1,000	12,000 00
30	100 Brunswick Land Association.	
	200 American Flag Gold Mining Co.	
	100 Brunswick Land (with Cameron & Co.)	
	400 Trust Mo. R. R. Stocks (Union Trust Co.'s receipt therefor), half net pro- ceeds to Wm. Graydon. Loan by tes- tator to his son John, as appears by his check-book, June 23, 1869	205 69
	Debt against Mr. Joseph Graydon, to January 1st, 1869	27,079 83
40	The remaining interests of the testator in the late firm of Graydon, Swanwick & Co., which was dissolved in the year 1860 or 1861. The surviving partners being Wm. Graydon and Thomas Swanwick.	
	The remaining assets of the firm consist mostly of debts of very doubtful cha- racter. The value of testator's interest	

cannot be exactly stated; it is believed that it will not exceed \$1,000 to \$1,200 (twelve hundred)	1,000 00	10
Balance account against F. Woodcock, for pay	115 78	
	<u>115 78</u>	
	<u>\$324,711 30</u>	

The following described stocks are held
as security for above debt of Joseph
Graydon: 20

(Likewise considered doubtful.)

3,100 Shares Wilson & Cass Gold Mining
Company.

25 Shares Am. Graphite Co.

100 Shares N. Y. and Boston Silver Lead
Company.

1,000 Shares Fork Gold Mining Company.

1,103 Shares Eagleton Coal and Iron
Company. 30

1,850 Shares Amenia Lead.

Appraised by us, the day and year aforesaid,

B. F. ROBINSON,
GARRET S. DEMAREST,

Appraisers.

JOHN W. GRAYDON,

JOSEPH GRAYDON,

JOHN WHITLEY MOORE,

Executors, &c.

(A true copy.)

H. S. LITTLE,

Clerk.

10 IN CHANCERY OF NEW JERSEY.

BETWEEN JOHN W. GRAYDON, JOSEPH GRAYDON, and JOHN WHITLEY MOORE, Executors of SAMUEL GRAYDON and JOHN GRAYDON, and others, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>On Bill, &c.</i>
	}	<i>Answer.</i>

- 20 The answer of John Graydon, one of the defendants to the bill of complaint in the above stated cause.
- This defendant, saving all benefit and advantage of exception to all errors and insufficiencies in the said bill of complaint contained for answer thereto, or to such parts as is necessary for this defendant to make answer unto, he answers and says, he admits it to be true, that the said Samuel Graydon, who was the father of this defendant, departed this life at the time mentioned in said bill, having first made a last will and testament, in manner and form, as in said bill stated, and left him surviving this defendant, and the other children named in said bill, as his next of kin and heirs at law, as well as the mother of the defendant, and other the said children; that Ida Graydon and Samuel D. Graydon, are infants; and that said children and their mother are all still living. And the defendant further admits that the said will was admitted to probate, and letters testamentary issued, as in said bill stated; and that the said executors have taken upon themselves the burden of the execution of said will.
- 30 And this defendant admits that his said father died seized of large real estate in the County of Bergen, Franklin Township, and that all the family reside on said lands, except this defendant, who resides at _____, in the State of New Jersey.
- 40

And this defendant further in answering, says, that on the tenth day of November, eighteen hundred and sixty-nine, this defendant was united in the bonds of marriage with Jessie Cameron, who is the daughter of Alexander J. Cameron, of the County of Bergen, but whether a

daughter of the A. J. Cameron, mentioned in the eighth clause of the said will, this defendant insists does not by the said will certainly or sufficiently appear; and defendant insists and submits, that the condition in said eighth clause is void, for uncertainty in that respect. 10

And the defendant in further answering, says, that before the death of his father, and before he had any knowledge of the provisions of his father's will, and while he was residing in the State of California, he and the said Jessie Cameron, his present wife, entered into a mutual, valid and binding contract to intermarry when he, the defendant, should next thereafter come to the State of New Jersey. That immediately after the death of his father, the defendant came on to attend the burial of his father, and while here in New Jersey, he and the said Jessie Cameron consummated the said contract by marriage; that by the terms of the said contract for marriage, both this defendant and the said Jessie Cameron were legally bound, each to the other, to fulfill their said contract while the defendant was then in the State of New Jersey; and any refusal on the part of this defendant to perform his said promise would have been not only in violation of honor and good faith, but contrary to his legal duties and obligations; and the defendant insists and submits, that if the condition in the eighth clause of the said will was intended to apply to a marriage of this defendant with his present wife, that the same is of no binding force, and void, because it requires the defendant in its observance to violate a legal contract. 20 30

And the defendant says, that he is advised by counsel, and submits to this Honorable Court, that the condition in the eighth clause of the said will is in restraint of marriage, and therefore void. 40

And the defendant in further answering, says, that there is not in and by the provisions of the said will and bequest over of the gifts, share and provisions given to the defendant therein out of the estate of his said father, upon the non-observance by the defendant of the said condition in the said will; and the defendant insists and submits that the said condition is therefore of no binding force upon the defendant, but merely in *terrorum*.

10 And this defendant in further answering, says, that he as well as the said complainant is desirous that a construction of the provisions of the said will shall be made by this Honorable Court; and this defendant joins in the prayer of the said complainant that such construction may be had in this Court, according to the rules of law and equity applicable in such cases.

And the defendant denies that there is any other matter, cause or thing in the complainant's said bill necessary for this defendant to make further answer
 20 unto, and not herein and hereby well and sufficiently answered, avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to maintain, aver and prove, as this Honorable Court shall direct, &c.

M. M. KNAPP,
Solicitor and of Counsel with Defendant.

(A true copy.)

30

H. S. LITTLE,
Clerk.

New Jersey, ss :

JOHN GRAYDON, the above named defendant, being duly sworn on his oath, saith, that the matters and things set forth in the above answer, so far as relate to his own acts are true, and so far as relates to the acts of others he believes them to be true.

JOHN GRAYDON.

Sworn and subscribed; this }
 25th day of May, A. D. }
 40 1871, before me,

GARRET ACKERSON, Jr.,
Master in Chancery,
 New Jersey.

IN CHANCERY OF NEW JERSEY.

10

BETWEEN JOHN W. GRAYDON, and
 others, Executors, and SAMUEL
 GRAYDON, deceased,
Complainants,

and

CAROLINE GRAYDON, and others,
Defendants.

Replication.

20

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, say, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto, by these repliants without that, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is untrue. All which matters and things these repliants are and will be ready to aver and prove, as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

30

CHAS. H. VOORHIS,

Solicitor, and of Counsel with Complainants.

BETWEEN JOHN W. GRAYDON, *et als.*,
 Executors,
Complainants, }
and
 CAROLINE GRAYDON, *et als.*,
Defendants. }

Examination of witnesses, &c., in the above stated cause, taken before WILLIAM P. DOUGLASS, one of the Masters and Examiners of the Court of Chancery of New Jersey, at his office, No. 1 Exchange Place, Jersey City, on Friday, the twentieth day of October, A. D. 1871, at 10 o'clock in the forenoon, in presence of CHARLES H. VOORHIS, Esquire, of counsel for complainants.

30 ALEXANDER J. CAMERON, a witness produced on the part of the complainant, being duly sworn, says: I live at Ridgewood, Franklin Township, Bergen County, New Jersey; I have lived there twelve years; I knew Samuel Graydon in his lifetime for probably twenty years; I do not know exactly how long he lived at Ridgewood, but I think for fifteen or sixteen years before his death; he lived there when I moved there; he lived within an eighth of a mile of me, and was a near neighbor of mine during all the time I lived there; I think I am the only Alexander J. Cameron who has been living at Ridge-
 40 wood; I am the father-in-law of John Graydon; I have four grown up daughters, three besides Jessie, who married John Graydon; Samuel Graydon, the testator, was on good terms with my family until about a year before his death; I usually write my name A. J. Cameron; that is my signature; I have a son, named A. J. Cameron; his name is Alpin; he is twenty-one years old, and has never been married; Samuel Graydon, the testator, at one time when the relation between John and my daughter Jessie was announced, and afterwards, was

very friendly, and visited my family frequently; subsequently he was very bitter and intolerant as to the religious notions of my daughter and family; John Graydon's mother is not alive; Samuel Graydon's step-mother is alive; I do not know that Samuel Graydon ever gave his son John any intimation to cut him off from his estate on account of his marrying my daughter; John Graydon is twenty-two or three or four years of age; John's mother died before his father Samuel; I do not know that any marriage announcement between my daughter Jessie and John Graydon was ever made to Samuel Graydon; the announcement I spoke of was that of the friendly relations that existed between them; the existence of a marriage relation between John Graydon and my daughter was as much a matter of surprise to me as to the Graydons; the announcement of their engagement was a matter of surprise to us at that time; their friendly relations had existed for ten years before, at that time; after the announcement Samuel Graydon was perfectly friendly.

A. J. CAMERON. 30

Sworn and subscribed at Jersey City, }
 this 20th day of October, A. D. }
 1871, before me,

WILLIAM P. DOUGLASS,
Master in Chancery.

ALEXANDER J. CAMERON, being re-called, and desiring to correct his testimony previously given, says, the announcement spoken of by me in my previous examination, was not that of the relations existing between my daughter and John Graydon, but that of John Graydon's purpose of becoming a Roman Catholic; I was not informed of their engagement until the February in which John Graydon went to California, which must have been in 1868.

A. J. CAMERON. 40

Sworn and subscribed at Jersey City, }
 this 23d October, A. D. 1871, be- }
 fore me,

WILLIAM P. DOUGLASS,
Master in Chancery,
 of New Jersey.

- 10 SAMUEL D. GRAYDON, a witness produced on the part of the complainants, being duly sworn, says, I live at Ridgewood, New Jersey, on my father's homestead; I was nineteen years of age on the 13th August last; Caroline Graydon was born, April 3, 1846; Alice Graydon was born, September 29, 1847, and now deceased; she died in my father's lifetime; John Graydon was born, December 23, 1848; Ida Graydon was born, October 29, 1850; William Sayer Graydon was born, August 6, 1854, now deceased; he died also in my father's lifetime; these
- 20 and myself are all the children my father had; my father left a will, which has been proved; there was a caveat against it, filed by John Graydon, my brother, before he was married; I am single; John saw the will, or a copy of it, before he was married; Uncle John gave me a copy of the will, and I showed it to John, my brother, in August, or the first week in September, 1869; my father, Samuel Graydon, the testator, died in Colorado, August 17, 1869; I was with him at the time.

SAMUEL D. GRAYDON.

- 30 Sworn and subscribed at Jersey City, }
 this 23d day of October, A. D. }
 1871, before me,

WILLIAM P. DOUGLASS,

Master in Chancery,

of New Jersey.

The complainants here declare their testimony concluded.

IN CHANCERY OF NEW JERSEY.

10

BETWEEN JOHN W. GRAYDON, and
others, Executors of SAMUEL
GRAYDON, deceased,

Complainants,

and

JOHN W. GRAYDON, and others,
Defendants.

On Bill, &c.

20

Examination of witnesses before me, this 22d day of March, 1872, at my office in Jersey City, in presence of CHARLES H. VOORHIS, Esq., solicitor for complainants, and M. M. KNAPP, Esq., solicitor for defendants.

CATHARINE CAMERON, a witness on the part of defendant JOHN GRAYDON, being by me duly sworn, on her oath saith : I am the mother-in-law of John Graydon ; he married my daughter ; I knew of their engagement to be married on the 7th day of February, 1868 : that was before John Graydon went to California, and about a year and a half before Mr. Samuel Graydon died ; to the best of my recollection John was to return from California home in three years after he left, and then they were to be married ; John returned in August, 1869, and they were married in November of the same year ; the knowledge I have of the engagement between John and my daughter was derived from admissions made by both parties ; I remember saying to John, when I learned of the engagement, " Well, the thing is fixed now, and I must make the best of it ;" I was also satisfied of the engagement by the conduct of my daughter and John ; they exchanged rings, and it was generally understood by the family that they were engaged.

30

40

CATHARINE CAMERON.

Subscribed and sworn, before
me, this 22d day of March,
1872, at Jersey City,

JAMES FLEMMING,

Master in Chancery,

New Jersey.

- 10 ALPIN J. CAMERON, a witness produced on the part of JOHN GRAYDON, being by me sworn, on his oath saith : I reside at Ridgewood, in the County of Bergen ; I will be twenty-two on the 3d of June next ; John Graydon married my sister ; I first knew of the engagement of my sister and John to be married in February, 1868 ; that was before John went to California ; I learned the fact of the engagement in conversations with my sister, also with John and with my mother ; as I understood it, the marriage was to take place in about three years from that time ; it was to take place on John's return from California ; I learned that also from the statements of John and of my sister ; on John's return from California they were married.

ALPIN J. CAMERON.

Subscribed and sworn, before }
me, March 22, 1872, }
JAMES FLEMMING,
Master in Chancery.

30

IN CHANCERY.—OCTOBER TERM, 1872.

GRAYDON'S EXECUTORS,

v.

GRAYDON and others.

- 40 This cause was argued upon bill, answer and proofs.

MR. C. H. VOORHIS, *for Complainants.*

MR. KNAPP, *for Defendant JOHN GRAYDON.*

THE CHANCELLOR : The complainants are executors of the will of Samuel Graydon, late of the County of Bergen. The object of this suit is to settle the construction of the will, and to direct the complainants as to their duty in executing it.

The testator died on the 17th day of August, 1869. By 10
 his will, dated July 11, 1868, he authorized his executors,
 at their discretion, to sell his real estate. He directed
 them to convert into money all his personal estate not
 already in money or securities, and invest the same
 securely at interest, and to apply so much of the interest
 as should be necessary to the support of his children
 until the youngest should be twenty-one. The great bulk
 of his estate consisted of shares in corporations, and was
 therefore included in this direction. When the youngest
 of his children should arrive at the age of twenty-one 20
 years, "then the said principal to be divided between
 them, share and share alike; said children being Caro-
 line Graydon, John Graydon, Ida Graydon and Samuel
 D. Graydon." The sum of \$12,000 of John Graydon's
 share, and a like sum of Samuel's share, is directed to be
 kept at interest, and the interest of the part of each paid
 to him during his life, and at his death the principal to
 go to his issue. The whole shares of the two daughters
 were to be in like manner kept at interest; the interest,
 during their lives, paid to each respectively, and at her 30
 death the principal to go to her issue when the youngest
 of said issue shall arrive at the age of twenty-one.

The sixth clause provides as follows: "If my said
 children shall all die before a division of the property be
 made under the foregoing provisions, leaving no lawful
 issue, then I give and bequeath all the said rest of my
 estate, including said money and securities, and real and
 personal estate of every kind and nature, to my brothers."
 Besides this, the will makes no disposition of testator's
 real estate, or money, or securities for money, unless the 40
 eighth clause is construed to dispose of them in the con-
 tingency there provided for.

The eighth clause is in these words: "If my son, John
 Graydon, shall marry a daughter of A. J. Cameron, of
 Ridgewood, Bergen County, New Jersey, prior to Decem-
 ber 1, 1879, then my will is, and I order that he take no
 part or share of my estate, either of principal or interest;
 and the provision heretofore made for him is upon con-

10 dition that he do not marry a daughter of said A. J. Cameron, before December 1, 1879. If he do, I hereby declare such provision void and revoked. And in case my son, John Graydon, do marry a daughter of A. J. Cameron, aforesaid, before December 1, 1879, then I order my said executors to dispose of my estate as if my son were dead in my lifetime, intestate and without issue, but subject in other things to the provisions of this my will."

20 John Graydon, on the 10th of November, 1869, married Jessie Cameron, the daughter of Alexander J. Cameron, of Ridgewood. They had entered into a mutual engagement of marriage in February, 1868. He then promised to marry her on his return from California, where he was about to go, and from which he returned in September, 1869, shortly after his father's death. He knew the provisions of his father's will before the marriage.

The questions on which the complainants ask for the directions of the Court are these :

30 1.—Whether the directions to invest and pay over interest, include the proceeds of the real estate, and the money and securities for the money ?

2.—Whether shares in corporations are included in the exception of securities, or whether they must be sold without regard to the fact that the interest of the proceeds will be less than the dividends ?

40 3.—Whether the executors may permit the furniture and other moveable chattels to remain unsold for the use of the family ?

4.—Whether if the lands be sold, the income should be paid to the children ?

5.—Whether the testator is intestate except as to the personal estate which is not money, or securities for money, and except a legacy of \$1,000 which is given to

Amanda Field, and an annuity of \$200 given to his 10
mother?

6.—Whether John Graydon, by his marriage, is deprived of all right to any part of his father's estate?

1st.—The will, after authorizing the executors to sell the real estate, and expressly leaving the sale to their discretion, directs, "All the rest of my estate not already in money or securities I order my executors to convert into money and invest." The words "all the rest," *ex vi termini*, 20 excludes the real estate which he has just provided for; and he expressly stated as to it, "I do not order them to sell the same, I leave it to their best judgment." This is inconsistent with including it in the property which he now orders to be converted into money.

2d.—Shares in the capital stock of corporations are neither money or securities; they are simply the title of a shareholder to his proportion of the corporate property and its income. 30 Bonds, mortgages, notes, bills of exchange and matters of like nature are securities for money. Shares of capital stock are never called securities unless when made so by being pledged as collateral; and here the testator could not have considered them as excepted under the term of securities, for without these there was not personal property to produce \$12,000, the sum which he directs to be invested for each of his sons out of his fourth of the proceeds. Both the language of the will and the condition of his estate show that he intended these shares to be converted into money and 40 invested. The executors are bound to obey this direction of the will; the wisdom of the direction is not for their consideration.

3d.—The testator, having no wife, provided for his four children by the interest of \$12,000 for each of his sons; and by the larger interest of her fourth share of the whole fund for each of his daughters. He made no provision

- 10 for keeping up the mansion as a home for his family. The executors should not allow the furniture and other moveables to be used and worn out, contrary to the express directions of the testator.

4th.—The interest of the proceeds of the lands, when sold, is not included in the directions of the fifth clause, to apply interest to the support of the children.

- 20 5th.—The only direct and positive dispositions made, besides the money legacy and the annuity, are as to the proceeds of the personal property directed to be converted into money. The money and securities for money, and the real estate, or its proceeds, are not included in this disposition. The language of the fifth clause, which contains the operative words of bequest, is clear and precise. After directing all the rest of his estate not already in money or securities to be converted into money, and disposing of the interest until the youngest child shall be
30 be divided between them, share and share alike." And all the other provisions, except those in the fifth and eighth clauses, relate to the shares of the four children in this fund.

The only disposition of any rest or residue of his estate is that contained in that part of the eighth clause which directs his executors, in case of John's marriage to A. J. Cameron's daughter, to dispose of his estate as if John had died in his lifetime intestate and without issue, but subject in other things to the provisions of the will.

- 40 If John had died in testator's lifetime, the bequests to him would have lapsed ; and if there had been a residuary bequest, would have fallen into the residue, and been thus disposed of ; but as there is no residuary gift, the testator, as to these lapsed bequests, is intestate. Had the principal of the fund been given to his children as joint tenants, and John had died, the survivors would have taken the whole ; but the bequest to them, "equally to be divided between them, share and share alike," made them tenants in common, and the share of one dying

would lapse. Had it been given to the children by the name of children, or as a class without naming them, it would have gone to those who constitute that class at testator's death, or the time for division ; but here they are enumerated by name in the bequest, and the effect is the same as if it had been given to each by name only. As to the share of John in the fund arising from this conversion of personal estate into money, I am of opinion that the testator also died intestate, except so far as the words of the eighth clause exclude John from any part of it. It must be equally divided among the three other children. The words "subject in other things to the provisions of this my will," do not apply to this lapsed share. He was here speaking of his whole estate. He had made certain provisions as to the shares of each child in the fund directed to be invested, and only in regard to shares in that fund. The general direction to dispose of his whole estate as if John were dead in his lifetime might, without this saving clause, been construed to affect the shares of the others. These words cannot be construed to extend these provisions further than they are applied in the will ; nor can directions or limitations as to John's share be applied to the issue of the other children. Indeed, the words "in other respects" seem to exclude John's share from this clause. That had just been declared forfeited, and was the only thing to be distinguished and excluded by the word "other."

The above conclusions are founded on the language used by the testator, and are the only conclusions that can be arrived at consistent with that language, according to the rules adopted for construing language. There is nothing in any provision of any part of the will, or any intention expressed by the testator, to lead to a different result, or to cause any doubt as to this interpretation. Yet, as a matter of speculation, it is not difficult to suppose that the testator intended to dispose of all his property, and has failed to use words to express that intention. On the other hand, it is possible that he intended to leave the proceeds of his real estate and chattels, and his money and securities, free from the

10 strict, long limitation with which he has tied up the special fund. He freed the shares of his sons in that fund, beyond \$12,000, from that limitation. When we look outside of the will for intention, and use speculations and probabilities to ascertain what a testator intended and did not express, we repeal the Statute of Wills, and pen testaments by the imagination of the Judge.

6th.—As to the right of John Graydon, it is urged that the person whom John is not to marry is not designated
 20 with sufficient certainty; the words are, a daughter of A. J. Cameron, of Ridgewood; besides Alexander J. Cameron, whose daughter John married, there was living at Ridgewood one Alpin J. Cameron, who usually wrote his name A. J. Cameron, and was known by that designation. This is a latent ambiguity, or one that does not arise upon reading the will, but upon facts outside of it. It, therefore, may be cleared up by evidence dehors the will. Alpin J. Cameron, who was a son of Alexander J. Cameron, has never been married, and, therefore, could
 30 not, at the date of the will, have been intended as having a daughter of a marriageable age in 1879. Besides, it is shown that John had paid his addresses to Jessie Cameron before 1868, in testator's life, and with his knowledge, and seemingly without his disapprobation, until John became a Romanist, as was supposed by the testator, through her influence, or that of her family. There can be no doubt but that testator meant a daughter of Alexander J. Cameron, who had marriageable daughters, and not a daughter of Alpin J. Cameron, who not only had
 40 no daughter, but could have had none marriageable in 1879.

It is further contended, that this condition is void, because it is in restraint of marriage, and because it requires John to do an illegal and immoral act; to violate his engagement with his present wife, made and entered into before he knew of this provision in his father's will, and in fact before the will was executed.

Although the law as to the validity of conditions in restraint of marriage may be considered, to a great

extent, unsettled, both in England and this country, 10
 yet some points are settled, so as to be beyond
 controversy. The general rule is, that a condition
 in restraint of marriage in general, or of marriage
 to any person whatever, is void, and the devise or
 bequest takes effect. But any one may limit a gift to his
 wife to her widowhood, or may annex a condition that
 it shall go over on her marriage; this is a well-established
 exception to the rule. So also where provision is made
 for the support of daughters as long as they continue un-
 married and need support, where the evident intention is 20
 not to restrain marriage, but to provide support.

On the other hand, in a gift to one as long as she con-
 tinues to live separate from her husband, or on condition
 that she live separate from her husband, the limitation
 or condition is void, and the gift is absolute. So any
 condition is void that is criminal, illegal or *contra bonos*
mores.

So also it is held, that a father, to whom the law gives
 positive control over the marriage of his children while
 minors, and who is at all times their proper and natural 30
 adviser and counsellor in marriage connections, may an-
 nex to a gift a condition that it shall be void if his child
 shall marry a particular person, or one of a specified class,
 as a Scotchman, a Papist, or a Baptist. And, without
 question, the condition in this case, that John should not
 marry a daughter of A. J. Cameron, is valid, if it does not
 require him to do an illegal or immoral act—to violate a
 legal and binding contract to marry.

There is, perhaps, no adjudication that a condition
 which requires the violation of a binding legal contract 40
 to marry is a void condition, or that it is a valid one.
 And it is not necessary here to consider or determine
 that, as John was a minor until after his marriage, the
 contract was not legal or binding. The common law and
 the law of this State favors the control of a parent over
 the marriages of minor children. Such marriage, with-
 out consent of a father in his lifetime, is forbidden, and,
 although not declared void, it subjects the person solemn-
 izing it to a penalty. It is against the policy, as well as

10 the provisions of our law, to allow a contract by a minor to marry to be declared valid or binding, so as to make a condition in a father's will to defeat it void, and a regard to the spirit of that law cannot be *contra bonos mores*.

On the contrary, it is the duty of the Courts to favor this, or any other legal means which a father may adopt to enforce the authority which the law for wise purposes has given to him over his minor children, and that regard for his wishes and counsel in the more important concerns of their lives after maturity which the untrammelled testam-
20 mentary power conferred by our law is calculated to secure.

I am of opinion that the condition is certain, and is a legal and valid condition, and makes void the bequests to John; and that the direction to the executors to dispose of the estate as if John were dead in testator's life, gives to the three other children absolutely both the share of the fund bequeathed to John and his issue, and that part of testator's property outside of this fund, which, by the law of succession, would have gone to
30 John, but for this provision.

IN CHANCERY OF NEW JERSEY. 10

BETWEEN JOHN W. GRAYDON, JOSEPH GRAYDON, and JOHN WHITLEY MOORE, Executors, &c.,
Complainants,

and

JOHN GRAYDON, Administrator of CAROLINE GRAYDON, deceased, and others,
Defendants.

} Final Decree.

20

This cause having been set down for final hearing, and coming on to be heard before the Hon. ABRAHAM O. ZABRISKIE, Chancellor of the State of New Jersey, in the presence of CHARLES H. VOORHIS, of counsel with the complainants, and of MANNING M. KNAPP, of counsel with the defendants; and the Chancellor, having heard the bill, answer, replication and proofs, and the arguments of the respective counsel thereon, and having duly considered the same; 30

It is by the said Chancellor ordered, adjudged and decreed, on this thirtieth day of April, A. D. one thousand eight hundred and seventy-three :

First.—That the real estate of the said testator is not included in the property which the testator now orders to be converted into money.

Second.—That shares in the capital stock of corporations are neither money or securities, and that bonds, mortgages, notes, bills of exchange and matters of like nature are securities for money; and that the testator intended these shares to be converted into money and invested, and that the executors are bound to obey this direction of the will. 40

Third.—That the testator made no provision for keeping up the mansion as a home for his family, and that

10 the executors should not allow the furniture and other moveables to be used and worn out, contrary to the express directions of the testator.

Fourth.—That the interest of the proceeds of the lands, when sold, is not included in the directions of the fifth clause to apply interest to the support of the children.

20 *Fifth.*—The only direct and positive dispositions made, besides the money legacy and the annuity, are as to the proceeds of the personal property directed to be converted into money. The money and securities for money, and the real estate or its proceeds, are not included in this disposition. That John's share of the fund arising from this conversion of personal estate into money, must be equally divided among the three other children.

30 *Sixth.*—That John Graydon has married a daughter of A. J. Cameron, of Ridgewood, Bergen County, New Jersey, and that the condition in section eighth of said will, that if said John Graydon should marry a daughter of A. J. Cameron, of Ridgewood, Bergen County, New Jersey, prior to December 1st, 1879, then he should take no part or share of testator's estate, either of principal or interest, is certain, and is a legal and valid condition, and makes void the bequests to John; and that the direction to the executors to dispose of the estate as if John were dead in testator's life, gives to the three other children both the share of the fund bequeathed to John and his issue, and that part of testator's property outside of this fund which
40 by the law of succession would have gone to John, but for this provision.

A. O. ZABRISKIE,

Chancellor.

W. J. Board of Errors and Appeals

WILCOX JOHNSON & CO. v. JAMES W. LEWIS & MOUNTAIN
 Plaintiff in Error, vs. Defendant in Error.

I. In this case the interpretation of the words used at the time of sale is not a question for the jury, but for the court.

Writ of Habeas Corpus, 1875
 Writ of Habeas Corpus, 1875
 Writ of Habeas Corpus, 1875

In this case the interpretation of the words used at the time of sale is not a question for the jury, but for the court.