INDEX

	Page
Writ of Certiorari	1
Return	2
Reasons	3
Petition of Appeal	4
Petition of Appeal—Exhibit A	9
Petition of Appeal—Exhibit B	15
Order Dispensing with Bond	21
Answer to Petition of Appeal	22
Opinion of Vice-Ordinary	24
Final Decree	31
Comptroller's Certificate re Transcript of Record	33
Tax Bill	34
Assessment	36
Will of George J. Gould	42
Affidavit with Schedules Completed by Department	48
Department's Letter re tax 4/24/29	58
Department's Letter 6/6/29	63
Department's Letter 5/16/29	65
Letter of McCarter & English to Department 5/15/24	66
Letter of McCarter & English to Department 6/24/27	67
Letter of McCarter & English to Department 9/7/27	68
Letter of McCarter & English to Department 9/8/27	69
Letter of McCarter & English to Department 9/16/27	71
Letter of McCarter & English to Department 1/6/28	72
Telegram and Letters of Decedent to S. H. Rice	73
Fifth Account of Executors	83
Revocation of Trust—Decedent to Bankers Trust Company	86
Deed of Trust—Decedent to Bankers Trust Company	88
Deed of Trust—Guinevere S. Gould to Commercial Trust Co. of N. J., et al.	96
Receipts of Commercial Trust Co., et al., Trustees, for Securities	104
Third Supplemental Affidavit of Executor	109
Supplemental Affidavit of Executor	113
Final Decree, Gould *v.* Commercial Trust Co., et als., 54/539	120
Final Decree, Gould's Executors *v.* Gould, 57/479	125
Second Supplemental Affidavit of Executor	134
Addition by Way of Supplement, Gould's Executors *v.* Gould, 57/479	148
Decree on Account, Rice *v.* Commercial Trust Co., et als., 62/608	152

PAGE

TESTIMONY.

Schuyler Neilson Rice,
direct examination 158
cross " 175
direct " 300
cross " 306, 310
George P. Langford,
direct examination 181
Miss Rose Davy,
direct examination 187
cross " 192
Miss Lilian D'Oyly Watkins,
direct examination 199
cross " 200
Marjorie Gould Drexel,
direct examination 204
cross " 207
re-direct " 210
Anthony J. Drexel, Jr.,
direct examination 210
cross " 211
Dr. Fellowes Davis, Jr.,
direct examination 212
cross " 214
Francois Carlin,
direct examination 216
cross " 220
Lady Decies,
direct examination 225
cross " 227
Lord Decies,
direct examination 230
cross " 231
Dr. Stanley Rendall,
direct examination 233
cross " 241
re-direct " 246
Jay D. Perkins,
direct examination 250
cross " 253, 255, 264

PAGE

Robert B. Knowles,
direct examination 266
cross " 267
re-direct " 269
(recalled) direct " 270
Kingdon Gould,
direct examination 271, 273
cross " 272
George Letterhouse,
direct examination 276
cross " 278
re-direct " 280
(recalled) direct " 281
cross " 281
re-direct " 281
Miss Violet Williams,
direct examination 282
cross " 285
re-direct " 290
re-cross " 290
Guinevere S. Gould,
direct examination 291
cross " 299
Jay Gould,
direct examination 314
cross " 316
Final Decree. Rice *v.* Commercial Trust Co., et als., 62/608 320
Bill of Complaint. Rice *v.* Commercial Trust Co., et als., 62/608 329
Stipulation for Compromise 347
Agreement of December 16, 1926 385
Extracts from Supplement to Fourth Account 443
Petition on Fourth Account 446
Extracts from Fourth Account 448
Opinion of Supreme Court 467
Order of Affirmance 470
Notice and Ground of Appeal 472

WRIT OF CERTIORARI.

NEW JERSEY, *ss.*

The State of New Jersey to the Honorable Edwin Robert Walker,
(L. S.) Ordinary of the State of New Jersey,
GREETING: We being willing for certain reasons to be certified of a decree made by you on the 25th day of February, 1930, upon the petition of appeal of Kingdon Gould and Schuyler Neilson Rice, as executors of the last will and testament of George J. Gould, deceased, from the assessment made by the Comptroller of the Treasury in the matter of the transfer inheritance tax in the estate of George J. Gould, deceased; do command you that the said decree, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, on the twenty-third day of April, 1930, you certify and send, together with this writ; that therein may be done what of right and according to the laws of this State should be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton, this third day of April, 1930.

FRED L. BLOODGOOD,
Clerk.

McCARTER & ENGLISH,
Attorneys.

I allow this writ. Let it be sealed, April 3, 1930.

THOMAS W. TRENCHARD,
J. S. C.

RETURN.

Filed April 22, 1930.

New Jersey Prerogative Court

In obedience to the command of this writ to me directed, I, EDWIN ROBERT WALKER, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, DO HEREBY CERTIFY and send to the Honorable Justices of the Supreme Court within mentioned, the order or decree made by me on the twenty-fifth day of February, 1930, by virtue of the powers conferred upon me by an act entitled, "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, and the supplements and amendments thereto, in a certain proceeding before me on appeal from the assessment heretofore made by the Comptroller of the Treasury of the State of New Jersey, entitled, "In the Matter of the Transfer Inheritance Taxes on the Estate of George J. Gould, Deceased," together also with the petition of appeal theretofore presented to me and the answer to said petition of appeal and all other proceedings and matters touching and concerning said petition of appeal and the proceedings thereunder, as fully as the same remain before me or under my control, as by the transcript of the same under my hand and the seal of the Prerogative Court, certified and annexed more fully appears.

EDWIN R. WALKER,
Ordinary or Surrogate General
(SEAL) and Judge of the Prerogative Court.

REASONS.

Filed June 9, 1930.

New Jersey Supreme Court

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, deceased.	*On Certiorari.* *Reasons.*

The prosecutors, Kingdon Gould and Schuyler Neilson Rice, as executors of the last will and testament of George J. Gould, deceased, assign as their reasons for reversing the decree of the Ordinary brought up by this writ the following:

1. Because the Ordinary erred in holding that payments totaling $1,825,000 made by the executors to or in trust for the ten children of George J. Gould, deceased, were not deductible as payments made in settlement of claims against the estate of the said decedent.

2. Because the Ordinary erred in holding that a transfer of First Liberty Loan bonds of the par value of $1,000,000, made by the decedent to his wife in his lifetime was taxable as a gift in contemplation of death.

3. Because the Ordinary affirmed the assessment made by the comptroller, instead of reversing and correcting the same in the respects set forth in the first and second reasons hereinabove.

McCARTER & ENGLISH,
Attorneys for Prosecutors.

PETITION OF APPEAL.

Filed June 21, 1929.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, deceased.	*Petition of Appeal.*

To his Honor, Edwin Robert Walker, Ordinary of the State of New Jersey:

The petition of Kingdon Gould and Schuyler Neilson Rice, as executors of the last will and testament of George J. Gould, deceased, respectfully shows unto your Honor:

1. George J. Gould departed this life heretofore and on the 16th day of May, 1923, a resident of Lakewood, in the County of Ocean in this State, having made, published and declared his last will and testament, wherein and whereby he appointed your petitioners executors, which said last will and testament was thereafter and heretofore duly admitted to probate by the Surrogate of the County of Ocean, and letters testamentary thereon issued to your petitioners.

2. Your petitioners thereupon entered upon their duties as such executors, and within due time filed with the Comptroller of the Treasury their affidavit, setting forth the assets and lia-

bilities of the estate of George J. Gould as nearly as they then could practicably specify the same. At the time of filing the said original affidavit claims against the estate of George J. Gould disputed by your petitioners were asserted in such amounts that it was then impossible to determine what the eventual net estate of the said decedent would be.

3. Heretofore, and on the 16th day of May, 1924, your petitioners paid on account of such transfer inheritance taxes, if any, as might be determined to be due, and in order to obtain the release of property of the decedent from the lien of the taxes and under protest, the sum of two hundred thirty-two thousand and nine hundred dollars ($232,900).

4. Thereafter the various claims against the estate of the said decedent were liquidated and the net estate of the decedent was ascertained. Thereafter and heretofore your petitioners filed with the Transfer Inheritance Tax Bureau supplemental affidavits, setting forth the true facts with respect to the estate of the said decedent as finally ascertained.

5. Thereafter and heretofore the Comptroller of the Treasury caused testimony to be taken before Theodore Rurode, Esquire, Special Examiner, and such proceedings were had upon all the said affidavits, testing taken before the said Special Examiner and the exhibits therein offered and received in evidence, that heretofore and within sixty days prior to the filing of this petition an assessment was made by the Comptroller of the Treasury of the transfer inheritance taxes due upon the estate of the said decedent, a true copy of which assessment is

hereunto annexed, marked Exhibit A, and made part hereof.

6. The total amount of tax computed by the Comptroller of the Treasury to be due upon the said assessment, was less than the amount hereinabove alleged to have been paid on account on May 16, 1924. The disposition of a portion of the remainder of the estate of the decedent depends upon the happening of certain contingencies, and as a result it was and is impossible at the time of making the said assessment or now definitely to determine the amount of the transfer inheritance tax which may be ultimately chargeable thereon.

7. Accordingly, heretofore, and on the 24th day of April, 1929, the Transfer Inheritance Tax Bureau, by its letter under that date, a true copy of which is hereunto annexed, marked Exhibit B and made part hereof, suggested to the petitioner a compromise payment in the sum of eight thousand one hundred dollars and seventy-nine cents ($8,100.79). Even with the addition of such compromise tax to the amount of tax found to be due by the aforesaid assessment, there is an admitted refund to be made to your petitioners.

8. Your petitioners find themselves aggrieved by the assessment aforesaid in the following particulars:

a. There was included in the taxable estate a transfer of one million dollars ($1,000,000) par value, United States 3½% First Liberty Loan bonds, made on March 21, 1923, by the decedent to his wife, which was taxed as a gift in contemplation of death, whereas the said gift was not made in contemplation of death.

b. A portion of the decedent's estate, consisting of stock of Consolidated Coal Company, was assessed at higher than its true value.

c. Payments totaling one million eight hundred and twenty-five thousand dollars ($1,825,000) made to the seven children of the decedent by his first wife, and in trust for the three children of the decedent by his second wife, and paid as part of the settlement of claims asserted against the estate of the decedent for his breaches of trust as executor of and trustee under the will of his father, Jay Gould, deceased, and as settlement of a suit in the Supreme Court of the State of New York, known as Gould *v.* Gould, were not allowed as claims against the estate, diminishing the value of the net estate for transfer inheritance tax purposes.

9. John McCutcheon is now the Comptroller of the Treasury of the State of New Jersey.

Wherefore your petitioners pray that the said assessment and the transfer inheritance taxes levied thereon be corrected in the respects whereof complaint is hereinabove made, and that John McCutcheon, Esquire, certify to your Honor the said assessment, the record of the taxes levied thereon, the affidavits of your petitioners, the testimony taken before the said Special Examiner and all exhibits, to the end that your Honor may hear and determine the questions hereinabove raised by your petitioners in relation to the said assessment and the taxes levied thereunder.

And your petitioners will ever pray, etc.

McCARTER & ENGLISH,
Proctors of Petitioners.

STATE OF NEW JERSEY, *ss.*

GEORGE W. C. McCARTER, being duly sworn upon his oath according to law, deposes and says:

I am one of the proctors of the petitioners in the foregoing petition of appeal, and am familiar with the matters therein set forth. I have read the said petition, and the matters and things therein contained are true.

G. W. C. McCARTER.

Sworn to and subscribed before me, this 21st day of June, 1929.

HERBERT R. BAER,
Notary Public of N. J.
(SEAL)

Petition of Appeal—Exhibit A.

EXHIBIT A.

STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.

Amount of Estate	Schedule "C"	$ 1,008,125.00
	Personal	13,344,255.47
	Real	415,106.50
	Total	$14,767,486.97
Debts, Expenses, &c.		8,268,953.88
Net Estate for Distribution		6,498,533.09

COPY

Exempt Interests & Contingent		1,212,256.39
Taxable Interests		$ 5,286,276.70
Will or Intestate, Tax 1-2-3-8%		$ 126,746.40

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	John Spinsley		None	..	.....	$5,000.00
2	Legacy	5,000.00				400.00
	George P. Langford		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	William Bishop		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	Gottfried Fluckiger		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	David Sommer		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	Guinivere S. Gould		Wife	30	5,000.00	2,643,537.19
						75,906.12
	Gift Transfer on March 21, 1923, of $1,000,000.00 par value of U. S. Gov't Liberty Loan Bonds—3½—due 32/47—taxed as a gift in contemplation of death	1,008,125.00				
3	Income during lifetime from $4,000,000.00 less payments of 1,825,000.00 under Agreement of Dec. 16, 1926	1,640,412.19				
		2,648,537.19				

Petition of Appeal—Exhibit A.

	Remainder of trust fund upon death of Guinivere S. Gould is Contingent #1				534,587.81	
	Carried Forward				$539,587.81	$2,668,537.19
						77,906.12

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate

ANALYSIS OF ESTATE

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	Brought Forward				$539,587.81	$2,668,537.19
						77,906.12
	Kingdon Gould		Son	35	5,000.00	318,914.51
						6,167.44
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	106,057.37				
		323,914.51				
	Remainder of 1/10 Residue upon death of Kingdon is Contingent #2				40,483.44	
	Marjorie G. Drexel		Daughter	32	5,000.00	321,712.49
						6,251.37
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	108,855.35				
		326,712.49				
	Remainder of 1/10 Residue upon death of Marjorie is Contingent #3				37,685.46	
	Jay Gould		Son	34	5,000.00	319,888,64
						6,196.66

Petition of Appeal—Exhibit A.

	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14	
3-b	Income during lifetime from 1/10 Residue	107,031.50	
		324,888.64	
	Remainder of 1/10 Residue upon death of Jay is Contingent #4	39,509.31	
	Carried Forward	672,266.02	3,629,052.83
			96,521.59

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.

ANALYSIS OF ESTATE

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	Brought Forward				$672,266.02	$3,629,052.83
						96,521.59
	Vivien Decies		Daughter	30	5,000.00	323,380.05
						6,301.40
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	110,522.91				
		328,380.05				
	Remainder of 1/10 Residue upon death of Vivien is Contingent #5				36,017.90	
	George J. Gould, Jr.		Son	27	5,000.00	325,613.70
						6,368.41

Petition of Appeal—Exhibit A.

	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during life-time from 1/10 Residue	112,756.56				
		330,613.70				
	Remainder of 1/10 Residue upon death of George, Jr., is Contingent #6				33,784.25	
	Edith G. Wainwright		Daughter	21	5,000.00	329,255.98
						6,477.68
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.15				
3-b	Income during life-time from 1/10 Residue	116,398.83				
		334,255.98				
	Remainder of 1/10 Residue upon death of Edith is Contingent #7				30,141.98	
	Carried Forward				787,210.15	4,607,302.56
						115,669.08

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.

ANALYSIS OF ESTATE

Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
Brought Forward				$787,210.15	$4,607,302.56
					115,669.08
Gloria Gould		Daughter	17	5,000.00	331,181.23
					6,535.44

Petition of Appeal—Exhibit A.

	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.15				
3-b	Income during lifetime from 1/10 Residue	118,324.08				
		336,181.23				
	Remainder of 1/10 Residue upon death of Gloria is Contingent #8				28,216.73	
	George S. Gould		Son	8	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of George S. is Contingent #9.....				25,609.84	
	Jane S. Gould		Daughter	5	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of Jane S. is Contingent #10.....				25,609.84	
	Guinivere S. Gould		Daughter	1	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of Guinivere is Contingent #11.....				25,609.83	
	Carried Forward				912,256.39	5,286,276.70
						126,746.40

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate.

ANALYSIS OF ESTATE

Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
Brought Forward				$912,256.39	$5,286,276.70
					126,746.40

Petition of Appeal—Exhibit A.

The sum of $100,000.00 from above trust held for the benefit of George S. Gould as per Agreement of Dec. 16, 1926 is Contingent #12	100,000.00	
The sum of $100,000.00 from above trust held for the benefit of Jane S. Gould as per Agreement of Dec. 16, 1926 is Contingent #13	100,000.00	
The sum of $100,000.00 from above trust held for the benefit of Guinivere S. Gould as per Agreement of Dec. 16, 1926 is Contingent #14	100,000.00	
Total	$1,212,256.39	$5,286,276.70
		126,746.40

Computation of Taxes

Guinivere		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
100,000.00—1½%	1,500.00	
100,000.00—2%	2,000.00	
2,398,537.19—3%	71,956.12	
$2,648,537.19		$75,906.12
Kingdon		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
100,000.00—1½%	1,500.00	
100,000.00—2%	2,000.00	
73,914.51—3%	2,217.44	
$323,914.51		$ 6,167.44
Marjorie		
$250,000.00—As above	$ 3,950.00	
76,712.49—3%	2,301.37	
$326,712.49		$ 6,251.37
Jay		
$250,000.00—As above	$ 3,950.00	
74,888.64—3%	2,246.66	
$324,888.64		$ 6,196.66
George, Jr.		
$250,000.00—As above	$ 3,950.00	
80,613.70—3%	2,418.41	
$330,613.70		$ 6,368.41
Edith		
$250,000.00—As above	$ 3,950.00	
84,255.98—3%	2,527.68	
$334,255.98		$ 6,477.68
Gloria		
$250,000.00—As above	$ 3,950.00	
86,181.23—3%	2,585.44	
$336,181.23		$ 6,535.44
Jane S., George S., Guinivere S.		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
70,930.97—1½%	1,063.96	
$120,930.97		$ 1,513.96
Vivien		
$250,000.00—As above	$ 3,950.00	
78,380.05—3%	2,351.40	
$328,380.05		$ 6,301.40

EXHIBIT B.

STATE OF NEW JERSEY.

OFFICE OF COMPTROLLER OF THE TREASURY.

Trenton, April 24, 1929.

Messrs. McCarter & English,
Prudential Building,
Newark, N. J.

Gentlemen:

Enclosed is bill for the Transfer Inheritance Taxes presently chargeable in re estate of George J. Gould, deceased, late of Ocean County, New Jersey.

The attention of the executors is called to the fact that the ultimate disposition of a portion of this estate, having a value of $1,157,257.39, depends upon the happening of certain contingencies and as a result thereof it is impossible for the Department, at this time, to definitely determine the amount of the Transfer Inheritance Taxes which may ultimately be chargeable thereon.

The decedent in and by the provisions of his last will and testament directs that the sum of $4,000,000.00 is to be held in trust and the income therefrom paid to his wife, Guinivere S. Gould, age 30 years, for and during the term of her natural life and upon her death the principal of the trust is to be paid to the decedent's children by said wife in such proportions and at such times as she shall appoint in and by her last will and testament and in case of her failure to make such testamentary appointment then the principal is to be divided into as many equal shares as

the said wife shall leave children of the decedent surviving or children of a deceased child living at the time of the decedent's death per stirpes and not per capita, and one of said shares continued in trust for the benefit of each of said children and the income therefrom paid to such child for and during the term of his or her natural life, and the principal upon his or her death to the beneficiaries named in his or her last will and testament, and in absence of such testamentary disposition then to his or her next of kin in accordance with the provisions of the statute of distribution then in force in the State of New Jersey. The decedent further directs that his entire residuary estate is to be divided into ten equal shares one of which is to be held in trust for the benefit of each of the decedent's children and the income paid each child from his or her respective share for and during the term of his or her natural life and upon the death of any of said children the principal of the share so held in trust for him or her is to pass to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament and failing such testamentary disposition then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey. Each of the decedent's children by his first wife has three children living at the present time with the exception of Gloria who has only one child. The three children by the second wife have no issue living at the present time.

The decedent's direction, however, as to the disposition of the $4,000,000.00 trust fund to the wife as above set forth has been modified by the Department for the purposes of this proceeding

so as to conform with the provisions of the "Agreement" attached to the "Stipulation for Compromise" which agreement was approved by the Courts of the State of New Jersey. This agreement provides that from the $4,000,000.00 trust fund there is to be paid each of the decedent's children by his first wife the sum of $217,857.14 and that there is to be set up in trust for each of the decedent's children by his second wife; namely, George S., age 8 years, Jane S., age 5 years, and Guinivere, age 1 year, a fund of $100,000.00 and from the income therefrom so much is to be used as may be necessary for the support, education and maintenance of each child until he or she attains the age of 21 years at which time the amount of the accumulated income up to that time is to be paid to said child and the fund continued in trust until said child attains the age of 25 years, all of the income in the meantime to be paid to him or her, and upon each child attaining the age of 25 years the trust is to cease and the entire fund paid over to such child. In the event of the death of any of said children before attaining the age of 25 years the corpus of the fund together with any accumulated income is upon the death of the child to be distributed to the issue of said child, if any, in equal shares per stirpes and not per capita and should said child die without leaving issue then the principal of the trust together with any accumulated income is to be paid to the survivors or survivor of the three children or their issue per stirpes and should of all of said three children fail to attain the age of 25 years and die without leaving issue surviving then the principal of the trust together with the accumulated income is to be equally divided among the seven children

of the decedent by his first wife the issue of any who may then be deceased to take the parent's share per stirpes. The names and ages as of the date of death of the decedent of the seven children by the first wife are as follows: Kingdon age 35, Jay age 34, Marjorie age 32, Vivien age 30, George J., Jr., age 27, Edith age 21 and Gloria age 17.

In the event that the remainders of the various trusts vest upon the death of the wife and the seven children by the first wife in their children now living and the three children by the second wife attain the age of 25 years and die leaving one child each surviving in whom the remainders of the trusts held for the benefit of the three children vest there will be an additional tax of $22,856.23 or should the remainder of the trust for the wife vest upon her death in only one or two of her children and the ones not sharing attain or die before attaining the age of 25 years, the additional tax will amount to $23,709.12, $24,854.46, $24,562.00 or $26,852.68. The amount of these taxes may be increased in the event of the death of any of the seven children by the first wife leaving less than three children surviving or leaving no children at all surviving or may be decreased in the event of the death of any of the seven children by the first wife leaving more than three children each surviving.

In order to presently adjust this feature of the estate, the Department suggests a compromise based upon the immediate payment of the sum of $8,100.79.

After applying the payment on account in the amount of $232,900.00 perfected by the executors under date of May 16, 1924 in payment of the direct taxes assessed as shown on the enclosed

bill, there remains the sum of $106,153.60 to the credit of the estate.

If the above suggested compromise meets with the acceptance of the representatives of the estate, upon receipt of a letter to that effect together with a short affidavit of the executors establishing the fact that the decedent's second wife and the ten children are living at the present time the Department will promptly issue a proof of claim covering the refund of the sum of $98,052.81.

Should, however, the representatives of the estate desire to defer the payment of the taxes which may ultimately be chargeable against the contingent portion of the estate until the contingencies actually happen, it will be necessary for the executors to file with the Department a bond of a New Jersey surety company executed in a sum in double the amount of the taxes chargeable at the highest possible rate and conditioned for the payment of said tax together with any accrued interest due thereon at the time the contingencies happen. If this procedure is to be followed, upon receipt of the properly executed bond the Department will issue a proof of claim covering refund of $106,153.60, being the difference between the amount of payment on account and the amount of direct taxes assessed as shown on the enclosed bill.

If an official receipt for the taxes is desired, the enclosed bill together with the temporary receipt issued under date of May 16, 1924 should be returned to the Department.

The Department will also promptly arrange to refund to the estate the amount of $350,000.00 on special deposit to the credit of the Comptroller with the Hanover Trust Company of Trenton,

New Jersey State Library

New Jersey, as evidenced by certificate of deposit No. 23.

Very respectfully,

JOHN McCUTCHEON,
Comptroller of the Treasury.

By WILLIAM D. KELLY,
State Supervisor of Transfer
Inheritance Tax Bureau.

AES/HGS
Encl.

ORDER DISPENSING WITH BOND.

Filed July 1, 1929.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, deceased.	*Order Dispensing with Bond.*

It appearing by the duly verified petition in the above-entitled cause that the tax levied by the Comptroller of the Treasury on the assessment complained of in the said petition has been paid, and that the questions raised by this petition have to do with the amount to be refunded to the petitioners; it is, on this 26th day of June, 1929, on motion of Messrs. McCarter & English, Proctors of the petitioners, ORDERED

That the giving of a bond to the Ordinary upon the filing of the said petition conditioned to pay the tax levied by the Comptroller of the Treasury, together with interest and costs if the said tax be affirmed by the Ordinary, in accordance with the statute in such case made and provided, is dispensed with.

E. R. WALKER,
Ordinary.

Respectfully advised,

ALONZO CHURCH,
V. O.

ANSWER.

Filed July 8, 1929.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, deceased.	*On Appeal.* *Answer.*

Answer of John McCutcheon, Comptroller of the Treasury of the State of New Jersey, to the Petition of Appeal of Kingdon Gould and Schuyler Neilson Rice, as Executors of the Last Will and Testament of George J. Gould, Deceased.

Respondent, answering the petition of appeal, says:

1. Paragraphs 1, 2, 3, 4, 5, 6, 7 and 9 are admitted.

2. Respondent, answering paragraph 8 "a" admits that there was included as a part of the taxable estate of George J. Gould, a certain transfer of $1,000,000 par value, United States 3½ per cent. First Liberty Loan bonds made on March 21, 1923 to his wife, Guinivere S. Gould, but denies petitioners' contention that the transfer was not made in contemplation of death.

3. Paragraph 8 "b" is denied.

4. Respondent, answering paragraph 8 "c" admits that payments referred to therein and totaling $1,825,000 were not allowed as deductions against the estate of the said George J. Gould by the Comptroller of the Treasury in determining the net taxable estate for the purposes of the Transfer Inheritance Tax assessment. And further answering respondent says that in reaching the net taxable estate of said decedent he did allow, as a proper deduction, the sum of $5,442,392.55, being the total payments made by the executors of the estate of said George J. Gould to the legal representatives of the estate of Jay Gould in full satisfaction of certain litigation, and further answering respondent specifically denies petitioners' contention that the payments referred to in paragraph 8 "c" of the petition and totaling $1,825,000 are proper deductions, in addition to the foregoing allowance of $5,442,392.55, in determining the net estate for the purposes of the Transfer Inheritance Tax.

Respondent denies the right of petitioners to an order directing John McCutcheon, as Comptroller of the Treasury, to certify to your Honor, the assessment, the record of taxes, the affidavit of petitioners, the testimony taken before the Special Examiner and all exhibits, and, further answering, says that it is the duty of petitioners, pursuant to the rules of this court, to submit all of this data, evidence and testimony in the form of a transcript of record.

Respondent prays that the assessment of taxes as presently levied by him be in all respects affirmed.

(Signed) W. A. STEVENS,
Attorney-General of the State of New Jersey,
Proctor for Respondent.

OPINION.

Filed February 4, 1930.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE TRANSFER TAX IN THE GEORGE J. GOULD ESTATE. } *Opinion.*

On appeal from the Comptroller of the Treasury.

For appellants, McCarter & English.

For respondent, W. A. Stevens, Attorney-General, William A. Moore, Assistant Attorney-General.

1. A Transfer Tax, upon the death of a testator, may be levied only upon the transfer of property as directed by his will. A transfer over of such property by one beneficiary to another by way of an equitable distribution is not taxable.

2. A gift made within two years of death is presumed to have been made in contemplation of death. Testimony examined and held to support the presumption and to establish the fact that the gift was actually made in contemplation of death.

3. The comptroller's appraisal of corporate stock will not be disturbed unless it appears that he erred as to the facts or in point of law on the evidence before him at a hearing.

BACKES, Vice-Ordinary:

This appeal is from a tax levied on the transfer of property by the death and last will and testament of George J. Gould.

The will of Mr. Gould set aside $4,000,000 in trust for his widow for life, over to their three children for life, remainder to their issue. The residue of the estate was given in trust for the testator's ten children for life (he had seven by his first wife), each an equal share, remainder to their issue. The gross estate approximated $15,000,000. Jay Gould, his father, left an estate of $80,000,000 in trust for his six children for life, each an equal share, remainder to their issue. Mr. Gould, with two of his brothers and a sister, co-trustees, was charged in the courts of New York with mismanagement of the trusts created by his father which finally terminated in a referee's report surcharging them with upwards of $50,000,000, and had the report been sustained it might have resulted in wiping out Mr. Gould's estate. A settlement was made, the four trustees agreeing to pay to the Jay Gould estate $17,500,000. Of this sum Mr. Gould's estate was to pay $5,442,392.55 as its share of the damage. Two million dollars of the $17,500,000 were allocated to the trust created for Mr. Gould's children in remainder. The compromise agreement was conditioned upon its approval by the seven children, the widow and her three children with the sanction of this Court. The seven children were unwilling that the $5,442,392.55 to be paid by their father's estate should fall entirely upon the residue unless the widow and her three children would yield $1,825,000 of their four million dollar trust, of which $1,525,000 was to be equally divided

among the seven—to each $277,857.14. The remaining $300,000 was to be held in trust for the widow's three children in equal shares. It was so agreed and the money was paid over. Thereupon the comptroller levied an assessment upon $277,857.14 against each of the seven children upon the theory that the payment out of the widow's trust was but an adjustment of the burdens of the $5,442,392.55 among the beneficiaries of Mr. Gould's will and effected a distribution of his estate to that extent contrary to the terms of his will. The seven children claim the sums were paid to them in part reimbursement for the loss to their trust under their grandfather's will.

The only evidence of the arrangement is to be found in the contract. That, after referring to the peril of the widow's trust and the residue of the estate of Mr. Gould from the impending judgment in the Jay Gould estate litigation, and to the negotiations which resulted in the compromise of that litigation recites that:

> "The performance of said Stipulation for Compromise would definitely determine the volume of the assets of the estate of George J. Gould, and all the stipulated payments required to be made from the estate but for this agreement would be made from the residuary estate, which would also insure the integrity of said preferential trust in which the three and Lady Dunsford (the widow) are pecuniarily interested.
>
> "The Seven are willing to sign such stipulation on condition that an equitable adjustment be made, as herein provided, of the loss which would otherwise fall exclusively on the said residuary, and which would re-

sult from making the payments called for by said Stipulation, * * *

"In consideration of the foregoing * * * the undersigned * * * agree:

"The Seven, the Three and Lady Dunsford unite in requesting the executors to execute said Stipulation for Compromise.

"If and when the Stipulation for Compromise and this agreement shall have been approved by the Court of Chancery of New Jersey, and the Stipulation for Compromise by said Supreme Court and said Supreme Court shall have authorized the dismissal of the said appeal of the Three, the Executors will pay out of the assets of the Estate of George J. Gould in their hands, and charge against the capital of the preferential trust, and distribute equally among the Seven as soon as may be after said compromise payments shall have been made, the sum of $1,525,000."

Plainly, the money was to be paid to the seven to offset *pro tanto* their loss in the residue of their father's estate and not for the damage suffered to their inheritance under their grandfather's will. Their contention that the State is not entitled to a transfer tax because the payment of $1,525,000 out of the widow's trust reduced by that sum the inheritable property of Mr. Gould upon the theory that it was made in discharge of an obligation of his estate is not admissible. The tax however should not have been levied against them, and for this reason the tax is imposable only upon the transfer of the property by will. The thing taxable was the transfer by the will of the four million dollar

trust fund for the widow and her children. The seven took $1,525,000 of the widow's trust not by the will of their father, but contrary to it, by transfer from the widow and her children. That transfer was not taxable. That she and they chose to bargain with the seven to surrender a portion of their trust to induce them to subject their inheritance under their father's will to the burden of the $5,442,392.55 due the Jay Gould estate, and to reimburse them for the consequent depreciation of their shares of that inheritance is wholly irrelevant to the power to levy a tax upon the transfer of property by death. It is true that a transfer tax is measured by the net amount passing to the beneficiary; and that rule would be satisfied by levying the tax against the widow's trust as an entirety for it was transferred from the dead to the living in its entirety; in fact, the contract presupposes its integrity in providing that the $1,525,000 to be paid the seven shall be charged "against the capital of the preferential trust." It cannot escape tax by the beneficiaries making part of it over to others any more than if they had made it over to strangers. It may be entirely equitable, as the appellants submit, that the widow's trust should not be taxed for more than the reduced amount of the trust but that is an equity between the seven and the widow and her children with which the State has no concern. The adjustment of the equities must be left to them—to their contract or conscience. At all events the State is not interested, and it was not the privilege of the comptroller to take notice of the manipulation of the property by the beneficiaries as between themselves. His duty began and ended with levying the tax imposed by the statute on the transfer of prop-

erty by the will of Mr. Gould. The assessment will be set aside.

The comptroller assessed, as against the widow, a gift of $1,000,000 in U. S. Liberty bonds made by Mr. Gould to her March 21, 1923, within two months of his death, May 16, 1923. The gift was of a material part of his estate (the estate was finally reduced to an assessable value of $6,500,000). Under the statute the gift is presumed to have been made in contemplation of death and the proofs show beyond peradventure that it was actually made in contemplation of death and in the nature of a final disposition. At the time of the gift Mr. Gould was, and for some time previous, had been room-fast, in the constant care of nurses and physicians, in the last stages of the disease from which he died, arterio-sclerosis, and attendant high blood pressure, heart and kidney trouble. His condition was precarious and he realized that his days were few. A trust had been established for his wife and their children with the Commercial Trust Company of Jersey City and S. Nielson Rice as trustees shortly before December, 1922. To this trust was added the gift, by letter communication to the trust company, March 21, 1923, in which Mr. Gould said, "Please deposit the $1,000,000 par value U. S. Liberty Loan 3½, which you are holding for me, in the trust for Mrs. Guinivere S. Gould, of which you and S. Nielson Rice are trustees." Mr. Rice, his confidential secretary, had arrived from New York at his home in the south of France a few days before the letter was sent and at that time Mr. Gould asked for his will and had it read to him. The two discussed the gift and Mr. Rice advised against it, saying he "thought it would be a mistake in

view of what he had already given," but Mr. Gould persisted. When he signed the letter he was so feeble his hand had to be guided. It was the fulfillment of his aim that "Mrs. Gould and the children (their children) must be taken care of," expressed in a letter to his secretary four months before, when he was harrassed by the New York suit and fears of its consequences. The tax will stand.

The comptroller assessed 5,428 shares of stock of the Consolidated Coal Company of St. Louis at $70 per share. The appellants protest that their fair market value was $60, but they conceded that $65 per share would not be objectionable. Sales of this stock were few; the prices equalled or exceeded the rate fixed and the comptroller took them into consideration. He also examined into the book value which equal $127.76 per share. Standard, current financial reports were consulted and information from responsible sources was procured. All available sources of information were exhausted—at least the appellants point to no other. There was sufficient evidence before the comptroller to support the appraisal and there is nothing in the record from which it may be adjudged that he erred. In fact, nothing was offered by the appellants upon which the Court could as a matter of law arrive at a different result. The tax is sustained.

FINAL DECREE.

Filed February 28, 1930.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, deceased.	*On Appeal.* *Final Decree.*

This matter coming on to be heard upon the petition of appeal of Kingdon Gould and Schuyler Neilson Rice, as executors of the last will and testament of George J. Gould, deceased, from the assessment made by the Comptroller of the Treasury of the transfer inheritance taxes upon the said estate, and the answer of the said Comptroller and the transfer of the proceedings before the said Comptroller, and the Court having inspected the said transcript and having heard the argument of George W. C. McCarter, Esquire, of counsel with the appellants; and William A. Stevens, Esquire, attorney-general, and William A. Moore, Esquire, of special counsel for the respondent, and being of the opinion that in none of the respects set forth by the appellants in their petition of appeal are the appellants aggrieved by the assessment appealed from; but the Court being of opinion that the assessment is erroneous in the respect in which it is hereinafter set aside; it is, on this 25th day of Febru-

ary, 1930, ORDERED, ADJUDGED and DECREED as follows:

1. Insofar as the assessment assesses a tax upon any part of the sum of four million dollars bequeathed in and by the third clause of the will of George J. Gould, deceased, to any person other than the beneficiaries for life and in remainder of the trust created in and by the said clause as named or described therein, the assessment be and the same is set aside with directions to the respondent to assess the tax in accordance with law upon the trust fund of four million dollars, without any diminution whatsoever against the beneficiaries thereof as named or described in the third clause of the decedent's will.

2. In all other respects the assessment be and the same is affirmed, and the petition of appeal be and the same is dismissed.

E. R. WALKER,
Ordinary.

Respectfully advised,

JOHN H. BACKES,
V.-O.

Comptroller's Certificate.

STATE OF NEW JERSEY

(Seal of the State of New Jersey)

Department of Comptroller of the Treasury

I, JOHN MCCUTCHEON, Comptroller of the Treasury of the State of New Jersey, being the officer chargeable by statute with the administration of the Transfer Inheritance Tax Laws of the State of New Jersey, and the custody of the records pertaining thereto, and the assessment and collection of Transfer Inheritance Taxes, hereby certify that:

The *Transcript of Record* hereto attached is comprised of true and perfect copies of bill for tax, analysis of tax, will, affidavits, testimony, exhibits, statements, letters, etc., in the matter of the Inheritance Tax in the Estate of George J. Gould, deceased, late of Ocean County, New Jersey, as the same appear of record in the files of the Department of Comptroller of the Treasury.

WITNESS my hand and Official Seal,
(SEAL) at Trenton, this Sixth day of November, A. D. 1929.

JOHN McCUTCHEON,
Comptroller of the Treasury.

Tax Bill.

STATE OF NEW JERSEY

DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

256502 April 25, 1929

Kingdon Gould and S. N. Rice, Executors, of the Estate of George J. Gould Late of Ocean County

Messrs. McCarter & English Prudential Bldg. Newark, N. J.

You are hereby notified that there is due the State of New Jersey by the above-named estate a transfer inheritance tax assessed pursuant to the law pertaining thereto, amounting to

	$126,746.40
Compromise tax	8,100.79
	$134,847.19
Amount to be refunded.....	98,052.81
Payment on account May 16, 1924.	$232,900.00
(John Spensley	$400.00)
(George P. Langford	400.00)
(William Bishop	400.00)
(Gottfried Fluckiger	400.00)
(David Sommer	400.00)
(Guinivere S. Gould, wife	75,906.12)
(Kingdon Gould	6,167.44)
(Marjorie G. Drexel	6,251.37)
(Jay Gould	6,196.66)
(Vivien Decies	6,301.40)
(George J. Gould, Jr.	6,368.41)
(Edith G. Wainwright	6,477.68)
(Gloria Gould	6,535.44)
(George S. Gould	1,513.96)

(Jane S. Gould 1,513.96)
(Guinivere S. Gould 1,513.96)

JOHN McCUTCHEON,
Comptroller.

DECEDENT DIED May 16, 1923

If paid subsequent to May 16, 1924 add interest at rate of 10% per annum from said date to date of payment.

Return this statement to this office with certified check for amount due. Make checks payable to TREASURER, STATE OF NEW JERSEY.

THIS RECEIPT MUST NOT BE DETACHED

OFFICE OF STATE TREASURER

$..... Trenton, N. J.,.....
RECEIVED from .....
.....
..... Dollars
in settlement of account as above set forth.

Countersigned: Treasurer.

Comptroller.

This tax was assessed on the value of property of decedent disclosed to the State in accordance with the statute. The State does not waive its right to any tax on property not disclosed.

Assessment.

STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.

Amount of Estate	Schedule "C"	$ 1,008,125.00	
	Personal	13,344,255.47	
	Real	415,106.50	
		Total	$14,767,486.97
Debts, Expenses, &c.			8,268,953.88
Net Estate for Distribution			6,498,533.09
Exempt Interests & Contingent			1,212,256.39
Taxable Interests			$ 5,286,276.70
Will or Intestate, Tax 1-2-3-8%			$ 126,746.40

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	John Spensley		None	..	.....	$5,000.00
2	Legacy	5,000.00				400.00
	George P. Longford		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	William Bishop		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	Gottfried Fluckiger		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	David Sommer		None	..	.....	5,000.00
2	Legacy	5,000.00				400.00
	Guinivere S. Gould		Wife	30	5,000.00	2,643,537.19
						75,906.12
	Gift Transfer on March 21, 1923 of $1,000,000.00 par value of U. S. Gov't Liberty Loan Bonds—3½—due 32/47—taxed as a gift in contemplation of death	1,008,125.00				
3	Income during lifetime from 4,000,000.00 less payments of 1,825,000.00 under Agreement of Dec. 16, 1926	1,640,412.19				
		2,648,537.19				

Assessment.

	Remainder of trust fund upon death of Guinivere S. Gould is Contingent #1				534,587.81	
	Carried Forward				$539,587.81	$2,668,537.19
						77,906.12

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate.

ANALYSIS OF ESTATE

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	Brought Forward				$539,587.81	$2,668,537.19
						77,906.12
	Kingdon Gould		Son	35	5,000.00	318,914.51
						6,167.44
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	106,057.37				
		323,914.51				
	Remainder of 1/10 Residue upon death of Kingdon is Contingent #2				40,483.44	
	Marjorie G. Drexel		Daughter	32	5,000.00	321,712.49
						6,251.37
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	108,855.35				
		326,712.49				

Assessment.

	Remainder of 1/10 Residue upon death of Marjorie is Contingent #3				37,685.46	
	Jay Gould		Son	34	5,000.00	319,888.64
						6,196.66
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	107,031.50				
		324,888.64				
	Remainder of 1/10 Residue upon death of Jay is Contingent #4				39,509.31	
	Carried Forward				672,266.02	3,629,052.83
						96,521.59

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate

ANALYSIS OF ESTATE

	Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
	Brought Forward				$672,266.02	$3,629.052.83
						96,521.59
	Vivien Decies		Daughter	30	5,000.00	323,380.05
						6,301.40
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	110,522.91				
		328,380.05				
	Remainder of 1/10 Residue upon death of Vivien is Contingent #5				36,017.90	
	George J. Gould, Jr.		Son	27	5,000.00	325,613.70
						6,368.41

Assessment.

	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.14				
3-b	Income during lifetime from 1/10 Residue	112,756.56				
		330,613.70				
	Remainder of 1/10 Residue upon death of George, Jr., is Contingent #6.....				33,784.25	
	Edith G. Wainwright		Daughter	21	5,000.00	329,255.98
						6,477.68
	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.15				
3-b	Income during lifetime from 1/10 Residue	116,398.83				
		334,255.98				
	Remainder of 1/10 Residue upon death of Edith is Contingent #7				30,141.98	
	Carried Forward				787,210.15	4,607,302.56
						115,669.08

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate

ANALYSIS OF ESTATE

Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
Brought Forward				$787,210.15	$4,607,302.56
					115,669.08
Gloria Gould		Daughter	17	5,000.00	331,181.23
					6,535.44

Assessment.

	Legacy from above trust fund under Agreement of Dec. 16, 1926	217,857.15				
3-b	Income during lifetime from 1/10 Residue	118,324.08				
		336,181.23				
	Remainder of 1/10 Residue upon death of Gloria is Contingent #8				28,216.73	
	George S. Gould		Son	8	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of George S. is Contingent #9.....				25,609.84	
	Jane S. Gould		Daughter	5	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of Jane is Contingent #10.....				25,609.84	
	Guinivere S. Gould		Daughter	1	5,000.00	115,930.97
						1,513.96
3-c	Income during lifetime from 1/10 Residue	120,930.97				
	Remainder of 1/10 Residue upon death of Guinivere is Contingent #11.....				25,609.83	
	Carried Forward				912,256.39	5,286,276.70
						126,746.40

STATE OF NEW JERSEY
DEPARTMENT OF THE COMPTROLLER OF THE TREASURY

TRANSFER INHERITANCE TAX BUREAU
ASSESSMENT

Estate of George J. Gould of Ocean County.
Late Resident of Lakewood. Date of Death May 16, 1923.
Will or Intestate

ANALYSIS OF ESTATE

Beneficiaries and Bequests	Value of Devise or Bequest	Relationship	Age	Exempt	Taxable
Brought Forward				$912,256.39	$5,286,276.70
					126,746.40

Assessment.

The sum of $100,000.00 from above trust held for the benefit of George S. Gould as per Agreement of Dec. 16, 1926 is Contingent #12	100,000.00	
The sum of $100,000.00 from above trust held for the benefit of Jane S. Gould as per Agreement of Dec. 16, 1926 is Contingent #13	100,000.00	
The sum of $100,000.00 from above trust held for the benefit of Guinivere S. Gould as per Agreement of Dec. 16, 1926 is Contingent #14	100,000.00	
Total	$1,212,256.39	$5,286,276.70
		126,746.40

Computation of Taxes

Guinivere		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
100,000.00—1½%	1,500.00	
100,000.00—2%	2,000.00	
2,398,537.19—3%	71,956.12	
$2,648,537.19		$75,906.12
Kingdon		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
100,000.00—1½%	1,500.00	
100,000.00—2%	2,000.00	
73,914.51—3%	2,217.44	
$323,914.51		$ 6,167.44
Marjorie		
$250,000.00—As above	$ 3,950.00	
76,712.49—3%	2,301.37	
$326,712.49		$ 6,251.37
Vivien		
$250,000.00—As above	$ 3,950.00	
78,380.05—3%	2,351.40	
$328,380.05		$ 6,301.40
George, Jr.		
$250,000.00—As above	$ 3,950.00	
80,613.70—3%	2,418.41	
$330,613.70		$ 6,368.41
Edith		
$250,000.00—As above	$ 3,950.00	
84,255.98—3%	2,527.68	
$334,255.98		$ 6,477.68
Gloria		
$250,000.00—As above	$ 3,950.00	
86,181.23—3%	2,585.44	
$336,181.23		$ 6,535.44
Jane S., George S., Guinivere S.		
$5,000.00	Exempt	
45,000.00—1%	$ 450.00	
70,930.97—1½%	1,063.96	
$120,930.97		$ 1,513.96
Jay		
$250,000.00—As above	$ 3,950.00	
74,888.64—3%	2,246.66	
$324,888.64		$ 6,196.66

I, GEORGE J. GOULD, of Lakewood, County of Ocean, State of New Jersey, do hereby make, publish and declare this to be my last Will and Testament, hereby revoking all other Wills by me made.

FIRST: Referring to the power of appointment contained in the Fifth Clause or Article of the last Will and Testament of my father, JAY GOULD, I hereby direct that the share of the Estate of Jay Gould held in trust for my benefit, shall upon my decease, be equally distributed among my seven children, KINGDON GOULD, MARJORIE GOULD DREXEL, JAY GOULD, VIVIEN DECIES, GEORGE J. GOULD, JR., EDITH GOULD WAINWRIGHT and GLORIA GOULD.

SECOND: I give and bequeath to JOHN SPENSLEY, GEORGE PHILIP LANGFORD, WILLIAM BISHOP, GOTTFRIED FLUCKIGER and DAVID SOMMER, the sum of Five Thousand ($5,000) Dollars each, free from all Federal and State inheritance or transfer taxes.

THIRD: I give and bequeath unto my trustees hereinafter named, the sum of Four Million ($4,000,000.) Dollars, IN TRUST, for the uses and purposes following:

1. To invest and re-invest, hold or sell, convey or dispose of the same at public or private sale, at such time or times and on such terms as they or the survivor of them in their or his discretion shall deem advisable.

2. To receive the rents, issues, income and profits thereof and after paying all necessary expenses in connection therewith, to pay over the net income therefrom to my wife, GUINIVERE S. GOULD during her lifetime, and upon her death to transfer and pay over the principal thereof

to my children by my said wife, Guinivere S. Gould, in such proportions and at such times as she shall appoint in and by her Last Will and Testament; and in case of her failure to make such testamentary appointment, then to divide the principal thereof in as many equal shares as my said wife shall leave children of mine surviving, or children of a deceased child living at the time of my death, per stirpes and not per capita, and to hold one of said shares IN TRUST for the benefit of each of said children, and to receive the rents, issues, income and profits thereof, and after paying all necessary expenses in connection therewith, to pay over the net income therefrom to the child thereunto entitled during his or her lifetime, and thereafter to transfer and pay over the principal of said share to the beneficiaries named in his or her last Will and Testament and failing such testamentary disposition then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

FOURTH: All the rest, residue and remainder of my property, real, personal and mixed, of which I shall die seized or possessed, or to which I shall be entitled at the time of my death, I give, devise and bequeath unto my Trustees hereinafter named IN TRUST for the uses and purposes following:

a. To invest and re-invest, hold or sell, convey or dispose of the same at public or private sale, at such time or times and on such terms as they or the survivor of them in their or his discretion shall deem advisable.

b. To divide the principal thereof into ten (10) equal shares and to designate, hold and

invest one of such shares for each of my children, KINGDON GOULD, MARJORIE GOULD DREXEL, JAY GOULD, VIVIEN DECIES, GEORGE J. GOULD, JR., EDITH GOULD WAINWRIGHT and GLORIA GOULD, and to collect and receive and pay or apply the rents, interest and income from the part or share so set apart for each child to his or her use during his or her life; and upon the death of any of said children to pay, assign, transfer or convey the part or share so held in trust for him or her to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament; and failing such testamentary disposition, then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

GEORGE J. GOULD

c. To designate, hold and invest one other of such shares for each of my children, GEORGE SINCLAIR GOULD, JANE SINCLAIR GOULD and GUINIVERE GOULD (the children of my said wife, Guinivere Sinclair Gould) and to collect and receive and pay or apply the rents, interest and income from the part or share so set apart for each child, to his or her use during his or her life; and upon the death of any of said children, to pay, assign, transfer or convey the part or share so held in trust for him or her to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament; and failing such testamentary disposition, then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

d. During the minority of the children of my said wife, Guinivere Sinclair Gould, the net income from the share or shares set apart for

them shall be paid to my said wife and to Schuyler Neilson Rice for the maintenance, education and support of said children, and no bond or other security shall be required of my said wife and Schuyler Neilson Rice for the faithful administration or expenditure of the income received by them as aforesaid.

FIFTH: I hereby nominate, constitute and appoint my said wife and Schuyler Neilson Rice to be the guardians of the person and property of my children by my present wife during their minority.

SIXTH: I nominate, constitute and appoint my son, KINGDON GOULD and SCHUYLER NEILSON RICE to be the Executors of this my will and direct that no bond or other security be required of either of them for the faithful performance of their duties as such Executors. I give and grant unto my said Executors full power and authority to sell at their discretion, as to time and terms and to convey any or all of my real estate and any or all of my personal property for cash, or upon credit, either at public or private sale, and until sold, I empower them to lease my real estate for such time and upon such terms as they may think proper and to collect the rents and income arising therefrom and generally to manage the same as they may think best.

If in effecting the division of my residuary estate my Executors deem it inadvisable to sell any of the securities or property constituting the same, I then authorize them to divide such securities and deliver the same in kind, at such valuations as they in their discretion shall agree upon, to the Trustees hereinafter named for the pur-

poses of establishing the trusts provided in the Third and Fourth numbered paragraphs hereof.

SEVENTH: I nominate, constitute and appoint, COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation organized under the laws of the State of New Jersey, and SCHUYLER NEILSON RICE to be the Trustees under this my last Will and Testament and I direct that no bond or security shall be required of said Trustees as a condition of qualifying or acting under this Will. My said Trustees may, at their discretion, retain and hold as investments under my Will any securities I may hold at the time of my death. I give and grant unto my said Trustees full power and authority to sell, dispose of and convey, at their discretion as to time and terms, any or all of my real estate and personal property held by them as such Trustees under any of the trusts hereunder, for cash or upon credit, either at public or private sale, and to lease the real estate for such a term and upon such conditions as they may think proper, and to collect the rents and income arising therefrom and generally to manage the same as they may think best.

EIGHTH: In case any person shall under any pretense whatever oppose the probate of this my last will and testament, or institute, take or share in any action or proceeding to impeach or impair or set aside or invalidate any of the provisions, I do hereby revoke any and all devises, bequests and provisions to or for the benefit of said persons, and such persons shall be excluded from all participation in and shall not have any share or part of my property or estate, real or personal, and the portion to which said person might otherwise have become entitled under the provisions of this instrument, shall form a part of my

residuary estate and shall be disposed of in accordance with the terms and provisions thereof, excluding, however, the persons opposing such probate or instituting, taking or sharing in any action or proceeding to impeach or impair or set aside or invalidate any of the provisions of this Will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of May, in the year One thousand nine hundred and twenty-two.

GEORGE J. GOULD (L. S.)

The foregoing instrument, contained on this and the preceding five pages, was subscribed, sealed, published and declared by the testator, as and for his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses, the day and year last above mentioned, having seen the testator also sign his name in the margin of each of the preceding five pages.

OTTO A. HACK	Residing at #1 Harbor Lane, New Rochelle, N. Y.
DAVID H. TAYLOR	Residing at 19 East 92 St., N. Y. City.
JOHN PAULL	Residing at 62 Pierrepont St., Brooklyn, N. Y.

LAST WILL AND TESTAMENT

OF

GEORGE J. GOULD

Dated, May 27, 1922

Affidavit with Schedules Completed by Department.

STATE OF NEW JERSEY

DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

RESIDENT DECEDENT.

IN THE MATTER
OF THE
ESTATE OF GEORGE J. GOULD, late of Ocean County.

Schedules Completed by The Department.

See Executors Affidavit for Details.

State of .....
County of ..... } ss.:

.....Executor

Administrator of the estate of the above-named decedent being duly sworn, depose and say: Decedent died (testate) May 16 1923, (intestate) (Month) (day) (year) leaving a last Will, copy of which is hereto attached.

Name and address of attorney or other representative to whom all correspondence should be mailed. McCarter & English Prudential Bldg. Newark, N. J.

That as such administrator executor deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the

decedent at the time of h.... death had no safe deposit box except Commercial Trust Co. Jersey City, N. J.

That *Schedule A* attached hereto and made part hereof sets forth fully and in detail all the real property in the State of New Jersey of which decedent died seized and possessed, or in which ....he had any right, title or interest at the time of h.... death. It also sets forth a statement of the liens and encumbrances upon each parcel of real estate at the date of death, giving in the case of mortgages the amount, date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof as of date of death of said decedent, and in the third marginal column the value of the decedent's equity in said property.

That *Schedule B* attached hereto and made part hereof sets forth fully and in detail all the personal property wheresoever situated owned by the decedent or in which said decedent had any right, title or interest at the time of h.... death. It also sets forth all of moneys left by the decedent at the time of h.... death, whether in h.... immediate possession, standing to h.... credit or in which ....he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings bank, and down to the date of decedent's death in all other cases. It also sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automo-

biles, boats, and any and all other personal chattels of whatsoever kind or nature, left by decedent, together with the fairly estimated market value thereof. It also sets forth a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of h.... death, and of all the promissory notes or other instruments in writing for the payment of money of which ....he died possessed, of whatsoever nature, with interest thereon, if any, giving the face values and estimated fair market values thereof, and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. It also sets forth a statement of any and all moneys payable to the estate from life insurance policies carried by decedent. It also sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of h.... death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities, giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stocks, the dividends paid, and any other facts which may be pertinent affecting the value of said securities. It also sets forth the interest of decedent at the time of h.... death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and good-will

thereof. It also sets forth in itemized form, together with the fair market value thereof, any other property owned or left by the decedent at the time of h.... death.

That *Schedule C* attached hereto and made part hereof sets forth all the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift in contemplation of h.... death or intended to take effect in possession or enjoyment at or after h.... death, or by reason thereof fell into or became part of the assets of this estate, by, reversion, remainder or otherwise. It also sets forth the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift within two years prior to the date of h.... death and without an adequate valuable consideration. It also sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by h.... of any power of appointment vested in h.... by the will, deed or instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which will, deed or other instrument are herewith submitted. It also sets forth all sums by way of commissions properly and legally chargeable against such property.

That *Schedule D* attached hereto and made part hereof sets forth the valid debts due and owing by decedent at the time of h.... death and allowed as just and fair by the Administrator Executor, together with any and all items claimed by the Administrator Executor as proper deductions herein. It does not include any claims as enter into computation of decedent's interest in

any copartnership or business. It also sets forth the funeral expenses, administration expenses, counsel fees paid or estimated.

That *Schedule E* attached hereto and made part hereof sets forth the names and addresses of all persons beneficially interested in this estate, at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's Will, if any. It also contains a statement showing which of the beneficiaries named in decedent's will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

That the deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules attached hereto and made part hereof, and that no information of any other property of the decedent has come to h.... knowledge and that ....he verily believes that decedent left no property except as herein set forth. That all the sums claimed as deductions in the schedules hereto attached and made part hereof are lawful, just and fair. Deponent further says that wherever in any of the schedules the word "none" has been written in or wherever such schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which said schedule relates.

Subscribed and sworn to before
me this ..... day
of ....., 19 .

Affidavit with Schedules Completed by Department.

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "A"

REAL PROPERTY IN NEW JERSEY, WITH STATEMENT OF LIENS AND ENCUMBRANCES UPON EACH PARCEL AT DEATH OF DECEDENT

The real property located in the State of New Jersey should be described by lot and block number or street and street number or by a general description, with a reference to the record of the conveyance by which the decedent took title; also statement of encumbrances upon each parcel at death of decedent.	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	Caution (Do not write in this space)
Property situate in Lakewood, Ocean County, N. J., known as "Georgian Court" described as per data submitted.	$302,700.00			$350,000.00
Property situate in Lakewood, Ocean County, N. J., known as "Kingscote" described as per data submitted.				65,106.50
				$415,106.50

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "B"

PERSONAL PROPERTY

Cash in Hand and on Deposit, Bonds and Mortgages, Promissory Notes, Claims, Insurance, Corporate Bonds and Stocks and All Other Personal Property Wherever Situate.	Appr.	Estimated Market Value	Caution (Do not write in this space)
Cash in Banks, Foreign			
American Express Co., Paris, Fr.—31,072.10	A-22	$ 2,071.47	$ 2,071.47
Brown Shipley & Co., London, L.—7,498-1-5	A-22	34,697.37	34,697.37
Deutsche Bank, $1,318.02	A-22	.....	.....
Equitable Trust Co., London, L.—1,131-19-5	A-22	5,238.10	5,238.10
Morgan, Grenfell Co., London, L.—32-0-1	A-22	148.10	148.10
Morgan, Harjis & Co., Paris, Fr.—340-042.85	A-22	22,669.52	22,669.52
National Provincial Union Bank, London, L.—13,440-17-0	A-22	62,197.58	62,197.58

Affidavit with Schedules Completed by Department.

Comptoin Nacionale, Mentone, Fr.—73,332.09	A-22	4,883.92	4,883.92
Cash in Banks, United States			
First Trust & Savings Bank, Chicago, Ill.	A-22	28,371.20	28,371.20
Equitable Trust Co., New York	A-22	371.15	371.15
Commercial Trust Co., Jersey City, N. J.	A-22	45,316.00	45,316.00
Commercial Trust Co., Jersey City, N. J.	A-22	112,431.53	112,431.53
Bankers Trust Co., New York, N. Y.	A-22	271.10	271.10
Guaranty Trust Co., New York, N. Y.	A-22	66.97	66.97
Lakewood Trust Co., Lakewood, N. J.	A-22	6,388.42	6,388.42
Cash in Office 120 Gold Franks	A-22	23.16	23.16
Miscellaneous Cash Items			
Guaranty Trust Co., New York, N. Y. "GJG" Special	A-22	376.60	376.60
OUTSTANDING CHECKS	A-22	712.91	712.91
Personal Effects			
Miscellaneous Chattels at Georgian Court (See Acct. 2, Exhibit 5, page 57 and Affid. of Executors, June 24, 1927, and G. P. Langford, Dec. 15, 1927, for deductions)	B	136,407.15	108,846.56
Books and Paintings at Georgian Court	C	107,504.50	107,504.50
Property on Storage in Everson Warehouse, Jersey City. (See Affid. of Executors June 24, 1927, and George P. Langford, Dec. 15, 1927, for deductions)	D	386,022.50	.....
Miscellaneous Property at Georgian Court	E	13,255.00	13,255.00
Mortgages, Notes, Accounts, Etc.			
Notes and Accounts Receivable, including accrued interest	A-23 to 25	886,294.27	630,730.73
Insurance			
Equitable Life Insurance Society Policy No. 1,437,501—payable to Estate	A-29	34,237.04	34,237.04
Stock Exchange Seats			
New York Stock Exchange	A-29	95,000.00	95,000.00
Stocks and Bonds			
Municipal Bonds	A-1 to 14	6,498,900.47	6,499,135.52
U. S. and Foreign Government Bonds	A-15	2,566,378.48	2,566,378.48
Miscellaneous Bonds and Scripts	A-16	112,813.44	112,813.44
Stocks	A-17 to 20	1,503,993.00	1,577,631.75
Interests in Other Estates			
Accrued Income from estate of Jay Gould	A-26 to 28	1,272,096.13	1,272,096.13
Accrued Income from estate of Helen D. Gould	A-28	391.22	391.22
	Total		$13,344.255.47

Affidavit with Schedules Completed by Department.

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "C"

All property transferred by the decedent within two years prior to the date of death without having received an adequate, valuable consideration.

All property transferred by the decedent in contemplation of death or intended to take effect in enjoyment at or after death.

All property passing by decedent's exercise of any power of appointment vested in him under the will, deed or other instrument of another.

On March 21, 1923, the decedent transferred to his wife, Guinivere S. Gould
$1,000,000.00 U. S. Government Liberty Loan Bonds—3½'s due 32/47
@ 100 26/32 ..... $1,008,125.00

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "D"

If notes, brokerage accounts or other claims are secured by collateral, describe the collateral pledged, with its value as of the date of death of the decedent and state whether or not said collateral is included among the assets disclosed in Schedule "B." If collateral is not pledged, state after each loan "no collateral pledged."

Debt or Claim of	Nature of Same	Amount	Caution (Do not write in this space)
.....	Funeral expenses		$ 6,245.86
.....	Administration expenses (estimated), ...		10,556.77
.....	Counsel Fees, ...		1,257,706.57
.....	Executor's or Administrator's Commissions, ... (Commissions must not be estimated and claimed unless a final account is to be filed with the Surrogate.)		481,577.67
(Detail Other Debts)			
Commercial Trust Co.	Settlement of Jay Gould, Jr. Claim	$ 27,682.76	27,682.76
New York	Transfer Tax	18,187.89	18,187.89
Illinois	" "	4,074.52	4,074.52
Pennsylvania	" "	44.83	44.83
Arkansas	" "	132.00	132.00
Great Britain	" "	11,009.79	11,009.79
Federal Estate Tax	" "	750,000.00	750,000.00

Miscellaneous Debts	Accrued and paid prior to	16,415.51	16,415.51
	Allowed and Paid After Death	116,349.25	116,349.25
J. K. Rice	Appraiser	20,000.00	20,000.00
J. F. Stephensen	"	20,000.00	20,000.00
Printing		11,032.69	11,032.69
Earl Eason	Accountants Services	8,333.20	8,333.20
A. Young & Co.	Services	10,424.50	10,424.50
U. S. Government	Income Tax—1923	56,466.11	56,466.11
Gould vs Gould	Payments—as per Court Decree (Acct. 4, page 55)	5,442,392.55	5,442,392.55
Michigan	Transfer Tax	321.41	321.41
	Total		$8,268,953.88

Federal Estate Tax.
Estimated by Dept.

$13,759,361.97	Gross	
34,237.04	Insurance	
$13,715,124.93		
7,518,953.88	Debts	
$ 6,196,171.05	Net	
50,000.00	Exemption	
$ 6,146,171.05	Net for Tax	
	Not incl. "C."	
$ 6,000,000.00—1 to 20%		$ 841,500.00
146,171.05—20	—	29,234.21
		$ 870,734.21
1,008,125.00 "C" 20	—	201,625.00
		$1,072,359.21

Affidavit with Schedules Completed by Department.

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "E"

Beneficiaries State full names of all who have an interest, vested, contingent or otherwise, in estate	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
Kingdon Gould	Son	Yes	35	
Silvia A. Gould	Gr. Daughter	"		
Edith K. Gould	Gr. Daughter	"		
Kingdon H. Gould	Gr. Son	"		
Marjorie G. Drexel	Daughter	"	32	
Edith K. Drexel	Gr. Daughter	"		
Anthony J. Drexel, Jr.	Gr. Son	"		
Marjorie G. Drexel	Gr. Daughter	"		
Jay Gould	Son		34	
Eleanor Gould	Gr. Daughter	"		
Anne D. Gould	Gr. Daughter	"		
Jay Gould	Gr. Son	"		
Vivian Decies	Daughter		30	
Eileen V.de la P. Bresford	Gr. Daughter	"		
Catherine Moya	Gr. Daughter	"		
Arthur G.M. de la Poer	Gr. Son	"		
George J. Gould, Jr.	Son	"	27	
George J. Gould	Gr. Son	"		
Maughan Carter	Gr. Son	"		
Howard Jay	Gr. Son	"		
Edith G. Wainwright	Daughter	"	21	
Stuyvesant	Gr. Son	"		
Caroline De Peyster	Gr. Daughter	"		
Carroll L., Jr.	Gr. Son	"		
Gloria G. Bishop	Daughter	"	17	
Glioia	Gr. Daughter	"		
George S. Gould	Son	"	8	
Jane S. Gould	Daughter	"	5	
Guinivere Gould	Daughter	"	1	
John Spensley	None	"		
George P. Langford	None	"		
William Bishop	None	"		
Gottfried Kluckiger	None	"		
David Sommer	None	"		

Department's Letter re tax 4-24-29.

April 24, 1929

Messrs. McCarter & English
Prudential Building
Newark, New Jersey

Gentlemen:

Enclosed is bill for the Transfer Inheritance Taxes presently chargeable in re estate of George J. Gould, deceased, late of Ocean County, New Jersey.

The attention of the executors is called to the fact that the ultimate disposition of a portion of this estate, having a value of $1,157,257.39, depends upon the happening of certain contingencies and as a result thereof it is impossible for the department at this time, to definitely determine the amount of the Transfer Inheritance Taxes which may ultimately be chargeable thereon.

The decedent in and by the provisions of his last will and testament directs that the sum of $4,000,000.00 is to be held in trust and the income therefrom paid to his wife, Guinivere S. Gould, age 30 years, for and during the term of her natural life and upon her death the principal of the trust is to be paid to the decedent's children by said wife in such proportions and at such times as she shall appoint in and by her last will and testament and in case of her failure to make such testamentary appointment then the principal is to be divided into as many equal shares as the said wife shall leave children of the decedent surviving or children of a deceased child living at the time of the decedent's death per stirpes and not per capita, and one of said shares continued in trust for the benefit of each of said children and the income therefrom paid

to such child for and during the term of his or her natural life, and the principal upon his or her death to the beneficiaries named in his or her last will and testament, and in absence of such testamentary disposition then to his or her next of kin in accordance with the provisions of the statute of distribution then in force in the State of New Jersey. The decedent further directs that his entire residuary estate is to be divided into ten equal shares one of which is to be held in trust for the benefit of each of the decedent's children and the income paid each child from his or her respective share for and during the term of his or her natural life and upon the death of any of said children the principal of the share so held in trust for him or her is to pass to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament and failing such testamentary disposition then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey. Each of the decedent's children by his first wife has three children living at the present time with the exception of Gloria who has only one child. The three children by the second wife have no issue living at the present time.

The decedent's direction, however, as to the disposition of the $4,000,000.00 trust fund to the wife as above set forth has been modified by the Department for the purposes of this proceeding so as to conform with the provisions of the "Agreement" attached to the "Stipulation for Compromise" which agreement was approved by the Courts of the State of New Jersey. This agreement provides that from the $4,000,000.00

trust fund there is to be paid each of the decedent's children by his first wife the sum of $217,857.14 and that there is to be set up in trust for each of the decedent's children by his second wife; namely, George S., age 8 years, Jane S., age 5 years, and Guinivere, age 1 year, a fund of $100,000.00 and from the income therefrom so much is to be used as may be necessary for the support, education and maintenance of each child until he or she attains the age of 21 years at which time the amount of the accumulated income up to that time is to be paid to said child and the fund continued in trust until said child attains the age of 25 years, all of the income in the meantime to be paid to him or her, and upon each child attaining the age of 25 years the trust is to cease and the entire fund paid over to such child. In the event of the death of any of said children before attaining the age of 25 years the corpus of the fund together with any accumulated income is upon the death of the child to be distributed to the issue of said child, if any, in equal shares per stirpes and not per capita and should said child die without leaving issue then the principal of the trust together with any accumulated income is to be paid to the survivors or survivor of the three children or their issue per stirpes and should all of said three children fail to attain the age of 25 years and die without leaving issue surviving then the principal of the trust together with the accumulated income is to be equally divided among the seven children of the decedent by his first wife the issue of any who may then be deceased to take the parent's share per stirpes. The names and ages as of the date of death of the decedent of the seven children by the first wife

are as follows: Kingdon age 35, Jay age 34, Marjorie age 32, Vivien age 30, George J. Jr. age 27, Edith age 21 and Gloria age 17.

In the event that the remainders of the various trusts vest upon the death of the wife and the seven children by the first wife in their children now living and the three children by the second wife attain the age of 25 years and die leaving one child each surviving in whom the remainders of the trusts held for the benefit of the three children vest there will be an additional tax of $22,856.23 or should the remainder, of the trust for the wife vest upon her death in only one or two of her children and the ones not sharing attain or die before attaining the age of 25 years, the additional tax will amount to $23,709.12, $24,854.46, $24,562.00 or $26,852.68. The amount of these taxes may be increased in the event of the death of any of the seven children by the first wife leaving less than three children surviving or leaving no children at all surviving or may be decreased in the event of the death of any of the seven children by the first wife leaving more than three children each surviving.

In order to presently adjust this feature of the estate, the Department suggests a compromise based upon the immediate payment of the sum of $8,100.79.

After applying the payment on account in the amount of $232,900.00 perfected by the executors under date of May 16, 1924 in payment of the direct taxes assessed as shown on the enclosed bill, there remains the sum of $106,153.60 to the credit of the estate.

If the above suggested compromise meets with the acceptance of the representatives of the

estate, upon receipt of a letter to that effect together with a short affidavit of the executors establishing the fact that the decedent's second wife and the ten children are living at the present time the Department will promptly issue a proof of claim covering the refund of the sum of $98,052.81.

Should, however, the representatives of the estate desire to defer the payment of the taxes which may ultimately be chargeable against the contingent portion of the estate until the contingencies actually happen, it will be necessary for the executors to file with the Department a bond of a New Jersey surety company executed in a sum in double the amount of the taxes chargeable at the highest possible rate and conditioned for the payment of said tax together with any accrued interest due thereon at the time the contingencies happen. If this procedure is to be followed, upon receipt of the properly executed bond the Department will issue a proof of claim covering refund of $106,153.60, being the difference between the amount of payment on account and the amount of direct taxes assessed as shown on the enclosed bill.

If an official receipt for the taxes is desired, the enclosed bill together with the temporary receipt issued under date of May 16, 1924 should be returned to the department.

The department will also promptly arrange to refund to the estate the amount of $350,000.00 on special deposit to the credit of the Comptroller with the Hanover Trust Company of

Department's Letter 6-6-29.

Trenton, New Jersey, as evidenced by certificate of deposit No. 23.

Very respectfully,

John McCutcheon
Comptroller of the Treasury

BY.....
State Supervisor of the Transfer
Inheritance Tax Bureau

AES/HGS
Encl.

June 6th, 1929

George W. C. McCarter, Esq.,
c/o Messrs. McCarter & English
Prudential Bldg. 765 Broad St.
Newark, N. J.

Dear Sir:

Your letter of the 29th., ult., in re estate of George J. Gould, deceased, late of Ocean County, N. J., received.

In reply thereto you are respectfully informed that:

1: Interest is not paid by the State on the amount refunded.

2: A refund has never been perfected until the assessment has been finally completed to the satisfaction of the representative of the estate and the Department.

In view of the intimation in your letter that an appeal is under consideration, it is respectfully requested that you state specifically the ground for objection to the assessment. You may recall that the Department questioned the

propriety of giving any consideration to the agreement resulting in the contribution by the widow from the preferential trust. If, therefore, there is objection on the part of the residuary beneficiaries, upon receipt of a letter to that effect the Department will proceed with a revision of the assessment in which event the tax against the widow will be increased and the tax against the residuary beneficiaries will be decreased. The amount involved is inconsequential.

If, as a matter of fact, the objection is based upon the theory that the deductions already allowed which included the total amount agreed upon in settlement of the litigation should be increased by the amount contributed toward the settlement from the preferential trust, the department is perfectly willing to stand upon the assessment as completed.

Very respectfully,

John McCutcheon
Comptroller of the Treasury

BY.....
State Supervisor of the
Transfer Inheritance Tax Bureau

K*K

Department's Letter 5-16-29.

May 16th, 1929

Messrs. McCarter & English
Prudential Bldg. 765 Broad St.
Newark, N. J.

Gentlemen:

Your letter of the 14th inst., in re estate of George J. Gould, deceased, late of Ocean County, N. J., received.

The deductions allowed include the item, "Gould vs. Gould, $5,442,392.55". Under ordinary circumstances this claim would be charged against the residuary estate and, therefore, the shares of the residuary beneficiaries would be diminished. As a result of the litigation, however, a part of the claim, amounting to $1,825,000.00, was charged against the preferential trust and the balance was paid from the residuary estate. Under ordinary circumstances the Department would disregard any agreements changing the disposition of the estate as established by the terms of the will or the terms of the deed of trust. In this particular case an exception was made because of the unusual circumstances prevailing. You will understand, however, that the entire amount of the claim has been allowed as a deduction. If, as a matter of fact, it is insisted that the department disregard the agreement relative to the charge made against the preferential trust, upon receipt of a letter to that effect, the assessment will be revised. This will not materially affect the total amount of taxes chargeable but will change the individual amounts. If, as a matter of fact, you contend that the amount of the claim "Gould vs. Gould"

should be increased by $1,825,000.00, the contention must be denied.

Very respectfully,

John McCutcheon
Comptroller of the Treasury

BY.....
State Supervisor of the Transfer
Inheritance Tax Bureau

K*K

McCARTER & ENGLISH
COUNSELLORS AT LAW
PRUDENTIAL BLDG. 765 BROAD STREET
NEWARK, NEW JERSEY

May 15, 1924.

RE: ESTATE OF GEORGE J. GOULD,
Deceased.

Comptroller of the Treasury,
State House,
Trenton, New Jersey.

Dear Sir:

As attorneys for the Executors of George J. Gould, late of Lakewood, deceased, we hand you herewith the Executors' check to the order of the Treasurer of the State of New Jersey, for $232,900., on account of the transfer inheritance tax payable on the estate of the above named decedent, who died May 16, 1923. This payment is made under protest that no such tax is due, and the payment is made under the compulsion of the State's exercise and/or threat to exercise all of the rights and powers conferred upon the State by the relevant legislation. The Executors

protest that the amount paid is not due, and reserve the right to demand from the State re-payment of all of the above amount, or of such part thereof as may be in excess of the amount which may finally be determined by competent authority to be due to the State by way of transfer inheritance tax upon the estate of George J. Gould, deceased.

Yours very truly,

End. (Signed) McCarter & English
DELIVER.

McCARTER & ENGLISH
Counsellors at Law
Prudential Building—765 Broad Street
Newark, N. J.

June 24, 1927.

Theodore Rurode, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:

RE: Gould Estate—Tax Matters.

By direction of Mr. Kelly, State Supervisor of the Inheritance Tax Bureau, we are sending you the enclosed supplemental affidavit in the matter of the Estate of George J. Gould, deceased. You will recall that when the return was filed, a tentative payment was made, based on what was then the estimate of the net estate. An additional sum has been deposited with the Comptroller as security for any further tax liability. The situation is now such that a definite return can be made, which it is the object of the enclosed

supplemental affidavit to do. You will see that there will undoubtedly be a refund.

We enclose also a copy of the bill of complaint in the case of Rice *v.* Commercial Trust Company, docket 62/608, which is referred to in the body of the affidavit. Any further information desired by you we shall be glad to give.

Please acknowledge the receipt of the enclosed.

Yours very truly,

(Signed) McCarter & English.

D/N
Encls.

McCARTER & ENGLISH
Counsellors at Law
Prudential Building—765 Broad Street
Newark, New Jersey

September 7, 1927.

Theodore Rurode, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Rurode:

Re: Estate of George J. Gould,
Deceased. (169)

Complying with your recent request, we beg to enclose a copy of the revocation by George J. Gould of the trust at the Bankers Trust Company. She is in the notice of revocation described as Vere Sinclair, which was her name before she married Mr. Gould. The other document you wish is the letter of instructions placing the securities in the trust with the Commercial

Trust Company. As soon as obtained a copy of that will be sent you.

I have seen a letter under date of September 21, 1922 from Mr. Gould to Mr. Rice, now one of the Executors, in which the following appears:

> "What kind of a plan would it be to transfer the trust at the Bankers to New Jersey and make it a *permanent trust there?* Would it be more safe from attack by Walker and others?"

For your information Walker was the attorney for Frank Gould and was the leader of the attack on George Gould in the great suit in New York, which has now been settled.

Yours very truly,

G. W. C. McCARTER.

D/N
ENCL.

McCARTER & ENGLISH
Counsellors at Law
Prudential Building—765 Broad Street
Newark, N. J.

September 8, 1927.

Theodore Rurode, Esq.,
1 Exchange Place
Jersey City, N. J.

Dear Mr. Rurode:

Re: Estate of George J. Gould, deceased.
(169)

Answering your letter of September 7th, *Guinevere* S. Gould is now Lady Dunsford and her

address in *Waldershare* Park, Dover, England, which is also the address of her three children. She and Schuyler Neilson Rice are the testamentary guardians of the three children. Her attorney is Merrit Lane and I represent Mr. Rice.

The item of $114,985.22 included in Schedule D and referred to in Schedule H covered his loan to Jay Gould and has been paid by him pursuant to the intra-family settlement. I hand you herewith our office copy of the testimony in the suit over the million dollar gift, including testimony taken before Bentley, V. C. and the depositions taken in Europe. I also include a copy of the pleadings in the suit over the art treasures, with the exception of the answer filed on behalf of the Estate of Edith Kingdon Gould, which seems to have been mislaid.

The other information requested in your letter of September 7th will follow.

Yours very truly,
(Signed) G. W. McCarter.

D/N
ENCLS.

Letter of McCarter & English to Rurode 9-16-27.

McCARTER & ENGLISH
Counsellors at Law
Prudential Building—765 Broad Street
Newark, N. J.

September 16, 1927.

Theodore Rurode, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:

Re: Estate of George J. Gould,
Deceased.

Complying with your request in the letter of instructions turning over to the Commercial Trust Company of New Jersey securities formerly in the trust with the Bankers Trust Company, enclosed herewith is a copy of a letter from Schuyler Neilson Rice to Mr. J. W. Hardenbergh, President of the Commercial, dated January 5, 1923, which was written by Mr. Rice pursuant to the authority contained in a cable from George J. Gould dated January 4, 1923, a copy of which is also enclosed.

We also enclose a photostatic copy of the trust with the Bankers Trust Company.

Yours very truly,

(Signed) McCarter & English

D/N
ENCLS.

Letter of McCarter & English to Rurode 1-6-28.

McCARTER & ENGLISH
Newark, N. J.

January 6, 1928.

Gould Estate Tax Matters.

Theodore Rurode, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Rurode:

Enclosed please find in the New Jersey transfer inheritance tax proceedings of George J. Gould the second supplemental affidavit of Schuyler Neilson Rice, verified December 19, 1927, with the exhibits therein referred to annexed; and the affidavit of George P. Langford, verified December 15, 1927, and the exhibits therein referred to annexed.

I also enclose a copy of the executors' fourth account and the supplement thereto. Copies of the first, second and third accounts I understand have been sent direct to your office by Mr. Hubert, auditor for the executors. I requested him to send them to me and have been waiting for them, but recently learned they had been sent to you.

Enclosed you will also find the following original letters from George J. Gould to Mr. Rice:

Letter dated September 21, 1922.
" " November 10, 1922, of four pages.
" " November 19, 1922, of five and a half pages.
" " December 14, 1922, of four pages.
" " Christmas Eve, 1922, of four pages.

An undated letter of seven pages which I have marked with blue pencil "A".

These are all of the original letters from George J. Gould to Mr. Rice which I have. I have marked with blue pencil in the margin what appeared to me to be the material parts of these letters. Please take good care of them, as I have no copies.

With all of the enclosed in your possession you will have, I think, all of the documents you have requested from me, and all of the facts which the executors desire to lay before you. We are, of course, at your service for any further information you may require.

Yours very truly,

(Signed) G. W. McCarter.

WESTERN UNION
CABLEGRAM

1923 Jan. 4 AM 9 57
195 Broadway, N. Y.

RECEIVED AT 40 BROAD STREET, NEW YORK
B LD 378 MX
MENTON 35
TEXAGOULD George J. Gould
165 Broadway

471
CANCEL TRUST BANKERS. TURN OVER TO MRS. GOULDS TRUST COMMERCIAL STOP. WOULD ACCEPT EIGHT HUNDRED THOUSAND FOR LAKEWOOD UNFURNISHED. FOR EDITH, GET WEDDING GIFT VIRGINIA SEND WITH CARD MY NAME AND VERES
LOVE.

"State Ex. 1—12/7/27—E.Mc"

VILLA ZORAIDE
CAP MARTIN
(A.M.) March 21st, 1923

Commercial Trust Co.
Jersey City, N. J. U. S. A.

Gentlemen:

Please deposit the $1,000,000. par value U. S. Liberty Loan 3½'s which you are holding for me, in the trust for Mrs. Guinevere S. Gould of which you and S. H. Rice are trustees.

Yours truly,

Geo. J. Gould.

Rec'd April 7, 1923
"State Ex. 3—12/7/27—E. Mc"

Sept. 21, 1922.

Castle Grant,
Grantown on Spey, Morayshire.

Dear Mr. Rice

I think well of your suggestion of letting the W. P. I have go. Do so when in your judgment it is time. Finish up, as you can the Col. Ind. and then the block that is in the V. S. Tr. at the Bankers. Substitute for them an equal amount ~~of~~ in interest producing securities that are not taxable. You may need my signature for this. If so get the papers ready and send over for my signature.

Thanks for attending so promptly to the camera, violin and fishing tackle.

I got a letter from Miss Curtis saying it would be quite an expense if Edith used Lakewood week

ends during the winter. I think I will write to Edith, & suggest we keep the place tight shut so as to save expenses.

By the way, when Reading gets to a point where I can get out even better *get* it go. Notify Connor, if there is any profit notify Connor. He is entitled to half. Then take up the margin and invest it.

Before the year is out shouldn't we get in our lawyers bills so as to get the benefit on this year's tax. Also shouldn't we sell the Sinclair?

What kind of a plan would it be to transfer the trust at the Bankers to New Jersey, and make it a *permanent trust there?* Would it be more safe from attack by Walker or others?

I enclose a bill from Dr. Anderton. I don't know what this is for. It may be for Laura or Edith. *I'v* thought he had a tendency to charge pretty high lately. Couldn't you see him, say that in my absence you were paying my bills but must have some details. In that way we can find out what he is charging for and how much.

I am feeling much better but not quite myself yet.

With kindest regards to all,

Sincerely

Geo. J. Gould.

P.S.

Send *letters* care Brown Shipley & Co. I may leave here shortly for London. Its getting cold. Snow on the mountains yesterday.

Nov. 10, 1922.

Villa Zoraide
Cap Martin

Dear Mr. Rice

The election has come off and I think the result is a good thing. It will show the Republicans they cannot go rough shod over everything. They have neglected their election pledges, especially as to taxation and economy and this is the result. It may do good but they better be careful or they will *loose* the next presidential election. I cabled you if you saw our friend to give my congratulations.

I have yours of the 30th.

I really think it wise to transfer that trust to New Jersey, and I favor *making it permanent,* Mrs. Gould and the children must be taken care of— Why defer it, and why not put it in as safe a shape as possible? but we will see what Knowles has to say.

I should think the trust Co's. were taking some risk in not selling the non trust securities, but that is up to them. I don't see how we can be blamed for holding these stocks in years past if the Trust Co.'s go on holding them now.

You are beginning to see the troubles I have with the kids. If you do anything for one you must do it for all. Gloria should remember Edith is much older than she with a baby to support— Besides, Edith rushed over to see me and showed every evidence of devotion a daughter could.

I have made all my plans to leave for Egypt on the 12th Jany. Dr. Davis and his wife will go and George and Laura and probably Vivien. Will be away from here about six weeks.

Sincerely,
Geo. J. Gould

Nov. 19

Villa Zoraide
Cap Martin

Dear Mr. Rice

In looking over some letters I came across some not answered in the hurry of traveling.

Yours of the 11th—Oct. I dont think the charges for Edith's trust or my wife's out of the way at all.

Yours of the 10th—Oct. You did well on the taxes.

If Mrs. Gould's jewelry does not sell for the amount of the assessment can we have it reduced?

I am debating whether it would not be part of wisdom for me to discontinue the trust at the Bankers, and give those securities or others, more suitable for a trust to Mrs. Gould to establish her's in the Commercial. When you get a chance talk this over with Knowles and give me your joint advice.

Yours of Oct. 9th. I thought I said I would pay Dr. Brewers' bill, i. e. the expenses for Laura's operation. If this is one of them you can pay it. George will stay with me all winter. I think you will have enough from rent etc. to pay them up.

I hope there is something in the idea of a settlement of the Estate Matters, but I doubt it. I wont trust Walker et al. until I see the signatures on paper. This may be just *camerflage* to lull us to sleep.

Please telephone to Lakewood to put the wooden covers on the statutes that protects them from the frost.

Curious thing happened today. Cartier sent a man from his firm in Paris to ask me to send a cable to Mrs. Gould's executors in New York, which he was anxious to have them get tomorrow, recommending them to accept an offer he makes of $150,000 for the pearl chain and diamond necklace, he to have a call on the other two pearl necklaces for three months of $200,000. Also the emerald and diamond ornaments to be sold through him.

Sincerely,

Geo. J. Gould

14th Dec. 1922

Villa Zoraide
Cap Martin

Dear Mr. Rice

I have mailed you the papers for Mrs. Gould's trust in New Jersey. I have changed the first page, so better let the lawyers look over it again, and if it is all right get it going soon as possible. The changes are all on the first page. You can see the changes by comparing with the original pages which I enclosed for comparison which latter I would keep a file.

The order to terminate the trust has been found and I will sign and forward to you next week. I dont want this served until there is good reason for it, until you are ready to place the securities in Mrs. Gould's trust in New Jersey.

Will you please look in my desk and in the *pidgeon* hole drawer marked Europe. I think you will find my driving licenses for England and France and my card membership in the French Auto Club. Please send these on to me by mail.

I just wired you to remit to Burns & Co. $20,000. and $10,000.00 to Morgan Hayes & Co. Paris. My idea is to keep good balances over here. Do you suppose I will stay abroad next summer and winter. If so it would pay me to sell the two riding horses I have at Lakewood and then I could let Charley Hayden go.

I inclose a second notice to the Trust Co. terminating the V. S. trust. I only think you will need but one, but you can keep this on file. I started to fill in the date at the wrong place. If you need to use them I dont think it will matter as it is easy to erase and change.

I would be glad if you would enter George at Lawrenceville. He is now 7½ years. Then if I want to send him I can.

I see a bill has been introduced into Congress to do away with tax free bonds. It is quite a ways off, but what mismanagement of the estate not to have disposed of some of their taxable stuff and substituted for tax free.

I hope you will all have a Merry Xmas and a Hoppy New Year.

Sincerely,

Geo. J. Gould

Xmas Eve. 1922.

Villa Zoraide
Cap Martin

Dear Mr. Rice

I have drawn several checks on the Commercial Trust Co. for Christmas presents from here, amounting to several thousand dollars, but I have kept no account of them in the hurray. You will see them as they come in.

I received your letter of the 11th and 18th Christmas Eve. I am glad you sold what Eq. rights you could and the stock you could. As we can do so I would like to dispose of stock, as I have too much in that concern, so if a good market springs up let some more go. By the way, is the stock in such shape you can deliver it? I am glad you have sold the taxable bonds.

Very silly of Edith engaging any counsel, although she has taken the best if she was to take any. Indirectly I have to pay them. Some of my children & brothers and sisters seem determined to litigate themselves into the poor house.

About Mrs. Gould's income tax. Pay hers in full out of my money. You can be guided as to mine, whether to pay quarterly or not by my balance on hand.

I wrote in my last letter to cancel the trust at the Bankers and transfer the securities to Mrs. Gould's new trust in the Commercial. You can pay the $5,000 out of my account.

I have a (Not legible) yacht Atalanta, at Owen's Yards, City Island. Sell if you can. Don't you think you better get up a bill of sale for my signature leaving the name of the purchaser blank, so delivery could be made. You could hold until it was wanted.

I dont think Edith better come out here until I cabled as I dont want to come back from Egypt until the last of March and then I want to motor a bit. It will depend how I feel. No use of her hanging around here when we are away. Besides these passages across the Atlantic are expensive.

I shall cable not to send any mail after the 30th here, but to address care Thos. Cook & Son, Cairo, Egypt. They will forward it on.

Have had a Happy Christmas. We all send best regards.

Sincerely,

Geo. J. Gould

Villa Zoraide
Cap Martin

Dear. Mr. Rice

I return Mrs. Gould's checks Nos. 2240-2242-2243. I'vd checked them off in her check book and they are correct. You better keep them for her in New York. Also a signed receipt for Equitable which I presume should be sent to them. I Have O. K. the bill of Taylor, Knowles & Hack and you will find it enclosed.

I also received the trust drawn out for George, but doubt if he would care to sign it at present.

I received a letter from King re (Not legible) Coal but I do not feel with my income tied up as if I could put any more money into this company.

I received the papers relative to the trust in New Jersey by Mrs. Gould; but did not quite like the wording and have it *in* mind to change it when I get round to the matter. It is in regard to the character of the securities that can be held after her death. When you get these papers back and her trust established then move the Bankers trust over to N. J. making it permanent or place directly in her own trust.

We might have to pay an inheritance tax if I treated it in the latter manner. Knowles would know about this. If we can avoid this by letting the Commercial take it over bodily that is, the best thing to do. I dont think you sent me

papers for this latter contingency. That trust should be much like the one now at the Bankers only permanent. To *recapulate:* there are two things to do. 1st. Put the securities in Mrs. Gould's new trust in New Jersey; and 2nd let the Commercial take the trust signed over from the Bankers on much the same trust deed but make it permanent.

Keep a file showing the sales of the stocks and bonds, especially W. Pac. made on the exchange after the orders to sell were given until completion. It will be useful later. How Walker et al., would have howled if such a record stood out while I was active in estate matters.

I sail *for* from Marsailles for Cairo on Jany. 12th and will probably return here about April 1st but I will keep you posted about by movements by cable. If Carroll & Edith and the baby want to come over I should think April 1st would be just right. It seemed to me the price for accommodations mentioned in your message large.

My address in Egypt will be care Thos. Cook & Son, Cairo, and they will forward the mail up Nile. I will cable when to use that address. Vivien & Decies, Dr. & Mrs. Davis, George & Laura, Bob Russell and my wife and myself are the party.

I cabled you yesterday to sell balance of my rights and 200 shares Equitable. I dont want to increase my money investment in the company. They dont seem to be trying to help me any in my law suit. I suppose you haven't heard any more about my settlement?

Yours of the 27th. I'm not so sure it was stupidity on the part of the Trust Cos. the bad handling of W. Pac.

I'v just *receives* yours private letter of Nov. 28th and your regular letter of Dec. 2nd. I think

you have sized the situation up about right but I know it will work out. I am very much disappointed over Jay's bills.

If you cannot get copies from the Equitable of the statement you sent me let me know and I will send these back.

Draw my check for $250 for yourself for Xmas. The others I have sent direct from here. Mrs. Gould has sent a few handkerchiefs over by mail addressed to you. Please get them when they come and send to the addresses on the boxes inside the package. Please pay the duty and charge to me.

Sincerely,

Geo. J. Gould

SUMMARY

The Fifth Account of Kingdon Gould and Schuyler Neilson Rice, as Executors of the Last Will and Testament of George J. Gould, shows as follows:

These Accountants Charge Themselves with:—

		Balance of Corpus and Income of September 7, 1927, as shown by Exhibit I		$2,882,106.96
Exhibit	II	Changes in Corpus (Information Exhibit)		
"	III	By Receipts of Income		36,798.97
		Gross Income	$44,680.47	
		Less: Administration Expenses	7,881.50	
			$36,798.97	
"	IV	Gains		299.60
"	V	Receipts of Corpus not on Inventory		4,360.34
		Total Charges		$2,923,565.87

These Accountants Pray Allowances as Follows:

"	VI	Losses	$ 56,026.46
"	VII	Charges against Principal	839,259.29
"	VIII	Commercial Trust Co. & Schuyler Neilson Rice, Trustees	1,271,002.50
		Total Credits	$2,166,288.25
		Leaving a Balance of Principal and Income in the hands of the Executors at February 9, 1929, as set forth in Schedule IX of Schedule A	$ 757,277.62

EXHIBIT VII

ESTATE OF GEORGE J. GOULD

FIFTH ACCOUNT OF EXECUTORS

September 7, 1927 to February 9, 1929

CHARGES AGAINST PRINCIPAL

Fees to Counsel & Executors as per order Vice Chancellor Backes, November 11, 1927.

1927	Legal Expenses		
Nov. 14	M. Caswell Heine, Special Masters	$ 5,000.	
	McCarter & English	50,000.	
	Gillespie & O'Connor	50,000.	
	Fisk & Fisk	7,500.	
	John P. Manning	3,000.	
	Merritt Lane	10,000.	
	Lindabury, Depue & Faulks	10,000.	
	Charles A. Roberts	5,000.	
	Wilfred H. Jayne	2,500.	
	Davis, Polk Wardwell Gardiner & Reed	15,000.	
			$158,000.00
	Executors Compensation		
Nov. 18	Kingdon Gould a/c Executor Comp.	$20,000.	
	S. N. Rice, a/c Executor Comp.	20,000.	
Dec. 24	Kingdon Gould " " "	30,000.	
1928			
Jan. 9	S. N. Rice " " "	30,000.	
			100,000.00

Accrued Interest on Primary Trust Commercial Trust Co. and Schuyler Neilson Rice, Trustees for Guinevere S. Dunsford, Interest on $4,000,000. legacy as per Chancery Court Decree of Oct. 24, 1927	$605,000.	
Less:		
Accrued Interest on securities turned over to Trustees in $2,175,000. Trust	23,740.71	
		581,259.29
Total Schedule VII Carried to Summary		$839,259.29

EXHIBIT VIII

ESTATE OF GEORGE J. GOULD

FIFTH ACCOUNT OF EXECUTORS

September 7, 1927 to February 9, 1929

Securities and Cash Turned Over to Commercial Trust. Co. and Schuyler Neilson Rice, Trustees to set up ten Residuary Trusts.

1928				
Nov. 2	100	Shs. Abercrombie & Fitch 7% pfd.	$	9,500.00
	220	" Baring Cross Bridge Co....		13,200.00
	5428	" Consolidated Coal Co. of St. Louis		325,680.00
	25M	Liberty Joint Stock Bank of Saline, Kan. 5s		25,250.00
	25M	Newark, N. J., 5% Bonds		26,372.50
	300M	State of New York 5% Bonds...		330,000.00
	7M	Boonton, N. J., 5½s		7,000.00
	2M	White Plains Reg. 6% Bonds....		2,000.00
Nov. 3	Cash			182,000.00
" 14	"			350,000.00
Total Schedule VIII Carried to Summary				$1,271,002.50

December 18 (in ink)
~~November~~ 1922.

The Bankers Trust Company,
14 Wall Street,
New York City.

Gentlemen:—

Please take notice that under the power and authority reserved to me under the terms of the trust instrument created by me on the 26th day of July in the year one thousand nine hundred and eighteen to your company as trustee for the benefit of Vere Sinclair and other beneficiaries, I do hereby revoke, cancel, set aside and annul said instrument and the trust thereby established and created, said revocation or annulment to be effective on this date, and I do hereby direct that the securities constituting the trust estate under said trust agreement in your hands as trustee be forthwith delivered to me, or to J. K. Rice, Jr. & Company who are hereby authorized to receipt for the same.

WITNESS my hand and seal this 18 day of ~~November,~~ 1922.
December (in ink)

(Signed) Geo. J. Gould. SEAL

~~REPUBLIC~~ OF FRANCE
Consulate of the U. S. A.)
Republic of France)
Department of the Maritime-Alsp) ss.
City of Nice. December (in ink))

On this 18 day of ~~November,~~ 1922, before me a ~~Vice~~ Consul of the United States of America, came and appeared GEORGE J. GOULD to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

(Signed).....

CONSUL OF THE UNITED STATES
OF AMERICA.

SEAL 2551 STAMP "Consul's Signature illegible"

We hereby certify that the foregoing is a true copy of the original document

BANKERS TRUST COMPANY,

(Signed).....
Trust Officer.

"Signature illegible"

KNOW ALL MEN BY THESE PRESENTS, that I, GEORGE J. GOULD, of Lakewood, New Jersey, do hereby grant, assign, transfer and set over unto the BANKERS TRUST COMPANY, all of the securities, cash and property hereinafter described, or which may hereafter be added thereto, or substituted therefor, IN TRUST for the uses and benefits, and upon the terms and conditions herein set forth and expressed; said securities are set forth at length in a schedule hereto annexed and marked Exhibit A, To HAVE AND TO HOLD the same unto the said Trustee, or its successor, as hereinafter provided, in trust for the uses and purposes following;

FIRST: (a) To sell and transfer any and all of said property when and in such manner as said trustee, with my approval during my lifetime (and without the approval of any one thereafter) may deem best, and to re-invest the proceeds of any such sale in such securities, or property, as it shall determine upon. The said Trustee is hereby authorized to continue to hold such securities as are set forth in Schedule A hereto annexed, and is also authorized to invest any funds coming into its possession hereunder, in securities other than those specified by law as legal investments for Trustees.

(b) To collect and receive the income and profits arising from said property, or any other property that may be added thereto or substituted therefor, and after paying the necessary expenses in connection therewith to pay over the net income thereof to VERE SINCLAIR during her lifetime, and upon her death to divide the principal and any unexpended income of said trust fund into as many shares as said Vere Sinclair shall leave children [*who are now living*]

G. J. G.

(in ink) surviving her, such shares to be in such proportions and in such amounts as said Vere Sinclair shall designate, or appoint by her last will and testament, but failing such testamentary designation, or appointment, then to divide the same into equal shares and to hold one of such shares for the benefit of each of the children of said Vere Sinclair now living, and to collect and receive the income and profits arising therefrom and after paying the necessary expenses in connection therewith to pay over the net income to the guardian of the child thereunto entitled during minority, and thereafter to pay over the said net income to such child during his or her lifetime, and upon the death of each child to transfer and deliver the share set apart for him or her, together *with* all accumulated income thereof to his or her surviving issue absolutely, and should said child leave no surviving issue, then to transfer and pay over the principal and any unexpended income of said share to me, the undersigned, if living, and if not, to my personal representatives. In case any child of said Vere Sinclair now living should not survive her, the share of such deceased child to go to his or her issue, and if no issue, then such share to be added to and become a part of the share of the surviving child subject to the trust conditions above referred to.

Should said Vere Sinclair leave no children surviving her, then I direct that the principal and any unexpended income of said trust fund shall be transferred and delivered to me, if then living, and if not, to my personal representatives.

SECOND: All stock dividends and extraordinary cash dividends which may be received by the said Trustee shall be considered by it as

wholly income and distributed to the beneficiary or beneficiaries hereunder accordingly.

THIRD: In any case in which the said Trustee is required, pursuant to the provisions of this instrument, to divide the principal of the trust estate *inot* parts or shares or to distribute the same, it is authorized and empowered in its sole discretion to make such division or distribution in kind, or partly in kind and partly in money, and for the purpose of such allotment the judgment of the Trustee concerning the propriety thereof and the relative value for the purpose of division or distribution of the property and securities so allotted shall be binding and conclusive.

FOURTH: The Trustee may, in its discretion, cause the securities which may from time to time comprise the trust funds or any part thereof to be registered in its name as Trustee hereunder or in its own name or in the name of its nominee, or to take and keep the same unregistered and to retain them or any part thereof in such condition that they will pass by delivery.

FIFTH: If at any time it shall be necessary to deposit any bonds, securities or stocks at any time held upon the trust hereby created with any committee formed to reorganize the corporation on whose property any mortgage securing said bonds or securities is a lien or by which such stocks are issued, the Trustee and its successors are hereby authorized and empowered in its or their discretion to deposit said bonds, securities or stocks with said committee and in the event of such deposit to pay out of the corpus of the trust any assessments which may be imposed upon or in respect to the bonds, securities or

stocks so deposited and to accept and retain in lieu of or in exchange for such bonds, securities or stocks, any other bonds, securities or stocks whatsoever.

SIXTH: In the event that the Trustee shall request from said George J. Gould written instructions as to the action which it shall take in regard to any of the matters set forth in this instrument and said George J. Gould shall for any reason neglect to furnish such instructions within a reasonable time, the Trustee is hereby authorized and *emposered* to take such action in regard to such matters as it may deem proper, and its determination as to what shall constitute such reasonable time will be conclusive.

G. J. G.

SEVENTH: The trust hereby created shall be ~~three~~ ~~(3)~~ (in ink) irrevocable for the term of five (5) years from date hereof, and thereafter the said George J. Gould hereby expressly reserves unto himself the right of revocation of the trust hereunder and hereby created with respect to all or any of the trust funds thereof at any time, which revocation may be exercised by written notice to the Trustee, whereupon said Trustee will dispose of the principal of said trust funds together with all accumulated interest, income, issues, and profits thereon, as directed in said notice.

G. J. G.

EIGHTH: Said George J. Gould further reserves unto himself after five years from the date hereof, the privilege of increasing the principal of the trust funds from time to time by adding thereto securities and property which the Trustee shall receive, hold, manage, sell, invest and re- ~~three~~ (in ink)

invest in the same manner as is hereinbefore specified in respect of the securities and property constituting the original trust funds; or to withdraw any or all of said securities or property and substitute in place thereof other securities and property of equal value, which value shall be determined by agreement between the parties hereto.

NINTH: The trustee shall be entitled to receive as compensation for its services under this agreement the following sums:

1% on the annual income received by it hereunder, provided that if said charge of 1% on the income received in any one year shall amount to less *then* $100 that the Trustee shall be entitled to an additional charge sufficient to make its total charge on the income for such year $100.

1% on the principal of the trust estate, payable therefrom on the termination of the trust, or any part thereof in accordance with the terms of this agreement; said percentage to be computed on the market value of the securities at the time of the termination of the trust.

It being understood that if any securities or property are withdrawn from said trust funds that the trustee's commissions shall be payable thereon, unless securities of substantially the same value are replaced hereunder in their stead, as above provided.

TENTH: In case of securities taken or purchased for the trust funds at a premium the Trustee shall not be required to set aside any part of the income thereof as a sinking fund to retire or absorb such premium or to make any

other provision for possible depreciation in the value of the securities or property constituting the trust funds, by reason of approaching maturity of such securities or otherwise.

ELEVEN: It is further understood and agreed that the Trustee shall not be held liable for any loss to the Trust Estate or to any of the beneficiaries under this agreement by reason of its retention of any securities received by it hereunder from the grantor, or by reason of any investments made or retained by it in accordance with the provision of this agreement.

I hereby nominate, constitute and appoint the BANKERS TRUST COMPANY to be Trustee hereunder.

The said Bankers Trust Company does hereby accept the trust and agrees that it will well and truly carry out the provisions thereof.

IN WITNESS WHEREOF the said George J. Gould has hereunto set his hands and seal, and the said Bankers Trust Company has caused these presents to be signed by its Vice President and attested by its Assistant Secretary, and its corporate seal to be hereunto affixed the 26th day of July, in the year one thousand nine hundred and eighteen.

(Signed) Geo. J. Gould.

In the presence of
(Signed) David W. Taylor.

BANKERS TRUST COMPANY,
(Signed) By H. F. WILSON, JR.,
Vice President.

ATTEST
(Signed) M. Watt,
Asst. Secretary.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

On this 26 day of July 1916, before me personally came and appeared GEORGE J. GOULD, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

(Signed) David H. Taylor
Notary Public
N. Y. County.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

On this 26th day of July 1918, before me personally came H. F. Wilson, Jr. to me known, who, being by me duly sworn did depose and say that he resided at Upper Montclair, N. J. that he is the Vice President of the BANKERS TRUST COMPANY the corporation described in, and which executed the above instrument; that he knew the seal of said corporation that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation, and that he signed his name thereto by like order.

(Signed) Herman W. Knokz
NOTARY STAMP

Exhibit A

$125,000.00	St. Louis Southwestern Ry. Co. 1st Cons. Mtge. 4's due June 1, 1932 #2651/2700 8451/5 19918/37, 20293/342 Dec. 1918 and subsequent coupons attached.
100,000.00	Colorado Industrial Co. No. Series A. 5's due Aug. 1, 1934 #4191 4258 4835 4919 4927 4929 4931/6 4947 5054/5 5058 5120/2 5155/6 5197 5244 5266 5505/6 5550/3 5647/9 5680/7 5690/2 5694 5812 5872/3 5875 5893 7433/7 7751/2 9094/8 9234/41 9244/8 9395/6 9469 9500 9504/7 9513 9655/6 9714 9727 9737/9 9745 9762/3 9789 9820/3 9904 Aug. 1918 and subsequent coupons attached.
200,000.00	Colorado Industrial Co. Series B. 5's due Aug. 1, 1934 #201/50 601/50 1401/50 1601/50 Aug. 1918 and subsequent coupons attached.
100,000.00	International Magazine Co. 1st Mtge. 6's due May 3, 1922 #201 302/400 Nov. 1918 and subsequent coupons attached.
100,000.00	Western Maryland R. Co. 1st Mtge. 4's due Oct. 1, 1952. #34731/80 34931/80 Oct. 1918 and subsequent coupons attached

All tax exempt to maturity in New York State

Bankers Trust Co.
By H. F. Wilson, Jr.
Vice. Pres.

We hereby certify that the foregoing is a true copy of the original document.

Bankers Trust Company

(Signed) .....

Trust Officer.

"Signature illegible"

KNOW ALL MEN BY THESE PRESENTS that I, Guinevere S. Gould, of Lakewood, New Jersey, do hereby grant, assign, transfer, and set over unto Commercial Trust Company of New Jersey, and S. Neilson Rice of New Brunswick, New Jersey, all of the securities, cash and property hereinafter described, or which may hereafter be added thereto in trust for the uses and benefits, and upon the terms and conditions herein set forth and expressed; said securities are set forth at length in a schedule hereto annexed and marked Exhibit A, to have and to hold the same unto the said Trustees, or their successors, as hereinafter provided, in trust fo*t* the uses and purposes following:

(a) to sell and transfer any and all of said property when and such manner as said trustees, with my approval during my lifetime (and without the approval of any one thereafter) may deem best, and to reinvest the proceeds of any such sale in such securities, or property, as they shall determine upon: with my consent during my lifetime, but after my death the investments shall be limited to securities approved by law for investment of trust funds. The said trustees are hereby authorized to continue to hold such securities as are set forth in schedule A hereto annexed and which may be added thereto, and are also

authorized to invest any fund coming into their possession hereunder, in securities other than those specified by law as legal investments for trustees with my approval during my lifetime.

(b) To collect and receive the income and profits arising from said property, or any other property that may be added thereto, and after paying the necessary expenses in connection therewith, to pay over the net income thereof to me, the undersigned, Guinevere S. Gould, during my lifetime and upon my death to divide the principal of said trust fund into as many shares as I, the undersigned, shall leave children surviving, (by my husband George J. Gould) or the issue of any said deceased child, per stirpes and not per capita, and reserving the right to designate by my will what proportion the share of each child shall be and, to hold one of such shares for the benefit of each of said children and pay over the net income thereof to the general guardian of..... the child thereunto entitled during his or her minority, and thereafter to pay over the net income to such child during his or her lifetime; any such child shall have the right after attaining the age of twenty-one years, of disposing of his or her share by will, but failing such testamentary disposition I direct that the share held for his or her benefit be transferred, delivered and paid over to his or her next of kin absolutely in accordance with the provisions of the law then in force governing the disposition of personal property.

Should I leave no children or issue of a deceased child me surviving then and in that event to transfer and pay over the principal of the said trust fund to the beneficiaries named in the residuary clause of my will.

The trustees are authorized and empowered to consent to and join in any reorganization or consolidation of or other change or any corporation whose stock, certificates or obligations may be held at any time by the trustees and they may receive in exchange for the securities held by them any other securities in accordance with any such reorganization, consolidation or other change, and may hold the *sam* pursuant to all terms and conditions of this agreement, and they may make deposit of securities as required by any deposit agreement for the protection of the holders of similar securities, and may make payment of assessment or subscription or other amount in cash required by any plan of reorganization of such corporation, and they may subscribe to any increase of the capital stock of any corporation of whose stock they are at the time holders, in accordance with any rights given to stockholders pro rata to make such subscription, provided that during the lifetime of the grantor they shall not do any of the things provided in this section, except with the approval and consent of the grantor, but after the death of the grantor they may do the things above authorized at their own discretion.

In the event that the trustees shall request from said Guinevere S. Gould written instructions as to the action which they shall take in regard to any of the matters set forth in this instrument and said Guinevere S. Gould shall for any reason neglect to furnish such instructions within a reasonable time, the trustees are hereby authorized and empowered to take such action in regard to such matters as they may deem proper, and their determination as to what shall constitute such reasonable time will be conclusive.

Said Guinevere S. Gould further reserves unto herself the privilege of increasing the principal of the trust funds from time to time by adding thereto securities and property which the trustees shall receive, hold, manage, sell, invest and reinvest in the same manner as is hereinbefore specified in respect of the securities and property constituting the original trust funds; or to withdraw any or all of said securities or property and substitute in place thereof other securities and property of equal value, which value shall be determined by agreement between the parties hereto.

It is understood and agreed that the trustees shall be entitled to compensation for services under this agreement as follows:

2% on the annual income received by them hereunder provided that if the said charge of 2% on the income received in any one year shall amount to less than $100. that the trustees shall be entitled to an additional charge sufficient to make their total charge on the income for such year $100.

1% on the principal of the trust estate payable therefrom at the termination of the trust, or any part thereof in accordance with the terms of this agreement.

It is further understood and agreed that the trustees shall not be held liable for any loss to the trust estate or to any of the beneficiaries under this agreement by reason of their retention of any securities received by them hereunder from the grantor, or by reason of any investments made or retained by them in accordance with the provisions of this agreement.

I hereby nominate, constitute and appoint Commercial Trust Company of New Jersey and S. Neilson Rice to be the Trustees hereunder.

The said Commercial Trust Company of New Jersey and S. Neilson Rice do hereby accept the trust and agree that they will well and truly carry out the provisions thereof.

In Witness Whereof the said Guinevere S. Gould, and S. Neilson Rice have hereunto set their hands and seals, and the said Commercial Trust Company of New Jersey has caused these presents to be signed by its President and attested by its secretary, and its corporate seal to be hereunto affixed the fourteenth day of December in the year one thousand nine hundred and twenty-two.

Guinevere S. Gould
S. Neilson Rice,

In the presence of:
Harry A. Lyons
Edward Petersen

Commercial Trust Company of New Jersey

Attest: By J. W. Hardenbergh,
R. S. Carmichael, President.
Secretary.

Deed of Trust—Guinevere S. Gould to Commercial Trust Co. of N. J., et al.

Consulate of the U. S. A.
Republic of France
Department of the Maritime-Alps } *ss.*
City of Nice

On this fourteenth day of December, 1922, before me personally came and appeared Guinevere S. Gould, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

Seal .....
Consul of the United States of America
at Nice, France.

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

On this 3rd day of January, 1923, before me personally came and appeared S. Neilson Rice, to be known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Spencer Carpenter
Notary Public of New Jersey

Deed of Trust—Guinevere S. Gould to Commercial Trust Co. of N. J., et al.

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

On this 3rd day of January, 1923, before me personally came J. W. Hardenbergh to me known and who being by me duly sworn did depose and say that he resides at Jersey City, N. J. that he is the President of Commercial Trust Company of New Jersey, the corporation described in, and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Spencer Carpenter,
Notary Public of New Jersey.
(SEAL)

SCHEDULE A

List of securities referred to in the attached instrument of Guinevere S. Gould, dated December 14, 1922.

$10,000.	par	value	County of Hudson, 4½% due January 1, 1953 with January 1, 1923 and subsequent coupons attached.
16,000.	"	"	County of Hudson, 4½% due March 1, 1966 with March 1, 1923 and subsequent coupons attached.
50,000.	"	"	Town of West Orange School bonds Series A. 4½% due August 1, 1961, with February 1, 1923 and subsequent coupons attached.
			City of Paterson, N. J. 4½% School Bonds.
6,000.	"	"	due April 1, 1929
1,000.	"	"	" " 1, 1931
3,000.	"	"	" " 1, 1933
3,000.	"	"	" " 1, 1934
3,000.	"	"	" " 1, 1935
11,000.	"	"	" " 1, 1936
3,000.	"	"	" " 1, 1939

Commercial Trust Company of New Jersey

BY

J. W. Hardenbergh
President

S. Neilson Rice

Receipts of Commercial Trust Co., et al., Trustees, for Securities.

January 9, 1923.

The Commercial Trust Company of New Jersey and S. Neilson Rice, Trustees acknowledged to have received on January 5, 1923 from Guinevere S. Gould of Lakewood, New Jersey, the following securities hereinafter specified, the same being delivered over to the said Commercial Trust Company of New Jersey and S. Neilson Rice by the said Guinevere S. Gould for the purpose of subjecting the same to the terms of a certain trust created by indenture, dated December 14, 1922, between said Guinevere S. Gould and Commercian Trust Company of New Jersey and S. Neilson Rice, as Trustees thereunder.

$100,000. par value Times Publishing Company of Detroit, 7% bonds due January 2, 1932 with July 1, 1923 and subsequent coupons attached, Nos. 11/20 for $10,000. each.

125,000. " " St. Louis Southwestern Railway Company, First Consolidated Mortgage, 4s due June 1, 1932 with June 1, 1923 and subsequent coupons attached, Nos. 2651/2700, 1918/37, 8451/5, 20293/20342 for $1,000. each.

300,000 " " Colorado Industrial Company, 30 year Convertivle 5% Gold Bonds due Aug. 1, 1934 with Feb. 1, 1923 and subsequent coupons attached, Nos. 201/50, 601/50, 1401/50, 1601, 5690/94, 5875, 5680/7,

		5647/9, 5872/3, 5550/53, 5505/6, 5266, 5812, 4835, 4258, 4191, 4919, 4927, 4929, 4931/6, 4947, 5054/5, 5058, 5120/2, 5155, 5166, 5197, 5244, 7433/7, 7751/2, 9094/8, 9234/41, 9244/8, 9395/6, 9469, 9500, 9504/7, 9513, 9655/6, 9714, 9727, 9737, 9739, 9745, 9762/3, 9789, 9820/3, 9904 for $1,000. each.
100,000.	"	"	Western Maryland Railroad, First Mortgage, 4% bonds due October 1, 1952 with April 1, 1923 and subsequent coupons attached, Nos. 34731/80, 34931/80 for $1,000. each.

Commercial Trust Company of New Jersey,

BY

J. S. Perkins,
Vice President
S. Neilson Rice

Receipts of Commercial Trust Co., et al., Trustees, for Securities.

January 15, 1923.

Commercial Trust Company of New Jersey
and S. Neilson Rice, Trustees,
Jersey City, N. J.

Dear Sirs:

This letter will confirm my understanding that you are holding in the trust made by me, dated December 14, 1922, with you as Trustees, the following securities referred to in Schedule "A".

$10,000.	County of Hudson, N. J. 4½s due January 1, 1953.
16,000.	County of Hudson, N. J. 4½s due March 1, 1966.
50,000.	West Orange, N. J. 4½s due August 1, 1961.
30,000.	Paterson, N. J. 4½s due from April 1, 1929 to April 1, 1939.
$106,000.	

There was also deposited in the same trust on January 5, 1923, the following securities:

$100,000. par value,	Times Publishing Company of Detroit, Michigan, 7% Bonds due January 2, 1932.
125,000. " "	St. Louis Southwestern Ry. Co. 1st Con. Mtg. 4s due June 1, 1932.
325,000. " "	Colorado Industrial Co. 30 year Conv. 5s due Aug. 1, 1934.
100,000. " "	Western Maryland R. R. 1st Mtg. 4s due Oct. 1, 1952.
$625,000.	

Yours very truly,

Guinevere S. Gould.

Receipts of Commercial Trust Co., et al., Trustees, for Securities.

165 Broadway
New York

January 5th, 1923.

Mr. J. W. Hardenbergh, President,
Commercial Trust Company of N. J.,
Jersey City, New Jersey.

Dear Sir:

Referring to the following securities delivered to you this day by J. K. Rice, Jr. & Co., will you please place these in the trust made by Mrs. Guinevere S. Gould, dated Dec. 14, 1922, with the Commercial Trust Company and S. Neilson Rice, Trustees, as follows:

$100,000.	Times Publishing Company 7s of Detroit, Michigan.
100,000.	Western Maryland R. R. 1st Mtge. 4s
300,000.	Colorado Industrial Co. 1st Mtge. 5s
125,000.	St. Louis So. W. Ry., Consols 4s

As per cable advice, Mrs. Gould desires all of the above named bonds, with the exception of the $100,000. Times Publishing Co. 7s sold and the proceeds invested in tax free municipals of New Jersey. Will you please prepare the necessary papers for Mrs. Gould's signature in order to carry out her wishes and I will forward them to her abroad.

Yours very truly,

(Signed) S. N. RICE.

Receipts of Commercial Trust Co., et al., Trustees, for Securities.

COMMERCIAL TRUST COMPANY OF NEW JERSEY
Main Office 15 Exchange Place

Jersey City, N. J. October 14, 1927.

Mr. Theodore Rurode
1 Exchange Place
Jersey City, N. J.

Dear Sir:

As per your request of October 13, we enclose herewith list of securities comprising the trust fund established by Guinevere S. Gould, dated December 14, 1922.

Yours very truly,

Signature
George Letterhouse,
Ass't Trust Officer.

Enc. 3

Third Supplemental Affidavit of Executor.

STATE OF NEW JERSEY

DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

Resident Decedent

IN THE MATTER OF THE ESTATE OF GEORGE J. GOULD, late of LAKEWOOD, OCEAN COUNTY, NEW JERSEY.	*Third Supplemental Affidavit of Executor.*

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

SCHUYLER NEILSON RICE being duly sworn upon his oath according to law, deposes and says:

1. That he is one of the executors of George J. Gould, the above named decedent, deceased.

2. This affidavit is made in response to a request for additional information made by the Transfer Inheritance Tax Bureau to Messrs. McCarter & English, attorneys of the estate, by letter dated February 6, 1929.

3. It is not true that the value of the real property known as "Kingscote" Lakewood, Ocean County, New Jersey, is not reflected in the schedules of real property as filed. The value of that property is included in the valuation stated in the original affidavit filed. All the real property owned by the decedent in Lakewood,

Ocean County, New Jersey, was assessed and appraised as one tract, and was returned in the original affidavit at a valuation of $425,000.00. On May 19, 1924, a portion of this whole tract, commonly called "Georgian Court" was sold for $350,000. On May 12, 1925, the remaining portion, commonly called "Kingscote" was sold for $65,106.50, making the total amount realized on the sale of all of the Ocean County real estate $405,106.50, which figure is a better evidence of the true value of the real estate on the date of the death of the decedent than the estimated figure given in the affidavit. The error in the supplemental affidavit verified June 24, 1927, was the inadvertent omission of the sale price on the portion of the property known as Kingscote. The estimated market value of all the real property of the decedent in Lakewood, Ocean County, New Jersey, as of the date of his death is $405,-106.50. The assessed value thereof in the year 1923, the year of the decedent's death, was, $302,700.

4. No real property of the decedent was under contract of sale at the date of his death.

5. The names of the living issue of each of the decedent's children are as follows:

Children of Kingdon Gould:
Silvia Annunziata Gould,
Edith Kingdon Gould,
Kingdon Henry Gould.

Children of Jay Gould:
Eleanor Gould,
Anne Douglas Gould,
Jay Gould.

Children of Marjorie Gould Drexel:
Edith Kingdon Drexel,
Anthony J. Drexel, 3rd,
Marjorie Gould Drexel.

Children of Vivien Gould Decies:
Eileen Vivien de la Poer Beresford,
Catherine Moya,
Arthur George Marcus de la Poer.

Children of George J. Gould, Jr.:
George J. Gould, III,
Maughan Carter,
Howard Jay.

Children of Edith Gould Wainwright:
Stuyvesant,
Caroline DePeyster,
Carroll L., Jr.

Children of Gloria Gould Bishop:
Gloria.

6: The amount of transfer inheritance taxes finally levied, assessed and paid in other States and countries, after taking into consideration any refunds of original payments, is as follows:

Arkansas		$132.00
Illinois, originally paid	$12000.00	
Refund	7925.48	
Net paid		4074.52
Michigan, originally paid	1026.44	
Refund	705.03	
Net paid		321.41

New York		30000.00
North Caroline		3500.00
Pennsylvania		44.83
Great Britain,		
originally paid	20203.10	
Refund	806.14	
Net paid		$19396.96

Submitted herewith are true copies of the executors' first four accounts and of the supplement to the fourth account, all of which accounts have been allowed by decree of the Ocean County Orphans Court and the Court of Chancery of New Jersey, and which cover the proceedings of the executors from the date of death down to and including September 7, 1927. Hereunto annexed, marked Schedule A and made part hereof is an account of the proceedings of the executors from September 7, 1927 to February 9, 1929. This account has not yet been allowed, and has not yet been presented; and it is not now intended to present any further account until all transfer inheritance tax proceedings in all jurisdictions shall have been finally determined.

(Signed) Schuyler Neilson Rice.

Sworn to and subscribed before
me, this 14 day of February,
1929.

(Signed) JOHN SCRIMGEOUR,
Notary Public.

SEAL

Supplemental Affidavit of Executor.

STATE OF NEW JERSEY

DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

Resident Decedent

IN THE MATTER OF THE ESTATE OF GEORGE J. GOULD, late of LAKEWOOD, OCEAN COUNTY, NEW JERSEY.	*Supplemental Affidavit of Executor.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

SCHUYLER NEILSON RICE, one of the Executors of the above named decedent, being duly sworn, on his oath deposes and says:

1. This affidavit is supplemental to the affidavit of Kingdon Gould, my co-executor, and me, verified April 4, 1924, and sets forth facts which have occurred since the date of that affidavit which have a bearing upon the net amount of the estate of the above named decedent for transfer inheritance tax purposes.

2. Schedule A should be reduced from $425,000. to $350,000., as this was the actual amount realized on the sale of the real estate in question, which sale was made March 19, 1924, and which figure is a better evidence of the true value of the said real estate on the date of the death of the

decedent than the estimated figure given in the original affidavit.

3. The following deductions should be made from Schedule C, personal effects; item No. 2, personal property located at Georgian Court, Lakewood, New Jersey. There should be deducted from this item a total of $16,250. representing items appraised by Samuel Marks as personalty, which were realty fixtures and, therefore, erroneously included among the personal property, and which were part of the real estate valued in Schedule "A".

From the other items of personal property enumerated in Schedule C as being in various places in New Jersey and New York State, the following deductions should be made. The sum of $700,321.08 should be deducted to represent the art treasures adjudged to be the property of the Estate of Edith K. Gould, deceased, by a decree of the Court of Chancery of New Jersey in a suit therein depending, wherein Kingdon Gould and Schuyler Neilson Rice, as Executors of George J. Gould, deceased, *et als.* are complainants and Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, *et als.* are defendants, docket 55 page 57, a true copy of which final decree is hereunto annexed and marked Exhibit A.

There should also be deducted from the same items in Schedule C as those last referred to, a total sum of $5,475.00, the value of personal property adjudged to be the property of and awarded to Marjorie Gould Drexel and Vivien Decies by the same decree, Exhibit A.

4. The following deductions should be made from Schedule "D". Notes and accounts receiv-

able as per appraisal of J. K. Rice, Jr., annexed to Schedule D.

	Returned Value	Corrected Value
Equitable Trust Co. et al, trust for George J. Gould and Vivien Decies	$201,800.00	$187,553.19
George J. Gould, Trustee for Jay Gould	94,844.00	142,145.77
Jay Gould, Notes and Accts.	240,884.30	
Carried Forward	$538,528.30	$329,698.96
Royal Auto Club, England		455.35
	$538,528.30	$330,154.31
	330,154.31	
Decrease	$208,373.99	

The net decrease in this Schedule should be $208,373.99.

5. The following deductions should be made from Schedule F; stocks and bonds. There should be deducted from the United States Government Bonds an item of $1,023,527.80, Liberty Bonds and interest accrued, which by decree of the Court of Chancery of New Jersey, made in a cause therein depending between Guinevere S. Gould, Complainant, and Commercial Trust Company of New Jersey, *et als.*, Defendants, docket 54 page 539, a true copy of which, marked Exhibit B, is hereunto annexed, were adjudged to be the property of the testator's widow, Guinevere S. Gould. There should, however, be added to this Schedule F the sum of $6,000.00 representing the value of Pacific Express stock now in liquidation, inadvertently omitted from the return as filed, so that the total net deduction from Schedule F should be $1,017,527.80.

6. Schedule K, list of the names of beneficiaries and the value of their respective legacies, should be amended as follows: The legacy to

Commercial Trust Company of New Jersey and Schulyler Neilson Rice, as Trustees, which is valued in the return at $4,000,000.00, should be valued at $2,175,000.00, because certain of the expenses of administration normally chargeable against the residue have been charged against that legacy, under and by virtue of paragraphs 2 and 3 of an agreement made the 16th day of December, 1926, between the various parties interested under the last will and testament of George J. Gould, deceased, which said agreement was approved and the specific performance thereof directed by decree of the Court of Chancery of the State of New Jersey, in a cause therein depending, between Schuyler Neilson Rice and Kingdon Gould, as Executors, etc. of George J. Gould, deceased, Complainants, and Commercial Trust Company of New Jersey, *et als.*, Defendants, docket 62 page 608, a true copy of which is hereunto annexed, market Exhibit C. The said agreement is Exhibit C to the bill of complaint in said cause, reference to which bill of complaint and the Exhibits thereunto annexed, is hereby made.

7. Schedule 1. Administration expenses should be $305,263.61, instead of $161,956.96, as stated in the return. This increase is due to the fact that the estimate of $100,000.00 for future administration expenses, the last item in Schedule 1 of the return, was very much too small. The larger figure of $305,263.61 is the administration expenses actually incurred and disbursed, down to and including May 1, 1927.

8. Schedule 3. Counsel fees paid to date amount to $1,468,745.81, so that the estimated figure of $750,000. given in Schedule 3 is too small by $718,745.81.

9. Schedule 4. Debts and claims against the estate should be changed as follows:

The following uncontested claims should be struck out, as they have been paid by the testator's widow and no claim has been made by her for reimbursement:

N. A. Royer	$ 400.00
Dr. Randell	2,651.55
Dr. Sarnway	925.50
Total	$3,977.05

The following claims, omitted from the return, should be added—

Income tax, Jan. 1 to May 16, 1923	$ 3,995.00
Income tax for years prior to May 16, 1923	51,787.00
Local Taxes for 1923, assessed prior to death of decedent on New York and North Carolina property	3,733.02
Total	$59,515.20

Subtracting those to be deducted from those to be added, leaves a net increase of $55,538.15.

The claims in litigation shown on the return total upwards of $408,000,000.00. Of those, Rogers *v.* Gould has finally terminated in favor of the estate and there is no liability thereunder. McMasters *v.* Gould has so far terminated in favor of the estate, but is now pending in the Supreme Court of the United States. It is believed that this will terminate finally in favor of the estate with no liability. It is also believed that the claim entitled Crennell *v.* Fulton will

also terminate in favor of the estate. The claim by James C. Millard has terminated in favor of the estate. The claim of the Executors of Edith K. Gould, deceased, was disposed of by the settlement between that estate, the children of George J. Gould and the Executors of George J. Gould, which was approved and directed to be specifically performed by final decree of the Court of Chancery of New Jersey, in a suit therein depending wherein Kingdon Gould and Schuyler Neilson Rice, as Executors of George J. Gould, deceased, are Complainants, and Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, *et als.*, are Defendants, docket 57 page 479, made on the 7th day of July, 1925, a true copy of which is hereunto annexed, marked Exhibit D.

By supplemental order made in that cause, all restraints upon the performance of that decree therein contained have been removed and the complainants in that cause, who are the Executors of George J. Gould, deceased, have fully performed all of the terms of that decree and have delivered all of the property and made all of the payments therein and in the settlement agreements therein approved of, called for.

The remaining contested claims have been settled and the total payments under such settlement amount to $7,435,350.85. These payments were made pursuant to the settlement agreements Exhibits B and C annexed to the bill of complaint in the suit in Chancery hereinabove referred to, docket 62 page 608, a true copy of the final decree in which suit is Exhibit C, hereunto annexed.

The Executors have paid $750,000. on account of the Federal Estate Tax due on the estate of this decedent. They have paid legacy duties and

inheritance tax to the United Kingdom of Great Britain and Ireland upon property therein situated, amounting in all to the sum of $20,203.10. They have paid taxes to the following states in the amounts set opposite each.

STATE	AMOUNT
Illinois	$12,000.00
New York	30,000.00
Pennsylvania	44.83
Arkansas	132.00
No. Carolina	3,500.00
Michigan	1,019.92

All of the foregoing taxes paid to the several states in the Union, and to the United Kingdom of Great Britain and Ireland, were assessed upon property located in the jurisdictions by the respective taxing authorities, and were paid as a necessary prerequisite to the executors obtaining possession of the property in question.

This affidavit is made without prejudice to the right of the executors to file claim for further abatement or refund of tax based upon administration expenses, including counsel fee and commissions hereinafter incurred and to be allowed by the Court, and in the event that some liability should be imposed upon the estate, growing out of the cases of McMasters *v.* Gould and Crennell *v.* Fulton, hereinabove referred to, and in the event that a greater tax liability should be imposed upon the estate by the United States Government, or any of the above mentioned states of the United States.

By error there was omitted from Schedule K the name of George Philip Langford, no relation to the decedent, whose address is Yonkers, New York, over twenty-one years of age and whose

interest in the estate is a legacy of $5,000. under clause Second of the will.

(Signed) Schuyler Neilson Rice.

Sworn to and subscribed before me this 24th day of June, 1927.

(Signed) Edith S. Powelson,
Notary Public of New Jersey.

EXHIBIT B

IN CHANCERY OF NEW JERSEY

(54-539)

Between Guinevere S. Gould, *Complainant,* *and* Commercial Trust Company of New Jersey, *et als.,* *Defendants.*	*On Bill, &c.* *Final Decree.*

This cause coming on to be heard on October 29th, 1924, at the Chancery Chambers in the City of Jersey City, in the presence of Ralph E. Lum and Ernest C. Lum, Esquires, of Counsel with the Complainant and with the Guardian *ad litem* of the infant parties hereto; and of Willard C. Fisk, Esquire, of Counsel with the Defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, Trustees under trust agreement by Guinevere S. Gould,

dated December 14, 1922; and of Robert H. McCarter and George W. C. McCarter, Esquires, of Counsel with the third parties, Kingdon Gould and Schuyler Neilson Rice, Executors of the last will and testament of George J. Gould, Deceased; and the pleadings and proofs having been read, and the arguments of the respective Counsel having been heard; and it now appearing that subsequently to said final hearing herein a Bill of Complaint was filed in this Court in a cause entitled "Between Kingdon Gould and Schuyler Neilson Rice, as Executors of George J. Gould, Deceased, Complainants, and Jay Gould and Charles P. Noyes, as surviving Executors of Edith Kingdon Gould, Deceased, and others, Defendants", (Docket 57, page 479), and that all of the parties herein are parties also to and appeared in said last mentioned suit, wherein various matters in difference between the parties thereto and various suits and actions pending between them in the Courts of this State, including this cause, were sought to be amicably adjusted and settled pursuant to an agreement between the parties, a copy whereof is attached to the said Bill of Complaint; and it further appearing that a decree of this Court dated July 7, 1925 was made and entered in said settlement suit, which ordered, among other things, that the Defendants hereto, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees under a trust agreement by Guinevere S. Gould, dated December 14, 1922, and the said Kingdon Gould and Schuyler Neilson Rice, as Executors of the last Will and Testament of George J. Gould, Deceased, consent to the making and filing in this cause of a decree to the purport and effect as hereinafter set forth; and the

New Jersey State Library

parties hereto by their respective Solicitors consenting hereto in pursuance thereof;

It is, on this 14th day of July, 1925, on motion of Messrs. Lum, Tamblyn & Colyer, Solicitors of the Complainant, ORDERED, ADJUSTED AND DECREED, and the Chancellor of the State of New Jersey by virtue of the power and authority of this Court, does order, adjudge and decree as follows:

1. That the One Million Dollars ($1,000,000.) Par Value 3½% First Liberty Loan Bonds mentioned in the Bill of Complaint herein, together with all accumulations of interest thereon, belong to and constitute a part of the trust held by said Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees under a trust agreement made by said Guinevere S. Gould dated December 14, 1922, as claimed by her in her bill of complaint herein, and that the said Kingdon Gould and Schuyler Neilson Rice, as Executors of the last Will and Testament of George J. Gould, Deceased, have and are entitled to no right, title or interest of, in or to the same.

2. That Defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees as aforesaid, be and they hereby are ordered and directed to make and pay over to said Complainant, Guinevere S. Gould, the income derived from the aforesaid securities (including any and all money heretofore collected and received by them as interest payments accrued on said bonds) during the term of her life pursuant to the provisions of said trust agreement; provided, however, that until the further order of this Court they shall not pay any of the income derived therefrom except upon receiving from

the said Guinevere S. Gould a refunding bond to be approved as to form and security by this Court, or other security to be approved by this Court.

3. That said Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees as aforesaid, shall keep the principal of the aforesaid Liberty Bonds intact within the State of New Jersey until the further order of this Court in the above mentioned cause wherein Kingdon Gould and Schuyler Neilson Rice, as Executors of George J. Gould, deceased, are Complainants, and Jay Gould and Charles P. Noyes, as surviving Executors of Edith Kingdon Gould, Deceased, and others, are Defendants.

4. That a Counsel fee in the sum of $30,000. be and hereby is allowed to Messrs. Lum, Tamblyn & Colyer, as Solicitors for the Complainant herein, besides Complainant's costs of this suit to be taxed, which said Counsel fee and costs are hereby ordered and directed to be forthwith paid one-half by the Kingdon Gould and Schuyler Neilson Rice, Executors of the last Will and Testament of George J. Gould, Deceased, out of the Estate of said George J. Gould, Deceased, now in their hands as such Executors, and one-half by the trustees out of the corpus of the fund in their hands; and that a counsel fee of Ten Thousand Dollars ($10,000.00) be and the same is hereby allowed to Willard C. Fisk, Esquire, as solicitor for the defendant Commercial Trust Company of New Jersey and Schuyler Neilson Rice, besides costs of this suit to be taxed, which counsel fee and costs are hereby directed and ordered to be forthwith paid by the said trustees, out of the corpus of the fund of

the said trust now in their hands as such trustees.

Respectfully advised,

JOHN BENTLEY,
V.-C.

We hereby consent to the entry of the foregoing Decree.

FISK & FISK,
Solicitors for and of counsel with Commercial Trust Company of New Jersey and Schuyler Neilson Rice, Trustees under trust agreement for Guinevere S. Gould, dated December 14, 1922.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Kingdon Gould and Schuyler Neilson Rice, as Executors of the Last Will and Testament of George J. Gould, deceased, except as to counsel fee allowance.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with Guinevere S. Gould, as Guardian *ad litem* of the infant parties, George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould.

EXHIBIT D.

IN CHANCERY OF NEW JERSEY.

Between

KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of George J. Gould, deceased,

Complainants,

and

JAY GOULD and CHARLES P. NOYES, as surviving executors of EDITH KINGDON GOULD, deceased, and others,

Defendants.

On Bill, etc.

57/479

Final Decree.

This cause came on to be heard on the eighteenth day of June, 1925, in the presence of George J. Gillespie, and George W. C. McCarter, Esquires, of counsel for the complainants, James E. M. Tams and Harold A. Content, Esquires, of counsel for the defendants, Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, and of the defendant, Jay Gould; Willard C. Fisk, Esquire, of counsel for the defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees under trust agreement by Guinevere S. Gould, dated December 14, 1922, and as successor trustees under a deed of trust by Jay Gould to George J. Gould, dated June 15, 1916, and as trustees under the Last Will and Testament of George J. Gould, deceased, and for

the defendant, Edith Gould Wainwright; Ralph E. Lum and George W. Wickersham, Esquires, of counsel for the defendant Guinevere S. Gould, and for Charles F. Landmesser, Guardian *ad litem* for the defendants George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, Louis Rudner and Thomas Stokes, Esquires, of counsel for the defendants Marjorie Gould Drexel and Vivian Decies; John P. Manning, Esquire, Guardian *ad litem* for the defendant, Gloria Gould Bishop; August Roche, Jr. and Walter B. Walker, Esquires, of counsel for the defendants United States Trust Company of New York, a corporation, Frank Jay Gould, Helen Gould de Montenach and Dorothy Gould de Graffenried de Villars; and Edward O. Stanley, Esquire, of counsel for the defendants Bankers Trust Company, The Equitable Trust Company of New York, the Farmers' Loan and Trust Company, as substituted trustees under the last will and testament of Jay Gould, deceased, Anna Duchesse de Talleyrand, formerly Anna Gould, Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, Georges Gustave Marie Antoine Boniface Charles de Castellane, and Jason Honore Louis Sever de Castellane; and the complainants' bill and the addition by way of supplement thereto, having been heretofore taken as confessed against the defendants, John Spensley, George Philip Langford, William Bishop, Gottfried Fluckiger, David Sommer, Kingdon Gould and George J. Gould, Jr.; and statements having been made by the respective counsel and having been accepted by all counsel in lieu of evidence, from all of which it appears to the Court that the agreement alleged in the eighth paragraph of the bill of complaint, a copy of which is here-

unto annexed marked Exhibit A, was entered into between the parties thereto on the twenty-second day of January, 1925, and that the recitals and clauses in the said agreement correctly and accurately set forth in the litigation pending in the courts of this state between the parties to the said agreement, and that on the third day of April, 1925, the complainants and the defendant, Jay Gould, did enter into the agreement liquidating the indebtedness of Jay Gould to the estate of George J. Gould, and the amount of offset thereto, which said last mentioned agreement is correctly set forth in the addition by way of supplement filed April 6, 1925, and it appearing that claims have been made and filed with the executors of George J. Gould, deceased, by various parties claiming to be creditors of the said George J. Gould, deceased, and the Court being of opinion that the complainants are entitled to the relief prayed for, as hereinafter granted,

It is, on this 7th day of July, 1925, on motion of Messrs. McCarter & English, solicitors of the complainants, ORDERED, ADJUDGED AND DECREED, and the Chancellor of the State of New Jersey, by virtue of the power and authority of this Court, does ORDER, ADJUDGE AND DECREE as follows:

1. The said settlement agreement made on the twenty-second day of January, 1925, a copy of which is Exhibit A to the bill of complaint and the said agreement between the complainants and the defendant, Jay Gould, as set forth in the addition by way of supplement, be and the same hereby are approved.

2. Except as hereinafter restrained, the parties to the said agreement be and they hereby are directed specifically to perform the same.

3. In compliance with this command, the complainants and the defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as trustees under a trust agreement by Guinevere S. Gould, dated December 14, 1922, are ordered to consent to the making and filing by this Court in the cause therein entitled "Between Guinevere S. Gould, complainant, and Commercial Trust Company of New Jersey, *et al.*, defendants," Docket 54, page 539, a decree adjudging that the complaint therein is entitled, as against the other parties thereto, to the fund of One Million Dollars ($1,000,000.00) par value 3½% First Liberty Loan bonds, together with all accumulations of interest thereon, as claimed by the said Guinevere S. Gould, in the said suit. The defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as trustees as last aforesaid, must keep the principal of the said Liberty Bonds intact within the State of New Jersey until the further order of this Court in this cause.

4. The complainants and the defendant Guinevere S. Gould shall consent to a final decree to be made in the cause pending in this Court entitled "Between Kingdon Gould and Schuyler Neilson Rice, as executors of George J. Gould, deceased, complainants, and Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, et als., defendants," docket 55, page 72, adjudging that all of the pictures, works of art, and other goods and chattels enumerated in the bill of complaint in

that cause, or in the schedules thereunto annexed, including both the schedule annexed to the bill as filed, and that added by amendment are, as between the complainants and the defendant Guinevere S. Gould, on the one hand, and the defendants Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, on the other hand, the property of the said surviving executors of Edith Kingdon Gould. The said surviving executors of Edith Kingdon Gould shall keep the proceeds of the sale of such of the said chattels as have been heretofore sold and as may hereafter be sold, within the State of New Jersey, and shall not disburse either the principal of the said proceeds or any interest heretofore accrued or hereafter accruing thereon, or any part thereof, without the further order of this Court, in this cause, except that they may disburse income upon receiving a refunding bond or bonds to be approved as to form and security by this Court, or other security to be approved by this Court.

5. And it further appearing to the Court that the following portraits and paintings, namely, Portrait of Lady Decies by Carolus Durand, Portrait of Edith Kingdon Gould by Carolus Durand, Oil Painting of Lady Decies by Porter, Oil Painting of Lady Decies by Fleming, Pastel of Lady Decies by Halmi, are in the possession of the complainants, although the property of the defendant, Vivian Decies, it is FURTHER ORDERED ADJUDGED AND DECREED that said portraits and paintings, together with the right to the immediate possession of the same, are the property of the said Vivian Decies, and the said Kingdon Gould and Schuyler Neilson Rice, as executors of George J. Gould, deceased, are hereby ordered

to deliver forthwith to the said Vivian Decies the possession of said portraits and paintings, and to execute and deliver to the said Vivian Decies any and all instruments of title which may be necessary.

And it further appearing to the Court that the following portraits and paintings namely: Portrait of Edith Kingdon Gould by Halmi, Portrait of Marjorie Gould Drexel by Halmi, Portrait of Marjorie Gould Drexel by Lynch, Small portrait of Marjorie Gould Drexel by Lynch, Portrait of Marjorie Gould Drexel by Fuchs, Portrait of Marjorie Gould Drexel by Porter, Painting "The Wedding Procession," Painting "The Arab," are in the possession of the complainants, although the property of the defendant, Marjorie Gould Drexel, it is FURTHER ORDERED, ADJUDGED AND DECREED, that said portraits and paintings, together with the right to the immediate possession of the same, are the property of the said Marjorie Gould Drexel, and the said Kingdon Gould and Schuyler Neilson Rice, as Executors of George J. Gould, deceased, are hereby ordered to deliver forthwith to the said Marjorie Gould Drexel the possession of said portraits and paintings, and to execute and deliver to the said Marjorie Gould Drexel any and all instruments of title which may be necessary.

6. The defendants, Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon Gould, deceased, shall within 14 days from the date hereof, enter a decree dismissing their bill filed in this Court in the suit entitled "Between Jay Gould and Charles Prentice Noyes, as surviving executors of Edith Kingdon

Gould, deceased, complainants, and Kingdon Gould and Schuyler Neilson Rice, as executors of George J. Gould, deceased, defendants", docket 55, page 483. Within like time, mutual general releases shall be exchanged between the complainants and the said defendants, as surviving executors of Edith Kingdon Gould, deceased.

7. The defendant, Jay Gould shall, within thirty days from the date hereof, pay to the complainants the sum of One Hundred Forty-two Thousand One Hundred Forty-five Dollars and Seventy-seven Cents ($142,145.77), and the complainants, upon receiving such payment, shall forthwith pay to the defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as substituted trustees under the deed of trust by the defendant, Jay Gould, dated June 15, 1916, the sum of Twenty-seven Thousand Six Hundred Eighty-two Dollars and Seventy-six Cents ($27,682.76), being the amount of overdrafts from the income of the said trust fund claimed to have been made by the said Jay Gould, and deliver to the defendant, Jay Gould, or to his solicitors, all of the promissory notes signed by the said defendant in the complainants' possession, and shall execute and deliver to the said defendant a general release, and the said defendant shall execute and deliver to the complainants a general release. The complainants and the said defendant, and the defendants Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as substituted trustees under the deed of trust by the defendant Jay Gould, dated June 15, 1916, shall all proceed expeditiously with the suit in this Court entitled "Between Kingdon Gould and Schuyler Neilson Rice, as executors of George J. Gould, deceased,

complainants, and Commercial Trust Company of New Jersey, *et als.*, defendants'', docket 55, page 57, and shall consent to a decree in the accounting thereon, in conformity with the agreement between the complainants, and the defendant, Jay Gould, made April 3, 1925, and set forth in the addition by way of supplement in this cause.

8. The Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as trustees under a trust agreement by Guinevere S. Gould, dated December 14, 1922, shall not until the further order of this Court pay any of the income on the fund of One Million Dollars ($1,000,000.00) par value 3½% First Liberty Loan Bonds, except upon receiving from the said Guinivere S. Gould a refunding bond to be approved as to form and security by this Court, or other security to be approved by this Court.

9. Wherever in this decree it is provided that something may be done upon the further order of this Court, all such orders shall be made upon thirty days' notice to all interested parties hereto, unless otherwise ordered, and service upon the solicitors of record of such parties shall be such notice.

10. Nothing in this decree shall be deemed to restrain the solicitors of any of the parties to the aforesaid settlement agreement, dated January 22, 1925, from applying for counsel fee as in the said agreement provided.

11. Nothing in this decree contained shall prejudice the rights of any of the defendants not parties to the said settlement agreement dated January 22, 1925, to assert in proper pro-

ceedings that any conveyance, gift, assignment, or transfer of any nature by George J. Gould in his lifetime was and is fraudulent as against his creditors, or prejudice the rights asserted by any such defendants in the suits commenced by some of them in this Court against the complainants, and others, that is to say, in the suit entitled "Between United States Trust Company of New York, *et als.*, Complainants, and Kingdon Gould, *et als.*, defendants," docket 55, page 395, and in the suit entitled "Between Anna Duchesse de Talleyrand, formerly Anna Gould, *et als.*, Complainants, and Kingdon Gould, *et als.*, defendants," docket 55, page 416, nor shall the fact that the complainants in the said two last mentioned causes are made parties hereto give as to the said defendants any conclusive effect to the figures in the supplemental agreement of April 3, 1925, between Jay Gould and the complainants which would not exist were the said defendants not made defendants hereto.

12. The payments provided for in paragraph 7 of this decree shall be stayed until the further order of this Court.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

Second Supplemental Affidavit of Executor.

STATE OF NEW JERSEY

DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

Resident Decedent

IN THE MATTER OF THE ESTATE OF GEORGE J. GOULD, late of LAKEWOOD, OCEAN COUNTY, NEW JERSEY.

Second Supplemental Affidavit of Executor.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

SCHUYLER NEILSON RICE, being duly sworn upon his oath according to law, deposes and says:

1. That he is one of the executors of George J. Gould, deceased.

2. This affidavit is made in response to requests for information made to the executors or their attorneys by Theodore Rurode, Esquire, Special Investigator for the Comptroller.

3. Since the filing of the inventory the executors have made diligent efforts to realize on the various notes and accounts receivable listed on the inventory as having been of no value at date of death, May 16, 1923. The following realizations and no others have been made, and they have been duly set forth in the executors' account as follows:

"3rd Account, page 37

One share Upcico Co. Certificate #46 sold for $100.00

The above appears on page 20 of the Appraiser's Report.

"3rd Account, page 37

Certificate No. 428 Westchester Country Club realized $332.00

The above appears on page 20 of the Appraiser's Report.

Total $432.00

No other proceeds have been received from the items inventoried as of doubtful value, so that the total proven value of those items is $432.00. My co-executor and I are satisfied that no further realization can now be made on any of the items listed as of doubtful value.

3. Of the taxes listed on page 7 of his supplemental affidavit, verified June 24, 1927, the North Carolina tax should be wholly eliminated, as it is assessed entirely on real estate and tangible personal property in North Carolina. The New York tax of $30,000 was paid on account of New York assets, as follows:

100 shares Abercombie & Fitch	$9,500.
2600 " Equitable Trust Co.	481,000.
Green Meadow Country Club	700.
Kingdon Realty Co.	24,075.
73rd Street Realty Co.	67,125.
N. Y. Stock Exchange Seat	90,000.
Furlough Lodge Real Estate	90,000.
Personal Property at Arkville	16,811.50
Property 167 East 73rd St.	1,537.
Property at Lincoln Safe Deposit Co.	63,875.

Property at 165 Broadway	16,237.
Property at Duveen Bros.	70,000.
Property at 149 Broadway	131,269.
Property at 857—5th Avenue	100.
Property at Nevins Shipyard	7,800.
Property at Rye, New York	1,700.
Additional Property at Duveen Bros.	33,000.
Additional Property at Lincoln Safe Dep. Co.	1,885.
Additional Property at 149 Broadway	1,375.
Additional Property at 165 Broadway	1,100.
	$1,109,089.50

The only property included in this list taxable in New Jersey is the first six items, which total $672,400. The remaining assets are either New York real estate or tangible personal property in New York, not taxable in New Jersey. The amount of the New York tax deductible therefore in New Jersey is ascertained by the following equation:

> x (the amount of tax deductible) is to $30,000., the total amount of tax, as $672,400, the value of the property with respect to which a tax is deductible, is to $1,109,089.50, the total value of New York assets.

This works out to $18,187.89. The Arkansas tax of $132.00 was assessed on shares of stock in Baring Cross Bridge Company, a corporation of the State of Arkansas. The Illinois tax of $12,000. was assessed on shares of stock in the First National Bank of Chicago, a corporation of Illinois; and in Consolidated Coal Company, a cor-

poration of Illinois; also on a bank deposit of the decedent amounting to $28,392.16 in the First Trust and Savings Bank of Chicago, Ill. The Michigan tax of $1019.92 was paid upon the bonds of Time Publishing Company, a corporation of the State of Michigan, owned by the decedent, together with accrued interest thereon to date of death. The Pennsylvania tax of $44.83 was paid upon shares of stock in Lykens Valley Railroad and Canal Company, a corporation of Pennsylvania; and shares of stock in the Delaware, Lackawanna & Western R. R. Co., a corporation of Pennsylvania. With respect to all of the securities for the tax on which by New York a deduction is claimed, and with respect to all of the property taxed by the States of Arkansas, Illinois, Michigan and Pennsylvania, it was necessary for the executors to make the tax payments above stated in order to obtain effective possession of the property in question. The property came to the executors in effect burdened by a paramount lien in favor of the several states in the amounts of the taxes paid. We claim, therefore, a deduction for inheritance taxes totalling $781,384.64.

4. With respect to the deductions for personal property, inventoried as belonging to George J. Gould, but adjudged to be the property of the executors of Edith Kingdon Gould, deceased, and of certain of the children of George J. Gould, I refer to the affidavit of George Philip Langford, filed herewith. The item of Equitable Trust Company *et al.*, in trust for George J. Gould and Vivian Decies, $201,800., represents an indebtedness from Vivian Decies to the decedent on account of moneys advanced by the decedent to her at her request, for the repay-

ment of which she charged her interest in remainder under the will of Jay Gould in the trust therein established for George J. Gould for life with remainder to his issue. The amount due was disputed by Vivian Decies, and in order to avoid litigation and to accomplish the payment thereof without further delay the executors on August 24 and September 2, 1927, compromised the said claim with Vivian Decies by making two reductions, one of $14,221.02 (See Fourth Account, page 75), and another of $9061.42 (See Supplement to Fourth Account, page 6). These reductions were charged off on the executors' fourth account, as just stated, and the same was approved by Decree of the Court of Chancery allowing the executors' fourth account November 2, 1927, so that the net amount actually received by the executors for this claim listed at $201,800. was $178,517.56, which last mentioned figure is the true value of this item.

5. Referring further to paragraph 4 of my supplemental affidavit herein, verified June 24, 1927, and in particular to the item

George J. Gould, Trustee for Jay Gould,
Returned value .....95,844.

Jay Gould notes and accounts 240,884.30

Corrected value $142,145.77, I have the following explanation to make. In the first place, the correct item for the returned value of George J. Gould, Trustee for Jay Gould is as just hereinabove given, and not $94,844, as by a typographical error it was entered in my said supplemental affidavit. Both these items were carried on the books of the decedent as charges against Jay Gould, representing moneys paid by the decedent to Jay Gould. Some of the moneys so

advanced by the decedent were evidenced by notes, and the remaining items had no other supporting evidence than the book entry. Jay Gould contended that all except those evidenced by his promissory notes were by way of gift. He also asserted a large claim, unliquidated in amount but greatly in excess of the total claim appearing on the books of the decedent against him, for alleged breaches of trust by the decedent as trustee for Jay Gould of a legacy of $500,000.00, given in and by the will of Jay Gould the first, grandfather of the Jay Gould herein mentioned. This trust terminated after Jay Gould came of age, but he then by deed of trust dated June 15, 1916, a true copy of which is annexed to the original affidavit of executors filed herein, retrusteed the property constituting the corpus of the said first mentioned trust with the decedent as trustee and with Commercial Trust Company of New Jersey and Schuyler Neilson Rice as successor trustees, the trust being to pay the income to Jay Gould for life, and after his death over.

The successor trustees of that trust contended that the executors of the decedent were indebted to them in the sum of $27,682.76, representing overdrafts of income suffered and permitted by the decedent in his lifetime to be received by Jay Gould. These several claims and counterclaims were settled by an agreement between Jay Gould and the executors of George J. Gould, deceased, subject to the approval of the Court of Chancery, which said agreement of settlement is fully recited in the addition by way of supplement to the bill of complaint in a suit in Chancery of New Jersey, wherein Kingdon Gould and Schuyler Neilson Rice, as executors

of George J. Gould, deceased, are complainants, and Jay Gould and Charles P. Noyes, as surviving executors of Edith Kingdon Gould, deceased, and others are defendants, Docket 57, page 479, a true copy of which addition by way of supplement is hereunto annexed, marked Exhibit A.

The making of the said settlement as expressed in Exhibit A hereunto annexed was approved by decree of the Court of Chancery made in the said cause, and the specific performance of the same was in and by the said decree directed. A copy of the said decree is Exhibit D to my supplemental affidavit aforesaid, verified June 24, 1927.

As a result of that settlement it will be seen that Jay Gould surrendered his large counterclaim, and the claims of the decedent against him were reduced from the amounts shown on the return to the corrected amount of $142,145.77, which said corrected amount, and no more, is the total actually paid by Jay Gould, and received by the executors, so that the same is the true value of the two items, George J. Gould Trustee for Jay Gould, and Jay Gould notes and accounts entered on the return.

It is impossible to allocate any specific portion of the true value to George J. Gould, Trustee for Jay Gould, the combined total is simply reduced to the figure given.

The reason why we do not here claim a further reduction in the sum of $27,682.76, the amount of the overdraft of income paid by the executors of the decedent to Commercial Trust Company of New Jersey and Schuyler Neilson Rice as successor trustees is because credit for that payment, which was actually made June 4, 1927, and

appears under that date on Exhibit V, page 51 of the executors' fourth account, is claimed under the administration expenses.

6. Schedule J of the original affidavit of executor figures the interest of the decedent in the estate of Jay Gould, deceased, at $1,272,096.13. The securities in which was invested the invested portion of the said sum were in the said original affidavit of the executors valued at $1,064,224.40, the appraisal of J. K. Rice, Jr., pages 26, 27 and 28. The said securities were by the Equitable Trust Company of New York, the trustee actually holding them, valued at $1,047,939.16. The difference between the two valuations is $16,285.24. It was only at the trustees' valuation that this property was available to the executors, and its true value therefore should be $16,285.24 less than the figure entered in Schedule J, which should be corrected as follows:

Returned value	$1,272,096.13
Corrected value	1,255,810.89

The total correct figure for the deduction for administration expenses down to and as of November 25, 1927, is $349,282.16. The details of this figure are arrived at in the following manner: The expenditures cover a period from May 16, 1923 to November 25, 1927, and are fully itemized and set forth in the four printed accounts of the executors filed with the Ocean County Orphans Court, as to the first three accounts, and the Court of Chancery as to the fourth account, all of which accounts have been allowed by the decrees of the respective Courts, and copies of which are furnished herewith. The total disbursements are set forth in detail in the various accounts as follows:

First account,	Exhibit	IV	pages	43 to 58		$ 157,140.37
Second "	"	IV	"	27 to 49		1,962,531.90
Third "	"	IV	"	21 to 28		357,870.56
Third "	"	IV	"	51 to 52		5,903.73
Fourth "	"	V	"	38 to 51		885,134.99
Fourth "	"	IV	"	74		2,885.35
Fourth "	"	II	"	4		1,032.63
Total to September 7, 1927						$3,372,499.53

From the last mentioned figure the following items are excluded:

Funeral Expenses	$ 1,762.87
Debts	195,326.25
Legacies	25,000.00
Appraisal Expense	60,005.46
Inheritance Taxes	1,048,993.71
Legal Services and Disbursements	1,134,351.57
Executors' Commissions on Corpus	556,806.73
Taxes on Real Estate Outside of New Jersey	6,581.98
Total Eliminations	$3,028,828.57

Where above eliminations appear in Executors' Accounts:

Funeral Expenses—1st Account, page 47		$ 1,762.87
Debts: 1st Acct., page 46	$ 16,764.79	
4th " " 51	120,722.12	
4th " " 51	30,156.58	
4th " " 51	27,682.76	
		$ 195,326.25
Legacies: 4th Acct., page 48		25,000.00
Appraisal Expenses		60,005.46
1st Acct., page 55, Voucher 420	$ 222.76	
" " " 58, " 527	636.20	
2nd " " 36, " 899	146.50	
" " " 37, " 941	20,000.00	
" " " 38, " 942	20,000.00	
" " " 38, " 948	35,000.00	
	$76,005.46	
Less Credit, 4th Acct., page 47	16,000.00	
	$60,005.46	

Inheritance Taxes			1,048,993.71
1st Acct., p. 55, Voucher 414.....	$ 14,000.00		
" " " 56, " 447.....	12,000.00		
" " " 56, " 449.....	30,000.00		
2nd " " 37, " 909.....	937.50		
" " " 38, " 947.....	44.83		
" " " 38, " 957.....	232,900.00		
" " " 39, " 991.....	132.00		
" " " 41, " 1041.....	3,500.00		
" " " 45, " 1201.....	1,026.44		
" " " 46, " 1222.....	750,000.00		
" " " 48, Dec. 9, 1924.....	5,265.60		
		$1,049,806.37	
Less: Credits:			
4th Acct., page 74.....$806.14			
2nd " " 49..... 6.52			
		812.66	
		$1,048,993.71	

Legal Services & Disbursements.... $1,134,351.57

Per 2nd Account

Page	Voucher No.	Amount
30	684	$ 50,063.12
31	685	10,000.00
34	805	488.75
34	819	452.00
37	937	50,000.00
37	938	50,000.00
37	939	50,000.00
37	940	2,500.00
38	946	5,000.00
38	952	500.00
38	953	500.00
39	988	200.00
39	990	437.50
39	1008	50.00
45	1207	1,000.00
47	1258	100.00
47	1289	1,493.15

	Page	Voucher No.	Amount
3rd Account			
	21	1306	100,359.47
	21	1307	10,111.58
	23	1382	52.89
	23	1383	1,185.00
	23	1386	52,835.79
	23	1387	500.00
	23	1388	500.00
	23	1389	500.00
	23	1390	50,000.00
	23	1391	51,536.34
	24	1395	200.00
	25	1429	60.00
	25	1462	150.00
	26	1496	15,000.00
	26	1505	5,000.00
Fourth Account			
	38	1619	85,330.70
	41	1731	45,000.00
	41	1732	45,176.38
	41	1733	10,000.00
	41	1734	10,000.00
	40	1702	821.00
	41	1735	957.00
	42	1792	744.00
Fourth Account			
	46	2060	50,000.00
	47	2069	17,500.00
	47	2070	50,000.00
	47	2071	20,000.00
	47	2072	5,000.00
	47	2073	5,500.00
	47	2074	5,000.00
	47	2075	28,500.00
	47	2076	6,000.00
	47	2077	15,000.00
	47	2080	50,000.00
	47	2078	146,344.97
	46	1922	50.00
	47	2079	602.60
	47	2082	403.98
	Sub-total		$1,108,706.22

Plus all items of Legal Printing, totalling	$ 17,312.15		
and Earle E. Eason's salary at $416.66 a month (Acct. 1, p. 58-Acct. 3, p. 26)	8,333.20		
		25,645.35	
Sept. 7, 1927, Total			$1,134,351.57

Executors' Commissions on Corpus			
2nd Acct., page 50		$538,546.61	
3rd " " 23	$6,138.38		
	6,138.37		
		12,276.75	
4th " " 41	$2,991.69		
	2,991,68		
		5,983.37	
			$556,806.73

Subtracting the total eliminations of $3,028,828.57 from the total disbursements to September 7, 1927, of $3,372,499.53, we have a balance of administration expenses to September 7, 1927 amounting to $343,670.96, the items comprising which, as above stated, can be ascertained item by item by an examination of the executors' four accounts and the supplement to the fourth account, copies of which are furnished herewith, reference to which is hereby made.

To the last mentioned figure add the following disbursements from September 7, 1927, the concluding date of the supplement to the executors' fourth account, to November 25, 1927, as follows:

1927		
Sept. 8	Peck & Durham, Printing	$1,075.00
16	Stenographic Service Co.	48.72
26	L. W. Lawrence, Stationery	3.60
	Peck & Durham, Printing Sup. to 4th Acct.	110.00
	Financial Press, Int. Table	6.50
	Western Union Telegraph Co.	6.72
	H. Janssen, Jr., Salary	37.50
	G. P. Langford, Salary	50.00
	G. H. Heidenheim, Salary	250.00

Oct.	1	A. H. Hubert, Salary	625.00
	4	Benenson Building	285.97
		Commercial Trust Co., Oct. Rent	34.00
		C. H. Heidenheim, Sept. Expenses	26.02
		Bergen Storage Warehouse	6.00
		Crystal Spring Water Co	3.00
		N. Y. Telephone Co	22.91
	7	L. W. Lawrence, Stationery	2.00
		N. Y. Telephone Co	36.40
		Western Union Telegraph Co	8.35
	17	H. Janssen, Jr., Salary	37.50
	19	Stenographic Service Co.	12.75
	26	Geo. P. Langford, Salary	50.00
		H. Janssen, Jr., salary	37.50
		C. H. Heidenheim, Salary	250.00
Nov.	2	Benenson Bldg., Nov. Rent	281.78
		Bergen Storage Warehouse	6.00
		C. H. Heidenheim, Oct. Expenses	31.98
		N. Y. Telephone Co	52.64
		C. O. Fogg, Surrogate	2.50
		L. E. Smith, Typing	27.00
		M. D. Beck, Typing	21.42
		Crystal Spring Water Co	3.50
		Commercial Trust Co., Nov. Rent	34.00
		Arthur Young & Co., Services	1,250.00
		A. G. Hubert, Salary	625.00
		A. G. Hubert, Expenses	32.60
	4	Western Union Telegraph Co	7.90
		Stenographic Service Co.	171.94
	15	H. Janssen, Jr., Salary	37.50
			$5,611.20

There is therefore a total of administration expenses to November 25, 1927, of $349,282.16. This last mentioned figure should be included as a deduction instead of the figure of $161,956.96, mentioned in Schedule 2 of the original return.

7. The correct amount of commissions actually allowed by order of Court to the executors and paid to them is as follows:

Commissions on corpus	$556,806.73
Commissions on income	51,907.31
Commissions allowed by decree of Court of Chancery on 4th accounting, Nov. 2, 1927, specifically allowed as either on corpus or income	100,000.00
	$708,714.04

8. The correct net total for appraisal expenses is $60,005.46, and not $75,000.

9. The correct total of legal expenses, that is to say, counsel fee, master's fees and disbursements of attorneys and counsel allowed by the Courts and paid by the executors down to and including November 25, 1927, is $1,529,764.12, made up as follows:

Total legal expenses detailed hereinabove under eliminations from administration expenses....	$1,134,351.57
Payments made November 14, 1927, pursuant to command of decree of Court of Chancery of November 2, 1927, a true copy of which is hereunto annexed, marked Schedule B.....	158,000.00
Counsel payments in Gould vs. Gould, 4th account, page 54.....	237,392.55
Andrew C. Fenton, legal services re Furlough Lodge, August 28, 1924, Voucher 1108, 2nd Account, page 42	20.00
	$1,529,764.12

10. Schedule 3 of the original return should therefore be corrected as follows:

Counsel fees, etc.			
Returned value	$750,000.	Corrected value	$1,529,764.12
Executors' fees			
Returned value	800,000.	Corrected value	708,714.04
Expenses for appraising, etc.			
Returned value	75,000.	Corrected value	60,005.46
Total Returned value.....			$1,625,000.00
Total Corrected value.....			$2,298,483.62

Schedule 3 of the original return should therefore be increased to the corrected total of $2,298,483.62.

(Signed) Schuyler Neilson Rice

Sworn to and subscribed before me, this 19th day of December, 1927.

(Signed) Clara Levy

Addition by Way of Supplement, Gould's Executors v. *Gould, 57/479.*

EXHIBIT A.

IN CHANCERY OF NEW JERSEY.

KINGDON GOULD and SCHUYLER NEILSON RICE, as executors of GEORGE J. GOULD, deceased, *Complainants,* *vs.* JAY GOULD and CHARLES P. NOYES, as surviving executors of EDITH KINGDON GOULD, deceased, and others, *Defendants.*	*On Bill, etc.* *Addition by Way of Supplement.*

TO HIS HONOR EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

The complainants by leave of Court by way of supplement to the original bill, say that:

1: Since the filing of the original bill of complaint in this cause the complainants and the defendant Jay Gould have, pursuant to paragraph 5 of Exhibit "A" to the original bill of complaint, agreed upon the amount of indebtedness of Jay Gould to the Estate of George J. Gould, and the amount of offsets thereto, whether or not arising out of the administration by George J. Gould of his trust for Jay Gould, the accounting on which is now pending in this Court in the suit therein pending wherein the complainants herein are complainants and the Commercial Trust Co. of New Jersey and others are defendants. Docket 55/57.

2: The said agreement is in the words and figures following:

April 3, 1925.

Jay Gould, Esq.,
New York City.

Dear Sir:

Under date of January 27th, 1925, you have, through your attorney, Harold A. Content, Esq., written us as follows:

The estate of George J. Gould claims that Jay Gould is indebted to the said estate in the following sums:

Jay Gould.....	$240,884.30
George J. Gould, Trustee for Jay Gould	95,844.00

Jay Gould admits an indebtedness to his Father of $71,102.11 The Estate of George J. Gould holds promissory notes signed by Jay Gould aggregating $142,145.77. While Jay Gould signed the foregoing notes, he does not admit all of the indebtedness represented thereby.

The Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as substituted trustees in the place of George J. Gould, deceased, claim an overdraft of income by Jay Gould, as beneficiary, in the sum of $27,682.76.

Mr. Gould, during his life-time, borrowed from the Trust Fund large sums of money and only allowed interest to the Trust fund at the rate of 3% on the major portion of his borrowings. In order to borrow the money from the Fund, Mr. George J. Gould called investments which were producing income of 6%; so that, on the major portion of his borrowings he only paid 3% to the beneficiary in place of investments that had

theretofore been paying 6%. Mr. Jay Gould, therefore, has a claim against the Estate of George J. Gould, in the sum of approximately $615,330.56, representing the loss in interest by reason of the acts above mentioned.

In addition to the foregoing Mr. Jay Gould has a claim against the Estate of George J. Gould in the sum of $174,637.75 occasioned by losses to the Trust Fund due to Mr. Gould's replacing in the Trust Fund, for the cash withdrawn by him, securities which were not legal securities for trust purposes.

All the foregoing figures have been submitted to the Auditor of the Estate of George J. Gould and have been checked by him.

In order to avoid family litigation and to bring about an amicable adjustment of all matters now in litigation or under discussion, Mr. Jay Gould is willing to do the following, if the same is accepted by the Executors of the Estate of George J. Gould and by Schuyler Neilson Rice and the Commercial Trust Company of New Jersey, as Trustees.

He will pay to the Estate of George J. Gould the aggregate of his promissory notes ($142,145.77) if the Estate of George J. Gould will repay to Schuyler Neilson Rice and the Commercial Trust Company of New Jersey, the amount of the overdraft ($27,682.76). In other words, Mr. Jay Gould will pay to the Estate of George J. Gould the net amount of $114,463.01.

At the same time, if the foregoing proposition be accepted and the settlement consummated in accordance therewith Mr. Jay Gould will waive all claims against the Estate of George J. Gould by reason of the loss of interest hereinbefore set

forth and the loss to the corpus of the Trust Fund by reason of the securities placed therein by Mr. George J. Gould to repay his own indebtedness to the Trust Fund.

It should be clearly understood, in connection with the foregoing, that this settlement embraces the sum of $95,844. due from George J. Gould, as Trustee for Jay Gould, Under Trust #1 to the Estate of George J. Gould, of this sum $90,000 represented a subscription to $100,000. Western Pacific new 5% Bonds at 90 under the Western Pacific Railway Company reorganization; $1,000. represented an assessment levied under the reorganization of the Denver and Rio Grande Railroad Company on its 7% Adjustment Bonds, and $4,844. of it represented the amount advanced to the Trust Fund by Mr. George J. Gould on account of the purchase of $24,000. Essex County, New Jersey, Bonds. In agreeing to pay the face value of the promissory notes, less the overdrafts, it is to be clearly understood that this sum of $95,844 is part of the consideration of the settlement and is not in addition to the offer heretofore made.

Will you please advise us at your earliest convenience whether the proposition outlined herein is acceptable to you?

We beg to advise you that the foregoing proposition is acceptable to us.

(Signed) Kingdon Gould
Schuyler Neilson Rice
Executors of George J. Gould, Dec'd

Wherefore, the complainants pray that the agreement aforesaid be duly approved by the decree of this Honorable Court and that it may be specifically performed by the parties thereto, according to the true intent and meaning thereof.

EXHIBIT B.

IN CHANCERY OF NEW JERSEY.

Between

SCHUYLER NEILSON RICE and KINGDON GOULD, as Executors, etc., of George J. Gould, deceased,
Complainants,

and

COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.,*
Defendants.

62/608

On Bill, etc.

Decree of Complainants' Account.

The complainants having heretofore, on the 15th day of September, 1927, filed herein their fourth account and supplement thereto, and the Court on that day having made an order referring it to M. Casewell Heine, Esq., one of the Masters of this Court, to audit the said account and supplement and directing all parties hereto to show cause before the Chancellor at the Chancery Chambers in the City of Newark on the 4th day of October, 1927, why the said account and supplement thereto should not be in all re-

spects allowed and proper allowances of commissions and counsel fees be made; and it appearing to the Court that the said order to show cause has been duly served and the complainants having given due notice to all parties hereto of their application to the Court at the time and place aforesaid for instructions as to continuing the payments of income heretofore made by them to the ten children of George J. Gould, deceased, pursuant to the decree of this Court, and as to setting up the trusts constituting the residuary estate of the said George J. Gould, deceased, and upon reading and filing the report of the said Master, from which it appears that he has audited as, in and by the said order to show cause directed, the said account and supplement thereto, and has found the same in all respects correct, and no exceptions to the said account or supplement thereto having been filed, and all of the aforesaid matters having been duly continued until today and coming on to be heard in the presence of George W. C. McCarter and George J. Gillespie (of the New York Bar) of counsel with the complainants, and J. Fisher Anderson of counsel with the defendants Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustee under the will of George J. Gould, deceased; of Merritt Lane, of counsel with Guinevere Dunsford, individually and as one of the testamentary guardians of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould; and of counsel with Thomas Barber, guardian *ad litem* for George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould; and of John P. Manning, of counsel with the defendant Gloria Gould Bishop; and of J. Edward Ashmead, of counsel with the defendants Kingdon Gould in-

dividually, Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., and Edith Gould Wainwright; and of Wilfred H. Jayne, Jr., guardian *ad litem* for the other infant defendants, it is on this 2nd day of November, 1927 on motion of counsel for the complainants, ORDERED, ADJUDGED AND DECREED as follows:

1. The report of the said Master be in all respects confirmed and the said fourth account of the complainants and the supplement thereto be in all things allowed; and there is a balance in the hands of the complainants as of the 7th day of September, 1927, amounting to Two Million, Eight Hundred Twenty-two Thousand, One Hundred Six and 97/100 ($2,822,106.97) to be disposed of according to law.

2. The complainants are instructed to make no further payments to the children of George J. Gould, deceased, under the decree of this Court made on the 7th day of July, 1925, in a cause therein depending, wherein George Sinclair Gould and others are complainants, and the complainants herein and others are defendants (Docker 57, page 700).

3. From the aforesaid balance in the hands of the complainants they be allowed the sum of One Hundred Thousand Dollars ($100,000.) for commissions; and there be allowed to M. Casewell Heine, for his fees as Master, the sum of Five Thousand Dollars ($5,000.); and there be allowed to the solicitors, counsel and guardians *ad litem* for fees and disbursements, as follows:

To Messrs. McCarter and English, solicitors for the complainants, the sum of Fifty Thousand Dollars ($50,000.); to Messrs. Gillespie and O'Connor, of counsel with the complainants the

sum of Fifty Thousand Dollars ($50,000.); to Messrs. Fisk & Fisk, of counsel with the defendants, Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees under the will of George J. Gould, deceased, the sum of Seventy-five Hundred Dollars ($7500.): to John P. Manning, counsel for the defendant Gloria Gould Bishop, the sum of Three Thousand Dollars ($3,000.); to Merritt Lane, counsel for Guinevere Dunsford individually and as one of the testementary guardians of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, and as counsel for Thomas Barber, guardian *ad litem* of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, the sum of Ten Thousand Dollars ($10,000.); to Messrs. Lindabury, Depue and Faulks, counsel for the defendants Kingdon Gould individually, Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., and Edith Gould Wainwright, the sum of Ten Thousand Dollars ($10,000.); to Charles A. Roberts, counsel for Marjorie Gould Drexel and Vivien Decies, the sum of Five Thousand Dollars ($5,000.); to Wilfred H. Jayne, Jr., guardian *ad litem* for the other infant defendants, the sum of Twenty-Five Hundred Dollars; and to Messrs. Davis, Polk, Wardwell, Gardiner and Reed, counsel for the complainants in New York, the sum of Fifteen Thousand Dollars ($15,000.). The complainants out of the aforesaid balance in their hands do forthwith pay the several sums so allowed.

4. The complainants are instructed to deliver to Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees of the several trusts constituting the residuary estate of the said George J. Gould, deceased, all of the

balance so remaining in their hands after paying the allowances aforesaid, except a sum not to exceed Seven hundred thousand Dollars ($700,00.), which is also to be paid over promptly after settlement of controversy concerning taxes against the estate.

5. Nothing in this decree shall be deemed to adjudge that the allocation made by the complainants in any of their accounts as between corpus and income is or is not a valid allocation of corpus and income as between life beneficiaries and remaindermen in the several trusts constituting the residuary estate of George J. Gould, deceased.

E. R. WALKER,
C.

Respectfully advised

JOHN H. BACKES,
V. C.

BEFORE THE COMPTROLLER OF THE STATE OF NEW JERSEY.

In the Matter of the Estate
of
GEORGE J. GOULD.

Jersey City, New Jersey,
December 7, 1927, at 2 P. M.

Hearing in the above matter of proceedings to fix an inheritance tax that may be due to the State of New Jersey, before Theodore Rurode, a Special Investigator and Appraiser, at No. 1 Exchange Place, Jersey City, N. J.

Appearances:

George W. C. McCarter, Esq., and George J. Gillespie, Esq., of the New York Bar, for Schuyler Nielson Rice, as one of the Testamentary Guardians of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould.

Hon. Merritt Lane, for Guinevere Gould, both individually and as Testamentary Guardian for the Infants.

J. Fisher Anderson, Esq., for the Commercial Trust Company of New Jersey.

Mr. Lane: You may call the witnesses, Mr. Rurode.

Mr. Rurode: I call Mr. Rice.

SCHUYLER NIELSON RICE, being first duly sworn, testified as follows:

Direct examination by Mr. Rurode.

Q Mr. Rice, you are one of the executors of George Jay Gould, deceased? A Yes, sir.

Q And who died a resident of Ocean County in this State? A He did.

Q The date of his death was when? A May 16th, 1923.

Q How old was he at the time of his death? A Born in '58. He was born February 5th—no—he was in his fifty-nine years, I think.

Q I think you are right about that. A I don't remember just exactly.

Q How long had you known Mr. Gould? A Thirty years, up to the time of his death.

Q Were you connected with him in business? A I was.

Q In what way? A As a secretary.

Q For how many years, approximately? A Well, you see, I started in first—don't put that on the record—but I started in first in the Missouri Pacific.

Q Well, you were with him in various capacities? A In various capacities and as secretary, up to the time of his death, for about twenty-two years.

Q Where did Mr. Gould die? A At Camp Martin, France, right near the Italian border.

Q Were you in Camp Martin at the time and before Mr. Gould's death? A Yes.

Q For how long prior to his death were you there? A I arrived at Camp Martin on March 16, 1923.

Q How long had Mr. Gould, to your knowledge, been at that place—staying there? A I think—yes, I think he moved there in October, 1922; yes, October, 1922.

Q Do you know when he was last in this country? A Yes, he was in this country on May—May 30, 1922, he sailed.

Q He sailed for Europe? A He sailed for Europe.

Q Do you know of your own knowledge where he went from here? A He went from here to England.

Q Who was with him? A When he sailed?

Q Yes. A I think his son Kingdon.

Q Did you see him after that—after he had gone to Europe and before you went to Camp Martin in March of 1923? A No.

Q You never saw him between those times? A No.

Q You remained in this country, did you? A I remained in this country.

Q Did you learn anything about his itinerary in Europe while he was there? A Yes, I had heard from him at different times.

Q To where did he go? A He went to Scotland. After he was in England he went to Scotland. And he took a place there, a shooting place in Scotland, and then he went over to France. He was there—he went to Paris and he was there for a while before he went to Camp Martin.

Q His wife was Guinevere Gould? A Guinevere Gould.

Q Guinevere Sinclair Gould? A His second wife.

Q There were three children, were there not? A Yes, there were.

Q The three just mentioned for whom you are one of the testamentary guardians? A Yes, sir.

Q Are they all infants? A All infants; yes, sir.

Q Did Mr. Gould, while he was in Europe, so far as your information goes, go to Egypt? A Yes.

Q Except for hearsay, are you familiar with his health—the condition of his health while in Europe, other than at the time you saw him there in France? A No, I don't know anything about it except when I saw him.

Q Except what you heard? A What I heard.

Q Do you know Dr. Davis? A Davis?

Q Davies? A Davis—no.

Q You know there was a Dr. Davis, don't you? A Oh, yes; I know there was a Dr. Davis.

Q But you didn't know him? A I never met him.

Mr. Lane: Who was he?

Mr. McCarter: He attended Mr. Gould abroad. He was one of the doctors whose testimony I took abroad in September, 1924; or, rather, I cross examined him.

By Mr. Rurode.

Q Did you ever learn whether Dr. Davies—is it?

Mr. McCarter: Davis, as I remember it.

Q Did you ever learn whether Dr. Davis was with Mr. Gould at any place on the other side? A I heard he was. I don't know of my own knowledge.

Q You are sure he did not sail with him? A No.

Q Did Mr. Gould have a valet when he sailed?

By Mr. Lane.

Q Wait a minute; the record does not show what the witness meant when he said "No" in answer to that other question. A I don't think Dr. Davis sailed with Mr. Gould. I don't think he did. I think he went over with Kingdon later.

Mr. Lane: I am only interested in the fact, whatever the fact may be. Do you know what the fact is, Mr. McCarter?

Mr. McCarter: No.

The Witness: I don't know who sailed with him.

By Mr. Rurode.

Q You did not sail with him? A No.

Mr. McCarter: I think he went with him to Egypt. That is where you have the sailing with him in mind.

The Witness: Yes, he went with him to Egypt. Mr. Gould had quite a party, as I understand it, to Egypt.

Q Do you know anything about Mr. Gould's health at the time—whether he was ill, or complaining about anything? A Well, Mr. Gould had high blood pressure for several years. But when he sailed from here, I think Mr. Gould's health was not in serious shape at all. In fact, my idea is that if he had thought he was in serious shape at all, he would not have gone abroad.

Q You don't know anything about the trip to Egypt except from hearsay? A No.

Q So we have to get that some other way. When you saw him in March of 1923, you saw him where? A At Camp Martin.

Q How did you come to go there? A He sent for me—cabled.

Q Who went with you? A My family; that is, my wife and one child.

Q Did Kingdon go with you? A No.

Q When you got there did you see Mr. Gould? A I saw him the next day.

Q Where was he? A He was in his bedroom.

Q In bed? A No—sitting on the couch.

Q Did he have nurses? A Yes.

Q Who were they? Do you know? A I don't remember the names. They were English nurses, I remember.

Q Was there any doctor in attendance? A Yes.

Q Did you talk to Mr. Gould? A Yes.

Q Did you talk about his illness? A No, I did not speak about his illness.

Q Did he speak about it to you? A Yes, he told me he had been very sick.

Q Did he tell you how long he had been sick? A No, I don't think he did.

Q What was the matter with him? A Well, he seemed to have—

Q (Interrupting.) What did he tell you? A Well, he told me he had had an attack of pneumonia in Egypt.

Q In Egypt; and how often did you see him? A Well, I saw him about—I was at the Villa every day from then on, and I saw him; well, about every other day, I should say.

Q Did you remain there until he died? A Yes, they were staying at the Villa, and I was staying at the hotel.

Q Yes; you saw him every other day, did you? A Yes, sir.

Q From the time you went there until the time he died? A Yes, at least that.

Q During that time did he talk to you about what his health had been previously, and about his general illness? A He told me about his condition in Egypt.

Q What did he say about that? A He said that since he had pneumonia in Egypt it had left him very weak.

Q Did he talk about his blood pressure? A No, I don't think that he did.

Q Did he have any other illness besides pneumonia? A High blood pressure.

Q Any other physical ailment? A Not that I know of.

Q Was Mrs. Gould there at the Villa? A She was.

Q What doctor was attending him? A I don't know—what is his name? Do you know? Was it Dr. Rendall?

Q Rendall? A Yes.

Mr. Lane: Is that spelled "R-e-n-d-a-l-l"?

Mr. McCarter: That is right.

By Mr. Rurode.

Q Did you talk to Dr. Rendall? A Yes.

Q About his illness? A Yes.

Q You did? A I did.

Q In Mr. Gould's presence? A No.

Q Do you know about how long Dr. Rendall had been in attendance on Mr. Gould? A No,

I couldn't say that. I know he was very ill when he returned from Egypt. How long before he returned from Egypt, I don't know. You see, he moved down there in October.

Q When was he stricken with pneumonia in Egypt? A Some time in January, 1923.

Q In January? A Yes, he did not leave there, as I understand it, until the 3rd or 4th of January, from Marseilles. Then he took the boat down from Marseilles and then he got a boat up the Nile—I think at Cairo. He went up the Nile and he got very ill with pneumonia on the boat. You know there are very serious changes in Egypt. It is very warm in the middle of the day and gets very cold at night.

Q Was he sick more than once? A No, only once, so far as I know.

Q That was in January? A That was in January, 1923. That is right, isn't it?

Q Did you have any communication with Mr. Gould at any time in December of 1922, concerning the trust which his wife was executing? A Yes.

Q Was it in the shape of a letter? A Yes.

Q Or a communication? A Yes, a letter; a letter and telegram—a cable.

Q Let's see if I have copies of those. We have copies of those things somewhere, I suppose.

By Mr. Lane.

Q That was in December of what year? A December, 1922.

Q When did he die? Was it 1923? A 1923; in May, 1923.

By Mr. Rurode.

Q Do you know what the general purport of those communications to you was? Do you re-

member that? A Well, they were on his business generally.

Q I mean with reference to this trust. A Well, he had considered for several months transferring the trust—cancelling the trust to the Bankers Trust and transferring it to New Jersey. He didn't want to do that on account of this lawsuit in New York.

Q Let's see; did you receive a communication in the shape of a letter or a telegram from Mr. Gould about that? A Yes.

Q Which was it? Was it a letter or a telegram? A I received a letter, and I received also a cable.

Mr. Rurode: Wait a moment—let's see about this. I don't mean the letter about the $1,000,000. I am talking about the other letter.

Mr. Lane: Which one are you talking about now?

Mr. Rurode: The communication with reference to the cancellation of the trust with the Bankers Trust and redepositing it. There is the telegram.

By Mr. Rurode.

Q I show you a copy of the telegram and ask you to read it and see if that refreshes your memory. We can use that copy. Everybody has been using copies.

Mr. Lane: Certainly—there is no objection to it.

Q (Continued.) Is that a copy of the telegram? A I think it is.

Q The cablegram? A You have the original. I think that is the one.

Mr. Rurode: I guess that is it.

Mr. McCarter: Yes.

Mr. Rurode: I will have it marked in evidence.

(Paper referred to was marked State's Exhibit 1 of this date.)

By Mr. Rurode.

Q You knew about a deed of trust executed by Guinevere S. Gould to the Commercial Trust Company as Trustee, did you not? A I did.

Q When did you first hear about that? A I think it was in October, 1922, when it was first drawn.

Q Where was it drawn? A It was drawn by Taylor, Knowles and Hack.

Q Taylor, Knowles & Hack of New York? A Yes.

Mr. Anderson: I would like to enter my appearance now, if you are going into the Commercial Trust Company agreement.

Mr. Rurode: The appearance may be noted on the record.

Mr. Anderson: I appear for the Commercial Trust Company of New Jersey, trustee under the deed of trust of Guinevere S. Dunsford and for Mr. Rice.

Mr. Rurode: What were the last question and answer?

(Last question and answer repeated by the stenographer.)

By Mr. Rurode.

Q They are attorneys in New York, are they not? A They are.

Q And they are attorneys for the Gould Estate, are they not? A No, not now.

Q They were, were they not? A They were.

Q Were they George Jay Gould's personal attorneys at that time? A They were, yes.

Q At the time that the deed of trust was drawn, George Jay Gould and Guinevere Gould were in Europe—in France, were they not? A Yes, they were.

Q At whose request was that deed drawn by Taylor, Knowles & Hack? I mean, did you go down there and see them? Or did somebody else suggest it? A Well, it was drawn, I think, at Mr. Gould's direction.

Q How was that direction conveyed to Taylor, Knowles & Hack? Do you know? A Why, I don't remember whether it came through me or came through them; that is, whether the instructions came to me and I saw them, or whether the instructions came direct to Taylor, Knowles & Hack.

Q Did you see Taylor, Knowles & Hack or any member of the firm about the trust? A I did.

Q Before it was drawn? A Yes, sir.

Q Did you talk with them about it? A Yes.

Q As Mr. George Jay Gould's representative, of course? A Yes.

Q Did you see it after it was drawn and before it was executed? A I executed it. I was one of the parties to it.

Q Did you execute it before it was executed by Guinevere Gould, or afterwards? A Afterwards.

Q My question was, before it was executed did you see it? A Yes.

Q Who forwarded the papers to France? Was it you, or Taylor, Knowles & Hack? A I think I did.

Q I show you a copy of that paper—I suppose we can use a copy for the present; the original is now with the Commercial Trust Company—.

Mr. Lane: Yes.

Q (Continued.) And I call your attention to the Schedule A which is a list of securities annexed to that deed of trust. I ask you if that list was annexed to it at the time it was forwarded by you to France? A Yes, it was.

Q Did you furnish that list to Taylor, Knowles & Hack—that list of securities? A I think I did. I think I was holding those securities for her at that time.

Q You were holding them for her? A Yes.

Q By "her" you mean Mrs. Gould? A The Lady Dunsford.

Q How long had you been holding them for her? A I think we bought some of those securities about two months before the trust was entered into.

Q At her request? A At her request.

Q And with whose money? A With her money—her check.

Q Were any of the securities mentioned in Schedule A ever owned by Mr. George Jay Gould? A Fifty bonds of Orange, four and a halfs.

Q That is $50,000 of West Oranges 4½'s? A Yes, sir.

Q And the rest were owned by whom? A They were purchased by her.

Q With whose money? A With her money.

Q And did Mr. Gould direct anyone to turn over that $50,000 of West Orange school bonds to the trust? A Yes, he had those set aside as a birthday gift to her.

Q When? A Well, I think her birthday is in September, isn't it? I don't remember the exact date.

Q You mean he had it set aside for a previous birthday? A After he went abroad, it is my understanding that he directed those to be set aside for her.

Q For a birthday that had happened in 1922, or one that would happen in 1923? A Oh, no, no—it was in 1922.

Q Whom did he direct to do that? A Me.

Q He directed you to do it? A Yes.

Q How did he do that? Was it by letter to you? A Yes.

Q Have you that letter? A I have that letter.

Q You have such a letter? A Yes.

Q Have you it with you? A No; I turned it over to Mr. McCarter.

Mr. McCarter: He turned over quite a bunch of letters to me.

The Witness: It is in that letter.

Mr. Rurode: Have you them?

Mr. McCarter: I have them in my office.

Mr. Rurode: Let me have a copy of it.

Mr. McCarter: You may have the original, if you want it.

Mr. Rurode: No, make a copy of it. Just say it is a true copy. I don't want the original. That letter may be marked in evidence as State's Exhibit 2.

(The copy of letter to be furnished by Mr. McCarter is considered marked in evidence as State's Exhibit 2 of this date.)

Mr. McCarter: Let me understand this. This is to be the letter which contains instructions to give a $50,000 birthday gift?

Mr. Rurode: Just for my information now, because we do not have the letter here, what did he say in the letter?

The Witness: The letter contained other things about his affairs.

Mr. McCarter: Such of these letters as I read, Mr. Rurode, contained general instructions about the affairs and family gossip.

Mr. Rurode: Then you may just make a copy of that part of it and excise the other part.

The Witness: I think it was for her birthday. Of course, the letter would refresh my memory on it, but I am pretty sure he directed it to be set aside for her birthday.

By Mr. Rurode.

Q I think you said that the instructions with reference to drawing this deed of trust by Mrs. Gould to the Commercial Trust Company came from George Jay Gould and not from her? A Well, I never had—I don't think I ever had any communications which—yes—I did, too; I had some communications, and I think in connection with this it came from Mr. Gould.

Q And he told you to put those certain securities which you had in your possession then in this deed of trust? A Yes.

Q And that is the letter which you will produce?

Mr. McCarter: No—it is not the same letter. We are talking about different letters; the letter about the birthday gift, and the letter about the trust.

Q Have you any written communication with reference to this trust? A Yes, I think I have.

Q Will you produce that communication? A Yes, I will. Off the record, naturally—I would not have had a deed of trust drawn unless I was instructed to, nor would he have signed it.

Q You say you went to Camp Martin in March of 1923? A March, 1923; March 16, 1923, I arrived there.

Q I show you a photostatic copy of a letter, and I ask you if you recognize it? A I certainly do.

Q Was that letter written in your presence? A It was.

Q And signed in your presence, was it? A It was.

Q It is in your handwriting, is it not? A In mine.

Mr. Rurode: I offer this letter in evidence.

(Paper referred to marked State's Exhibit 3 of this date.)

By Mr. Rurode.

Q Did Mr. Gould talk to you about this letter, or about this proposed transfer of $1,000,000 to

his wife, which is referred to in this letter? A He did.

Q Before the letter was drafted? A He did.

Q At that time he was in bed, was he not? A He was in bed part of the time. He was on a sofa at that time. He was on a sofa every day.

Q He was very ill, too? A He was very sick.

Q And had consulted specialists? A He had consulted specialists from England.

Q And he had a doctor in attendance? A Yes, had a doctor there every day; yes, sir.

Q And nurses? A Nurses, yes.

Q A day nurse and a night nurse? A Yes, sir; I think he did.

Q Did Mr. Gould talk to you about the chances of living or dying at that time? A No.

Q He knew he was a very sick man, did he, from what he told you? A Oh, yes; he knew that he was a very sick man.

Q Did he tell you why he was going to make that transfer to his wife? A No.

Q What did he say about it? A He simply told me that he wanted it done. I talked to him two or three times about it, and finally, one day he called me in and instructed me to do it.

Q When did he first speak to you about it? A Well, I think it was about—let's see; I got there on the 16th; I think it was on the 18th that he first spoke about it.

Q What did he say? A He said that that $1,000,000 that he had set aside he wanted to turn in and put it into Mrs. Gould's trust.

Q Which $1,000,000 did he refer to? Was it this $1,000,000 in the Commercial Trust? A The $1,000,000 which he ordered set aside before he had gone abroad.

Q He wanted that put in Mrs. Gould's trust? A Yes, sir.

Q Did he tell you why he wanted it put in Mrs. Gould's trust? A No.

Q That is all; did Mr. Gould direct you to write this letter? A He did.

Q And then he signed it? A He did.

Q And it was forwarded, of course? A I forwarded it.

Mr. Rurode: I suppose we can stipulate without any further testimony that the $1,000,000 of Liberty 3½'s were actually transferred into her trust?

The Witness: Oh, yes.

Mr. Lane: That is stipulated. We have them.

Mr. Anderson: We did have them.

By Mr. Rurode.

Q At the time he signed this letter, was he in a very weak physical condition? A Yes, I will say he was.

Q He was in bed, wasn't he? A Well, he was in the bed and on the sofa, too. At the time he signed the letter he was sitting upon the bed—leaning over the edge of the bed.

Q He was in bed, but leaning over the edge of the bed? A Yes, on the table.

Q As a matter of fact, he was not able to guide the pen himself, was he? A Well, he started to sign it, and then—Mr. Gould has a very quick movement. He started to sign it, and he drove the pen into the paper, and he called for his wife to come and help him to sign it. She got him another pen.

Q She got him another pen, and then she rather guided his hand, did she? A Yes.

Q Was there a nurse in the room at that time? A No.

Q Was there a nurse in the room just before that? A Well, half an hour before that I had been in there about a—

Q (Interrupting.) He was taking medicine, was he not, at that time, continually, for his illness? A He was taking something; mostly, I think, something to make him sleep; I think more of a bromide.

Q He did not have pneumonia then, did he? A No, sir.

Q Just blood pressure? A He had gotten over the pneumonia. He was just affected by the pneumonia.

Q His condition? A Weakened condition.

Q His entire health was broken down, wasn't it? A Yes.

Q And he had that appearance, did he not? A Yes, sir.

Q After he signed the paper, did he get up? Or did he remain in bed? A No, he was sitting on the edge of the bed, leaning on the table.

Q What do you mean by siting on the edge of the bed? Do you mean he had his feet hanging out? A No, his feet were out.

Q He was sitting on the edge of the bed? A Yes.

Q How long was he there? A Well, I was not in the room for more than twenty minutes after that. I don't know whether the nurse put him back in bed, but he was sitting on the sofa and going to bed, and after he got tired of being in bed he went to the sofa again. But after he signed that letter I think he signed several checks, the next day.

Q That is not a very good signature for George Jay Gould, is it? A Well, I have seen—I have seen Mr. Gould sign his name that way; sometimes better and sometimes about like that. He was a man who signed it quickly—quickly, like that (illustrating).

Q I notice two "G's" here beginning the name George. How did that happen? A I think that happened when he started to use one pen and it stuck, and he got another pen and signed it over again.

Q And when he usually signed the name George, did he generally sign it "Geo." or "George"? A Always.

Q Always "Geo."? A Yes.

Q Did he form the letters "G-e-o"? A No, just a sort of scratch; wasn't really any form.

Mr. Rurode: You may cross examine, or examine, or whatever you call it. I don't think I will proceed any further with this at the present time.

Cross examination by Mr. Lane.

Q I have only a question or two to ask the witness at this time while the record is in this condition. When were those securities sent by Mr. Gould? You said something about the securities— A (Interrupting.) Why, Mr. Gould sent a cable over, I think, around the first part of March, for Kingdon and I to get those securities out of his box and deposit them with the Commercial Trust Company subject to his order.

Q That was in 1923? A In 1923; I think it was the first part of March. I can easily get the exact dates.

Mr. McCarter: It will be right in his testimony here.

Mr. Lane: Who has copies of this testimony taken over in France, Mr. McCarter?

Mr. McCarter: These are my copies here that I have sent to Mr. Rurode.

Mr. Lane: I would like to see them some time or other.

Mr. Rurode: Do you wish to examine him on any other matter?

Mr. McCarter: No. I have nothing to ask him at this time about the taxability of this gift.

Mr. Lane: Under those circumstances, I am through.

(Discussion off the record.)

Mr. McCarter: I will ask Mr. Rice some questions about that matter.

By Mr. McCarter.

Q Mr. Rice, this trust in the Commercial Trust Company of New Jersey between them and yourself, before the deposit of $1,000,000 of Liberty bonds, was composed of how much, in round numbers? A $625,000, par value.

Q Had any of that $625,000 par value been part of any previous trust? A It had.

Q What trust? A It was a trust which Mr. Gould established with the Equitable Trust Company of New York on September 17, 1917.

Q Who were the beneficiaries of that trust, or who was the beneficiary? A Guinevere Gould; Guinevere Sinclair.

Q Did Mr. Gould in that trust reserve the power to revoke it? A He did.

Q And did he revoke that deed of trust? A He revoked it on July 26, 1918.

Q What did he do with it then? A He turned the trust over to the Bankers' Trust Company.

Q Who was the beneficiary of that trust? A Guinevere Sinclair.

Q Did he reserve the right to revoke that trust? A He did.

Q Did he exercise that right? A He did; on December 18, 1922.

Mr. Rurode: Why don't you put them right in evidence?

Mr. McCarter: I will. Have you both of them? Or is that only one of them?

Mr. Rurode: That is the Bankers' Trust Company. That is the only one you want now.

By Mr. McCarter.

Q I show you a photostatic copy of a deed of trust between George Jay Gould and the Bankers Trust Company, and I ask you if this is the deed of trust to which you have just referred? A It is.

Mr. McCarter: I offer that in evidence.

(Paper referred to marked Executor's Exhibit A of this date.)

Mr. Anderson: Put the date of that on the record, please.

The Witness: July 26, 1918.

By Mr. McCarter.

Q I show you another document addressed to the Bankers' Trust Company and dated December

New Jersey State Library

18, 1922, signed George Jay Gould, and I ask you if that is a photostatic copy of the revocation by George Jay Gould of Exhibit A? A It is.

Mr. McCarter: I offer that in evidence.

(Paper referred to marked Executor's Exhibit B of this date.)

By Mr. McCarter.

Q Mr. Rice, did you have any conversations with Mr. Gould from which you learned his reason for changing the trust from the Equitable Trust Company to the Bankers' Trust Company? A I had some letters from him.

Q Some letters; mind you, I am not referring to the change from the Bankers' Trust to the Commercial. I just referred to that from the Equity to the Bankers' Trust. Did you have any letters or conversations on that? A Oh, well, Mr. Gould was here at the time.

Q Yes, certainly. That is why I asked you that question; do you know why he changed it from the Equitable Trust Company to the Bankers' Trust Company? A I have forgotten now.

Q Yes. A I have forgotten now just what he did.

Q Was there anything concerning the income tax and a difference in position taken by one trust company and the other? A I think it was that. I think it was.

Q Does that suggestion of mine refresh your recollection at all? A I think—it was my impression that the Equitable Trust Company said that Mr. Gould would have to put the income from that in his own return, and the Bankers' Trust Company said that if he made the trust

with them for three years they would report the income. That is my impression.

Q Was the principal of the Equitable Trust Company's trust and the Bankers' Trust Company's trust the same amount? A It was.

Q Was the trust originally created with the Equitable Trust, or had there been an earlier trustee or trustees of that trust? A No, there was an earlier trust; George Gould and Kingdon Gould were the trustees.

Q Of that same amount? A That same amount.

Q When was that trust originally set up? A I haven't that date. That was back in 1917. I think that was in March, 1917. It was written off Mr. Gould's books; and then Kingdon went to war, and when Kingdon went to war, he transferred it to the Equitable Trust Company.

Q Had the principal of the trust remained substantially the same from the time it was set up with Kingdon, one of the trustees, down to the revocation of the trust with the Bankers' Trust Company? A I think in 1918 there was one substitution. Mr. Gould—there were some Anglo-French bonds which he took out of the trust and put in some St. Louis and Southwestern first mortgage bonds. That is my impression.

Q I don't mean so much a change in investments; but did the total amount of the principal of the trust remain substantially the same during all those years? A Well, the principal amount practically remained the same except that he took out one hundred Anglo-French bonds and put in 5,000 St. Louis and Southwestern bonds to make up the same amount, because they were selling at different prices.

Q Yes. A I think that was 1918—1917.

Q At the time that Mr. Gould revoked the trust with the Bankers' Trust Company, he was the defendant in a suit in the Supreme Court of the State of New York, growing out of the estate —of his management of the estate of his father, Jay Gould, as executor and trustee, was he not? A He was.

Q In that suit was there an effort to surcharge George Jay Gould being made? A There was.

Q At the time of the revocation of the Bankers' Trust Company trust, had George Jay Gould been removed as trustee? A He had.

Q By an order of the Supreme Court of New York? A Yes.

Q For misconduct as trustee or as the result of charges of misconduct? What is your answer to that? A Yes.

Q Do you know whether or not Mr. Gould was fearful of a large judgment being entered against him in the New York Supreme Court in that case at the time he revoked this trust of the Bankers' Trust Company? Or, if "fearful" is too strong a word, did he have it in mind as a possibility? A Well, he thought—you see, he was abroad. He thought that this trust might be seized by Walker.

Q Who was Walker? A Counsel for Frank Gould.

Q Was Walker then counsel for Frank Gould in this case? A I think he was.

Q At the time of the revocation of the trust in the Bankers' Trust Company, had George Gould's income under his father's will been impounded by an order of the New York Supreme Court? A It had.

Mr. McCarter: I think that is all I can bring out, short of these letters.

Mr. Lane: Do I understand that there is no further testimony going to be taken this afternoon on the question of that million dollars and the taxability of the gift?

Mr. Rurode: I am informed that there is nobody else here who knows anything about it—about the condition of health of George Jay Gould at that time. We will not take any more this afternoon.

Mr. Lane: Then I will go. I have a will to probate in the prerogative court myself.

Mr. McCarter: Were you in Europe?

Mr. Langford: Yes.

Mr. McCarter: Oh, well, then will have some questions to ask him.

Mr. Lane: Well, I will stay a few minutes.

GEORGE P. LANGFORD, being first duly sworn, testified as follows:

Direct examination by Mr. Rurode.

Q Mr. Langford, you knew George Jay Gould in his lifetime, did you not? A Yes, sir, I did.

Q How long did you know him? A About twenty-five years or so.

Q Did you work for him? A Yes.

Q What position did you hold with him? A I was in control of his house.

Q At his home? A At his home.

Q Do you know when he died? A Yes, May 16, 1923.

Q He was living in Europe then? A He was.

Q Did you go to Europe with him? A I met him in Europe, in July of 1922.

Q You went to Europe in July of 1922? A Yes.

Q With Mr. Gould? A No, I went later. Mr. Gould, I think, sailed the end of May, 1922.

Q Where did you meet him? A I met them in London. I went there for the purpose of controlling a house in Scotland and making the arrangements for them, and so forth, and leasing.

Q How long did you stay there? A Well, then I leased this place for them in Camp Martin and set them up there, and then had to come back to New York on other business.

Q Did you see Mr. Gould quite often while he was in Scotland? A While he was in Scotland I saw him all the time, yes.

Q What was his health and what were his general habits? A Well, he took part in sports; he used to play golf, and shoot, and so forth.

Q He went shooting? A He went shooting.

Q How long did that continue? A Well, we stayed there until, I should not, about September 15th.

Q Were you with him all that time? A Oh, yes.

Q During that time was he ill at all? A Oh, yes, he was laid up sometimes from his blood pressure, but he was always around, and had no fear of himself at all.

Q Never mind that. You don't know what fear he had, do you? A Well, I do, in a way.

Q Did he talk to you about it? A Well, he would, yes, sir.

Q What did he say about that? A Well, his blood pressure would be bothering him, and he

would say—he would rest up, you know, and all that sort of thing.

Q Did he have a doctor? A He had a doctor and dieted and reduced his general activity, don't you know.

Q His doctor would diet him and he would rest up? A Yes, and he would be all right again—reduced his blood pressure.

Q Did Mr. Gould talk to you about that condition of his health? A Not freely, no.

Q What doctor attended him in Scotland? A Well, they had a local doctor; —had to call in a local doctor.

Q What place was that? A Grantown-on-Spey.

Q How often did the doctor attend him there? Do you know? A Well, I couldn't say how often; just once in a while.

Q Were any of these children there with him? Were any of these infants there with him? A Of the second marriage?

Q Of the first marriage? A Yes, George was there.

Q Was he the only one? A That was the only one.

Q Where did they go to from Scotland? A They went to London and then went touring in France.

Q Did you go with them? A No, I never traveled with them.

Q When did you come back to America? A I came back the early part of September or the end of October, 1922.

Q When did you next see Mr. Gould? A Well, I arranged for a place for them at Camp Martin and established it for them, and then they went down there and I left and came back to New York.

Q Did you see them at Camp Martin? A Oh, yes.

Q When did you see them there? A Well, I think about the time—

Q (Interrupting.) No—when you first saw him there? A Well, he probably arrived there about the latter part of October.

Q 1922? A 1922.

Q Did he have a Dr. Davies with him at that time? A No, Dr. Davis was not there.

Q Did he have any doctor then? A Yes, this Dr. Rendall was a local physician. He came in to see Mr. Gould, yes, sir.

Q How often? A Not very often at that time. Mr. Gould was feeling pretty well then.

Q How long did you stay at Camp Martin? A Well, I think I sailed the 28th of November, or around that time.

Q You came back to America? A I came back to New York.

Q Did you talk to Mr. Gould about his health at that time, or did he speak to you about it, I should say? A Oh, yes—just passingly, you know. He would have these spells of blood pressure; I would not say excessive blood pressure, but he suffered from high blood pressure and had spells.

Q He was complaining about blood pressure? A Yes.

Q And he had been treated for it? A Yes, for some time.

Q Did he complain about his heart? A No, I don't think he was aware of the heart condition.

Q What was he doing there? A In a general way, do you mean?

Q His general habits? A Well, he was motoring and walking—didn't do very much at that time.

Q He didn't do very much walking? A There wasn't very much in the way of activities at that time. It was early in the season there. He went to that place just to establish the family, and then they were planning to go to Egypt.

Q Did he have any nurses in attendance? A No, not at that time.

Q Up to the time you left there were no nurses in attendance? A No.

Q That is at Camp Martin? A Yes.

Q When did you go back there? A I did not return.

Q Oh, you never returned? A No.

Q Did Mr. Gould have heart trouble, too? A No.

Q He never spoke of that to you? A Never said anything about heart trouble, no, sir.

Mr. Rurode: That is all on this particular subject.

Mr. Lane: I don't think I have anything. May I be excused?

Mr. Rurode: Yes.

Mr. McCarter: I do not think I have any questions to ask Mr. Langford, on that point, at least.

Mr. Lane: Mr. Anderson, are you going to order a copy of this?

Mr. Anderson: Yes.

Mr. Lane: I guess I had better have one, too.

Mr. McCarter: I want one, too.

Mr. Anderson: I want a copy.

Mr. McCarter: Mr. Rurode has written me several letters asking for certain informa-

tion with respect to matters in general. I do not think they particularly concern you at all.

Mr. Anderson: It is not going to touch this trust?

Mr. McCarter: No, not at all. It is just a number of detailed questions in connection with the estate.

Mr. Anderson: Very well. Goodbye.

Mr. Gillespie: If the Comptroller's representative will excuse me, I will leave.

Mr. Rurode: Yes, Mr. Gillespie.

Mr. McCarter: Mr. Rurode, would you rather have me put this all in affidavit form instead of doing it now? The only reason why I suggested doing it now was that I was right here and you were here. I was about to put it in affidavit form when I got your letter stating you would put on Mr. Rice for a hearing today. It won't make any difference to me how I do it. I have the material.

Mr. Rurode: Which would you rather do? I think I would rather have it in affidavit form. It would be more compact.

Mr. McCarter: Very well; suppose we put it that way.

IN CHANCERY OF NEW JERSEY.

Between

GUINEVERE S. GOULD,
Complainant,

and

COMMERCIAL TRUST COMPANY,
Defendant.

On Bill, etc.

A DEPOSITION of MISS ROSE DAVY, of 27 Westbourne Grove, Scarborough, Yorke, taken *de bene esse* to STIPULATION BETWEEN THE PARTIES HERETO in London, August 15, 1924, at 3 o'clock in the afternoon.

Appearances for complainant: Messrs. Lum, Tamblyn & Colyer, by Ralph E. Lum, Esq.

Appearances for defendant's executors: Messrs. McCarter & English, by Geo. W. C. McCarter, Esq.

It is stipulated and agreed by and between the counsel as above that the Deposition of the Witness may be taken stenographically and afterwards reduced to typewriting, the signature of the same being waived: This testimony being taken by Miss A. J. James of 39 Bramham Gardens, South Kensington, S. W. 5., a person agreed upon between the solicitors above mentioned pursuant to the terms of the stipulation dated July 8, 1924.

Direct examination by Ralph E. Lum.

MISS ROSE DAVY, being duly sworn by Master Chancery of New Jersey on her oath testified as follows:

Q What is your profession? A Nurse.

Q Are you a graduated nurse? A Yes, from the British Hospital, Buenos Aires.

Q Did you know the late George J. Gould during his lifetime? A Yes.

Q Did you act as his nurse during his illness? A Yes, in 1923.

Q Do you recall about when you started your duties? A March 1, 1923.

Q For how long were you there? A Up to when he died, May 16th.

Q Did you as part of your duties keep a chart of records? A Yes.

Q Were there other nurses there at the time with the case? A Yes, but not when I was on duty.

Q How many and what other nurses? A He began with two, a night nurse and myself on day duty, but we gradually got to three and then four.

Q When did you go to three? A About March 27th.

Q Up to March 27th there were just the two nurses? A Yes, myself and Miss Watkins.

Q I show you copies which are photographic and are used by consent in place of the originals which are in America, and ask if you recognize these as being your records? A Yes, all mine.

Q They cover the period March 12, 1923, to March 31, 1923, do they not? A Yes.

Q Were the entries on these charts made at the time indicated by the dates? A Yes, every one.

Q Were they the usual charts such as you keep in a case of this kind? A Yes.

Q Where was Mr. George J. Gould during his illness? A In his Villa at Cap Martin, Alpes Maritimes, France.

Q What part of the Villa was he in? A A suite of rooms on the second floor.

Q Facing which way? A Facing the sea and South.

Q What were the rooms in the suite? A Three, a bathroom and large bedroom and large boudoir.

Q Who were his doctors while you were there? A When I went Dr. Rendall of Mentone was in charge of the case and Dr. Davis, his own doctor of New York, visited him twice a day.

Q Was there any other doctor while you were there? A Yes, Lord Dawson of Penn was sent for to consult with Dr. Rendall.

Q Do you remember when he came? A He came on the 20th March.

Q Do you recall the general condition of Mr. Gould at about that time? A Yes, I do very well.

Q Will you tell us what you observed? A On the 20th March Mr. Gould expected Lord Dawson of Penn would come rather early in the day. It was arranged that the consultation should be at 7 o'clock in the evening, consequently Mr. Gould got a little restless during that day, but this was owing to his wanting to see Lord Dawson so very much. When Lord Dawson did come he was in a good condition—he knew exactly what he said and what he did.

Q Were you in the room while Lord Dawson was there? A All the time.

Q Do you recall any conversation that took place? A Yes. Mr. Gould knew Lord Dawson very well. He had seen him in London and spoke of the visits he had made to London some time before. I do not recall any of the actual conversation, but Lord Dawson went over Mr. Gould and examined him thoroughly.

Q Was Mr. Gould conscious? A Yes.

Q Did conversation take place during the entire visit? A All the time.

Q What did you observe thereafter for say a week as to Mr. Gould's mental condition? A That he was perfectly all right.

Q Did he know you? A Always.

Q Between March 20th and March 21st what did you observe? A He was perfectly normal although slightly restless at times.

Q Did you note any mental aberration whatever between the time you came and a few days after Lord Dawson had been there? A No, although he was sometimes drowsy in the mornings, but he always knew me.

Q When is the first note on your chart? A 28th March.

Q What is that note? A That he was "wandering." (3 o'clock.)

Q Had you observed any wandering before that? A No.

Q Were the servants, butler, maids, etc., in the room during this time or were they not? A No, except one, his valet, John Spencley. He came in frequently.

Q Did the courier come at times? A Yes, Mr. Collins.

Q When they came do you know whether matters of business were discussed? A Very frequently.

Q Had Mr. Gould at this time any difficulty in making himself understood? A He was perfectly clear.

Q The members of the family, Georgie, Lord Decies and others, did they come to see him? A Yes, they came in the middle of the day and always asked someone, usually me, if they could come and see Mr. Gould, and he was always seen by any members of the family if he was awake and if we considered his condition was good enough for them to see him.

Q Did he have conversation with them and know them? A He always knew them.

Q Up till the time of Mr. Gould's death were there times when he still recognized them? A Certainly.

Q On the 21st March will you tell me what was Mr. Gould's condition? A Mr. Gould was very much better on the 21st March. He had been pleased to see Lord Dawson the day before and I think he had given him confidence. He was pleased that Lord Dawson was coming again that morning to see him, which he did, I think, between 10 and 11 o'clock.

Q Did he talk to Mr. Gould conversationally? A Not very much about his physical condition and illness, but generally and he appeared quite pleased with everything Mr. Gould said.

Q Do you remember whether Scotland was mentioned? A Yes, they talked about certain places and Mr. Gould asked him if he decided to go up to Scotland whether he should go to any special place, and if so he would consult Lord

Dawson on the supposition that he might decide to go.

Q Do you remember when Mr. Rice came from America? A Yes, very well.

Q About how long was that before the 21st? A I think about four or five days.

Q Do you know whether Mr. Gould saw him quite regularly? A Very regularly, generally every day.

Q Do you know whether they discussed matters of business? A I believe they did.

Cross examination by Mr. McCarter.

Q I am interested in the medicines mentioned in the charts and direct your attention to Cachet Duirocardie and Veronal. How much of that did you give him? A One teaspoonful.

Q What is this at the bottom of the page? A Hepatic Pill.

Q What is this medicine at the bottom of the page on March 13th? A Paraldehyde, 2 teaspoonfuls only if drowsy. These were directions for the night nurse.

Q On the page of March 14th at 1:30 did you give him 2 teaspoonfuls of bromide? A Yes.

Q And what is this you gave him at about 5:35? A Asperin, 7½ grains with bicarbonate of soda in hot water.

Q And at 10:30 on March 16th what was it you gave him? A Luminal cachet.

Q How much was that? A I do not know the exact quantity made up in the luminal cachet. It was prescribed and ordered by Dr. Rendall.

Q What is a cachet? A A small white flat tablet covering a powder, which is made up in that way because it is easier to swallow.

Q I notice that on the bottom of the page for March 17th you included in your notes among other things: "No bad breathing attacks." Was he apt to have bad breathing attacks during that whole period? A Not all the period. When I first went Mr. Gould had rather serious breathing attacks, I think due a good deal to nervousness.

Q Where you do not note at the bottom of the page "No bad breathing attacks" does that mean that he did during that day have bad breathing attacks? A Not necessarily; if he had any bad ones I noted them.

Q Why on this particular page did you put down "No bad breathing attacks?" And I call your attention to the fact that on the previous pages, *i. e.,* prior to March 17th, there is no such entry as "No bad breathing attacks." Just look on these previous pages for March 16th-17th and see if you made any note as to bad breathing attacks? A There is no such note. At times when I put down "very restless" sometimes that included his breathing attacks.

Q What was your reason for making the entry in that negative form on March 17th? A I noted the fact that March 17th had been an exceptionally good day.

Q On March 19th at 3 P. M. you gave him some asperin. How much? A 7½ grains.

Q On March 20th I note that at 8:15 you have entered "Restless morning," and at 2:30 you have entered "Began to get very restless before 4 P. M." That was not an exceptionally good day? A No.

Q On March 24th there is a medicine beginning with L. you seem to have given him several times. A That is luminal.

Q What is this other medicine given at about 3:45? A Theobromine.

Q I notice that on March 26th you have entered towards the end of the remarks column on the first page an entry referring to March 26th. How did you come to make that entry? A That entry is not mine. Sometimes Miss Williams relieved me for an hour or two, and I went into the garden or further.

Q I notice that on March 28th the second entry in the remarks column is as follows: "Awake, quiet, mind clear." Will you look at these various pages and see if you can find any other entry of the words "Mind clear" or substantially the same note? A I have looked through these charts and I find no entry till that day.

Q Why do you make that entry referring to his mind being clear on that particular day? A Two or three days before, I think the 27th, he had a very bad night—I forget exactly which night—and he had had more sedatives than usual and was not very clear in the morning. He had afterwards had a quiet sleep and he no doubt awakened up quite refreshed and much better.

Q You want us to understand that at all other times except the time following that bad night and the sedatives that his mind was clear at all times covered by these charts? I am referring to the time immediately preceding his death. A Sometimes in the morning he was drowsy and his mind was not clear because the sedatives lasted for some considerable time. Sometimes it was given to him in the night, late.

Q Which of the medicines were the sedatives? A I cannot remember exactly what he had had or what he was taking, unless it was bromide,

paraldehyde and luminal. These were the three sedatives used. They were not usually given by me unless it was specially ordered by the doctor to be given during the daytime.

Q How long before his death was it that his mind began to wander and he did not recognize people and did not know what he was doing? A I cannot remember that, I cannot tell you.

Q Was it before the 1st April? A He died May 16th—I should think it would be before the 1st April.

Q Long before the 1st April? A That I cannot tell you, I have nothing to go on.

Q In these charts it tells me that the first time he wandered was March 28th? A That is the first time. No doubt he wandered at intervals especially in the mornings after his sedative from that day.

Q Do you recall when it was that his daughter, Lady Decies, first arrived? Was it before or after Lord Dawson's visit? A I cannot remember.

Q Do you recall whether he recognized her on her arrival? A Yes, he did.

Q What did he call her? A I cannot remember—I do not know her name. When any member of his family came to see him I generally went into the next room leaving him alone with them.

Q You would know what he would call his daughter and family when they came to see him, by what name? A He called them by their Christian names.

Q Did they always see him when they called? A Sometimes he was sleeping when they called and then they just looked at him and went away.

Even if they thought that he was just resting they never disturbed him.

Q You are sure that he never called any one of the members of his family by a wrong name—a wrong Christian name? A I cannot be certain of that because I was not always there and even if I was I did not pay great attention.

Q Did he always seem to know Mr. Rice? A Always as far as I can remember.

Q Were you there when Lord Decies saw him? A I was there sometimes.

Q Did he recognize him? A So far as I can remember he did.

Q Did he call him by name? A Yes, and shook hands with him and was always pleased to see him.

Q The same is true of his sons when they came? A Yes.

Q When did his oldest son, Mr. Kingdon Gould, come the first time? A I remember the night he arrived very well, but I cannot give you the date.

Q It was after the note on these charts? A Yes.

Q Mr. Gould recognized him? A Yes.

Q When did Mr. Jay Gould arrive, before or after Mr. Kingdon Gould? A After, I think.

Q Did his father recognize him? A Yes, so far as I know. I do not think I was in the room when he came.

Q And the other son, Mr. George Gould, had been there frequently? A Yes.

Q How was Mr. Gould's memory at this period? A Very good.

Q How did it show its being so? A If I took anything to eat he always knew what Dr. Rendall had ordered for him, and if I asked

him if he would have so-and-so he gave me to understand that he knew it had been ordered for him. He would not have taken anything from me unless it had been ordered by Dr. Rendall and he knew about it.

Q These were orders that had been given during the day or recently? A Yes.

Q Did you have any occasion to observe that his memory was good in respect of things that had occurred months ago? A He frequently told me about his visit to Egypt and before and of being up in Scotland in that time.

Q Did he ever seem to remember anything prior to his leaving America? A Yes, he told me that he had seen certain doctors in New York about his health. He seemed to know exactly what he was saying and doing. He spoke of having seen Dr. Davis in New York and told me about his house there.

Q Did he ever discuss business matters with you? A No.

Q He did not discuss his personal affairs such as the distribution of his estate? A No.

Q In your opinion at the time March 21st was he of such a mind that he could remember the contents of what I will call "a fairly complicated will," which had been approximately a year before? A Yes, he could.

Q I ask you to look at Exhibit "A" attached to the bill of complaint in this case and read it over and then tell me whether or not in your opinion on March 21st Mr. Gould's state of mind was such that he could understand so far as any one not a trained lawyer be expected to understand, that document? A Yes, I do consider Mr. Gould could understand this bill on the 21st March.

Miss Rose Davy, cross.

Q You say that the children were admitted to their father's room whenever you thought his condition was such that it would be proper for them to see him. Were there ever times when they asked to see him and you refused? A Sometimes. If Mr. Gould had had a bad night and perhaps dropped off to sleep about 9 o'clock in the morning and was still sleeping at 11 or 12 or had wakened up during that time and gone to sleep again, I told them and they preferred to let him sleep.

Q Did he sleep lying down or did he have to be propped up? A He slept propped up with pillows.

Q He was not able to sleep comfortably lying down? A He was generally much more comfortable well propped up.

Q During the day when he was awake was his mind alert or not? A That depended on the sedative he had had. If he had had a good night and slept it off, or if it was still working.

Q It generally was working in the morning? A Yes.

Q Did he ever have any hallucinations or delusions during the period covered by these charts? A No.

A DEPOSITION OF MISS LILIAN D'OYLY-WATKINS, of 11 Walerand Road, Lewisham, taken *de bene esse* to STIPULATION BETWEEN THE PARTIES HERETO in London, August 15, 1924, at 3 o'clock in the afternoon.

Direct examination by Mr. Ralph E. Lum.

MISS LILIAN D'OYLY-WATKINS, being duly sworn by Master Chancery of New Jersey, on her oath testified as follows:

Q What is your profession? A Nurse.

Q How long have you been such? A Eight years.

Q You are a graduated nurse? A Yes, of University College Hospital, London.

Q Did you have any connection with the case of the late Mr. George Jay Gould? A I was his night nurse.

Q When did you start your duties? A 18th February, 1923.

Q How long did you remain? A Until his death.

Q Did you as part of your duties keep charts? A Yes.

Q What did you note on these charts? A I noted the medicines given and any other particulars necessary for the doctors.

Q Did these charts differ from those you generally keep? A No.

Q These cover a period of what? A From March 11th to March 31st.

Q And you identify these charts as those made by you in connection with your duties in this case? A I do.

Note: I ask to have the Day Nurse charts marked respectively C. 1, as a whole, and the Night Nurse charts marked as a whole C. 2.

Q Briefly, when did you come on as night nurse? A At the beginning of the time at 8 o'clock.

Q For how long was that? A For the first two months I should think.

Q So that in March you were going on at 8 o'clock? A Yes.

Q For how long would you stay on? A Till 8 o'clock in the morning.

Cross examination by Mr. McCarter.

Q From the 1st March up till the 22nd or 23rd what did you observe as to Mr. Gould's general and mental condition? A His general condition was getting weaker.

Q And his mental condition? A His mental condition was much the same during that period.

Q When did you first begin to note a definite change in his mental condition? A At the end of March, about the 26th or 27th.

Q Take the period from the 20th to the 22nd, did he know you? A Yes.

Q Did you have any conversation with him? A Yes.

Q Did he answer questions? A Yes.

Q Will you tell us whether or not the answers were rational and germane to the subject? A Yes.

Q Did he have any memory? A Yes.

Q Give us something by way of illustration what you observed regarding his memory? A He told me of things that had been happening in the day.

Q Did he speak of anything that had happened before that, anything back in memory for months or a year before? A He talked of things in America.

Q And were the conversations rational and lucid? A He talked about the doctors in America and the medical methods there.

Q Would he be able to transact business? A Yes.

Q Did you ever discuss business with him? A No.

Q The medicines were prescribed as shown by the charts there? How did they affect his mind? A They did not affect his mind, they made him sleepy and drowsy.

Q When he had come out of the effect of the drowsiness how would his mind be, wandering or rational? A Rational.

Q Do you recall any instance in which up to March 26th he failed to recall any of his children by name or to know you or to be conscious of his surroundings? A No.

Q Did you follow the doctors' instructions with reference to the drugs that were to be given to him? A Yes.

Q Did you depart from them? A No.

Q I suppose the purpose of the sedative was to make him sleep? A Yes.

Q He slept as indicated on your chart? A Yes.

Q Therefore during your period of duty he was for most of the time under the influence of sedatives? A Yes.

Q Did you and he carry on conversations to any extent during the night? A He used to when I first went on duty before he went to sleep.

Q How long after you came on duty would you give him the sedatives? A Generally between 10 and 11 o'clock.

Q Therefore up till that time he was in substantially the same condition as far as you were concerned as he would be in the daytime? A Yes.

Q And you say there was a difference between his condition during those hours and his condition in the later part of the night after he had received the sedative? A Yes. He would be drowsy after he had had that medicine.

Q Were any members of his family in the habit of calling or being in the room during the night after he had had his medicine? A Mrs. Gould used to come to say goodnight.

Q Any of his children? A I do not remember any of the children.

Q So you are not in a position to say whether he was able to recognize his children or not? A I do not remember them coming in at night.

Q Take the day of March 11th, your entry at 6:30 A. M. indicates that you gave him 1 teaspoonful of bromide. Is a tenspoonful approximately the same as 2 drachms? A Yes.

Q At 10:45 on March 12th how much paraldehyde did you give him? A 3 drachms.

Q On March 17th, at 9 P. M., what is that medicine, and how much? A Paraffin, ½ ounce.

Q At 5:30 on March 18th how much bromide? A 10 grains.

Q At 10:15 on March 19th did you give him 20 grains of bromide? A Yes.

Q At 4:15 on March 20th did you give him 20 grains of bromide? A Yes.

Q During the night how did he sleep, in a chair or in bed or how? A Both. He would sit in a chair and sleep there for a change.

Q When he slept in that would he be propped up? A Yes.

Q When did he become to get worse mentally? A Towards the end of March. Being so weak the sedatives had more effect on him.

Q Prior to the 1st April? A Perhaps the last few days of March.

Q Coming to the 20th March what sedatives were you giving him? A 20 grains bromide, nothing else.

Q The 21st March? A 20 grains bromide.

Q No other medicine on those days? A No.

ADDITION TO MISS WATKINS' TESTIMONY.

Note: I wish to correct my testimony and now state that 1 teaspoonful is equal to 1 drachm.

IN CHANCERY OF NEW JERSEY.

Between

GUINEVERE S. GOULD,
Complainant,
and
COMMERCIAL TRUST COMPANY, *et al.*,
Defendants.

On Bill, etc.
Depositions.

MARJORIE GOULD DREXEL, a witness on behalf of the defendants being duly sworn by a Master in Chancery, testified as follows:

Q You are a daughter of the late George J. Gould, are you not? A Yes.

Q When did you first see your father after January 1, 1922, and where? A I saw him before he went to Egypt and I saw him the day he got back from Egypt at Cap Martin, France.

Q As nearly as you can, what was the date? A I do not remember.

Q Where was he when you saw him? A He was lying on a sofa surrounded by two nurses, his wife and his valet John Spencely.

Q What was his condition of health as far as you can see? A He had just come out of a fainting spell, he was crying and they were giving him brandy.

Q How frequently did you see him thereafter until his death? A I saw him twice every day until his death.

Q Were there any times when he did not recognize you? A Several times after that he did not recognize me.

Q Were any of those times prior to Lord Dawson's visit? A I do not remember.

Q Were any of those times prior to March 21, 1923? A Yes, they were prior to that.

Q Tell us how your father would act on these occasions when he did not recognize you. A Sometimes we would come in his room and he would say "Hullo" to us with a glassy look in his eye and we could see that he did not recognize us at all, because after a little while he would call us by a different name, for example "Edith" which is my mother's name.

Q Did he at any of those times say anything to you which would indicate that he thought you were your mother other than just calling you "Edith"? A Yes, he would say, please forgive me, please forgive me for all the wrong that I have done to you.

Q Did you ever have any difficulty in making your father understand what you had to say to him? A Yes, we did.

Q In what position would he generally be when you saw him? A He would be sitting bent over on a table with his arms on the table and his head down on the table.

Q Did he show much, of any, interest in what was going on about him? A No, he did not, except that at first upon his return from Egypt he did show an interest and seemed to be worried about his health, but after about a month after his return from Egypt his condition changed and he showed no interest.

Q Can you fix the date of this change with reference to either Lord Dawson's visit or your father-in-law being operated upon, or the 21st March, 1923? A The change came before Lord Dawson's visit.

Q How long before? A I should say about two weeks before.

Q Did you have anything to do with Lord Dawson's being sent for? A Yes, my husband and I and Uncle Howard and Neilson Rice insisted on having a good medical opinion.

Q Who was the physician in charge? A Dr. Rendall.

Q Was it to him that those of you whom you have mentioned insisted on a good medical opinion? A It was, to him and to my father's wife.

Q How long before Lord Dawson's visit did you first ask for the consultation of another physician? A About two weeks before.

Q Did Dr. Rendall seem anxious to have a consultation? A No.

Q On March 21, 1923, did your father in your judgment have sufficient intelligence to recall the property of which he was the owner and the natural objects of his bounty and to understand the effect of the signature of a document purporting to transfer one million dollars par value of liberty bonds to a trust for the benefit of the lady who is now his widow and their children? A He did not seem to me to be in any condition to do any business whatever.

Q Why not? A Because I thought at that time he was too mentally and too physically weak.

Q Would you at that time have relied on him to do any business for or with you? A I certainly would not.

Q Do you recall the date when your sister Lady Decies arrived? A Not the date.

Q Was it before or after 21st March, 1923? A I do not know, I never remember dates.

Q Can you recall whether it was before or after Lord Dawson's visit? A I do not know.

Q Dr. Rendall has testified that your father's condition on the day of Lord Dawson's visit was somewhat better than theretofore—in other words that your father was improved on that day. What is your recollection in respect to this? A My father's condition was not always the same and he might have been a tiny bit better when Lord Dawson came.

Q Did you ever have any difficulty in seeing your father or obtaining admittance to the sick room? A Yes, I did, a lot of difficulty.

Q From whom? A From the doctor and from the nurses.

Q Was your father's wife Mrs. Guinevere Gould in and about your father's room when you were there? A I was never allowed to be alone in the room with my father, there were always the nurses or Mrs. Gould there.

Cross examination by Mr. Lum.

Q Mrs. Drexel there were of course were there not many times at your father's return from Egypt when he recognized you called you by name and talked to you? A In the beginning.

Q How long a period do you include by the term "in the beginning." A I should say about three weeks after he got home—it might possibly have been a month or two weeks.

Q Do you remember Dr. Fellows Davis being there? A Yes, I do.

Q About how long was he at Cap Martin? A I cannot tell you how long.

Q Did your father ever fail to recognize you during the time that Dr. Davis was there? A I do not recall any time that he did not.

Q You wished Lord Dawson of Penn to be called into consultation because you considered him one of the leading medical men of the world, did you not? A I wanted expert advice.

Q Did you consider Lord Dawson expert? A I did.

Q Did you consider as convincing to you his opinion that at the time he saw your father, your father was sound mentally and capable of transacting any business? A I would have to abide by the doctor's opinion.

Q Mrs. Drexel, were you familiar with the fact that on various dates particularly the 7th, 8th, 19th and 21st of March, 1923, your father wrote in his own handwriting various cablegrams, some of a personal or family nature and some of a business nature? A Not all of those dates.

Q Would you be surprised to know that cablegrams which he himself wrote in his own handwriting on the dates mentioned have been placed in evidence in this case? A Yes, I would be surprised.

Q How many different dates do you recall Lord Dawson being at the Villa at Cap Martin? A I think he made three visits.

Q Do you recall whether these three visits were or were not on consecutive days? A On consecutive days, the three visits in two days.

Q Was there any particular time or times of the day when you went to see your father? A I went in the morning always before lunch, sometimes after lunch and always at night.

Q Do you recall whether your father was sometimes sleeping when you went in or had just awakened? A Sometimes he was sleeping and sometimes he had just awakened.

Q And when he had just awakened I assume he was not as clear in his mind as at other times? A That is so as to the early part of his illness, later I did not think that he was ever quite clear.

Q You do recall then regardless of dates a certain stage in your father's illness when he seemed to you to get physically and mentally much weaker? A Yes.

Q Up until that time, whenever the date may be, you considered, did you not, that your father knew the members of his family and what property he had and was able to transact business? A I think he recognized his children, but I do not think he was competent to transact business.

Q On what do you base that opinion? A I think to his extreme physical weakness.

Q But up until this bad attack you say your father knew his family, did he not also know what property he had? A I never talked about his property to him so I do not know.

Q Up until that time was there anything whatever to indicate to you that he did not know his property? A I have no reason to think this except his terrible weakness—I mean physical weakness, and think that must have affected his mind.

Q Did you and the others ask for consultation of a good medical expert, before Dr. Davis left or after? A After.

Q Do you recall that the visit of Lady Decies was a little while after you had written her a note? A Yes, soon after.

Q You wrote for Lady Decies after you had noted this change for the worst in your father? A Yes.

Q Mrs. Gould was not always in the room when you were there with your father, was she? A Not always.

Q Do you think that the nurse always stayed in the room while you were there with your father? A There was always somebody there.

Q After this bad attack as we have been calling it, your father again rallied, did he not? A I never thought he did.

Q Do you recall that your brother, George, had a business transaction with your father regarding an automobile some two weeks before his death? A I do not recall it?

Re-direct examination by Mr. McCarter.

Q Mr. Lum has referred to a bad attack suffered by your father, state whether or not the bad attack which you had in mind in answering Mr. Lum's questions took place before or after March 21, 1923? A After.

Q Or before or after Lord Dawson's visit? A After.

ANTHONY J. DREXEL, JR., a witness on behalf of the defendants, being duly sworn by a Master in Chancery, testified as follows:

Q What relation are you to Marjorie Gould Drexel who has just testified? A Husband.

Q Did you see Mr. George J. Gould, your father-in-law, after his return from Egypt in 1923? A Yes.

Q Did he at any time when you saw him fail to recognize you? A Many times.

Q Were any of these times prior to March 21, 1923? A That I could not say.

Q Did your own father undergo an operation in March, 1923? A I think it was the latter part of March.

Q Were any of the times when Mr. Gould failed to recognize you prior to your father's operation? A I do not remember that.

Q Were there any times when Mr. Gould in his conversation with you was at all irrational and, if so, state what he said? A Yes, on one occasion he told me he thought that he would take a walk to Constantinople as it was so near Cap Martin. On another occasion he told me to send in his valet, John Spensley, to get his dinner jacket as he thought he would like to go out and play a game of golf.

Q Can you place either or both of these occasions with reference to March 21, 1923? A Whether it was before the first visit to my father or immediately afterwards, I do not know.

Cross examination by Mr. Lum.

Q Whatever the date or time just referred to do you recall that thereafter and on alter occasions Mr. Gould recognized you and spoke to you? A Yes. Once I remember he asked how my father was.

Q Had he heard before that that your father had been ill? A Yes.

DR. FELLOWES DAVIS, JR., being duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Lum.

Dr. Davis, you are a physician and for how many years?

College of Physicians and Surgeons, 1899.

Did you professionally attend Mr. Gould in the last year or so of his life?

I did.

Were you with him on the trip to Egypt?

I was.

Did Mr. Gould have a serious illness during that trip?

He did.

What was its nature?

Bronchial pneumonia.

Did he recover?

He did.

How long did you continue with Mr. Gould?

My official capacity with Mr. Gould lasted until March 12, 1923, when I left Mento although after our return from Egypt he was directly under Dr. Rendall's care.

From the 1st of March, 1923, until you left on the 12th did Mr. Gould at all times recognize you?

He did always.

During this time in Egypt and after your return and up until the 12th March did you see Mr. Gould frequently or unfrequent?

Very frequently.

Did you at any time observe an irrationality or mental incompetence?

No.

Up until you left on the 12th March was Mr. Gould in your opinion competent to transact important business?

With the exception of a few hours at the time of one of his attacks, he was most decidedly.

And what is the date to which you refer about the attack?

The attack was in the nature of an arterial spasm which occurred the afternoon of Feb. 27th, or evening, immediately on his return to Cap Martin.

How soon after this attack did you talk with him?

Approximately, an hour.

And was he thereafter say from the following day up until you left perfectly normal and sane in every way?

Absolutely.

Can I ask you to state whether there was an incident the following day which would have proved to you Mr. Gould's memory and capacity mentally?

Yes, there were several incidents, but one in particular which emphasized his normal mental state.

Although at the time he was suffering from the attack referred to?

The evening on which the attack occurred while I was sitting with Mr. Gould, he made an effort to speak to me and to say that he had something for me which I must remind him to give me in the morning. The next morning when I visited him his first remark was to John, his valet, "get that package for Dr. Davis." The package referred to contained a rug which he had brought from Egypt to give me as a present and which he seemed anxious for me to have as soon as possible.

Did you a few days before you left speak of general subject with Mr. Gould?

Frequently.

Will you tell us whether he had a good memory for recent as well as for antecedent events?

At the time you left what is your opinion as to Mr. Gould's mental capacity to know the natural object of the bounty and the property of which he was possessed?

His mental capacity was perfectly capable of handling all his affairs.

Cross examination by Mr. McCarter.

And how was his memory?

Excellent.

You did not see him after, what date Dr. Davis?

March the 12th.

What was his condition pending the arterial spasm you have referred to?

Convalescent from bronchial pneumonia.

What I meant was, what was his condition pending the arterial spasm as compared with his condition immediately prior and subsequent to the arterial spasm?

During the spasm he lost to a great extent his power of speech and some power of motion but his mental condition was all right.

Was not his loss of speech and motion during that spasm the result of a then existing condition of the arteries in his brain?

He had general arterio sclerosis.

And being general, it existed in his brain as well as elsewhere?

Arterio sclerosis is a gradual progressive arterial change that takes place in everybody and involves all vessels.

Therefore, continuing at my question the condition existed as well in his brain as elsewhere?

To a very much less extent.

But to a sufficient extent to impair on the date which you have reference his power of speech and motion?

No because an arterial spasm may involve arteries in certain localities and not necessarily the arterial system at large.

What localities of the arterial system were in your opinion involved so as to cause the impairment of speech to which you have referred?

Motor speech area.

And that is in the brain isn't it?

In a certain locality, yes.

IN CHANCERY OF NEW JERSEY.

Between

GUINEVERE S. GOULD,
Complainant,

and

COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.*,
Defendants.

Deposition of Mr. Francois Carlin, taken *de bene esse*, pursuant to stipulation, before Christine Chisholm, a person agreed upon as satisfactory to the counsel for the respective parties, at Paris, on Monday, August 18th, at six o'clock P. M., it being stipulated and agreed by and between the counsel for the parties hereto that the deposition of the witness may be taken stenographically by Christine Chisholm, and afterwards reduced to typewriting, the signing of the same being waived.

Appearances:

For complainant, Lum, Tamblyn & Colyer by Ralph E. Lum, Esq.

For defendant executors, McCarter & English, by George W. C. McCarter, Esq.

MR. CARLIN, being duly sworn according to law, on his oath deposes and says as follows:

Direct examination by Mr. Lum.

Q What is your address, Mr. Carlin? A Care Monroe & Co., 4 rue Ventadour.

Q What is your occupation, Mr. Carlin? A Courier.

Q By whom are you engaged at this time? A By Ella J. Hoagland of New York.

Q Were you at any time employed by the late George J. Gould? A Yes.

Q In the month of March, 1923, were you employed by him? A Yes, I was.

Q Where were you at that date with him? A At Cap Martin.

Q What was the nature of your duties there? A General work of a courier principally. I acted as a little bit of a Jack of all trades.

Q Just what did you have to do in your services as courier for Mr. Gould? A I looked after the mail and the principal occupation was traveling. When not traveling, I looked after the mail, sent cables, went after the doctors, after the chemists.

Q You say you had to do with the sending of cables for Mr. Gould? A Yes.

Q I will show you a photographic copy of a cable to Mr. Rice. (Paper offered in evidence and marked "C-3-A CC".) Is that your handwriting? A Yes.

Q Tell us the history of that cable. From whom did you receive it? A I received it direct from Mr. Gould.

Q I will show you another. (Paper offered in evidence and marked "C-3-B CC".) A I received it direct.

Q I will show you another cablegram of the 8th. (Paper offered in evidence and marked "C-3-C CC".) Whose handwriting is that? A Mine.

Q From whom did you receive it? A I could not say for certain from whom I received it—

from Mr. Gould direct or someone in the household.

Q I will show you another. (Paper offered in evidence and marked "C-3-D CC".) A I think I got it direct from Mr. Gould.

Q I will show you another. (Paper offered in evidence and marked "C-3-E CC".) A I think I got that from Mr. Gould, too.

Q I will show you another. (Paper offered in evidence and marked "C-3-F CC".) A That, I think, I got from the valet. Mr. Gould handed it to the valet.

Q In whose handwriting was that? A In Mr. Gould's handwriting.

Q But the valet handed it to you? A Yes.

Q I will show you another. (Paper offered in evidence and marked "C-3-G CC".) A That I got from Mr. Gould.

Q I will show you one of March 21, 1923. (Paper offered in evidence and marked "C-3-H CC".) A That I received direct from Mr. Gould.

Q I will show you one undated addressed to— Whose handwriting is that? A Mine.

Q Do you remember how you received it? A No, I do not remember.

Q It is your handwriting? A Yes.

Q Have you any recollection from whom you received it? A No.

Q In whose handwriting was it when you received it? A In Mr. Gould's. I received none that were not in Mr. Gould's handwriting.

Q During this time covered by the cables did you see Mr. Gould yourself? A Yes, I saw him every day.

Q During the time covered by these cables did he ever fail to recognize you? A Never.

Q On the occasions when he dictated these to you or discussed them with you, did he seem to know what he was doing? A Yes. He never dictated any cables to me. When there was any talk Mr. Gould was always in his right mind when referring to these telegrams.

Q Up to the end of March what was his mental condition when you saw him? A His mental condition was always normal. He was ill, but mentally he was clear in his mind. With regard to conversations I had with him, he was always clear.

Q On this 21st of March when these two cablegrams were sent, was he, from what you observed, able to transact important business? A From what I could see, he was.

Q Would you have had any hesitation, Mr. Carlin, in doing business with him on that date? A None at all.

Q I will show you a paper as follows:

"Villa Zoraide
Cap Martin (A.M.) March 21st, 1923.
"Commercial Trust Co.,
Jersey City, N.J., U.S.A.
"Gentlemen:

Please deposit the $1,000,000. par value U.S. Liberty Loan 3½'s which you are holding for me, in the Trust for Mrs. Guinevere S. Gould of which you and S. N. Rice are Trustees.

Yours truly,
signed—Geo. J. Gould."

In your opinion was Mr. Gould able to understand that on the 21st of March, and the business represented by it? A Yes.

Cross examination by Mr. McCarter.

Q Did you keep copies of all the telegrams you sent? A Yes, in a copy book.

Q And it is from a copy book that these various documents that have been marked are photographed from? A I suppose so.

Q Was it just one book? A One book.

Q Did you send any messages that were not copies in that book? A Well, not cables.

Q Did you send any cables that were not copied in that book? A No, that is, cables from Mr. Gould.

Q You sent no cables for the late George J. Gould that were not copied in a book in which you kept your cables, photographic copies of which were not in the direct examination? A No. You understand that there were cables sent that did not pass through my hands.

Q But every cable you sent was copied? A Yes.

Q Do you remember sending on the 8th of March a cable to Mr. Kingdon Gould and Mr. Rice directing them to do anything with the $1,000,000 par value Liberty Bonds? A I remember that.

Q That is not amongst the cables you have identified in the direct examination? A No.

Q I show you Exhibit "C-3-B" and ask you if that is the cablegram you sent on March 8, 1923, with respect to $1,000,000 and securities? A That is in my handwriting. I sent that.

Q Did you send any other telegram on that date with regard to $1,000,000? A I don't remember. That is over a year ago. If I sent any cable it is in my copy book. They have always been copied in the book.

Q You, without refreshing your recollection, without going over the copy book, cannot remember sending any other cablegram around March 8th with respect to $1,000,000? A I don't remember. I don't think so.

Q You say all these telegrams came to your hand all written down? A Yes.

Q In whose handwriting? A Mr. Gould's.

Q And what did you do with the original messages as written down by him? A I tore them up. Once I copied them in the copy book the original was sent and what I received from Mr. Gould was destroyed because there were a great many words scratched out—in nearly all the cables he gave me there were some words changed.

Q Would you see Mr. Gould every day during the month of March? A Almost every day. Sometimes for a day I would not see him.

Q Was he always in the same condition mentally when you saw him in the month of March? A Yes.

Q No change for the worse towards the end of the month? A As far as I recollect, no.

Q Your conversations with Mr. Gould were all in connection with things to be done by you at the time? A Yes.

Q You did not have any discussions with Mr. Gould during March, 1923, which would require Mr. Gould to exercise his memory as to events that had occurred months or a year before? A No.

Q You have said, Mr. Carlin, that on March 21st, Mr. Gould's mental condition was such that he would understand the matter of his act in signing this letter dated March 21st addressed to the Commercial Trust Company? A

As far as I can remember, Mr. Gould was in a position to transact that business. Of course, I am not a doctor.

Q You are not familiar, are you, with the terms for the trust for Mrs. Guinevere S. Gould mentioned in this letter of March 21st you do not know whether it is a simple or complicated trust? A I don't know anything about it.

Q So in giving your opinion that Mr. Gould was competent to transact the business of signing this letter, you will qualify your statement, will you not, by the fact that you assume that the trust did not make more complicated the transaction as shown on the fact of the letter? A I don't know anything about that.

Q Do you understand my question? A Yes, but I don't see what that has to do with me.

Q Please answer the question as you understand it? A You mean about Mr. Gould being capable of understanding the transaction of the business in this letter.

Q I will re-frame it for you if you don't understand it? A Yes.

Q You don't know whether or not Mr. Gould was in such a state of mind on March 21st as to understand the terms of a complicated deed of trust, do you? A In my opinion Mr. Gould was in a condition to understand what he was signing.

Q No matter how complicated the document signed? A As far as I remember, Mr. Gould was absolutely capable of transacting that business.

Q No matter how complicated the business? A Yes.

Q How long had you known Mr. Gould before March, 1923? A I knew Mr. Gould the first time fifteen years previous.

Q Would you say he was just as competent to transact business on March 21, 1923, as he was any time during your prior acquaintance? A In my opinion, yes.

Q Did you notice any failure in his memory at all as early as March 21, 1923? A No, I had not noticed any failure.

Q What was his physical condition as far as you could see on March 21, 1923? A He was not so active as he was fifteen years previous.

Q He was a sick man? A He was not so strong as he was before.

Q He was sick enough to require the attendance of a day and a night nurse? A Yes.

Q And that had been going on ever since his return to France from his Egyptian trip? A Yes.

Q And by March 21st he was physically very weak as far as you could see? A Yes.

Q But you say you noticed no change in his mental condition on that day from what you knew him fifteen years before? A No.

Q How long after March 21st did you first observe any weakening in Mr. Gould's mental condition? A Early in April, as far as I can recollect.

Q When you would see him during the month of March, would he be in bed? A Sometimes on the bed, sometimes on the sofa.

Q Did you ever see him writing any of these telegrams you took? A Yes.

Q Did he write them easily or with difficulty? A He wrote them quite easily.

Q Did you see him write anything on March 21st? A I don't remember.

Q From your recollection of his condition on March 21st, would you say that on that date he

could sign his name without having his hand guided or held? A I should think so, yes.

I hereby certify that the foregoing deposition of Francois Carlin was taken *de bene esse*, pursuant to stipulation before me at the Hotel du Hhin, Paris, France, on Monday, August 18, 1924, at six o'clock, P. M., in the presence of Ralph E. Lum, Esq., for complainant, and George W. C. McCarter, Esq., for defendant executors; that it was stipulated and agreed by and between the counsel for the respective parties that the deposition of the witness should be taken stenographically by me and afterwards reduced to typewriting, the signing of the same being waived. And I do further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony given by the witness before named.

IN CHANCERY OF NEW JERSEY.

Between GUINEVERE S. GOULD, *Complainant,* *and* COMMERCIAL TRUST COMPANY, *et al.,* *Defendants.*	*On Bill, etc.* *Depositions.*

LADY DECIES.

Q You are a daughter of the late George J. Gould? A Yes.

Q Did you accompany him on his trip to Egypt in 1923? A Yes.

Q And your husband was with you on that trip? A Yes.

Q What was the condition of your father's health on that trip? A I should consider very poor. He was very ill when we arrived at Marseilles.

Q You refer to the return trip? A No. Before I left. When D and I were at Marseilles he was not at all well.

Q Did he become better or worse during the trip? A On the steamer he was very ill and never came on deck at all. He seemed to get better the first few days in Cairo and when we got to Luxor he had an attack of bronchial pneumonia; and Dr. Davis was rather worried about him, or so he stated to me.

Q Did he recover from that attack of pneumonia? A The doctor, I believe, was rather anxious to get him back to Cairo as he was so worried, so as soon as he was able to travel and

got out on the Dahabya we took him back to Cairo where he was very ill.

Q But he did recover from that attack of pneumonia? A Yes, he did recover.

Q Did you accompany him back to France or did you leave sooner? A I left a few days sooner.

Q When next did you see your father after you left him in Egypt? A My sister sent me a telegram from Cap Martin on the 23rd March, 1923, I left on the 24th March and arrived on the 25th at 7:30 and on the 26th I stayed at Monte Carlo. On the 26th we were all called urgently by telephone because he was supposed to be dying then. He had had a terrible attack and I was so alarmed I wired to my husband to come on the 27th.

Q When you first saw your father on your arrival at Mentone which was on the 25th, describe to us the condition in which you found him. A I went in with my sister Mrs. Drexel but he did not know either of us. His mind was wandering.

Q Was he asleep or awake? A Somewhat between the two. How can one explain that particular condition he was in at that time. He was lying down with his eyes closed. The doctor was in the room.

Q What time of day was it? A About 2:30 or 3:00, after lunch I think.

Q And how frequently did you see him? A Well, when we could. It was not easy to get into his room, there was always some excuse.

Q Excuse offered by whom? A Well, anybody. The doctor sometimes—as a matter of fact I hardly ever saw the doctor, but whoever happened to be there said he was not well enough to

see us, but occasionally we did get in, but he only once recognized me.

Q When was that? A I was there about ten days. I cannot quite recall. Once he thought I was my mother, then another time he recognized me for about one second. He called me by my name.

Q And was that the only time he called you by your own name? A Yes, only once.

Q You say whoever was in charge would deny you admission to his room. Are you referring to the nurses or to whom? A Well, anybody who happened to be there.

Q Do you mean Mrs. Gould? A Yes, if she was there she often said that he was not well enough for us to come in.

Q And you say you stayed about ten days? A I think I stayed about ten days.

Q What do you recall about the night of the 30th? A He had an awful attack. He sat on the table and fought his valet Spensely and the nurses. He thought warships were following him. He was very violent, and only was got to bed again after great trouble. On April 1st Lord Decies left for London. I did not go back until about 4 or 5 days after that.

Q Did you see your father again before his death? A No.

Cross examination by Mr. Lum.

Q These notes to which you are referring were taken by you? A No, in a diary.

Q And whose diary was that? A My maid's.

Q And you have, for the purpose of testifying here made a copy of her diary to refresh your recollection? You did not have an in-

dependent recollection? A Yes, but I wanted to make absolutely certain of the date.

Q Were you present at this time when your father sat on the table and thought the warships were coming to attack him? A No, I was not, it was a time when I was not in the room.

Q You, then, in that instant, are testifying to what someone else has told you, I believe? A Yes.

Q And how many different days did you go in your father's room, about? A It is very difficult to say. Some days I did not go in at all. I went up to ask if I could go in.

Q And how many days when you asked to go in, did you not go in? A That is also very difficult to say because I cannot recall that.

Q Do you remember speaking with the doctor at that time about going in? A No. I do not think I actually spoke to the doctor. I cannot remember absolutely.

Q I do not understand whether you felt you were unjustly or wrongly excluded from the room. Did you? A I think there were times when I might have seen him when we were rather kept out.

Q Will you give me any date on which his wife kept you from going in? A No, I can't do that.

Q Would you say there was any time when she prevented you from going in? A Well, not prevented exactly, but often she would come out and say "I do not think your father is well enough," or, "that he is asleep."

Q And at that time he was asleep? A In a state of coma.

Q And there were several different people there to go in and see him, were there not?

Different members of the family and others visiting there? A Yes, my brother, my sister, my husband and myself.

Q Mr. Drexel? A Yes, and my husband.

Q And did it not seem to you good medical judgment that all these people should not go in every day while your father was in that condition? A All of them, yes, but I do not think my sister and myself should not.

Q What was the date on which you say your father recognized you as near as you can say? A I cannot remember.

Q About how many days before you left? A It is goodish more than a year ago and is hard to recall.

Q Give the best date in your recollection. A I simply cannot remember. It was once when I happened to be in with my sister.

Q When you left your father's condition had improved, had it not? A Well, they did not think he would die for some time—a few weeks—I had to get back to my children. But I did not think he had very much improved, there was no hope. The doctors had said that.

Q Did you during this time carry on any conversation with your father at any length? A I could not as he did not know what he was saying.

Q He was in charge of Dr. Rendall at that time? A Yes, after he went away, another doctor came and took his place.

LORD DECIES, a witness on behalf of the defendants being duly sworn by a Master in Chancery, testifies as follows:

Q You are the husband of Lady Decies who has just testified, are you not? A Yes.

Q And you were with her and Mrs. Gould in the trip to Egypt in the winter of 1923? A Yes.

Q Was Mr. Gould taken sick on that trip? A He got on the boat at Marseilles in a very bad state. I happened to go to the hotel when we arrived from the train at Marseilles and he was in a very bad shape then and it was very questionable at the minute whether he would be able to get on the boat or not.

Q And was he taken more seriously sick during the trip in Egypt? A Oh yes, certainly much worse in Egypt.

Q What trouble did he have in Egypt? A Well, not being a doctor I did not sufficiently know, but I know that Dr. Davis has testified that he had pneumonia.

Q Did you leave Egypt at the time Lady Decies did? A Before.

Q When did you next see Mr. Gould after you left him in Egypt? A Well, I think I ought to tell you that my arrangements were to leave Egypt on Feb. 5th but Mr. Gould was so ill to my mind that on Friday the 2nd I went to see him in the afternoon but he was so bad—talking about never seeing one again, so I said if you like I will put my departure off for a week and I stayed another week. I eventually left on the 10th or 11th.

Q And when did you see him next after that? I never saw him again after I left Egypt until I

saw him in Mentone about the 29th March. My diary contains the entry "Monte Carlo 29th."

Q Lady Decies had preceded you to her father's side? A Yes.

Q How was Mr. Gould when you saw him then? A When I left?

Q Yes? A He was in a state of collapse.

Q Was he in bed? A No, on a sofa.

Q Describe his appearance or actions. A He was sitting half doubled up, breathing very heavily and was quite unconscious of me.

Q Did he recognize you? A Not in the slightest.

Q Did anybody try to make themselves recognized to him? A My wife went up and said "Here is D come to see you."

Q And what did Mr. Gould say to that? A Nothing.

Q And how frequently after that did you see him until his death? A I stayed there three or four days and went out every morning to the villa and saw him whenever I asked. I suppose I saw him four or five times during the time I was there. But I did not like seeing him he was so ill.

Q Was the condition the same each time? A Absolutely.

Cross examination by Mr. Lum.

Q You, I suppose, have no knowledge as to what recovery he made after that? A No.

Q He lived I understand until about the 15th May? A Yes.

Q And you left early part of April? A The first week.

Q And when you spoke to him in Egypt about not going for a week, you say he seemed pleased that you were going to stay? A You could see he felt pleased.

Q He knew you then, of course? A Yes.

Q And spoke to you? A Oh, yes.

Q He was quite a different man in Egypt from what he was in France? A Yes.

IN CHANCERY OF NEW JERSEY.

Between

GUINEVERE S. GOULD,
Complainant,

and

COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.*,
Defendants.

Deposition of DR. STANLEY RENDALL, taken *de bene esse,* pursuant to notice hereto annexed, before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at the office of Paul Bonynge, Esq., 111 Broadway, New York City, on Tuesday, November 13, 1923, at three o'clock in the afternoon.

Appearances:

For complainant, Lum, Tamblyn & Colyer, by Ernest C. Lum, Esq.

For defendants, Fisk & Fisk, by Willard C. Fisk, Esq.

It is stipulated and agreed by and between the counsel for the respective parties that the deposition of the witness may be taken stenographically by the Master and afterwards reduced to typewriting, the signing of the same being waived.

DR. STANLEY RENDALL, being duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Lum.

Q Dr. Rendall, you are a practicing physician? A Yes.

Q Where do you reside? A Half the year, the summer months Aix les Bains.

Q And the remainder of the year where? A And the winter months at Mentone.

Q How long have you been a practitioner of medicine? A For the last thirty-eight years, anyhow.

Q Did you know George J. Gould in his lifetime? A Yes.

Q Did you ever see him as his physician? A Yes.

Q What was the first occasion upon which you treated him and where? A The first occasion on which I treated him was either July or August, last year.

Q 1922? A At Aix les Bains.

Q For what did you treat him at that time? A For a general gouty condition and high blood pressure, arterio-sclerosis.

Q How long did your treatment of him continue? A At that time, roughly, between three and four weeks.

Q Did you subsequently treat him again? A I subsequently treated him at Cap Martin, where he had a villa, Roquebruno Alpes Maritimes, France.

Q And for what condition did you treat him at that time? A The same condition.

Q When did you begin your treatment of him at that time? A At Mentone; I have got my 1923 visiting list here, so that any date in 1923 is absolutely dead certain. As I haven't got my 1922 list here, I cannot give you the date when I first saw him, but it must have been sometime in December.

Q And did you treat him subsequent to that? A Subsequent to my first seeing him he went to Egypt, and immediately on his return from Egypt I again took his case in hand.

Q About when was that? A That would be February 27 or 26, 1923.

Q And after that did you continue as his physician? A I continued as his physician with an interval of five days, when I was called Paris, to see a case, up to May 11th.

Q At or about March 21, 1923, were you treating him then? A Yes.

Q Was or was not anyone else brought in consultation with you at that time? A Yes, I sent for Lord Dawson, of Penn, to come to see him in consultation. Lord Dawson saw him with me on the twentieth of March.

Q Will you tell us who Lord Dawson is, Dr. Rendall? A Lord Dawson, of Penn, is one of the leading consulting physicians of England and London, the physician to the king; physician to the London Hospital.

Q In the treatment of Mr. Gould, will you describe what you had been doing for him shortly prior to March 20, 1923? A I had been treating symptoms as they arose in his case at that time, as well as general treatment from the point of view of blood pressure.

Q And in conjunction with that, what medicines, if any, had you administered? A For

some time prior to March 20, on account of insomnia, restlessness, general distress, he had had or was obliged to have a certain amount of sedative treatment; by which I mean bromides and paraldehyde and other sedatives luminal.

Q Just prior to March 20 had there been any change of any kind in that treatment? A For two or three days prior to Lord Dawson's coming, everything was suppressed in the nature of sedatives, so far as my memory serves me, except a small dose of bromide, which one wouldn't have been justified in stopping, as I wished Lord Dawson to see him under normal conditions.

Q When Lord Dawson saw him what was his condition? A At that time his condition, apart from general weakness an evidence of dilated heart and arterio-sclerosis and blood pressure—you mean his condition mentally?

Q Yes. A He was quite clear.

Q Was he at any time other than quite clear? A Prior to my stopping the sedatives he would naturally be under the effect in the morning, or possible later on in the day, of what you would call a dope, by which I mean a sedative. I don't mean an opiate. He did not have opium or any derivative of opium, except on one occasion, when it was given to him by Dr. Davis, his regular New York physician, and we concluded that it didn't suit him.

Q When you used the expression "under the influence of a dope," I think you said? A I believe that is your expression over here for a sedative drug.

Q When you used that expression— A I do not mean either opium or morphine; I mean a sedative, such as bromide, paraldehyde or luminal.

Q What effect would that have upon his mental condition, or did it have, rather? A That is a difficult question to answer. Bromide, paraldehyde or luminal, when a man has had those things, he is not in any sense off his head, but the object in giving a drug is to deaden his sensibility and he will be sleepy.

Q How long would such a sleepy period last after the administration of the drug? A The ordinary dose, such as Mr. Gould was having, the effect would last for twenty-four hours, as far as making him sleepy is concerned, but you could always rouse him.

Q And when roused how did he act? A He acted like any sick man, a physically weak man. There would be no question of his being out of his head.

Q Were you present on March 20 when Dr. Dawson saw him? A Yes.

Q What was his condition on that date? A His condition that day was remarkably satisfactory.

Q In what particulars? A Lord Dawson, who had previously seen him in London before he went to Scotland, had quite a little chat with him about his life in Scotland, and he told Lord Dawson that if he went to Scotland the following summer, prior to taking any place for shooting, it would be advisable to consult Lord Dawson with regard to the physical characteristics of the country and the place he proposed to take.

Q Do you know whether on March 21, 1923, Mr. Gould executed any papers of a legal nature? A Either on the evening of the day that Lord Dawson saw him, on the evening of the twentieth, or more probably during the twenty-first, Mr.

Gould said he greatly enjoyed Lord Dawson's visit, that he had—I remarked to him that he seemed very chirpy and bucked up; he said that he had enjoyed Lord Dawson's visit; he said that he had—I cannot remember the exact words or term he used; the substance of it was that he had concluded some business which gave him great satisfaction.

Q Did he express himself as to what that business was? A No, he did not.

Q Did you see Mr. Gould on the twenty-first of March yourself? A Yes.

Q What part of that day did you see him? A I saw him quite frequently; always three or four times a day.

Q How did he seem on the day of the twenty-first of March, mentally? A Just the same as I have already described of Lord Dawson's visit on the twentieth, and it was probably on the twenty-first—if not on the twentieth, certainly on the twenty-first, that he told me that he had enjoyed his visit and that he had concluded some business which was a weight off his mind, and about which he was very pleased.

Q Do you know, Dr. Rendall, whether any other physician attended Mr. Gould, other than Dr. Davis? A Dr. Davis attended him during his visit to Egypt. I saw him with Dr. Davis on his return from Egypt, and then continued in sole attendance myself until I got Lord Dawson to come over and see him. I then had to go to Paris for a medical visit and was absent from the third to the eighth.

Q What month? A Of April, and when his condition was quite different; he was all that was to the bad between the twenty-first of March and the third of April, a man as sick as he was.

Q Did you continue then as his physician for the remainder of his life? A I took up the case again on the eighth until the eleventh of May, when I left for Aix les Bains. I saw him last on the eleventh of May, either a Monday or Tuesday.

Q Do you know anything about his condition after the eleventh of May? A When I left him he was getting rapidly worse; as one couldn't say whether he would last for a week or a month, I was obliged to leave.

Q Do you know as a matter of fact how long he did last? A My impression is that he lasted for about six days after I saw him.

Q During your entire care of his case, did you have occasion to observe his mental condition closely? A Seeing him three or four times every day, yes, I should say.

Q As a result of your experience and the treatment of his case, what would you say as to his general mental condition? A He never gave any signs, in my personal experience, of what you call mental alienation. When a man is under the influence of things like paraldehyde, luminal and bromides, he is slow in his cerebration.

Q To partake of an idea? A I prefer to use the term slow in cerebration, but he never, in my experience, had any signs of mental alienation.

Q By mental alienation what do you mean? A By that I mean delusions.

Q Do you know just when Mr. Gould returned from Egypt? A The first visit to Egypt, February 26th or 27th.

Q Was Mr. Gould treated by you at his own home or stopping place or in some institution? A No, his own home, his own villa, Villa Zoraide.

New Jersey State Library

Q Were there nurses in attendance? A From the time he came back from Egypt he had always had one, two, sometimes three nurses; day and night he had four.

Q He had two in the day and two at night? A Yes.

Q Have you any record from which you could supply the names of those nurses? A I don't think I have. Nurse Williams was one; the names of the others I forget. I would know if they were recalled to me.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

I HEREBY CERTIFY that the foregoing deposition of Dr. Stanley Rendall was taken *de bene esse,* pursuant to notice thereto annexed, before me as Master in Chancery of New Jersey, at the office of Paul Bonynge, Esq., 111 Broadway, New York City, on Tuesday, November 13, 1923, at 3 P. M., in the presence of Ernest C. Lum, Esq., for complainant, and Willard C. Fisk, Esq., for defendants; that it was stipulated and agreed by and between the counsel for the respective parties that the deposition of the witness should be taken stenographically by me and afterwards reduced to typewriting, the signing of the same being waived; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony given by the witness before me.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

Cross examination by Mr. McCarter.

What did Mr. Geo. J. Gould die of, Dr. Rendall?

He died as a result of arterio-sclerosis, which led up to heart failure and kidney trouble.

What is arterio-sclerosis in layman language?

Hardening of the arteries.

Does arterio-sclerosis have any effect upon the mind?

No, not necessarily.

Does it sometimes or ever?

Sometimes at the very end of the complaint it might have possibly such an effect.

And it did in the case of Mr. Geo. J. Gould, did it not?

No.

At no time in the course of the disease?

No, at no time.

His mind was clear unto to the end.

Absolutely until the end of my attendance.

Did you not attend him until his death.

No, I left about a week prior to his death.

And during the full period of your attendance, his mind remained clear.

His mind remained clear.

No delusions of any kind?

None that I was aware of.

Did your attendance continue until after the arrival of all the members of his family at Cap Martin?

While I was there, Lady Decies, Mr. George Gould, Jr., Jay Gould and Mr. Kingdon Gould and Mrs. Wainwright all were there.

Was his memory good during all that time?

So far as I knew, yes.

Did you ever during that period ask him any question or enter into any conversation with him which would require him to remember events occurring say a year before?

Certainly.

And did he remember such events?

Clearly.

You prescribed sedatives for him during his illness?

Yes.

Do you recall what the sedatives were?

Yes.

What were they?

Bromide of potassium, paraldehyde, bromidia, luminal.

Did you prescribe theobromine?

That is not a sedative, but a stimulant and diuretic.

So far as you know did Mr. Gould while you were in attendance recognize the different members of his family?

He recognized them on various occasions whether he recognized them on every occasion is more than I can tell.

What would be the effect of the sedative which you prescribed and which were administered to Mr. Gould on his mind?

They would produce sleep and have a sedative-calming influence.

And while they were still operating and active his mind would not be entirely clear, would it.

Under the influence of some as paraldehyde, yes.

Under the influence of others, how?

He might be more or less sleepy especially in the early part of the day.

And while sleepy, of course, his mind would not be clear.

Is yours when you are sleepy?

Do you recall the date when Lord Dawson consulted with you?

Lord Dawson of Penn Tuesday, the 20th of March.

Did you send for him?

I did.

Why?

Because Mr. Gould was not making satisfactory progress with developing signs of heart and kidney trouble.

Mr. Gould was on March 20th when Lord Dawson of Penn arrived a very sick man, was he not?

Yes.

How long had you known Mr. Gould before this particular illness?

I made Mr. Gould's acquaintance at Aix les Bains during the preceding summer (1922) in July or August.

And do you wish us to understand that down to your departure a week before his death or thereabout, his mind was as clear as it was when you knew him in the summer of 1922?

Certainly not.

When did his mind become less clear than in the summer of 1922?

I should say, it was especially noticeable during the month of April, 1923.

And it was less specially noticeable, but still noticeable, when?

Probably a few days before that, but about the number of days I am not certain.

But inasmuch as his mind was particularly clear at the time that Lord Dawson paid his visit, it must have been subsequent to that time.

Did Lord Dawson's visit seem to tire Mr. Gould?

On the contrary, it seemed to stimulate him and cheer him up.

Do you recall the names of the nurses on the case?

I can only recall the name of Miss Williams.

Was not Miss Davy also one of the nurses?

Yes.

And was not Miss Watkin also one of the nurses?

I won't be sure because I always addressed by their Christian name as Sister so-and-so.

Do you recall a night nurse whom you addressed as Sister Lillian?

I can't recall that name.

But you do recall Miss Davy?

I do.

How many nurses were there?

Originally one, finally four.

You recall Miss Williams and Miss Davy, what other by their Christian name?

I don't recall any.

Nurse Davy testified that she entered on the chart under the date of the daytime of March 29th in the remarks column the following entry amongst others: "Awake, quiet, mind clear." Do you recall anything in connection with Mr. Gould's mind which would explain such an entry?

No, I can't.

You said that in some instances that arteriosclerosis does affect the mind?

At the latter stages of the disease.

Is that a result of the hardening of the arteries of the brain or not?

Yes.

When did Mr. Gould reach the latter stages of the disease?

When he died.

And how long before his death?

I should say that when his mind was not quite as clear as it had previously been, which, as I previously stated was towards the end of March.

But until the end of March his mind was as clear as it was when you knew him in the summer of 1922?

As tested by answers to direct questions, yes.

The questions which you asked him were not complicated, were they?

They were partly medical and partly social.

Would any of the questions in your opinion have required so careful and exact an exercise of memory on the part of Mr. Gould as would be required to remember the contents of what I may call a fairly elaborate will, executed approximately a year before.

Yes, and for the following reason, that at a certain age and under certain conditions, the effort (mental) re-recall recent events is greater than that to recall longer anteceding events.

And in your opinion had Mr. Gould reached that age?

There is no special age limit which would apply to such a condition, but it is well known to exist at a different age with different people.

And in your opinion had Mr. Gould reached that age for him?

There is no "that age" for him.

But in your opinion Mr. Gould had in March, 1923, reached an age such that it required greater effort mentally to remember recent events than events occurring a year or eighteen months previously?

No, not necessarily, but possibly, though, I cannot remember any reason for thinking that Mr. Gould's memory was affected in that way.

You did not during your attendance on Mr. Gould in March, 1923, and thereafter discuss such matters as his personal estate, did you?

No.

And you do not know, therefore, except by inference whether he then had sufficient understanding and recollection of his will and understanding of the terms and effects of a certain trust for the benefit of the lady who is now his widow, and their children, fully to understand the nature and consequences of an act such as the transfer from his personal ownership to the trust just mentioned of approximately one million dollars in government securities.

As previously stated, Mr. Gould did not discuss with me his private pecuniary affairs, but on the morning following Lord Dawson's visit or on the same afternoon following his visit, I found Mr. Gould in an unusually good spirits and cheerful frame of mind, on commenting on it to Mr. Gould, he said to me, "Well, I greatly enjoyed Lord Dawson's visit, he cheered me up; I have also terminated or signed an important document in connection with Mrs. Gould which I have had mailed to the States and it was a great relief to my mind to get that finished.

You do not specialize in mental or nervous disease, do you?

No, I don't.

Re-direct examination by Mr. Lum.

At the time of Lord Dawson's visit on the 21st of March did Mr. Gould, in your judgment,

have sufficient intelligence to recall the property of which he was possessed and the natural objects of his bounty and to dispose of his property as he wished?

Yes.

BETWEEN GUINEVERE GOULD

AND

COMMERCIAL TRUST CO.

COMPLAINANT'S CASE.

INDEX

Hearing of Oct. 29, 1924
Jay S. Perkins.....
Robert B. Knowles .....
Complainant Rests.
Robert B. Knowles, recalled ..

THE DEFENDANTS' CASE.

Kingdon Gould .....
George Letterhouse .....
Miss Violet Williams .....
George Letterhouse, recalled ..
Guinevere Gould .....

COMPLAINANT'S REBUTTAL.

DEFENDANTS' REBUTTAL.

S. Neilson Rice .....
Jay Gould .....

COMPLAINANT'S EXHIBITS.

C. 1. Record of Trust Co. of trust funds .....
C. 2. Control sheet .....
C. 3. Entry sheet .....
C. 4. Letter from George J. Gould .....
C. 5. Photograph of Gould and child .....
C. 6. Photograph .....

DEFENDANTS' EXHIBITS.

D. 1. Letter of Gillespie ....
D. 2. Receipt for $1,000,000
D. 3. Written demand for payment of interest ..
D. 4. Letter .....
D. 5. Letter .....
C. 5. Letter .....
D. 6. Letter from Hardenbergh, Apr. 7 .....
D. 7. Record of Trust Co.
C. 8. Record of vault custo-
D. 8. Record of vault custodian .....
D. 9. Cable .....
D. 10. Cable .....
D. 11. Cable .....
D. 12. Cable .....
D. 13. Cable .....

IN CHANCERY OF NEW JERSEY.

Between		
GUINEVERE S. GOULD, *Complainant,*		
and		*On Bill, &c.*
COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et al.,* *Defendants.*		

Transcript of testimony taken in the above stated cause, on final hearing at the Chancery Chambers in Jersey City on Wednesday, October 29, 1924, at 10 o'clock in the forenoon, before His Honor John Bentley, Vice-Chancellor.

Appearances:

Lum, Tamblyn & Colyer, by Ralph E. Lum, Esq., and Ernest C. Lum, Esq., for the complainant.

McCarter & English, by Robert H. McCarter, Esq., and George W. C. McCarter, Esq., for the executors.

Fisk & Fisk, by Col. Willard C. Fisk, for defendant Commercial Trust Co.

Arthur R. Bailey, official court reporter, 75 Montgomery street, Jersey City.

JAY S. PERKINS, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Ralph E. Lum.

Q What is your business, Mr. Perkins? A Vice-President and Trust Officer of the Commercial Trust Company of New Jersey.

Q And in that capacity does the record of the Trust Company as to the trusts established and funds coming into your hands come to your attention? A Yes, sir.

Q Have you a record of the establishment of the trust of Guinevere S. Gould in December, 1922? A Yes, sir; I have the original (witness producing paper).

Mr. Lum: I offer it in evidence.

(The same is marked "Exhibit C. 1.)

Col. Fisk: Inasmuch as a true copy is attached to the bill and admitted as a fact, I suppose he can retain the original.

Mr. Lum: No objection to that.

Q On or about the 8th of March, 1923, did your company receive any securities from Mr. Kingdon Gould and Mr. Rice? A Yes, sir.

Q What were they, and was there a receipt issued for them? A Why, we received $1,000,000 U. S. A. 3½ Liberty bonds, and the receipt we issued for those bonds reads as follows:

Jersey City, N. J., March 8, 1924.

Received from Kingdon Gould and S. N. Rice, to be held subject to the order of George J. Gould, $1,000,000 United States of America First Liberty Loan 3½% bonds with June 15, 1923, and all subsequent coupons attached.

(Signed) Commercial Trust Co. of N. J.
by J. S. Perkins, Vice-President.

Q Did you, at a later date, receive further written instructions regarding the disposition

of that $1,000,000 of bonds? A Yes, sir; we received a letter from Mr. George J. Gould.

Mr. McCarter: That ought to be proven, I think. I don't suppose the witness ought to characterize it as being from Mr. Gould.

The Court: Have you any objection to it, subject to that proof being supplied later?

Mr. McCarter: I have no objection to his saying he received this document.

Q Did you receive a document? A Yes.

Q Have you the document with you? A Yes, sir.

Q What is the date? A March 21, 1923.

Q Do you know the signature of George J. Gould? A Why, I am familiar with it, but I wouldn't want to say it is genuine.

Q When did you receive that paper? A April 7, 1923.

Q What was then done with the million dollars of 3½ Liberty bonds? A They were entered in our books under the trust agreement with Mrs. Gould.

Q When did the coupons on these bonds become due? A June 15, 1923, was the first coupon.

Q What was done with that coupon, clipped? A They were cut and the proceeds held.

Q Were the proceeds of that paid, under the terms of the trust, to Mrs. Gould? A No, sir.

Q Why were they not paid? A Why, we received a letter from Mr. Gillespie, dated May 21, 1923, which reads as follows:

Commercial Trust Company of New Jersey,
15 Exchange Place, Jersey City.

Dear Sirs:

In behalf of Mr. Kingdon Gould, I wish to confirm the oral advice to you of Mr. Jeffrey delivered to Mr. R. S. Carmichael, your secretary, on Saturday, May 19, 1923, over the telephone that one and probably both executors will oppose transfer of million liberty bonds and claim them for Estate of George J. Gould.

Please therefore regard this communication as a protest against such transfer and as a claim that the said liberty bonds with all coupons attached are a part of the Estate of George J. Gould, recently deceased, and that any attempt to transfer the same was ineffectual and invalid.

Please acknowledge receipt.

Very truly yours,
GEORGE J. GILLESPIE.

Q And was there any other reason, excepting the receipt of that letter, why the income was not paid according to the terms of the trust? A Not that I know of.

Cross examination by Col. Fisk.

Col. Fisk: Let me ask one or two questions to complete the record.

The Court: Certainly.

Q Have you the original record of these bonds? A Yes, sir.

Q Will you produce it? A Yes, sir (witness producing paper).

Q That is the original record of the trust? A Yes, sir.

Q What is the entry as to that? A On the control sheet showing the total amount of investment, it says, "April 7, 1923, received from George J. Gould as per letter 3-21-23, $1,010,000." On our other sheet, or record of individual investment of securities, it says "April 7, 1923, $1,000,000 U. S. A. 3½, market value 101; charged to estate $1,010,000. Invested Capital $1,010,000."

Q You entered those at the market price? A Yes, sir.

Q That represents the date on which these bonds were actually transferred? A Yes, sir.

Col. Fisk: I would also like to have these papers marked in evidence.

(The control sheet is marked Exhibit C. 2; and the sheet showing entry of securities, C. 3.)

Col. Fisk: I also offer in evidence the letter of Mr. Gillespie, notifying the trustee of an adverse claim as to the ownership of these bonds.

The Court: There being no objection, it will be admitted.

(The same is marked Exhibit D. 1.)

Q Mr. Perkins, I show you a paper purporting to be signed by you; is that the original receipt issued by the trust company to Mr. Kingdon Gould and Mr. Rice for the $1,000,000 bonds? A Yes, sir.

Col. Fisk: I offer that in evidence. Mr. McCarter has kindly furnished it to me.

(The same is marked Exhibit D. 2.)

Q Mr. Perkins, did you receive any written demand from Mrs. Gould concerning the payment of interest on these bonds? A Yes, sir.

Q Have you that paper with you? A Yes, sir. It is dated September 21, 1923. (Witness producing paper.)

Col. Fisk: I offer it in evidence.

(Admitted and marked Exhibit D. 3.)

Q How much income have you collected and retained on these bonds? A $52,500.

Q And the interest is payable what dates? A June and December 15th.

Cross examination by Mr. McCarter.

Q After the establishment of the original trust of $2,000,000 by Mr. Gould where were these securities actually located? A After the establishment of the trust? You mean the trust of December 14, 1923? I don't know where they were located. The trust agreement was executed in Europe and sent to us, and the securities were afterwards delivered to us, to be held under this trust agreement.

Q When were they received? A Part on Jan. 4th and 5th, 1923, and part on the following day.

Q After that where were they placed? A Why, in our vaults.

Q In a special box? A We run our trust—

Q I don't care how you run your trust department; I'm asking you where they were placed? A We might have three or four trusts in one box. They were placed in our vault.

Q Have you any recollection where these $2,000,000 of securities were put? A It wasn't $2,000,000; about $600,000.

Q Where were they put? A In a safe, in a vault.

Q In a special room? A In a box that is under control of the Trust Department.

Q Mixed up with all the other securities? A Oh, no; they were identified by themselves in large envelopes, with the number and names of the trust written on.

Q So that they were in large envelopes with the name and nature of the trust, and the number of it, written on? A Yes, sir.

Q And then placed in the vault of the company? A Yes.

Q Where all of its other trust funds are kept? A Yes, sir.

Q And they have remained there until this day? A Yes, sir; they're still there, except those that are sold and reinvested.

Q When did the trust company receive the letter of March 21, 1923? A Mr. Gillespie's letter?

Q The letter purporting to be signed by Mr. Gould? A Oh, excuse me; April 7, 1923.

Q And that seems to be noted on this letter. Whose handwriting is that? A That's mine.

Q Now, where have the million dollars of bonds which Mr. Kingdon Gould and Mr. Rice left with you, in the meantime been kept? A In our vaults under the control of the Trust Department.

Q Your vault is quite large? A It is composed of a number of boxes.

Q That is what I am trying to find out: It was in separate boxes? A Yes, with other securities under the control of the Trust Department.

Q Well, you must remember we know nothing about this and I suppose you do know something about it. The question is, can you tell us at all definitely, more definitely than you have, where the million dollars of securities that Mr. Kingdon Gould and Mr. Rice left with you, were put? A They were put in a vault, Mr. McCarter, under control of the Trust Department. We probably have six or eight different vaults for that purpose.

Q You don't recall this? A I don't recall the particular box they were put in.

Q They weren't put in the envelope with the original securities, were they? A Well—

Q Well, were they?

Col. Fisk: What do you mean by "other securities"?

A They were put in with the other securities; but we have no envelope that would fit those bonds and they were put with the other securities.

Q You now say they were put with the other securities? A Yes, with the April 7th—

Q I am not asking you about April 7th; I'm asking you about the time when received. Where were the $1,000,000 securities put before April 7th and after Mr. Kingdon Gould and Mr. Rice had left them with you. Where were they put at that time? A They were put in the vault under control of the Trust Department.

Q You have already told us that four times. Now, they weren't put in the same envelope that the original securities were? A Not at that time.

Col. Fisk: What do you mean by "original securities"?

Mr. McCarter: Under the original trust.

The Court: By "original" you mean those securities deposited by Mrs. Gould?

Mr. McCarter: Yes, sir; I call them the original securities.

Q Upon the receipt of the $1,000,000 liberty bonds from Mr. Kingdon Gould and Mr. Rice what entry was made on your books? A Just an entry for safe keeping.

Q Have you got it here? A No, sir.

Col. Fisk: Would you like to have it, Mr. McCarter?

Mr. McCarter: I would.

Q Now, you say you received the letter purporting to be signed by Mr. George J. Gould on the 7th of April; did you afterwards make some entry with reference to the million dollars securities? A Yes, we did.

Q When did you make that entry? A April 7th.

Q And what is that entry? A The entry on the control sheet shows that on April 7, 1923—

Q (By the Court.) That is, Exhibit C. 2? A Yes.

—we received from George J. Gould, as per letter of 3-21-23 $1,010,000. This sheet does not show the nature of the money or securities, but it shows the value. The account was credited with $1,010,000.

Q What is this sheet? A Control sheet.

Col. Fisk: Explain what it is.

A (Continuing.) This is the sheet that shows the value of the trust in so many dollars.

Q Well, you had entered on some sheet the fact that you had in your possession a million dollars of securities? A Yes, sir; before this date.

Q And along on the 7th of April exactly what did you do in the way of entries? A I am telling you. These two entries of the trust funds were made and the securities were put in our vault for safe keeping.

Q I don't think you had better characterize that until asked. You entered them on what you call the control sheet? A Yes, "April 7, 1923, received from Geo. J. Gould, as per letter of 3-21-23, $1,010,000."

Q This control sheet is what? A It contains the value of the Trust.

Col. Fisk: You mean the values of the securities?

A The value of the securities held in the trust.

Q In whose handwriting is the entry "April 7, 1923" and so forth? A Mr. Letterhouse's.

Q Who directed him to make that entry? A Being in charge of the department he made the entry. I turned it over to him with instructions to make the proper entries.

Q Who was at that time President of the Commercial Trust Company? A John W. Hardenbergh.

Q And he was your superior? A Yes, sir.

Q Did he know of the receipt of the letter of March 21st? A Yes, sir.

Mr. Lum: I object. I don't know how he could know as to the knowledge of Hardenbergh.

Mr. McCarter: Mr. Hardenbergh and Mr. Perkins talked about it, and I take it Mr. Perkins would know what he knew about it.

The Court: I suppose he can tell what Mr. Hardenbergh said.

Mr. Lum: I don't see how he can tell what he said unless in our presence.

The Court: I will sustain that objection.

Q Who actually received in the mail this letter of March 21, 1923? A Mr. Hardenbergh.

Q And he brought it to your attention? A Yes, sir.

Q Did Mr. Hardenbergh tell you, at the time that he brought the letter of March 21, 1923, purporting to be from Mr. Gould, to your attention, that he had received the letter?

Mr. Lum: I object unless Mrs. Gould was present. Of course, I can't admit the conversations between a trust officer and another officer of the bank.

The Court: On what theory is it offered?

Mr. McCarter: Well, I withdraw that question.

Q Did Mr. Hardenbergh, at the time he brought to your attention the original letter of March 21st, purporting to be signed by Mr. Gould, also show you this letter from Cap Martin, dated Sunday, and purporting to be signed by Mr. Rice?

Mr. Lum: I object, because we can't be bound and I'm not concerned with any private communication passing between Mr. McCarter's client and his trustee to which we were not parties.

The Court: Is this for the purpose of impeaching what this witness has said?

Mr. McCarter: No, this is a part of the transaction, to show that the trust company, at the very same time that it received the original letter purporting to be from Mr. Gould, received what I might term a "warning letter"; which bears very materially upon the subsequent transaction.

Mr. Lum: A letter by whom?

Mr. McCarter: Mr. Rice.

Mr. Lum: That is merely a self-serving declaration.

Mr. McCarter: Not at all. We don't offer the letter as proof of what it contains, but we offer it to show that certain facts were brought to the attention of the trust company, and therefore it is very material in showing how the subsequent acts of the trust company were conducted.

Mr. Lum: That will be a part of the defendants' case.

Mr. McCarter: Mr. Rice was a trustee of this very fund. He was associated with the trust company in the performance of his duty as trustee.

The Court: I'm afraid I don't understand, Mr. McCarter, what bearing this has, the manner in which the trustee acted?

Mr. McCarter: Why, I may say to your Honor, anticipating perhaps a little bit, that every hour counts in this matter. Mr. Gould's condition of health and mind is a very material issue in this case, and whether or not this was what the French call a *fait accompli* on the 7th of April is of great

moment, and our purpose is to show what was done after the receipt of this letter. Of course, the letter is not proof of the facts therein stated; it acts as a warning to the trustee and the addressee of the original letter of March 21st. We propose to show that Mr. Hardenbergh wrote us a letter which can only be explained by this letter, and we think that all that occurred on that day or didn't occur on that day is of great moment in this case.

Col. Fisk: My suggestion is that it is hardly competent at this time. When they get in their case these papers will be at their service.

The Court: Mr. McCarter, what I can't understand is this, as Col. Fisk has just said: This may become very pertinent upon the defense of the trustees or executors, but I don't see how the manner in which the trust company have carried out the instructions of Mr. Gould is of any moment.

Mr. McCarter: Suppose they didn't carry them out for a dozen days because of a warning, or information that they received as to Mr. Gould's state of mind; and suppose in the meantime Mr. Gould died or became so badly off mentally that his acts were—well, that he was *non compos mentis,* and then there was execution of the directions by the person to whom it was directed? I suppose we ought to find out just what happened. If I may be permitted, I would like to have these marked for identification.

(They are marked D. 4 and D. 5 for identification.)

Q Now, I show you a letter dated April 7, 1923, addressed to Mr. Rice, and purporting to be signed by Mr. Hardenbergh, the president of your company.

Mr. Lum: I object to this also, on the ground that we are not bound by it. We know nothing about it, of course. It is hearsay and a self-serving declaration; it also is not cross examination; and it is a part of the affirmative defense on the part of the defendant.

Mr. McCarter: The witness has said that on the 7th of April an entry was made carrying the securities to this fund.

Mr. Lum: This is not a suit against the trust company for malfeasance, of course. If it were, I imagine it would be very important.

Col. Fisk: I don't see any objection to the letter.

Mr. Lum: My objection is that it is not any part of the case at this point. It is offered solely for the purpose of discrediting the witness' testimony.

The Court: I will take it for that purpose. If it is subsequently proved by the defendants so as to render it admissible for any other purpose I shall use it for that also; but at this time that is the only theory on which I will admit it.

(The same is marked "Exhibit D. 6.")

Q Did you hear Mr. Hardenbergh dictate that letter? A No, sir.

Q You knew he had written it?

Mr. Lum: I object. There is nothing in that to impeach him, and we cannot be bound by it. Moreover, it is not cross examination; and, again, it is an attempt to establish an affirmative defense on our case. Mind you, we know nothing about what took place, so far as the officer's giving him directions is concerned.

The Court: I understand from Mr. McCarter that that is an attack upon the witness' testimony, and for that reason I will overrule the objection.

Q (By the Court.) Did you know Mr. Hardenbergh had written this Exhibit D. 6? A Yes.

Q At the time it was written? A Well, shortly afterwards.

Q I notice in this letter he says, "I am afraid there may be trouble; move slowly in the matter before doing anything"—

Mr. Fisk: Are you reading the entire letter, Mr. McCarter?

Mr. McCarter: I am not.

Q Had Mr. Hardenbergh directed you to do nothing, in view of something that had transpired? A I think if you will read all of Mr. Hardenbergh's letter—

The Court: No, answer the question.

A Not that I know of. He merely told us to put the bonds in.

Cross examination by Col. Fisk.

Q Mr. Perkins, in answer to the questions of Mr. McCarter you spoke of a control sheet, and you have another sheet there; what does that

show? A That sheet (witness referring to Exhibit C. 3) shows the actual securities held in the trust.

Q Held in this particular trust? A Yes.

Q What does it show as to the $1,000,000 bonds? A Shows an entry of April 7, 1923, of $1,000,000 U. S. A. 3½ bonds.

Q As constituting what? A Constituting part of the trust.

Q Do you recall the day and circumstance of the receipt of that order? A Yes, sir.

Q Were the bonds actually placed in the trust and put on your records as in the trust on the day received?

Mr. McCarter: I object to that. It is already established that on the 7th, the date the letter was received, an entry went on the books of the company.

The Court: Isn't that clearly a conclusion, Colonel?

Q Are the bonds in the trust company now? A Yes, sir.

Q Mr. Perkins, will you explain to the Court your system of vault control for the safe keeping of securities, which you have in your control as trustee, executor or otherwise; do you have separate and distinct boxes for each trust, or do you have large vaults in which you keep the securities of various trusts? A Well, to begin with, we have probably 10 or 12 vaults—

Q Vaults? A Well, safes in the large vault, and they are under double combination, requiring two persons to have access to them.

Q Two what? A Two officers, or one officer and one head clerk.

Q What is the system known as "vault control"? A We have a vault control that requires the making out of a slip to show the entry in the vault, to show the securities, which is checked up by a vault custodian; and we also have slips to show that securities are removed from the vault. We have no particular boxes for any particular trust. We may put quite a number of trusts in one box.

Q In one safe? A In one safe.

Q Generally speaking, what is about the value of the securities you have under control of your trust company? A About $70,000,000.

Q The letter referred to and marked for identification, being a letter purporting to be written by Mr. Rice—was that ever on the files of your trust department? A No, sir.

Q Did this order from Mr. Gould come to you in the same envelope with this letter purporting to be written by Mr. Rice? A No, sir.

Q They were separate communications? A Separate communications.

ROBERT B. KNOWLES, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lum.

Q What is your profession? A Attorney at law, New York City.

Q Member of the firm of Taylor, Knowles & Hack? A I am.

Q Did you know George J. Gould in his lifetime? A Yes, sir.

Q Did you ever see him make his signature? A Yes.

Q Frequently? A Very frequently.

Q For how long a time were you his counsel? A For a matter of eight or ten years.

Q I show you this letter and ask you if you can identify that signature? A In my opinion, that is the signature of Mr. George J. Gould.

Mr. Lum: I offer the letter in evidence.

(Admitted and marked Exhibit C. 4.)

Cross examination by Mr. McCarter.

Q Mr. Knowles, I assume you are quite familiar with Mr. Gould's signature; you never saw his signature in any such form as appears upon the document before you, did you? A The latter part of the signature is cramped; the first part is perfectly natural, as usual.

Q The first part is what? A The first part of the signature is such as I have seen many times, but the last part of it is certainly cramped and different from the usual way he wrote.

Q By "the first part" you mean the first name? A George J. He had rather a slurring way of writing his name.

Q Did he use two "Gs"? A No. I notice there is a start of a "G" up above.

Q A full g, isn't it? A Yes.

Q The first part of his signature is not like his? A Yes, I should say the first part, including the u and G, is very evidently his.

Q You have noticed that he was accustomed to write with two "Gs"? A No, I don't know anything about his writing with two Gs, except the G in "George" and the G in "Gould."

Q Did he use a third G? A No, I never saw it before.

Q What is there peculiar about the latter part of the signature? A The latter part of the signature is, as I said a moment ago, rather jumbled up, in a way; that is, it is bunched up. Mr. Gould usually wrote his signature out.

Q Well, would you say, looking at the writing as a whole, that he was in a very weak condition? A Well, perhaps that would be a pure guess on my part. Of course, the latter part of the signature is so cramped that if Mr. Gould had carried the signature out the way he usually wrote, he would run off the page, and whether he was trying to get it all on the page I couldn't say. It would be a pure guess on my part.

Q You mean that normally he was inclined to go beyond the paper? A No, not normally, but his signature as a rule is a slightly spread-out signature.

Q If he attempted to put his entire signature on that paper he would have to put a part of it in the air? A Oh no.

Q Then the "J" is about the only thing that is characteristic? A Oh, no; the whole thing is quite characteristic. "Geo. J." and the "Gou," except it is lumped up at the end—bunched up. I have seen him write so many times that I wouldn't question that signature at all.

Q You were not at Cap Martin? A No, I was not. I have never been there.

Q When had you seen Mr. Gould last previous to March 21st? A I saw Mr. Gould in Scotland in the month of August of the preceding year.

Q 1922? A Yes.

Re-direct examination by Mr. Lum.

Q Do you recognize the rest of the handwriting of this Exhibit C. 4? A Yes, I recognize the handwriting.

Q Whose is it? A Mr. Rice.

Q Who is Mr. Rice? A Mr. George J. Gould's secretary at that time.

Q The same gentleman who is the executor of Mr. Gould's will? A Yes.

Q And one of the trustees under the trust? A I don't know. I have heard his name mentioned. I presume it is the same S. M. Rice.

Mr. Lum: Complainant rests.

Col. Fisk: The defendant trustees have no further evidence.

Mr. George McCarter: The defendants' executors offer in evidence the deposition of Mrs. Drexel, taken in France in August last. The originals are not here, for some reason. Shall I read the copies now?

The Court: Well, I thought perhaps you had a number of documents now to offer.

Mr. George McCarter: I will offer the deposition of Anthony J. Drexel, Jr., taken at the same place.

(The deposition is read by counsel.)

Mr. George McCarter: I also offer the deposition of Lady Decies, taken in London in August last.

(The deposition is read by counsel.)

Mr. George McCarter: I next offer the deposition of Lord Decies.

(The deposition is read by counsel.)

Robert B. Knowles, recalled, direct.

Mr. McCarter: I would like to recall Mr. Knowles for a moment.

ROBERT B. KNOWLES, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. McCarter.

Q You have already testified, Mr. Knowles, that the body of Exhibit C. 4 is in the handwriting of Mr. Rice? A Yes, it is, Mr. McCarter.

Q In whose handwriting is the body of Exhibit D. 5? A That is Mr. Rice's handwriting also.

Q In whose handwriting are the two envelopes, both of which seem to be marked "Exhibit D. 4"? A The addresses on both of these envelopes are in the handwriting of Mr. Rice.

Mr. McCarter: If your Honor please, these two envelopes seem to bear the same exhibit number.

(It was explained by the stenographer that the first envelope handed him was marked with the automatic exhibit numbering machine, but that one of the counsel handed him another envelope with the statement that I had been handed the wrong envelope; and he then marked the second envelope "D. 4" with pen and ink.

The Court: Is there any way of straightening this out?

Mr. Lum: It is utterly immaterial.

The Court: But Mr. McCarter doesn't seem to think so.

Mr. McCarter: I would say to the Court that the document to which objection is made was marked an exhibit at the time it was produced and put in my hands in the envelope by Col. Fisk, and that was originally marked D. 4.

Col. Fisk: Mr. Rice is here and can identify them. That is the envelope that contained the order of Mr. Gould; this is the envelope that contained the personal letter, and I produced it today and got it personally from Mr. Hardenbergh this morning.

Mr. McCarter: My suggestion is that the letter to which you refer was contained in that envelope having the title of President appearing after the name. Is that your recollection?

Col. Fisk: No, that is not the fact. I got the letter this morning from Mr. Hardenbergh. Mr. Perkins had the other letter with the word president on it. It wasn't in my possession. I produced this personally at Mr. McCarter Jr's request. Mr. Rice is here. He knows which envelope contained it.

KINGDON GOULD, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. George McCarter.

Q Where do you live, Mr. Gould? A I live at Lakewood, New Jersey.

Q You are one of the executors of your late father, George J. Gould? A I am.

Q And you are his oldest son? A I am.

Q Did you go to Cap Martin, France, in the spring of 1923? A Yes.

Q Did you, while you were at Cap Martin, see your father's widow, the complainant in this case? A I did.

Q Did you have any conversation with her there? A Yes.

Q Did you have any conversation in which you discussed with her any statements she might have made to your father, concerning the settlement of what we call the Jay Gould accounting suit? A Yes.

Q Tell us what you said to her and what she said to you? A After I met my father I said to the widow, "You are kidding father about this matter." She replied, smiling, "yes, but he is so sick."

Q When was that, Mr. Gould? A That was on the 16th of April, 1923.

Q How long before that had you arrived at Cap Martin? A The same night—evening.

Cross examination by Mr. Lum.

Mr. Lum: May I reserve my right to cross examine if it should become important? I don't know anything to cross examine on now, but if this ties up with something else I want it noted simply that I have reserved my right to cross examine him.

Mr. McCarter: Counsel should cross examine or not cross examine. I don't know of any rule that allows counsel to hold the cross examination up in this manner. He should cross examine or say he has no cross examination.

The Court: Of course, it is within my discretion as to whether or not he shall have further opportunity for cross examination. I will see, Mr. Lum, that you are not put to any disadvantage on that. But, gentlemen, I have no right to be sitting here. I notice this case has been referred to Vice-Chancellor Backes.

Mr. Lum: No, that is another case. I have a copy of the order of reference and I'm quite sure it was referred to you.

The Court: Oh well, it will be taken care of on a re-reference.

Col. Fisk: I signed a consent to have it go to you.

Mr. Lum: I have a true copy from the Clerk in Chancery, sent to us, referring it to your Honor.

The Court: I have no middle initial at all. That ought to have told him. That is the only way that Vice-Chancellor Backes and I can be distinguished in filing papers.

Mr. George McCarter: I wish to recall Mr. Kingdon Gould.

KINGDON GOULD, resuming the stand, testified as follows:

Direct examination by Mr. George McCarter (continued).

Q Mr. Gould, do you wish to correct your testimony? If so, go ahead. A I do. The date of my arrival at Cap Martin was the 18th of April and not the 16th.

Q And the date of your conversation with Mrs. Gould was when? A The date of my arrival.

Mr. George McCarter: That is all the testimony we have to introduce today. We are in this position with respect to the testimony: Two of the other children, Mr. George Gould, 3d, the youngest son, is now in Europe. In view of the fact that your Honor is holding open the determination of the case for the return of Lord Dawson's testimony, we should like to have an opportunity to put in Mr. George Gould's testimony before you at the same time, whether it can be taken before you or taken before a Master and presented to your Honor. We also have Mr. Jay Gould, who was called out to Chicago, but who is on his way back now and will arrive tomorrow morning. He is on the train now. We were under the impression that he wouldn't be reached until tomorrow morning, and for that reason I notified him to come back from Chicago then. He is on his way now. It may be that before the case is finished we will not want to use him, but if we do we will have him here to put on the stand tomorrow morning.

Mr. Lum: I have no objection to that, but I have objection to holding it open until November. We will be entirely unconcerned with Lord Dawson's testimony. Also, I might say to your Honor that Mr. George Gould was in Paris when Mr. McCarter and I were there, and the testimony could have been taken at any time.

Mr. McCarter: It wasn't taken because he said he would be here at the trial. I don't know why he isn't here; but inasmuch as your Honor is going to keep the case open for the consideration of Lord Dawson's testimony later—and I don't see how it can be kept out now—I can't see what harm could be done if you waited the same length of time to hear George Gould's testimony. He was there, first and last, and the only one of the children other than Mrs. Drexel, from the beginning to the end of his father's last illness, and therefore can give very valuable testimony.

The Court: Will you consume the rest of the day?

Mr. Lum: I do not think so. But I would not object to Mr. Jay Gould's testifying whether we did or did not.

The Court: Suppose we lay the consideration of your request over until tomorrow.

Mr. Lum: I will read the deposition of Mr. Francis Carlin, taken on the 18th of August.

(The deposition is read by counsel.)

Mr. Lum: Also the testimony of Dr. Rendall.

(The deposition is read by counsel.)

Mr. Lum: I will also read the deposition of Miss Rose Davy.

(The deposition is read by counsel.)

Mr. Lum: I read also the deposition of Miss Lillian D'Oyly-Watkins, taken in London August 15th. She was a nurse.

(The deposition is read by counsel.)

(Recess until 2 o'clock P. M.)

Mr. Lum: The original depositions are now before your Honor, I'm happy to say. We were somewhat handicapped by the people we had taking the testimony. We now offer those depositions in evidence.

GEORGE LETTERHOUSE, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. McCarter.

Q You are employed by the Commercial Trust Company? A Yes, sir.

Q And what position do you occupy there? A At present I am Assistant Trust Officer.

Q And what were you in the month of April, 1923? A I had charge of the Trust Department at that time.

Q What does that mean? A Well, I was the clerk that had immediate charge of the Trust Department, under Mr. Perkins, who was the Trust Officer.

Q The Mr. Perkins who has already testified in this case? A Yes, sir.

Q Did you have something to do with this document marked Exhibit C. 27? Please look at it and tell us if you recognize your handwriting there. A Yes, sir; that is my handwriting on this page.

Q Everything on the page? A No; these two entries here, under date of January 5th, $61,225, are not in my handwriting.

Q What is in your handwriting? A The entries under January 4th, "Guinevere S. Gould, donor, securities, $111,901.90" and "Jan. 5th, ditto, $191,875.00"; and on April 7, 1923, "Received from Geo. J. Gould, as per letter of 3-21-23, $1,010,000."

Q Did you see that letter? A Yes, sir.

Q The letter of Mr. Gould? A Yes, sir.

Q Who showed it to you? A Mr. Perkins gave it to me and told me—

Q Never mind what he told you. A Mr. Perkins gave it to me.

Q Did you see any other letter? A Yes, sir; I did.

Q Did you handle the securities? A Yes, sir; I handled all the securities.

Q You did? A Yes, sir.

Q What, if anything, did you do with the securities referred to in the letter of April 7th? A Why, I placed them with the other securities belonging with the trust of Mr. Gould.

Q When did you do that? A On April 7, 1923.

Q Are you sure about that? A Yes.

Q Where were the other securities? A They were in one of our vaults at that time—the vaults we use for our Trust Department. We have six vaults that we use for that.

Q How were the other securities; wrapped up, or identified, or kept separate? A They were in a large envelope, about this size, 18 x 20 I believe they are.

Q You mean that you put the securities referred to in the letter of April 21st in that

envelope? A No, sir; they wouldn't fit in that envelope; they were put in the same vault attached to the other envelope.

Q This was a big vault, wasn't it? A Yes.

Q I asked you, were they placed in the same envelope? A No, sir.

Q They had their individual envelope? A Yes.

Q Did you put them in an envelope of your own or keep them in the envelope given to you? A Put them in an envelope of our own.

Q Where did they come from? A Mr. Kingdon Gould and Mr. Rice gave them to us; they had them in trust.

Q Where were they then? A In the vault.

Q Where were they taken from and where were they put? A Taken from the one vault where they were in, where we put the customer's securities, and put them in the other vault where we have the voluntary trusts.

Q In a new envelope? A No, they weren't in an envelope at the time; they were bound—I don't know what you call it, something like suspenders that snap on, to hold the securities together.

Cross examination by Col. Fisk.

Q Have you the record showing the procedure in taking these million dollars from Mr. Gould and Mr. Rice? A Yes, sir.

Q Will you produce it? A (Witness produces a large sheet.)

Q Whose handwriting is that? A Mine.

Q What does that show? A Shows that on March 8, 1923, we received one million U. S. A. 3½ bonds from George J. Gould.

Q Does that show any disposition of them? A It shows that on April 7, 1923, we delivered them to the vault, as per letter of Mr. George J. Gould.

Col. Fisk: I offer that in evidence.

Mr. McCarter: No objection.

(Marked Exhibit D. 7.)

Q Have you any record to show who took them out of the vault when they were held on account of Mr. George J. Gould, and what vault they were put in? Is there any record there of that? A Yes, sir; here's a record of the vault custodian, showing the entry into the vault and delivery from the vault.

Q What does that show? A That shows "Liberty bonds, 3½, $1,000,000 received in the vault March the 8th, 1923, and delivered from vault April 7, 1923."

Col. Fisk: I also ask to have that marked in evidence.

(The same is marked Exhibit D. 8.)

Q Have you any other records? A Here are the in-and-out slips, showing they were put in the vault and taken out of the vault.

Q Explain the system. A It takes two to open the vault, and Mr. Hardenbergh and Mr. Perkins have the upper combination, and Mr. Purcell has the lower combination and also I.

Q He is your assistant? A Yes. In addition to the two who hold the combination on the vault, we as the vault custodians, check all securities that are placed in the vault or taken out.

Q Have you any record showing when these securities were first placed in the vault and who took them out?

Mr. McCarter: Colonel, I don't think he can prove other people's records. I object to it.

Col. Fisk: All right; it is immaterial. I will withdraw it. I only wanted to see if our system was correctly understood.

Re-direct examination by Mr. McCarter.

Q Do you have any numbers to these different securities? A Yes, sir.

Q What number is the trust Exhibit C. 2? A C. 98.

Q I notice on this Exhibit D. 7, transferred to the trust account, is C. 99? A That is my mistake.

Q Your mistake? A Yes.

Q Was it transferred to a separate trust account? A No, sir.

Q Why did you say C. 99 on there? A I don't know why I did; I made a mistake on it.

Q Where is trust account C. 99? A That is down in our ledger.

Q I wish you would produce it.

Col. Fisk: He will do that. (Addressing the witness.) Maybe you can telephone to Mr. Purcell to bring it up.

Mr. Lum: The exhibits that have been referred to in those depositions are photostatic copies. Shall I leave them with your Honor?

The Court: Keep them until the close of the case, anyway.

GEORGE LETTERHOUSE, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. McCarter.

Q What is this paper you have produced? A That is the control sheet on trust No. C. 99, Commercial Trust Company.

Q Taken from some files? A Taken from the loose-leaf ledger.

Q How do you account for the fact, then, that on Exhibit D. 7 it says "transferred to the trust account of C. 99" as per letter of Mr. George J. Gould? How do you account for that? A Why, I don't account for it except I made a mistake in the number of the trust.

Cross examination by Col. Fisk.

Q What is trust C. 99? A It is the trust of Emma E. Black for $10,000.

Q $25,000 mortgages? A Yes.

Q No relation to this other trust? A None whatever.

Re-direct examination by Mr. McCarter.

Q Now, as a matter of fact, at the time you wrote on this Exhibit D. 7, didn't you intend to open a trust as C. 99? A No, sir.

Q Well, that trust was opened when? A Opened on March 23, 1923.

Q Did you look at the trust ledger before you made that entry? A I put that number down from memory, sir.

Q From memory? A Yes, sir.

Q When do you say C. 99 was opened? A March 23, 1923.

Q Well, when was this trust purported to have been opened? A That was made on April 7, 1923.

Mr. Lum: The complainant rests.

(MISS) VIOLET WILLIAMS, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lum.

Q Where do you live, Miss Williams? A In New York.

Q What is your profession? A I am a trained nurse from Bellevue Hospital.

Q Did you know the late George J. Gould in his lifetime? A I did.

Q Did you act in the capacity of nurse in that household? A I did.

Q Tell us, briefly, what your duties were? A I left New York in charge of the baby—of his children, principally of the baby, and I relieved the other nurses during their hours off.

Q Were you at Cap Martin? A Yes, I was at Cap Martin.

Q During the entire time? A During the entire time.

Q From the first of March, 1923, and during the whole of that month, about how often were you in the sick room a day? A At least twice a day, in the afternoon and in the evening.

Q Tell us whether or not you ever spoke to Mr. Gould. A I conversed with him every day.

Q Did he or did he not recognize you? A Always, and until about a week before his death.

Q Do you recall the general subjects of conversation with him? A Why, various subjects; about his children, particularly the baby.

Q Did he show any interest in the children during this period? A Very great interest, and his room was right next to the baby's, and if she cried during the night he always wanted to know if the baby was all right, and he frequently asked me to bring her in.

Q And did you do so? A I did.

Q Was the baby left with him alone at times when you stepped in the other room? A No; naturally, I wouldn't leave a baby alone with a sick man.

Q About how old was the baby? A A year and a month.

Q What was the baby's name? A Guinevere.

Q Named after its mother? A Yes.

Q Did you take any pictures of the baby and Mr. Gould? A Yes, around about the 14th of March, about a week before that time, Mr. Gould was sitting on a couch, and he asked me to bring the baby in, and I took it in and they were both together, and I got my camera and took the picture of both of them.

Q Did you take the photograph yourself? A Yes.

Q And are these pictures a good representation of the two of them? A Yes, sir.

Mr. Lum: I offer in evidence these two photographs of Mr. Gould holding the baby.

(Admitted and marked Exhibits C. 5 and C. 6.)

Q Do you recall the visit of Lord Dawson? A Perfectly.

Q What was Mr. Gould's condition at that time? A Why, Mr. Gould was very eager to see Lord Dawson, and after seeing him he seemed to brighten up and it seemed to give him more confidence. He talked with Mr. Gould on the 20th, which was the evening of Mr. Dawson's visit, and he seemed very much cheered up.

Q And the next day how was he? A He said his condition was good. His mind was very clear always, I should say.

Q And do you know when Mr. Rice came? A I was in the room when Mr. Rice came. I knew that Mr. Gould expected him. I was there when he came.

Q When was that with reference to Lord Dawson's visit, before or after? A I should think it was about five days before.

Q And do you know whether Mr. Rice and Mr. Gould conversed together at that time and thereafter? A Oh, I do know that, yes, on business.

Q And how often? A Why, every day.

Q Do you know when Kingdon Gould came there? A I do.

Q Did you ever see him converse with his father? A I did.

Q Did you ever hear them discussing any business matters together? A I didn't hear what they said, but I know they discussed business.

Q How did you know that? A Well, I knew that Mr. Gould wanted to talk with his son; he was very eager for him to come.

Q How did you know that? A Well, I knew that because I was asked to leave the room.

Q Was anybody else there? A Mr. Kingdon Gould; and Mr. Jay Gould, and Mr. Rice was also asked to leave the room.

Q Was Mr. Howard Gould there? A Frequently.

Q He was a brother of George? A Yes.

Q Do you recall Mr. Gould's saying anything to you after his son had been there for quite a time with him? A Yes, I remember an occasion when Mr. Kingdon and Mr. Jay were there, and I was asked not to let them stay so long.

Q How long had they been there on that occasion? A Quite some time for a sick man.

Q A minute or an hour? A Oh, no; I should say a half an hour, fully.

Q Was there ever a time, up until a week or so before his death, that Mr. Gould ever failed to recognize you or the baby? A Never.

Cross examination by Mr. McCarter.

Q How long have you been in the employ of the present Mrs. Gould? A How long have I been?

Q That's what I said. A Or had I been?

The Court: How long have you been now.

A I'm not in Mrs. Gould's employ.

Q How long had you been? A I left America on June 6, 1922.

By the Court.

Q You mean that is when you went in her employ? A Yes; I took the baby on the ship going over.

Q How long had you been in her employ? A Never before that; never.

Q Well, how long were you in her employ? A When I left for America?

Q You told us you were a graduate nurse of Bellevue Hospital; I am asking you the simple question how long you were in the employ of Mrs. Gould? A You mean before I left America?

The Court: No, altogether.

A Oh, altogether. Those three months altogether.

Q You were in her employ before she was married, were you not? A No, never. There were other nurses, but I wasn't.

Q And you remained till how long at Cap Martin; till his death? A Right on, and I returned on the ship with Mr. Gould's body.

Q And when did you see Mrs. Gould before coming here today? A I seen her the first day she arrived; I think it was last week sometime.

Q By appointment? A Yes, naturally, because I am busy all day.

Q I don't want "naturally"; and have you seen her since? A I saw her today; not since then until today.

Q Came over here with her? A Yes.

Q She hunt you up? A No. Well, I stop at the hotel she is staying at.

Q Came down together? A Yes.

Q Now, you have stated that while Mr. Gould was sick you saw him at least twice a day. You were then charged with the care of the infant, weren't you, at that time? A I was.

Q You weren't in charge of his case? A No.

Q They had other nurses? A Yes.

Q However, you did now and then relieve the nurses? A Sometimes as much as two hours at a time.

Q How many nurses were there? A First, two; and then three; and then four.

Q When did the four commence? A I don't remember exactly the time.

Q How long before Lord Dawson arrived? A Oh, it was after that. He just had two nurses when Lord Dawson was there.

Q Now and then when you were relieving the nurses you would make entries on the charts, would you not? A I would.

Q Do I understand you to say that you never attended Mrs. Gould previous to the time that you say you were employed by her? A No, not previous to the time I left America in 1922.

Q I am asking you if you ever attended Mrs. Gould, either in America or Europe, or Asia, or Africa previous to the time that you say you were employed by her? A No, never.

Q Never did? A No.

Q I refer you to one of the charts and ask you if, in the right-hand corner of the chart dated the 26th of March, the words "Has been talking to Mrs. G. calmly" is in your handwriting? A Yes.

Q What did you mean by "has been talking to Mrs. G. calmly"? A I meant that Mr. Gould seemed to know perfectly that he was going to die, and he was talking with Mrs. Gould.

Q So on the 26th of March he knew as well as you that he was going to die? A Yes.

Q And he knew it, too? A He did.

Q And then I find on the nurse's day report on the same date: "Very exhausted. Pulse weak. Has been more comfortable." Is that in your writing? A Yes.

Q You say these days his mind was perfectly clear all the time? A Perfectly.

Q No question about that, is there? A No question in my mind.

Q The sedatives that were given him you were familiar with? A Yes.

Q While they were operating, his mind was perfectly clear? A That is, he could always be aroused.

Q You differ from Dr. Davis in that respect? A I don't know Dr. Davis. Dr. Davis was not there then.

Q Notwithstanding the doses of sedatives that he was to receive your statement is that his mind was perfectly clear all the time? A I think his mind was always clear.

Q Never any departure from that? A Never.

Q Was he sitting up all the time? A Sitting up most of the time, either that or propped up with pillows.

Q He couldn't sleep lying down, could he? A Not so very long.

Q Didn't he a great deal of the time lie with his head down on the table that way (illustrating)? A Yes, because he seemed to be more comfortable.

Q And do you remember when the oxygen was tapped so that he could breathe? A Yes.

Q When was that? A About February.

Q So that since February he had been compelled to use oxygen? A Only occasionally.

Q Once a month? A I should say oftener than that.

Q Once a week? A Perhaps.

Q Or once a day? A He wasn't compelled to use it, but it did make him more comfortable.

Q But he wasn't sick? A I said he was sick.

Q Now, do you remember a visit of Mrs. Drexel there? A Yes, I do.

Q And do you remember her being with her father when you brought in the baby? A No, I don't recall that.

Q Do you remember, when Mrs. Drexel was there, your bringing the baby in to Mr. Gould's room? A I don't remember, but possibly I might have.

Q Let me see if I can refresh your recollection: And do you remember his asking who the baby was? A No, never.

Q Never? A No, never.

Q And you told him it was his baby; and he said he had no baby? A Oh, never.

Q Never? A No, never.

Q And do you remember at the same time that he said he only had one daughter and that was Margaret? A Oh, I don't remember that at all.

By the Court.

Q How frequently did he have oxygen? A Some days he didn't have any at all.

Q About how often? A Two or three times a day, but not all the time.

Q Along about the 20th or 21st of March how frequently was he inhaling it? A I don't think he used it all all that day. I don't remember.

Q I mean at about that period; how often would he have occasion to use it? A I cannot say, because I wasn't in the room all the time.

Q Will you just describe the sick-room? A When he first returned from Egypt he was in his bedroom, and afterwards he went to the boudoir facing the sea.

Q What was in there? A A lounge, and several easy chairs, and tables, and a large wardrobe.

Q When did he last leave that room? A Last leave it? When he was taken away.

Q You know perfectly well what I mean; when was he out of that room before he died? A I don't remember.

Q Well, to the best of your recollection? A I don't know; I think it was sometime before Dr. Davis left, I think, when he was down in the balcony for a sun bath.

Q When was that? A It would probably be about the 12th or 14th of March.

Q Did you relieve the four nurses after they came? A Certainly not.

Q When did the two nurses start in? A From the 1st of March; one at night and the other at daytime. I relieved the day nurse.

Re-direct examination by Mr. Lum.

Q By whom are you employed now? A By Mrs. Solomon for Dr. Hubert Guyle.

Q Have you any connection or interest in this case in any way? A None whatever.

Re-cross examination by Mr. McCarter.

Q Did you get into Gould's employ through Dr. Davis? A I did.

THE DEFENSE. REBUTTAL.

GUINEVERE S. GOULD, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. McCarter.

Q Mrs. Gould, you are the complainant here?
A Yes.

Q When did you and your husband go abroad?

Mr. Lum: I object. This is rebuttal, may it please your Honor, and nothing has been asked on our case touching that in any way. They should confine themselves strictly to their rebuttal. In other words, this is not competent for them to go into at this time. Our case did not touch the question when Mr. Gould went abroad.

The Court: I know, but this is cross examination.

Mr. Lum: Oh, no, sir; she is their witness. I haven't called her at all.

The Court: Now are we going to quibble about her being a hostile witness?

Mr. Lum: Not at all. It has nothing to do with that, but it has to do with the course of procedure. They rested their case and now, on rebuttal, they can only, under the rules, meet the case that we have put in. Now, this doesn't contradict anything that I put in.

The Court: I don't know, of course.

Mr. Lum: May I suggest that there was nothing said in our case about her and her husband ever going abroad.

The Court: Yes, Miss Williams testified to it.

Mr. Lum: On cross examination she was asked to identify the date when she went from this country. She did not say Mr. and Mrs. Gould went abroad, and this was on their cross examination. They can't, on their cross examination, lay the basis for rebuttal. I am simply attempting to protect our rights by confining them to a rebuttal of our particular case, and certainly our case didn't go into any such thing.

The Court: Well, I don't know what Mr. McCarter is driving at or what he is going to try to develop; I can't tell from this question. You may be able to tell, because of your greater familiarity with the facts and circumstances surrounding the case. I can't tell. But even if it is not proper rebuttal it is within my discretion to permit it. I am going to allow it.

A I went abroad on June—I don't remember the exact date—in June, 1922.

Q Well, when did you and Mr. Gould get together abroad? A Mr. Gould met me at Southampton.

Q When? A In June, 1922.

Q (By the Court.) On the arrival of your steamer? A He met me at the steamer.

Q And from that time you were with him until his death? A I was.

Q He was ill in Egypt? A Yes.

Q You were with him then? A Yes.

Q Attended to him? A I was with him all the time.

Q And after he got to Cap Martin you were with him? A Yes.

Q Down to the time of his death? A Yes.

Q When did you conclude he was seriously ill? A After he had seen Lord Dawson. Lord Dawson told my husband—

Q Never mind about what Lord Dawson told your husband; I asked you when you concluded he was seriously ill? A After he saw Lord Dawson.

Q Well, he was ill before that, wasn't he? Who was his attending physician at that time?

Mr. Lum: I object, may it please the Court. That is not rebuttal of our case. Oh, well, I will withdraw the objection.

Q Who was the attending physician at that time? A At the time of Lord Dawson's visit?

Q Yes. A Dr. Rendall.

Q And Lord Dawson was way over in England, wasn't he? A When?

Q When you sent for him? A Yes.

Q And is said to be the most distinguished man in England? A Yes.

Q And he was ill enough to send for him at that time, wasn't he? A We all thought so, yes.

Q Now, Lord Dawson was there on the 20th, wasn't he? A Yes, sir.

Q I show you Exhibit C. 4; please look at it (handing paper to the witness). A Yes.

Q You were in the room when that was executed? A Yes.

Mr. Lum: I object. This certainly was a part of their case. They set up in their

pleading certain defenses. They put in their case, and they can call witnesses to meet that. If they are going into this line of testimony I want the privilege of calling others, for I have an abundance of witnesses.

The Court: You are in a court of equity and I want to find out everything—the relation of the decedent at the time he signed that order. I am not going to apply any hard-and-fast rule.

Mr. Lum: Then I know your Honor will when Mr. Rice, who is one of the defendant executors, and who wrote that paper, takes the stand. Now, why don't they call him? I would be delighted. I don't know what Mr. McCarter is up to, but I object to it as improper.

Mr. McCarter: If you will only keep still you will find out.

Mr. Lum: They rested their case on the question of defense.

The Court: I assure you that you shall not suffer by reason of not having an opportunity to meet anything that Mr. McCarter may be able to develop.

Q Who else was in the home? A Mr. Rice.

Q Let me see if I can refresh your recollection; do you recall Mr. Gould's attempting to write with a fountain pen, and being unable to successfully do so you secured another pen for him? A I don't remember that very well, but I think it was so.

Q And do you recall where you secured that other pen from? A I can't remember.

Q Well, was it in the room or in another room? A No, in the same room.

Q It was not a fountain pen but an ordinary penholder and pen, was it not? A That I don't know.

Q See, also, if I am right in this: Where was Mr. Gould sitting at the time? A On the bed; either on the bed or in a chair, I don't remember which.

Q Now, Mrs. Gould, can't you remember? This was a very important document, signed in your presence, at a time when your husband was quite ill, and if it were a proper transaction it meant a million dollars to you and your children, and I want you to try and recall, if you can, the circumstances. A Well, I can't tell. I think it was near the window. I was standing in the window and my husband was in the back of the room or in a chair; I can't remember which.

Q And you went and got this other pen, and did you hand it to your husband? A Yes, I think I did. My husband said—I was at the window and my husband said: "Dear, come over here and attend to this," and I went over from the window.

Q And then you got the pen? A (The witness pauses.)

Q I wasn't there, Mrs. Gould. A But, you see, I don't remember quite.

Q I am trying to refresh your recollection. This wasn't an every-day event, you know; this was a pretty important matter. I am asking you, was it after you came from the window that you went and got the pen? A Well, yes, I suppose so.

Q Don't you remember? A Of course, it would be—

Q Not what it would be but what it was. A Yes, you see I don't remember this part so well. I was at the window and my husband asked me to come over—

Q Yes, you have told us that. Now, what was the document resting on when that signature was put there? A I never noticed.

Q Table? A I don't remember at all.

Q A book? A I can't tell.

Q Was he standing, sitting, or lying? A He was sitting.

Q And you guided the pen while he wrote what is there, did you not? A No, I did not.

Q Now, Mrs. Gould, try and think; isn't it a fact that after that pen had been obtained that you went over there and, in the presence of Mr. Rice, that signature was put there, you having your fingers on the end of the pen, standing up from Mr. Gould's hand? Isn't that a fact? A I don't remember that at all.

Q Don't remember that at all? A No.

Q You wouldn't say it isn't true, would you? A Well, I don't quite see what you are asking me to say.

Q I am asking you to say the truth, and I say you won't say it isn't true, will you?

The Court: In other words, counsel means will you deny or won't you deny that that is true?

A What is true?

The Court: That you helped to guide the pen.

A No.

The Court: Then you do deny it?

A I didn't guide the pen.

Q You didn't have hold of the pen? A If I had handed my husband the pen I had hold of it, but I didn't guide it.

Q Will you say when he signed it in that way you didn't have hold of the pen and help him? A I handed him the pen.

Q Yes, I know you did; and I ask you again —now think carefully and be candid about it. Isn't it a fact that there was so much difficulty in your husband's writing that you assisted him? I'm not criticising you for doing it; I only want the facts. Did you not assist him by helping him hold the pen? A I handed him the pen. You see that is different.

Q I know you did; you handed him the pen and then he wrote his name, didn't he? A Yes, of course.

Q You saw him? A Yes, I did.

Q Had that first "G" been put there before you brought the pen? A I don't remember.

Q Now, when he wrote his name you were right there, anyway, weren't you? A Yes, I was.

Q You and Mr. Rice and your husband were right together? A Yes.

Q And will you positively deny—I'm only asking for your best recollection—will you positively deny that you did not continue to hold that pen while your husband undertook to sign that paper? A I don't remember that at all.

Q I show you a cable dated March 6th, signed "Guinevere Gould"; did you send that cable? A Yes, I think so.

Mr. McCarter: I offer it in evidence.

Mr. Lum: No objection at all.

(Marked Exhibit D. 9.)

Q At the time you sent that cable, which was on the 6th of March, you thought Mr. Gould was seriously ill, did you not? A I knew he was ill, but I didn't think he was dangerously ill.

Q And on April 2nd did you send that cable (exhibiting paper to the witness)? A Yes, I remember that.

Mr. McCarter: I also offer that in evidence.

(Admitted and marked Exhibit D. 10.)

Mr. McCarter: This cable, Exhibit D. 10, is dated April the 2nd, and reads as follows:

Texagould, New York.

For Kingdon and Jay.

Can you come at once. Your father asks for you all the time.

GUINEVERE GOULD.

Q Did you consider Mr. Gould seriously ill then? A May I see it again?

Q (Counsel hands Exhibit D. 10 to the witness.) A Yes, my husband was always asking for Kingdon and Jay.

Q So that on April 2nd he was very ill? A He was ill, yes.

Q Well, he had been ill in Egypt, hadn't he? A Yes.

Q Now, let's be sensible about it; he was seriously ill, wasn't he? A Yes.

Cross examination by Mr. Lum.

Q Mrs. Gould, did your husband know you and recognize you on this day this paper was signed, the 21st? A Of course.

Q And did you voluntarily come over and participate in this or come only when you were called? A You mean from the window?

Q Yes. A He called me when I was by the window.

Q Had the paper been actually written out when you came over to your husband? A Yes.

Q It was written, it has been testified, by Mr. Rice; do you know how long Mr. Rice had been your husband's secretary? A No.

Q Had you discussed this paper previously with your husband? A No.

Mr. McCarter: I object as not cross examination. I confined my examination to the fact that she and her husband were together from the time she arrived at Southampton until he died, about a year, and then I jumped right to this transaction. Of course, whatever occurred then and there I think is subject to cross examination.

The Court: I think that statement that he had previously made might be of importance to indicate the state of his mind at the time he signed it. I overrule the objection.

Q And had you any knowledge of the contents of this paper until you came over and saw it? A Yes, because he asked Mr. Rice if he had drawn up the paper he asked him to, and Mr. Rice had it in his pocket and took it out and says, "Here it is."

Q Mrs. Gould, will you tell us whether or not that is your husband's signature? A Yes, it is.

Q And was it made in your presence and in the presence of Mr. Rice? A Yes.

Q Did you make that signature for him? A No.

SCHUYLER NEILSON RICE, sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. McCarter.

Q Mr. Rice, you lived in New Brunswick? A Highland Park, New Brunswick.

Q How long had you known George J. Gould? A About 25 years.

Q And before and at the time of his death were you in his employ in any capacity? A Yes, I was employed by him at the time of his death.

Q Did you learn that Mr. Gould was ill, in this country— Did you learn that fact? A Oh, yes.

Q And did you go abroad? A I went abroad and sailed on March 10th.

Q When did you reach Cap Martin? A March 17th.

Q What condition did you find him in at that time?

Mr. Lum: Just a moment. I object to that. May it please your Honor, no one in the state had had more trial experience than Mr. McCarter, and no one knows better how a case should be tried. It is not a technical objection that I make, but I rise to

a point of substantive right. When Mr. McCarter rested his case he had not called this client of his, one of the parties who was represented by him and who protested against the payment of this fund to Mrs. Gould.

Col. Fisk: I want to correct that. There is no evidence that Mr. Rice protested.

Mr. Lum: Well, I will withdraw that part of it.

Col. Fisk: Mr. Kingdon Gould testified to it.

Mr. Lum: The fact is, he is one of the executors and one of the defendants here who has filed an answer, and in that answer certain defenses were set up. They have undertaken to meet those defenses. They read the depositions of Margery Gould and Lord Decies and Lady Decies after the 25th of March, which had nothing to do with the issues in this case; and then they rested, and we put in our evidence. If we had gone on further, after having put in an abundance of evidence, your Honor might claim that we were trifling with the Court's time; and I say at that time to attempt to call a man that had to do with the matters that we are concerned with today is clearly objectionable. I objected when Mrs. Gould was put on the stand, but thought there might be something in the way of rebuttal. If this is the only witness they intend to call, then I withdraw my objection; but I make my objection because I do not want to keep on meeting other things. This is a court of equity and we desire to know all that has been. But by doing that I don't want to be

placed in a position of allowing them to put in other witnesses.

The Court: I think there is a great deal to your objection.

Col. Fisk: I understood that the testimony of Mr. Jay Gould was to be taken.

The Court: That was reserved before the executors rested. I will overrule the objection.

Q (Question read by the stenographer.) That is, when you arrived there on the 17th of March? A I found Mr. Gould in a very weak physical condition.

Q What was there in the way of artificial breathing? A Why, he had some oxygen—a bag of oxygen, and he kept it on the sofa by him. He was sitting on the sofa.

Q How many nurses did he have? A I think at that time there was only one nurse in the room.

Q How many attended him? A Why, he had his valet there; he came in at times. That is the only one I saw.

Q He had a day nurse and a night nurse? A A day nurse and night nurse, but only one there at a time.

Q I show you Exhibit C. 4; who was in the room when that was executed? A Mrs. Gould, Mr. Gould, and myself.

Q What time of the day was it? A I think it was the afternoon of March 21st.

Q What position was Mr. Gould in when he signed it? A Mr. Gould was sitting up in bed, leaning against his table. He had one of these bed tables.

Q How was he leaning? A He always leaned that way (illustrating), and when he signed that he sat at the desk and signed it.

Q I notice there are two Gs there; can you explain that? A The idea of the first G was, he attempted to sign alone with my fountain pen and he dug it into the paper and he couldn't use it, and Mrs. Gould had come into the room, and he called her and asked her if she wouldn't bring him another pen and come over to help him with it.

Q What did she say? A She went over to the desk and brought a stub pen and helped him.

Q How did she help him? A She took hold of his hand and started him with it at his request. He requested her to do it.

Q Did she then assist him in the actual signing of his signature? A Well, she started it. I don't remember whether she finished it or not; she started his hand signing it. He always signed very quickly.

Q How does that signature compare with his regular signature? A It isn't as good, because he was very weak, physically.

Q He was very weak? A Very weak.

Q After it was over what became of the document? A I took the document and put it in my pocket and kept it until the following Sunday.

Q Did Mrs. Gould make any inquiry? A Not until after I mailed it.

Q What did she inquire? A She wanted to know if it had been mailed.

Q Did you mail another note at about the same time to Mr. Hardenbergh of the Trust Company? A I mailed another note the same day.

Q What have you to say as to the condition of Mr. Gould at the time that that document was signed? A Mr. Gould seemed clear; he seemed to know what he was doing; but he was very weak, physically.

Q I don't want to offer this letter in evidence, Mr. Rice, but I want you to look at it and refresh your recollection. Read it over (handing witness D. 5). Were you aware, at the time and before the time that that document was signed by Mr. Gould, that he had been given drugs? A I was told that he had been given bromides to make him sleep.

Q What effect did the drugs that you were told had been given him to make him sleep seem to have upon his mental activity? A Well, up to about the end of March I always saw him at his best in the morning. At that time I had heard a good deal, but I hadn't seen actually any mental wandering.

Q Are you clear that at the time that paper was signed Mr. Gould was competent to sign it? A On account of the weak condition I feel doubtful.

Q How long did you remain there? A I remained there until Mr. Gould died.

Q Which was what? A May 16, 1923.

Q Immediately after the signing of that paper, what would you say as to his sickness, whether it increased or otherwise? A I think he gradually grew weaker until March 30th.

Q What occurred on March 30th? A I was told—

Mr. Lum: I object to what he was told; what he saw.

A The only thing I saw, up to March 30th, was that he gradually grew weaker.

Q But you don't know except from what you were told? A I don't know, no.

Q I show you a cable, dated the 23d of March; look at it and refresh your recollection. It is from you, signed "Nelson." Now, after having looked at it and refresh your recollection, tell us what your recollection is as to his condition on that day. A Well, his condition is exactly as I said in that cable; I considered his condition very grave, and I felt that there wasn't any hope.

Q (By the Court.) What date was that? A March 23d.

Q On the 24th did you send that cable? A Yes, I sent that cable.

Q At that time what did you think of his condition? A Well, that was the next day. I thought he was getting worse every day.

Q The cable reads:

> Your father had a bad night. I think you should come as soon as possible and close all accounts.

That is to Kingdon Gould? A Yes.

Q On the 27th did you send that cable? A I sent that on March 27th.

Q And does that correctly state the condition of things so far as you knew or was able to tell, at that time? A Yes. I got the doctor's report, stating that he was very weak and that he wouldn't probably last until Sunday.

Q Now, on the 30th did you send that cable? A Yes.

Q Stating that the doctor reports a slight change for the worse all the time and that he had several sinking spells? A Yes.

Q Those cables correctly stated your view of the situation at that time? A Yes, sir.

Q See if you recall sending that cable. That is a copy of it. A Yes, Mr. Howard Gould and I drew that up together.

Q And did that correctly state the situation at that time? A At that time.

Q March 21, 1923—

Mr. Lum: Just a moment; you haven't offered these in evidence. They are all self-serving declarations. I object to your reading them. I thought you were merely showing them to him to refresh his recollection.

Q Referring to the cable that you just recognized and refreshing your recollection from it, tell us as to the possibility of George signing accounts on the date that cable was signed? A These accounts I had taken over in the Jay Gould accounting suit covering a period of 30 years and more, and Howard Gould and I both decided it was useless to bring up such a proposition for Mr. Gould to sign.

Q That was on the 21st of March? A Yes, on the 21st.

Cross examination by Mr. Lum.

Q Mr. Rice, you say that this paper (Exhibit C. 4) signed by Mr. Gould had already been written by you before Mrs. Gould came into the room? A C. 4 had been written by me before Mrs. Gould came in the room.

Q Had it been discussed before? A Yes.

Q When? A On the Sunday after I arrived.

Q The 18th of March? A Yes, sir.

Q Was Mr. Gould in favor of doing it? A Yes. He asked me for his will at that time.

Q Did he remember the contents of his will? A Well, I read it to him. I read the will over to him first to refresh his memory.

Q And after he had done that— A (Interrupting.) He spoke about this million dollars the next day.

Q —you advised against it, I believe? A I told Mr. Gould I thought it would be a mistake, in view of what he had already given, to do this.

Q Did you also say you thought there would be trouble with his children? A Yes.

Q And although you pointed that out he insisted upon doing it? A Yes.

Q The subject was mentioned, by the way, the next day? A On Sunday I mentioned it.

Q And, again, you advised him against it? A I told him I thought it was a mistake.

Q Do you remember it being mentioned the next day? A The next day I didn't see him. Lord Dawson arrived on Tuesday.

Q The 20th? A Yes.

Q Did you see him on the 21st? A Yes. After I had seen him he told me to draw up the paper.

Q Did you mention it to him or did he tell you? A He told me. I never mentioned it to him.

Q You are perfectly familiar with Mr. George Gould's signature? A Yes.

Q And except for his physical weakness it shows his signature? A It shows the outlines of his signature.

Q That is his signature? A That is his signature as it stands.

Q Was Mrs. Gould present at any of these conversations when the matter of signing the paper came up? A Mrs. Gould was never present except when he attempted to sign the paper and she came in the room at the time.

Q Did she do anything excepting what she was actually asked to do? A No.

Q You recall, although that had been signed and given to you to mail, you did not mail it at once? A Yes.

Q Do you remember speaking to Dr. Rendall the next morning? A Yes.

Q And did you ask him about that? A Yes, I asked him whether he thought he was competent to sign the paper.

Q You remember speaking to Mr. Howard Gould? A Yes.

Q They were very close? A Yes.

Q And he told you also to send it? A I spoke to him after Mr. Gould signed it and talked it over, and he told me he thought I had nothing else to do but to send it.

Q When did Jay and Kingdon arrive there? A I think the 15th.

Q You then told him about it? A No, he knew about it.

Q He knew about it when he arrived? A I think so.

Q Were you ever present when he discussed it with his father? A No, we never talked about it after Kingdon arrived.

Q You did have talks with him on various subjects after Kingdon arrived? A Not on business matters, only just in a general way, always out of his presence.

Q You knew Kingdon? A Yes.

Q He knew you? A Yes.

Q Kingdon never made any suggestion that he should revoke this, in your presence? A Never in my presence.

Q And you remember on the 22nd certain important checks were signed? A There were two checks signed.

Mr. Lum: Have you those checks? We gave notice to produce them.

Q There were two checks signed the day after? A Yes.

Q There was a discussion regarding other matters in which checks weren't signed, wasn't there? A I don't remember.

Q You remember a discussion as late as the first day of May, wherein Mr. Gould was concerned in the matter of an automobile which arrived at the place? A I knew he had bought an automobile. One of the checks he signed on March 2nd was in payment of an automobile.

Q And they were as late as the first day of May that the automobile arrived; and did you then discuss with Mr. Gould the matter of the payment of the balance? A Yes.

Q And after talking with him you came out and said Mrs. Gould was instructed to give George the check? A Yes.

Q Some 46,000 francs? A Yes.

Q That was done at the time? A Yes.

Q Mr. Gould understood what you said when you spoke to him about these matters? A Yes.

Cross examination by Col. Fisk.

Q Will you be kind enough to take those two envelopes which are in your handwriting, and tell us which one contained the personal letter to Mr. Hardenbergh? A The one that is addressed to Mr. J. W. Hardenbergh, President contained the order.

Col. Fisk: One is in evidence and the other is not.

The Court: Then the envelope which contained the personal letter to Mr. Hardenbergh will be Exhibit D. 4?

Col. Fisk: It wasn't offered in evidence; only marked for identification.

Mr. McCarter: I am offering now the Hardenbergh letter.

Mr. Lum: I can't see that it is material or relevant. It is a self-serving declaration, and Mr. Rice is here. It can't rise any higher than the source.

The Court: I will overrule the offer, upon the ground that Mr. Rice is a party defendant; his testimony has not been attacked up to date, and this will serve as a declaration made by him, favorable to his side of this litigation.

Mr. Lum: One or two questions of this witness, to see if I understood him correctly:

Q On the 21st of March when Mr. Gould signed this paper he knew you? A Very well.

Q And he knew Mrs. Gould? A Yes.

Q Recognized her when she came in the room? A He called her "Darling."

Q Was there any word said whatever to suggest any irrationality during the transaction? A Not during my presence.

Q That is all.

Examination by the Court.

Q You say that you had previously written C. 4? A I wrote that on March 21st.

Q In the presence of Mr. Gould? A In the presence of Mr. Gould; Mr. Gould directed me to do it. I was there alone with him and he called me in and told me to do it. Lord Dawson had been there in the morning.

Q And at what stage of the preparation and execution of that paper did Mrs. Gould, the complainant, make her appearance? A She came into the room when Mr. Gould attempted to sign it.

By Col. Fisk.

Q I don't think you have been asked the question: Before Mr. Gould attempted to sign it did you read it to him? A Yes; he asked me to read it to him.

By Mr. McCarter.

Q How long had Mrs. Gould been out of the room when she came in? A About 15 or 20 minutes.

By the Court.

Q Had the preparation of it been discussed in her presence? A No, sir.

Q It was written during that period of her absence? A Yes. Lord Dawson was in there in

the morning. After consultation I saw him, in the afternoon.

By Col. Fisk.

Q Mr. Rice, for a number of years you kept a diary of events as they occurred? A Yes.

Q And you have a diary of all these events to which you testify? A Yes.

Q And you have it at their service? A Yes. It is in shorthand and I don't think they can read it.

Q You can? A I can read it.

Mr. McCarter: With the exception of Mr. Jay Gould tomorrow morning and offering a copy of the will—

The Court: And the other two that are abroad?

Mr. McCarter: I think we are through.

Mr. Lum: Now, as to that, Mr. Jay Gould was not present until the 18th of April. I have no objection to his taking the testimony if it will throw any light on it in any way. He was in this country. I think no one will testify that he was there before his brother came. When he came on the boat they arrived substantially the same time. I don't see how it will throw any light on this matter in any way.

The Court: Which one is that?

Mr. Lum: That is Jay, the one they told us is on his way from Chicago and will be here tomorrow morning.

The Court: If they make the offer I will hear him.

Mr. Lum: If they don't, then I want to ask that we be permitted to sum up the case as though it were entirely closed. And may I say, that the testimony taken abroad would be of no value, excepting that of Lord Dawson, and I think we should certainly, on the present state of the record, be entitled to send a cablegram at once, revoking and cancelling that commission. There is no reason in the world why these children and this woman should be put to the expense of that testimony. I have a statement from Lord Dawson as to what he will testify to and it will be favorable to us. This suit was started a year ago. This income, which is a very substantial one, was intended for the children, and I think we are entitled to a prompt disposition of the case; and, on the completion of Mr. Jay Gould's testimony tomorrow, I give notice now that I want to sum up this case.

Mr. McCarter: We haven't delayed on this at all.

Mr. Lum: I am not blaming anybody. It is not a matter of blame. I am merely making the motion now so that we can be permitted to dispose of the case tomorrow.

(The further hearing is adjourned on Thursday, October 30, 1924, at 11 o'clock in the forenoon, at the Chancery Chambers in Jersey City.)

DEFENDANTS' CASE (continued).

Thursday, October 30, 1924, 11 A. M.

All counsel present as before.

Mr. George McCarter: I would like to offer in evidence a copy of the will, which I neglected to offer yesterday as a part of our main case. It is the last will and testament of George J. Gould, dated May 27, 1922.

(Admitted and marked Exhibit D. 11.)

JAY GOULD, sworn on behalf of the defendants testified as follows:

Direct examination by Mr. George McCarter.

Q Where do you live, Mr. Gould? A My official residence is Lakewood, New Jersey.

Q And how old are you? A I am thirty-six.

Q And you are one of the sons of George J. Gould? A I am.

Q And you are next in age, I take it, to your brother Kingdon, who is the executor? A I am.

Q Did you go to the South of France at the time of your father's last illness? A I did.

Q When did you leave the United States? A The 10th of April, nineteen hundred and—

Q Twenty-three? A Yes, 1923.

Q Did you go pursuant to any message you received from the other side? A I did. A cable came to my brother and myself, saying—

Q From whom was the cable, in the first place? A It was signed by Mrs. Gould, I think.

Q I show you a cablegram dated April 2, 1923, and signed "Guinevere Gould," and ask you if that is the cablegram you have just referred to? A It is.

Q Was that the only cablegram which you had received, pursuant to which you went to your father's side? A I received some cables from Mr. Nelson Rice.

Q I show you a cablegram dated at Cap Martin, March 25, 1923, addressed to you, and ask you if that is one of the cablegrams from Mr. Rice, which you have just referred to? A It is.

Mr. George McCarter: I ask that it be marked for identification.

(The same is marked D. 12 for identification.)

Q I show you another cablegram addressed to you, dated Cap Martin, March 26, 1923, and ask you whether that is another one of the cablegrams you received, pursuant to which you went? A It is.

Mr. McCarter: I ask to have that marked for identification.

(Same is marked D. 13 for Identification.)

Q Will you state whether or not there were other cablegrams, the receipt of which induced your going? A I don't remember any.

Q When did you arrive at Cap Martin? A Must have been the 20th of April.

Q Did you see Mrs. Gould, the complainant, before you saw your father? A I did.

Q Did you have any conversation with her before you saw your father? A The only conversation I had was, I said I was going up to his room to see him, and she says, "I don't think he will remember you—recognize you"—not remember you, recognize you.

Q And did you go and see your father that day? A I went right up to his room immediately.

Q Did he recognize you? A He did not.

Q Did he ever recognize you at any time after that? A He never fully recognized me all the time I was there.

Q How did he act when you went in to see him? A Spoke to me, or just moaned or groaned some sort of answer, but nothing intelligible.

Q Did he ever call you by name? A No.

Cross examination by Mr. Lum.

Q You and your brother Kingdon went across on the same boat? A No, we did not; I went on the—

Q Did you follow, then, a day or two later? A He went about two or three days ahead of me. I think; I am not sure exactly what day he sailed.

Q You talked to him just before he sailed? A I did, because we were in the same office together and met each other every day.

Q And when you arrived you saw him frequently? A I saw him at Cap Martin.

Q And did you and he discuss this paper of March 21, at that time?

Mr. McCarter: I object. How is that cross examination? The whole testimony of this witness is addressed entirely to the receipt of the cable to come over.

The Court: How do you justify it, Mr. Lum?

Mr. Lum: I anticipated there would be an objection and I cannot sustain it.

Q Mr. Gould, you and your brother did not stay at your father's home continuously after you arrived, did you? A No.

Q You left and went on a pleasure trip down into Italy? A No, I did not.

Q What was the nature of the trip? A I was in Paris.

Q You went on a pleasure trip to Paris? A Not on a pleasure trip.

Q When did you leave for Paris? A I can't remember. I think my first visit was three days, approximately; and I went again approximately a week later.

Q You were there from the 20th to the 23d, and left in about a week, which would be the 30th, and went back about the 30th, you think? A I forget how long I stayed on the second visit; I think two or three days.

Q And then you went away again? A I went back to Paris again.

Q And your father was a little better when you left on the second trip, wasn't he? A I don't think so. I'm not a medical man.

Q Did you discuss with medical men his condition? A No.

Q Didn't speak with any medical men at all about his condition? A I did.

Q About his mental condition? A No, just whether he would get well or not.

Q What time of the day did you usually go to see your father during these three days? A Usually in the morning.

Q Early in the morning? A Usually right after the doctor had been there.

Q Were you there on the first of May when George's automobile arrived and had to be paid

for? Do you remember that? A I don't remember it.

Q You don't remember a conversation Mr. Rice had with your father on that day? A No.

Q And you mean to say that there was never a time that your father knew you? A Not to fully recognize me.

Q What do you mean by fully recognizing you? A So that he could call me by name and to speak to me as he would to a son.

Q How did he speak to you? A Mumble a few words that were absolutely unintelligible.

Q You then thought his condition wasn't such that you thought it well to remain there, but you went on two trips to Paris, is that correct? A No, that is not correct.

Q What did you go there for? A I was representing the U. S. Tennis tournament and it was very much against my will that I went there.

Q And you concluded that your father's condition was such that you were justified in doing that? A Well, I had to do that.

Examination by the Court.

Q You sailed for France when? A The 10th of April.

Q And arrived there at your father's residence on the 20th of April? A Yes, sir.

Q That was about three weeks before his death? He died, I understand, on May 16th? A Well, it would be a little over three weeks.

Q How old was your father at the time of his death? A I think he was 59; I'm not positive.

Mr. Geo. McCarter: That is all we have now.

The Court: I have prepared an order of reference, and I want to know if it is satisfactory.

Mr. Lum: We have one, consented to, that I think covers everything, and it is the same in substance, except that it is drawn *nunc pro tunc.*

(Briefs to be submitted within one week after receipt of the stenographic record. Case closed.)

62/608—721

IN CHANCERY OF NEW JERSEY.

BETWEEN

SCHUYLER NEILSON RICE and KINGDON GOULD, as Executors, etc., of George J. Gould, deceased,

Complainants,

AND

COMMERCIAL TRUST COMPANY OF NEW JERSEY, et als,

Defendants.

ON BILL, &c.

FINAL DECREE

McCARTER & ENGLISH,
Solicitors for Complainants,
765 Broad St.,
Newark, N. J.

Filed Mar. 29, 1927

JOHN H. BACKES,
V. C.

Final Decree, Rice v. *Commercial Trust Co., et als., 62/608.*

IN CHANCERY OF NEW JERSEY

BETWEEN SCHUYLER NEILSON RICE and KINGDON GOULD, as Executors etc. of George J. Gould, deceased, Complainants, and COMMERCIAL TRUST COMPANY OF NEW JERSEY, et als. Defendants.	On Bill, &c. **Final Decree**

This cause coming on to be heard on the 3rd day of March, 1927, in the presence of George W. C. McCarter, William Wallace, Jr., and George J. Gillespie, of counsel with the complainants, and Willard C. Fisk, of counsel with the defendants, Commercial Trust Company of New Jersey, a corporation, and Schuyler Neilson Rice, as Trustees under the last will and testament of George J. Gould deceased, and also of counsel with the defendant, Edith Gould Wainwright, and in the presence of Ralph E. Lum, Ernest C. Lum and George W. Wickersham, of counsel with Guinevere Dunsford, individually, and as one of the guardians of the person and property of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, Gerald McLaughlin, of counsel with Schuyler Neilson Rice, as one of the guardians of the person and property of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, August Roche, Jr. and Walter B. Walker, of counsel with the defendants United States Trust Company of New York, a corpora-

tion, Frank Jay Gould and Helen Gould de Montenach; and of Edward O. Stanley, Jr., of counsel with Anna Duchesse de Talleyrand and Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, Georges Gustave Marie Antoine Boniface Charles de Castellane, Jason Honore Louis Sever de Castellane, Bankers Trust Company, The Farmers' Loan and Trust Company, and The Equitable Trust Company; and of J. Edward Ashmead, of counsel with Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., and Kingdon Gould, individually and as general guardian of Gloria Gould Bishop; and of John P. Manning, guardian *ad litem* and of counsel with Gloria Gould Bishop; and of Merritt Lane, of counsel with Thomas Barber, guardian *ad litem* for George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould; and of Wilfred H. Jayne, Jr., guardian *ad litem* for Edith K. Drexel, Anthony J. Drexel, Third, Marjorie Gould Drexel, Eleanor Gould, Anne Douglas Gould, Jay Gould, Jr., Eileen Vivien de la Poer Beresford, Catherine Maya Beresford, Arthur George Marcus Douglas Horseley de la Poer Beresford, Sylvia Annunciata Gould, Edith Kingdon Gould, Kingdon Henry Gould, George J. Gould, Third, Maughan Carter Gould, Stuyvesant Wainwright, Caroline De Peyster Wainwright, Carroll Livingston Wainwright, Jr., and Gioia Bishop, infants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint:

It is, on this 29th day of March, A. D., Nineteen Hundred and Twenty-seven, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor by virtue of the power and authority of this Court does hereby ORDER, ADJUDGE AND DECREE, as follows:

I. That the signing and execution by the complainants herein of the Stipulation for Compromise, dated December 4, 1926, a copy of which is Exhibit "B" of the Bill of Complaint in this cause, be and the same hereby is approved and said complainants are hereby authorized and directed specifically to perform and carry out all things in and by the terms of said Stipulation to be performed by them, and further that the making of the agreement of December 16, 1926, a copy of which is Exhibit "C" of the Bill of Complaint in this cause, be and the same hereby is approved, and the parties thereto are hereby ordered and directed to specifically perform the same, and that the said agreement of December 16, 1926, and the aforesaid Stipulation for Compromise of the action in the Supreme Court of the State of New York, dated December 4, 1926, be and they hereby are approved, and that they be in all things specifically performed, and that Schuyler Neilson Rice and Kingdon Gould, as executors of the last Will and Testament of George J. Gould, deceased the complainants herein, be and they hereby are authorized, empowered and directed to do and perform all acts and things required of them to be done and performed in and by the aforesaid Stipulation for Compromise of the action in the Supreme Court of the State of New York, dated December 4, 1926, and in and by any order and judgment of

the Supreme Court of the State of New York to be entered upon said Stipulation for Compromise, and in the aforesaid agreement of December 16, 1926, provided however,

(a) That the appearance to be entered by the executors of the Estate of George J. Gould, deceased in the action in the Supreme Court of the State of New York, pursuant to the terms of the said Stipulation for Compromise, dated December 4, 1926, shall be for the sole purpose of perfecting the said compromise agreement and the carrying out of the judgment to be entered pursuant thereto; and

(b) That in carrying out the terms of the said Stipulation for Compromise and in making the payments required to be made in and by the terms of paragraph II A "First" thereof, the complainants herein, the executors of the estate of George J. Gould, deceased, shall pay one-fourth (¼) of the several amounts in said paragraph specified, and no more, unless otherwise directed by this Court.

II. That upon full performance of the terms and provisions of the Stipulation for Compromise dated December 4, 1926, and the judgment to be entered pursuant thereto, the defendants hereto, who are complainants in the two certain suits in this Court mentioned in paragraph 5 of the bill of complaint herein, shall promptly enter decrees in this Court in each of the said suits dismissing the bills of complaint therein.

III. That this Court assume general jurisdiction of the administration by the complainants of their trusts as executors of the estate of George J. Gould, deceased, and take over the administration of the said Estate. Such ad-

ministration shall be had in this cause and jurisdiction over the parties hereto is expressly retained for all purposes of such administration, and the complainants shall, with all convenient speed, exhibit their account as executors of the estate of George J. Gould, deceased, in this Court and shall give such notice as this Court shall direct to the parties entitled thereto of the filing of such account and of the complainants' application for the settlement thereof and the allowance of commissions and counsel fees.

IV. That the parties hereto have leave upon five days' notice to the solicitors and guardians *ad litem* of all parties who have appeared herein, to apply to the Court for the allowance of counsel fees, costs and expenses (but no adjudication is hereby made that any party is entitled to counsel fee, costs or expenses); and upon like notice any party hereto may have leave to apply to the Court for such further order as may be necessary or advisable.

Respectfully advised,

E. R. WALKER,

C.

JOHN H. BACKES,

V. C.

I, THOMAS BARBER, Clerk of the Court of Chancery of the State of New Jersey the same being a Court of Record do hereby certify that the following is a true copy of the Final Decree, filed Mar. 29, 1927 in the cause wherein Schuyler Neilson Rice and Kingdon Gould, as Executors, etc. of George J. Gould, deceased, are complainants and Commercial Trust Company of New Jersey, et als., are defendants, now on the files of my office.

(Seal)

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 31st day of March A. D. nineteen hundred and twenty-seven.

THOMAS BARBER,
Clerk.

I, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, do hereby certify that Thomas Barber whose name is subscribed to the above certificate, was, at the date thereof, and now is, the Clerk of Chancery of the State of New Jersey; that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Thomas Barber is in his own proper handwriting.

WITNESS my hand at the City of Trenton this 31st day of March A. D. nineteen hundred and twenty-seven.

E. R. WALKER,
Chancellor.

Final Decree, Rice v. *Commercial Trust Co., et als., 62/608.*

STATE OF NEW JERSEY

Department of State

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby Certify, that EDWIN ROBERT WALKER, Esquire, who hath signed the foregoing Certificate was, at the doing thereof, and now is Chancellor, in and for the State of New Jersey, duly appointed, commissioned and sworn according to law, and that full faith and credit are to be given to his official attestations; and I further certify, that the Seal thereto annexed is his Official Seal, and that the said signature is in the proper handwriting of the said EDWIN ROBERT WALKER.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Thirty-first day of March, A. D. 1927.

JOSEPH F. S. FITZPATRICK,
Secretary of State.

(Seal)

STATE OF NEW JERSEY.

I, the Governor of the State of New Jersey do hereby certify that JOSEPH F. FITZPATRICK, Esquire, who hath signed the annexed Certificate, and whose Official Seal is thereto annexed, was, at the doing thereof, and now is, SECRETARY OF STATE of the State of New Jersey duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations, that the said signature is in the proper handwriting of the said JOSEPH F. S. FITZPATRICK and the seal his seal of office, and that the said Certificate is in due form of law and by the proper officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of New Jersey to be hereunto affixed at the City of Trenton in said State, this Thirty-first day of March, in the year of our Lord one thousand nine hundred and twenty-seven.

A. HARRY MOORE,
Governor.

(Seal)

BY THE GOVERNOR,

Joseph F. S. Fitzpatrick,
Secretary of State.

(9839)

In Chancery of New Jersey

BETWEEN

SCHUYLER NEILSON RICE and KINGDON GOULD, as Executors, etc. of George J. Gould, deceased,

Complainants,

AND

COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.,*

Defendants.

Bill of Complaint.

McCARTER & ENGLISH,
Solicitors of Complainants,
765 Broad Street,
Newark, New Jersey.

(Filed December 24, 1926.)

IN CHANCERY OF NEW JERSEY.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainants, Kingdon Gould, of Lakewood, in the County of Ocean, and Schuyler Neilson Rice, of Highland Park, in the County of Middlesex, as Executors of the Last Will and Testament of George J. Gould, late of Lakewood, in the County of Ocean, deceased, respectfully show unto Your Honor:

1. George J. Gould, late of Lakewood, in the County of Ocean, aforesaid, departed this life on the sixteenth day of May, 1923, having theretofore made, published and declared his Last Will and Testament in writing, wherein and whereby he appointed the complainants the Executors thereof, which said Last Will and Testament was, on the fourth day of June, 1923, duly admitted to probate by the Surrogate of the County of Ocean, and letters testamentary thereon were duly issued to the complainants, which letters remain in full force and effect. A true copy of the said Last Will and Testament is hereunto annexed, marked Exhibit A.

2. The said George J. Gould was the son of Jay Gould. Jay Gould departed this life the second day of December, 1892, a resident of the State of New York, having first made, published and declared his Last Will and Testament and three codicils thereto in writing, all of which were on the thirteenth day of January, 1893, duly admitted to probate by the Surrogate's Court of the County of New York, a court of competent jurisdiction in the State of New York. In and by the said Last Will and Codicils the said George

J. Gould, his brothers Howard Gould and Edwin Gould, his sister, Helen Gould Shepard, formerly Helen M. Gould, were appointed Executors and Trustees thereof, to whom letters testamentary duly issued on the day last aforesaid.

3. The said four Executors and Trustees under the Will and Codicils of Jay Gould, deceased, entered upon their duties as such, and administered their trusts as Executors and Trustees without any judicial settlement of their accounts as such, until the twenty-sixth day of July, 1916. On the last mentioned date, George J. Gould, Howard Gould, Edwin Gould and Helen G. Shepard, commenced a suit in equity in the Supreme Court of the State of New York, in New York County, for a judicial settlement of their account as Executors and Trustees under the Last Will and Testament and Codicils thereto of Jay Gould, deceased. Objections to the account filed in the said suit were duly made by Frank Jay Gould and Anna Duchesse de Talleyrand, brother and sister respectively of the complainants' testator, and other parties. All parties interested under the Last Will and Testament and Codicils of Jay Gould, deceased, were made parties to the said suit in the Supreme Court of the State of New York. The said suit was referred to the Honorable James A. O'Gorman, as Referee, to hear and determine the same; many hearings were had; a great mass of testimony was taken until, finally, on the tenth day of November, 1925, the said Referee filed an opinion or report, in which he found that the four Executors and Trustees under the Will of Jay Gould, including the complainants' testator, had been guilty of various breaches of trust, and should be ordered to pay the various trust

estates and beneficiaries under the Will and Codicils of Jay Gould, deceased, very large sums of money, the exact amount of which was not determined, but which ran into many millions of dollars.

4. On motion of the complainants, an order limiting creditors of the Estate of George J. Gould was duly entered by the Surrogate of the County of Ocean. Notice thereof was duly published, and thereafter and heretofore, a decree barring creditors was duly entered by the Surrogate of the County of Ocean. Prior to the entry of the decree barring creditors, claims were duly presented under oath to the complainants by upwards of one hundred persons, claiming to be creditors of the Estate of George J. Gould, deceased. Most of such claims have been allowed by the complainants, and the total of the claims so allowed, without interest, amounts to $119,-452.72. Prior to the entry of the decree barring creditors, and within the time limited by the order limiting creditors, the following claims were presented to the complainants:

A claim by Bankers Trust Company, The Equitable Trust Company of New York, and The Farmers' Loan and Trust Company, as substituted trustees under the Last Will and Testament of Jay Gould, deceased. This claim was for $83,600,000.00.

A claim by United States Trust Company of New York, as substituted trustee under the Will of Jay Gould, deceased, Frank J. Gould, Helen Gould de Montenach and Dorothy Gould. This claim is in the sum of $70,000,000.00.

A claim by Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, Georges

Gustave Marie Antoine Boniface de Castellane, Charles Maurice Jason Howard Duke de Sagan, Helene Violette de Talleyrand, Jason Honore Louis Sever de Castellane, and Anna Gould Duchesse de Talleyrand. This claim is in the sum of $52,600,000.00.

5. All of the said three last mentioned claims were disallowed by the complainants, and notice of disallowance has been served on the said claimants, their agents or attorneys. Within three months after service by the complainants of the aforesaid notice of disallowance, two suits against the complainants in this Court were commenced by the said claimants. One of those suits was commenced by United States Trust Company of New York, Frank Jay Gould and Helen Gould de Montenach, which suit is docket 55, page 395, in this Court. The other suit was commenced by Anna Duchesse de Talleyrand, formerly Anna Gould, Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, Georges Gustave Marie Antoine Boniface Charles de Castellane, Jason Honore Louis Sever de Castellane, The Farmers' Loan and Trust Company, The Equitable Trust Company of New York, and Bankers Trust Company, and is docket 55, page 416. Both of the said suits are now pending undetermined in this Court.

6. The complainants have duly presented their three intermediate accounts to the Ocean County Orphans' Court, and the same have, on due notice to all interested parties, been duly allowed by the Ocean County Orphans' Court. The complainants' third intermediate account was allowed by decree of the Ocean County Orphans' Court, made and entered on the seventh day of July,

1926, in and by which it was adjudged that there was a balance in the hands of the complainants, the accountants therein, amounting to the sum of $12,541,311.10.

7. Upon the death of George J. Gould, the complainants' testator, an effort was made by other parties to the above mentioned suit in the Supreme Court of the State of New York to make the complainants parties thereto. This effort was resisted by the complainants under a special appearance but, notwithstanding their resistance, the New York Supreme Court has made an order making the complainants parties to the aforesaid action in the New York Supreme Court for certain limited purposes. The complainants have at all times preserved their special appearance and right to review the action of the New York Supreme Court by appeal. Subject to such special appearance and reservation, the complainants have been represented by counsel in the said New York action and have taken part therein. Subject to such special appearance and reservation, but only after their jurisdictional objections had been overruled, and only because of such compulsion, complainants have under protest continued to defend through counsel in the said New York action, but have not otherwise taken part therein.

8. All of the complainants in the claims hereinabove in paragraph 4 hereof alleged to have been duly filed with the complainants and disallowed by them, and all of the complainants in the two suits in this Court hereinabove in paragraph 5 hereof alleged to have been commenced against the complainants herein, are parties to the said action in the Supreme Court of the State of New York. The said claims and the

said suits thereon in this Court are based upon alleged breaches of trust and acts of misconduct by George J. Gould, as Executor of and Trustee under the Will of his father, Jay Gould, deceased, which are the same breaches of trust and acts of misconduct relied upon by the objectors in the said New York action to the accounts of George J. Gould and his co-executors and co-trustees under the Will of Jay Gould, deceased. Some of the said alleged breaches of trust and acts of misconduct are the basis of the said opinion or report of the Honorable James A. O'Gorman, Referee.

9. George J. Gould left him surviving the following seven children by his first wife, namely, Kingdon Gould, Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., Edith Gould Wainwright, and Gloria Gould Bishop, all of whom are of full age except Gloria Gould Bishop, who is an infant over the age of fourteen and under the age of twenty-one. He also left him surviving his widow, who has since his death remarried, and who is now Guinevere Dunsford, and three children by his second wife, the said Guinevere Dunsford, namely, George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould. The said three children by the testator's second wife are all infants under the age of fourteen.

10. By order of the Surrogate's Court of New York County, a court of competent jurisdiction of the State of New York, made on the fifteenth day of February, 1924, the defendant Kingdon Gould was appointed General Guardian of the defendant, Gloria Gould Bishop, and letters of guardianship duly issued to him on the fifth day of March, 1924.

11. The said Guinevere Dunsford and Schuyler Neilson Rice have duly qualified as testamentary guardians of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, aforesaid, and letters of guardianship have duly issued to them by the Surrogate of the County of Ocean.

12. Heretofore, and on or about the fourth day of December, 1926, the complainants and all the other parties to the said action in the Supreme Court of the State of New York duly signed a stipulation for the compromise thereof, a true copy of which stipulation is hereunto annexed, marked Exhibit B, and made part hereof.

13. Heretofore, and on or about the sixteenth day of December, 1926, the complainants, the defendant, Guinevere Dunsford, the six adult children of George J. Gould by his first wife, Gloria Gould Bishop, by Kingdon Gould, her General Guardian, and the three infant children by the second wife, by their respective testamentary guardians, have entered into an agreement, a true copy of which is hereunto annexed marked Exhibit C, and made part hereof. Such agreement was and is an integral part of the stipulation, Exhibit B, and that stipulation could not and would not have been entered into but for the making and execution of Exhibit C.

14. The carrying out of the settlement adjustment in accordance with the terms of Exhibits B and C will not affect the administration of the Estate of George J. Gould so far as the payment of claims against that estate already allowed by the complainants, or so far as the payment of the legacies given in and by Clause Second of the Will of George J. Gould is concerned. Notwithstanding anything in either Exhibit B or Exhibit

C, there will be in the Estate of George J. Gould, after carrying out all of the terms and provisions of Exhibits B and C, ample funds to pay all claims against the Estate heretofore duly allowed by the complainants and to pay the legacies given in and by Clause Second of the Will. On the other hand, if the claims asserted in the two suits in this Court, alleged in paragraph 5 hereof, should be sustained asserted, the Estate of George J. Gould would be insolvent.

15. It is to the very great advantage of all persons interested under the Will of George J. Gould that the plan of adjustment, in accordance with the terms of Exhibits B and C, be carried out; that the signing of the said stipulation, Exhibit B, by the complainants, and the making of the said agreement, Exhibit C, be approved by this Court, and the specific performance thereof by all parties thereto directed.

16. The following children have been born to the defendants Kingdon Gould, Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., Edith Gould Wainwright, and Gloria Gould Bishop, and are now living: Edith K. Drexel, Anthony K. Drexel, Third, Marjorie Gould Drexel, Eleanor Gould, Anne Douglas Gould Jay Gould, Jr., Eileen Vivien de la Poer Beresford, Catherine Maya Beresford, Arthur George Marcus Douglas Horseley de la Poer Beresford, Sylvia Annunciata Gould, Edith Kingdon Gould, Kingdon Henry Gould, George J. Gould, Third, Maughan Carter Gould, Stuyvesant Wainwright, Caroline De Peyster Wainwright, Carroll Livingston Wainwright, Jr., and Gioia Bishop.

17. Commercial Trust Company of New Jersey, a corporation of New Jersey, and Schuyler

Neilson Rice, are the duly appointed Trustees under the Last Will and Testament of George J. Gould, deceased.

18. The three intermediate accounts which the complainants have heretofore exhibited to, and which have been, as hereinabove stated, allowed by the Ocean County Orphans' Court, have not shown the payment of any debts of George J. Gould, deceased, of any of the legacies under his Will, or the setting up of any of the trusts in and by that Will created; nor have the payment of any debts of the said decedent, of any of the legacies given in and by his Will, or the setting up of any of the trusts therein created, yet been passed upon or approved by any of the said decrees of the Ocean County Orphans' Court.

19. Should the plan of adjustment hereinabove, and more particularly in paragraph 15 hereof, referred to, be approved by this Court, the subsequent administration by the complainants of the estate of George J. Gould will be conducted in part pursuant to the terms and provisions of Exhibits B and C hereunto annexed, and pursuant to such decrees as this Court may make in this cause. The subsequent administration by the complainants of their trusts as executors of George J. Gould, deceased, will be convenienced and facilitated if this Court assume general jurisdiction of the subsequent administration of the estate of George J. Gould, deceased.

The complainants are without relief except in this Honorable Court, and, therefore, pray:

1. That Commercial Trust Company of New Jersey, a corporation, and Schuyler Neilson Rice, as Trustees under the Last Will and Testa-

ment of George J. Gould, deceased, Guinevere Dunsford and Schuyler Neilson Rice, as Guardians of the person and property of George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, Guinevere Dunsford, United States Trust Company of New York, a corporation, Frank Jay Gould, Helen Gould de Montenach, Anna Duchesse de Talleyrand, Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, Georges Gustave Marie Antoine Boniface Charles de Castellane, Jason Honore Louis Sever de Castellane, Bankers Trust Company, The Farmers' Loan and Trust Company, The Equitable Trust Company, Kingdon Gould, individually and as General Guardian of Gloria Gould Bishop, Jay Gould, Marjorie Gould Drexel, Vivien Decies, George J. Gould, Jr., Edith Gould Wainwright, Gloria Gould Bishop, George Sinclair Gould, Jane Sinclair Gould, Guinevere Gould, Edith K. Drexel, Anthony K. Drexel, Third, Marjorie Gould Drexel, Eleanor Gould, Anne Douglas Gould, Jay Gould, Jr., Eileen Vivien de la Poer Beresford, Catherine Maya Beresford, Arthur George Marcus Douglas Horseley de la Poer Beresford, Sylvia Annunciata Gould, Edith Kingdon Gould, Kingdon Henry Gould, George J. Gould, Third, Maughan Carter Gould, Stuyvesant Wainwright, Caroline De Peyster Wainwright, Carroll Livingstone Wainwright, Jr., and Gioia Bishop, who are the defendants in this suit may answer this bill of complaint, and each statement therein made.

2. That the signing and execution by the complainants of the stipulation for compromise, a copy of which is hereunto annexed, marked Ex-

hibit B, be approved, and the complainants be advised and directed specifically to perform and carry out all things in and by the terms of the said stipulation, Exhibit B, by them to be performed.

3. That the making of the agreement, Exhibit C, be approved by this Court, and that the same be decreed by this Court to be specifically performed by the parties thereto.

4. That this Court assume general jurisdiction of the subsequent administration by the complainants of their trusts as Executors of George J. Gould, deceased, and take over the administration of the said estate.

5. That the complainants may have such other relief as may be equitable and just.

6. That a writ of subpoena may issue, commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

McCarter & English,
Solicitors of Complainants.

G. W. C. McCarter,
Of Counsel.

Exhibit A.

I, GEORGE J. GOULD, of Lakewood, County of Ocean, State of New Jersey, do hereby make, publish and declare this to be my last Will and Testament, hereby revoking all other Wills by me made.

FIRST: Referring to the power of appointment contained in the Fifth Clause or Article of the last Will and Testament of my father, JAY GOULD, I hereby direct that the share of the Estate of Jay Gould held in trust for my benefit, shall upon my decease, be equally distributed among my seven children, KINGDON GOULD, MARJORIE GOULD DREXEL, JAY GOULD, VIVIEN DECIES, GEORGE J. GOULD, JR., EDITH GOULD WAINWRIGHT and GLORIA GOULD.

SECOND: I give and bequeath to JOHN SPENSLEY, GEORGE PHILIP LANGFORD, WILLIAM BISHOP, GOTTFRIED FLUCKIGER and DAVID SOMMER, the sum of Five Thousand ($5,000) Dollars each, free from all Federal and State inheritance or transfer taxes.

THIRD: I give and bequeath unto my trustees hereinafter named, the sum of Four Million ($4,000,000) Dollars, IN TRUST, for the uses and purposes following:

1. To invest and re-invest, hold or sell, convey or dispose of the same at public or private sale, at such time or times and on such terms as they or the survivor of them in their or his discretion shall deem advisable.

2. To receive the rents, issues, income and profits thereof and after paying all necessary expenses in connection therewith, to pay over the

net income therefrom to my wife, GUINEVERE S. GOULD during her lifetime, and upon her death to transfer and pay over the principal thereof to my children by my *side* wife, *Guinivere* S. Gould, in such proportions and at such times as she shall appoint in and by her Last Will and Testament; and in case of her failure to make such testamentary appointment, then to divide the principal thereof into as many equal shares as my said wife shall leave children of mine surviving, or children of a deceased child living at the time of my death, per stirpes and not per capita, and to hold one of said shares IN TRUST for the benefit of said children, and to receive the rents, issues, income and profits thereof, and after paying all necessary expenses in connection therewith, to pay over the net income therefrom to the child thereunto entitled during his or her lifetime, and thereafter to transfer and pay over the principal of said share to the beneficiaries named in his or her last Will and Testament and failing such testamentary disposition then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

FOURTH: All the rest, residue and remainder of my property, real, personal and mixed, of which I shall die seized or possessed, or to which I shall be entitled at the time of my death, I give, devise and bequeath unto my Trustees hereinafter named IN TRUST for the uses and purposes following:

a. To invest and re-invest, hold or sell, convey or dispose of the same at public or private sale, at such time or times and on such terms as they or the survivor of them in their or his discretion shall deem advisable.

b. To divide the principal thereof into ten (10) equal shares and to designate, hold and invest one of such shares for each of my children, KINGDON GOULD, MARJORIE GOULD DREXEL, JAY GOULD, VIVIEN DECIES, GEORGE J. GOULD, JR., EDITH GOULD WAINWRIGHT and GLORIA GOULD, and to collect and receive and pay or apply the rents, interest and income from the part or share so set apart for each child to his or her use during his or her life; and upon the death of any of said children to pay, assign, transfer or convey the part or share so held in trust for him or her to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament; and failing such testamentary disposition, then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

c. To designate, hold and invest one other of such shares for each of my children, GEORGE SINCLAIR GOULD, JANE SINCLAIR GOULD and GUINIVERE GOULD (the children my said wife, Guinivere Sinclair Gould) and to collect and receive and pay or apply the rents, interest and income from the part or share so set apart for each child, to his or her use during his or her life; and upon the death of any of said children, to pay, assign, transfer or convey the part or share so held in trust for him or her to his or her issue in such proportions and at such times as he or she shall appoint in and by his or her last will and testament; and failing such testamentary disposition, then to his or her next of kin in accordance with the provisions of the statutes of distribution then in force in the State of New Jersey.

d. During the minority of the children of my said wife, Guinivere Sinclair Gould, the net income from the share or shares set apart for them shall be paid to my said wife and to Schuyler Neilson Rice for the maintenance, education and support of said children, and no bond or other security shall be required of my said wife and Schuyler Neilson Rice for the faithful administration or expenditure of the income received by them as aforesaid.

FIFTH: I hereby nominate, constitute and appoint my said wife and Schuyler Neilson Rice to be the guardians of the person and property of my children by my present wife during their minority.

SIXTH: I nominate, constitute and appoint my son, KINGDON GOULD and SCHUYLER NEILSON RICE to be the Executors of this my will and direct that no bond or other security be required of either of them for the faithful performance of their duties as such Executors. I give and grant unto my said Executors full power and authority to sell at their discretion, as to time and terms and to convey any or all of my real estate and any or all of my personal property for cash, or upon credit, either at public or private sale, and until sold, I empower them to lease my real estate for such time and upon such terms as they may think proper and to collect the rents and income arising therefrom and generally to manage the same as they may think best.

If in effecting the division of my residuary estate my Executors deem it inadvisable to sell any of the securities or property constituting the same, I then authorize them to divide such securities and deliver the same in kind, at such valua-

tions as they in their discretion shall agree upon, to the Trustees hereinafter named for the purposes of establishing the trusts provided in the Third and Fourth numbered paragraphs hereof.

SEVENTH: I nominate, constitute and appoint COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation organized under the laws of the State of New Jersey, and SCHUYLER NEILSON RICE to be the Trustees under this my last Will and Testament and I direct that no bond or security shall be required of said Trustees as a condition of qualifying or acting under this Will. My said Trustees may, at their discretion, retain and hold as investments under my Will any securities I may hold at the time of my death. I give and grant unto my said Trustees full power and authority to sell, dispose of and convey, at their discretion as to time and terms, any or all of my real estate and personal property held by them as such Trustees under any of the trusts hereunder, for cash or upon credit, either at public or private sale, and to lease the real estate for such a term and upon such conditions as they may think proper, and to collect the rents and income arising therefrom and generally to manage the same as they may think best.

EIGHTH: In case any person shall under any pretense whatever oppose the probate of this my last will and testament, or institute, take or share in any action or proceeding to impeach or impair or set aside or invalidate any of the provisions, I do hereby revoke any and all devises, bequests and provisions to or for the benefit of said persons, and such persons shall be excluded from all participation in and shall not have any share or part of my property or estate, real or personal,

and the portion to which said person might otherwise have become entitled under the provisions of this instrument, shall form a part of my residuary estate and shall be disposed of in accordance with the terms and provisions thereof, excluding, however, the persons opposing such probate or instituting, taking or sharing in any action or proceeding to impeach or impair or set aside or invalidate any of the provisions of this Will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of May, in the year One thousand nine hundred and twenty-two.

GEORGE J. GOULD (L. S.)

The foregoing instrument, contained on this and the preceding five pages, was subscribed, sealed, published and declared by the testator, as and for his Last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses, the day and year last above mentioned, having seen the testator also sign his name in the margin of each of the preceding five pages.

OTTO A. HACK	Residing at #1 Harbor Lane, New Rochelle, N. Y.
DAVID H. TAYLOR	Residing at 19 East 92 St., N. Y. City.
JOHN PAULL	Residing at 62 Pierrepont St., Brooklyn, N. Y.

Exhibit B.

SUPREME COURT,

NEW YORK COUNTY.

KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of George J. Gould, deceased, Executor and Trustee under the last Will and Testament and Codicils thereto of Jay Gould, deceased, EDWIN GOULD, HELEN G. SHEPARD (formerly Helen M. Gould) and HOWARD GOULD, as Executors and Trustees under the Last Will and Testament and Codicils thereto of Jay Gould, deceased,

Plaintiffs,

against

KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of George J. Gould, deceased, individually and as Receiver of the surplus income of Duchesse de Talleyrand (formerly Anna Gould); EDWIN GOULD; HELEN G. SHEPARD (formerly Helen M. Gould) individually and as Receiver of the surplus income of Duchesse de Tallyrand (formerly Anna Gould); HOWARD GOULD; DUCHESSE DE TALLEYRAND (formerly Anna Gould); FRANK JAY GOULD; KINGDON GOULD; JAY GOULD; MARJORIE G. DREXEL (formerly Marjorie Gould); LADY DECIES (formerly Vivien Gould); GEORGE J. GOULD, JR.; EDITH GOULD WAINWRIGHT (formerly Edith C. Gould); GLORIA GOULD

County Clerk's Index No. 19346—1916.

BISHOP (formerly Gloria Gould); FRANK M. GOULD; HELEN GOULD DE MONTENACH (formerly Helen Margaret Gould); DOROTHY GOULD DE GRAFFENRIED DE VILLARS (formerly Dorothy Gould); MARIE LOUIS JEAN JAY GEORGES PAUL ERNEST BONIFACE DE CASTELLANE; GEORGES GUSTAVE MARIE ANTOINE BONIFACE CHARLES DE CASTELLANE; JASON HONORE LOUIS SEVER DE CASTELLANE; CHARLES MAURICE JASON HOWARD, DUKE DE SAGAN; HELENE VIOLETTE DE TALLYRAND; EDITH K. DREXEL; ANTHONY J. DREXEL, 3RD; MARJORIE GOULD DREXEL; ELEANOR GOULD; ANNE DOUGLAS GOULD; JAY GOULD, JR.; EILEEN VIVIEN DE LA POER BERESFORD; CATHERINE MAYA BERESFORD; ARTHUR GEORGE MARCUS DOUGLAS HORSELY DE LA POER BERESFORD; SYLVIA ANNUNCIATA GOULD; EDITH KINGDON GOULD; GEORGE J. GOULD, 3RD; MAUGHAN CARTER GOULD; STUYVESANT WAINWRIGHT; GEORGE SINCLAIR GOULD; JANE SINCLAIR GOULD; GUINEVERE GOULD; UNITED STATES TRUST COMPANY OF NEW YORK, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Frank Jay Gould and Remaindermen; BANKERS TRUST COMPANY, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Edwin Gould and Remaindermen and Helen G. Shepard and Remaindermen; THE EQUITABLE TRUST COMPANY OF NEW YORK, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Howard Gould and

Remaindermen and George J. Gould and Remaindermen; THE FARMERS' LOAN AND TRUST COMPANY, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Duchesse de Talleyrand and Remaindermen; THE EQUITABLE TRUST COMPANY OF NEW YORK, as Trustee for Lady Decies (formerly Vivien Gould) under a Deed of Trust dated December 14, 1920; COMMERCIAL TRUST COMPANY OF NEW JERSEY and SCHUYLER NEILSON RICE, as Trustees for Jay Gould under a Deed of Trust dated October 19, 1922, and a Deed of Trust supplemental thereto dated November 10, 1922; COMMERCIAL TRUST COMPANY OF NEW JERSEY and SCHUYLER NEILSON RICE, as Trustees for Edith Gould Wainwright under a Deed of Trust dated October 31, 1922; HELENE-DANIELE DE MONTENACH; KINGDON HENRY GOULD; CAROLINE DEPEYSTER WAINWRIGHT; GIOIA BISHOP; ANNA ELEONOR MARIE RAYMONDE DE CASTELLANE; MARIANNE ALICE GOULD; CARROLL LIVINGSTON WAINWRIGHT, JR.,

Defendants.

STIPULATION FOR COMPROMISE.

In view of the fact that the above entitled administration action has been pending for ten years; that there are upwards of fifty parties to said action, most of them members of the same family and descendants of Jay Gould, the testator the administration of whose estate is the subject matter of said action; that the interests of said

parties are complicatedly diverse; that the record in said action is of unprecedented length and complication in an action of this character; and that in consequence, if appeals should be prosecuted to the court of last resort, a final judgment determining all the issues in the said action might not be had for many years to come; and that the preparation and argument of such appeals would add greatly to the already great costs and expenses of the action, to the prejudice of all the interested parties; and

In view of the further fact that a settlement and compromise of said action would tend to compose family differences which have arisen out of the administration of the estate of the common ancestor, the said Jay Gould, and out of the trial of said action, and would tend to remove existing impediments to sentiments of family unity, and would also the sooner permit the said estate to be administered in accordance with the intention of the testator, the said Jay Gould, and freed from the administrative embarrassment to which continued litigation for possibly many years to come would subject it; and further

In view of the opinion of the Referee herein to hear and determine, rendered under date of November 10, 1925, and taking into consideration the uncertainty of the result of the appeals which all the parties to this action would be entitled to take unless the action is settled and compromised,

Now, THEREFORE, the undersigned adult parties to this action, by their attorneys of record herein, and the undersigned guardians ad litem of the respective infant parties to this action, (the latter having carefully considered the terms and provisions of the settlement and compromise herein-

after provided for and believing said settlement and compromise to be one which should be submitted to the Court for its determination as to whether it is in the best interests of their respective wards, and being prepared, when the same is so submitted to the Court, to give the Court their views, as such guardians, in the premises) and the corporate substituted Trustees who also have carefully considered the terms and provisions of said settlement and compromise and believe it to be one which should be submitted to the Court for its determination as to whether it is in the best interests of the life tenants and remaindermen of said trusts respectively, and who are prepared when so submitted to express to the Court their views that said proposed settlement and compromise is in their judgment wise and proper and that they should be authorized and directed by the Court to enter into it, hereby stipulate as follows:

I. Immediately upon the signing of this Stipulation by the attorneys of record herein for Edwin Gould, Howard Gould and Helen G. Shepard, individually and as executors and trustees under the last will and testament and codicils thereto of Jay Gould, deceased, Kingdon Gould and Schuyler Neilson Rice as Executors of the Last Will and Testament of George J. Gould, deceased, the Bankers Trust Company as substituted trustee of the trusts for Edwin Gould and remaindermen and Helen G. Shepard and remaindermen respectively, The Equitable Trust Company of New York as substituted trustee of the trusts for George J. Gould (now deceased) and remaindermen and Howard Gould and remaindermen rerespectively, The Farmers' Loan and Trust Company as substituted trustee of the trust for

General Provisions

the Duchesse de Talleyrand and remaindermen, United States Trust Company of New York as substituted trustee of the trust for Frank Jay Gould and remaindermen, the Duchesse de Talleyrand and her adult children, Frank Jay Gould and his children, the adult children of George J. Gould and their assignees, the guardian ad litem for Gloria Gould Bishop, (minor child of George J. Gould), Frank M. Gould and by the guardian ad litem for the infant children of the Duchesse de Talleyrand, and by the guardian ad litem of the other minor children of George J. Gould, the surviving accounting plaintiffs herein Edwin Gould, Howard Gould and Helen G. Shepard will move in this action together with any others of the parties hereto who may join with them either on notice or *ex parte* and without notice which is hereby waived, for leave to settle and compromise this action in accordance with the terms of this Stipulation and for the appointment of a guardian or guardians for any unborn remaindermen under any of the trusts created by and under said will and codicils thereto of Jay Gould, deceased, if in the opinion of the Court such appointment is necessary. Said moving parties shall pray that the motion be referred to the Hon. James A. O'Gorman, the referee who tried this action, to hear and report upon the said proposed compromise. As soon as said report is signed, any party to this action may file the same, and if said report shall approve the compromise herein provided for then forthwith upon notice of the filing of said report being given to them by mailing a copy of such notice addressed to

Schuyler Neilson Rice, Executor of the Estate of George J. Gould, deceased, Highland Park, New Brunswick, New Jersey.

Kingdon Gould, executor of the Estate of George J. Gould, deceased, Lakewood, New Jersey.

Kingdon Gould, Executor of the Estate of George J. Gould, deceased, 160 East 72nd Street, New York City, New York.

Kingdon Gould and Schuyler Neilson Rice, Executors of the Estate of George J. Gould, deceased, 15 Exchange Place, Jersey City, New Jersey.

Kingdon Gould and Schuyler Neilson Rice, Executors of the Estate of George J. Gould, deceased, 165 Broadway, Borough of Manhattan, New York City, New York.

the said executors of the estate of George J. Gould will, by their attorneys, enter their general appearance in this action, and consent to the entry of judgment in this action on said report. Immediately upon the filing of a report approving the compromise herein provided for any party to this action may move for confirmation thereof and for judgment in accordance therewith, in which judgment there shall be incorporated provisions for the payment of the amounts to be paid under and pursuant to the provisions of Paragraphs II and III hereof and such other provisions as may seem to the Court wise or necessary. Execution upon such judgment shall not be issued until thirty (30) days shall have expired after the entry thereof.

The amounts to be paid pursuant to Paragraph IV hereof shall be forthwith paid by the trustees of the respective trusts to the parties entitled thereto, but in the event that any such payment or payments shall not be made within thirty (30) days after the agreement upon the amount

or the signing of the award as the case may be, any party entitled to such payment or payments may move the court herein for an order directing that a provision for the payment thereof be incorporated in the judgment to be entered herein or if the same shall have been theretofore entered for the addition thereof at the foot of the judgment.

It is the intent and purpose of this Stipulation to provide for a settlement and compromise of all the issues heretofore raised in this action, including the issues involved in the appeal taken by the three children of George J. Gould by his second wife from the separate judgment on severed issues duly entered herein on December 16, 1925, and to provide for a final judgment herein judicially settling the accounts of the Executors of the Last Will and Testament and Codicils thereto of Jay Gould, deceased, and judicially settling the accounts of the Trustees of the residuary trusts under said Last Will and Testament and Codicils thereto and including the 31st day of December, 1925, as hereinbelow provided; and the judgment provided for by this Stipulation shall expressly be declared to be a judgment judicially settling the accounts of said Executors and Trustees as aforesaid, and said judgment, together with the judgment upon the aforesaid severed issues as it now stands, shall constitute the final judgment or judgments in this action.

The sums to be paid under the paragraphs of this Stipulation numbered II and III are to be in full settlement and compromise of all the objections filed herein to the accounts of the Executors and Trustees to and including the 26th day of May, 1922.

The objections filed herein to the accounts of the Trustees of the six separate trusts from the 26th day of May, 1922, to and including the 31st day of December, 1925, shall be dealt with and the said accounts shall be restated, and as restated approved, as follows: Said accounts are to be approved as they stand, except that

Re: Accounts

A. The testamentary compensation of the Testamentary Trustees charged on said accounts since May 26, 1922, shall be charged against income.

B. The ordinary expenses of administering the said trusts (exclusive of the costs and expenses of this action), charged on said accounts since May 26, 1922, shall be charged against income.

C. The costs and expenses of this action, charged on said accounts since May 26, 1922, including counsel fees to counsel for the Trustees, individual and corporate, for legal services in connection with this action, shall be charged 60% to income and 40% to principal.

D. As to the securities received by the Trustees upon the reorganization of the Denver & Rio Grande Railroad Company, the apportionment thereof between income and principal adopted by the Trustees of the separate trust in favor of Frank Jay Gould and remaindermen is to be followed by the Trustees of the other five separate trusts, and their accounts restated accordingly.

E. The interested parties will endeavor to agree upon a restatement of said accounts, in accordance with the provisions of "B" and "C", above, and in the event of their failure to agree

with respect to any item or items on said accounts the decision as to the item or items in controversy shall be finally determined by the referee appointed on the motion for leave to compromise.

Immediate Payments by accounting plaintiffs

II A. First: Edwin Gould, Helen G. Shepard, Howard Gould and the executors of the estate of George J. Gould, deceased, agree to pay the following amounts to the trustees of the six residuary trusts created by the Last Will and Testament and codicils thereto of Jay Gould, deceased;

(a) Two million dollars ($2,000,000.) to the trustees of the trust for George J. Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $2,000,000 from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(b) Two million dollars ($2,000,000.) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the principal of said trust.

(c) Two million dollars ($2,000,000.) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the principal of said trust.

(d) Two million dollars ($2,000,000.) to the trustees of the trust for Howard Gould and remaindermen to the credit of the principal of said trust.

(e) Two million dollars ($2,000,000.) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of

$2,000,000. from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(f) Two million dollars ($2,000,000.) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $2,000,000. from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(g) Two million seven hundred fifty thousand dollars ($2,750,000.) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $2,750,000. from June 1, 1926, to the date of entry of judgment herein.

(h) Two million seven hundred fifty thousand dollars ($2,750,000.) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $2,750,000. from June 1, 1926 to the date of entry of judgment herein.

One-half of each of said payments of $2,750,000. to the credit of income shall be in settlement of income due the life beneficiary prior to March 1, 1913, and one-half in settlement of income due the life beneficiary subsequent to March 1, 1913.

SECOND: (a) Edwin Gould, Helen Gould Shepard and Howard Gould agree to pay The Equitable Trust Company of New York of 37 Wall Street, Borough of Manhattan, City of New York the sum of Three hundred thousand ($300,000) Dollars to be held by said Trust Company in three (3) separate trusts of One hundred thou-

sand ($100,000) dollars each, one for each child of George J. Gould by his second wife in accordance with the trust agreements agreed upon between the guardian ad litem of said children and the parties interested, subject to the approval of the Court. The said three children of George J. Gould by his second wife, by their guardian ad litem agree, subject to the approval of the Court, to withdraw their pending appeal from the judgment upon the severed issues, upon the entry of a judgment confirming the report approving this compromise.

(b) Edwin Gould, Helen Gould Shepard and Howard Gould agree to pay the sum of Fifty thousand ($50,000) dollars to the seven (7) children of the said George J. Gould, deceased, by his first wife to be divided equally between them.

Annual payments

B. Edwin Gould, Helen G. Shepard and Howard Gould jointly and severally for themselves, their executors and administrators, covenant as follows:

First: That Edwin Gould, his executors and administrators, will, during the lives of Helen G. Shepard and Howard Gould and of the survivor of them, pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as Helen G. Shepard and Howard Gould are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of either Helen G. Shepard or Howard Gould and during the life of the survivor of Helen G. Shepard and Howard Gould.

Should Edwin Gould die before the death of the survivor of Helen G. Shepard and Howard Gould, said payments are to be continued by his executors or administrators during the aforesaid term of said obligation.

In the event that the Duchesse de Talleyrand or Frank Jay Gould dies before the death of the survivor of Helen G. Shepard and Howard Gould, said payments shall be continued during the aforesaid term of said obligation to her or his issue surviving on her or his death in equal shares, *per stripes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of each shall be ratably reduced according to the date of his or her death; and in the event of the death of the Duchesse de Talleyrand or of Frank Jay Gould before the death of the survivor of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of the Duchesse de Talleyrand or of Frank Jay Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue according to the date of her or of his death.

SECOND: That Helen G. Shepard, her executors and administrators, will pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as she and Howard Gould are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of herself or Howard Gould and during the life of the survivor of herself and said Howard Gould.

Should Helen G. Shepard die before Howard Gould said payments are to be continued by her executors or administrators during the aforesaid term of said obligation.

On the death of the Duchesse de Talleyrand or Frank Jay Gould said payments shall continue during the aforesaid term of said obligation to her or his issue surviving on her or his death in equal shares, *per stirpes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould the amount payable during the payment year of the death of each shall be ratably reduced according to the date of her or his death; and in the event of the death of the Duchesse de Talley-

rand or Frank Jay Gould before the death of the survivor of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of the Duchesse of Talleyrand or of Frank Jay Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue, according to the date of her or of his death.

THIRD: That Howard Gould, his executors and administrators, will pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as he and Helen G. Shepard are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of himself or Helen G. Shepard and during the life of the survivor of himself and said Helen G. Shepard.

Should Howard Gould die before Helen G. Shepard, said payments are to be continued by his executors or administrators during the aforesaid term of said obligation.

On the death of the Duchesse de Talleyrand or Frank Jay Gould said payments shall continue during the aforesaid term of said obligation to her or his issue surviving on her or his death in

equal shares, *per stirpes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould the amount payable during the payment year of the death of each shall be ratably reduced according to the date of her or his death; and in the event of the death of the Duchesse de Talleyrand or of Frank Jay Gould before the death of the survivor of Howard Gould and Helen G. Shepard the amount payable during the payment year of the death of the Duchesse de Talleyrand or of Frank Jay Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue, according to the date of her or of his death.

FOURTH: That Edwin Gould, Helen G. Shepard and Howard Gould, their executors and administrators, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided), will make the same annual payments as provided in the foregoing subdivisions "FIRST," "SECOND" and "THIRD" to the seven children of George J. Gould by his first wife considered as a group, each child receiving one-seventh (1/7) thereof, to wit, to Kingdon Gould, Jay Gould, George J. Gould, Jr., Marjorie Gould Drexel, Lady Decies, Edith Gould Wainwright and Gloria Gould Bishop and their respective executors and administrators, that is, an aggre-

gate sum of $54,000 annually until the death of either Howard Gould or Helen G. Shepard and thereafter and until the death of the survivor of said Howard Gould and Helen G. Shepard an aggregate sum of $30,000, such payments to be made upon the same terms and conditions in all respects as the annual payments are to be made to the Duchesse de Talleyrand or her issue and to Frank Jay Gould or his issue.

The annual payments to be made pursuant to clause "B" of this paragraph shall be made in equal one-half parts semi-annually, the first payment to be made as of January 1, 1927.

FIFTH: In each and every instance in which a joint and several liability shall be imposed by the judgment to be entered herein, each of the judgment debtors, if any, who may pay more than his or her equal share shall have a right of contribution as against the other judgment debtors jointly liable with him or her.

Payments to certain trusts on deaths of Helen G. Shepard and Howard Gould

C. First: Edwin Gould, the Duchesse de Talleyrand and Frank Jay Gould hereby agree, each for himself and herself, that, following the death of Helen G. Shepard and upon receipt by them respectively or by their respective executors or administrators of their distributive shares of the trust fund held for the benefit of Helen G. Shepard, they each or their executors or administrators will pay from the said distributive shares so received by them or by their executors or administrators to the trustees of their respective trusts, to be added to the corpus thereof, the sum of $400,000 if Helen G. Shepard shall die before Howard Gould or $500,000 if Helen G. Shepard shall have survived Howard Gould and on her death there shall be no living issue of Howard

Gould entitled to take under the will and codicils thereto of Jay Gould, deceased, but if such issue shall then be living the amount shall be $400,000 instead of $500,000.

Second: Edwin Gould, the Duchesse de Talleyrand and Frank Jay Gould hereby agree, each for himself and herself, that, following the death of Howard Gould in the event that he shall die leaving no issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, and upon receipt by them respectively or by their respective executors or administrators of their distributive shares of the trust fund held for the benefit of Howard Gould, they each or their executors or administrators will pay from the said distributive shares so received by them or by their executors or administrators to the trustees of their respective trusts to be added to the corpus thereof, the sum of $400,000 if said Howard Gould shall pre-decease Helen G. Shepard, leaving no issue as above described him surviving, or $500,000 if said Howard Gould shall die after the death of Helen G. Shepard, leaving no issue as above described him surviving.

Re: Death of Howard Gould leaving issue entitled to take under the will and codicils thereto of Jay Gould, deceased

D. First: In the event that Howard Gould shall die leaving him surviving issue in any degree entitled to take under the will and codicils thereto of Jay Gould, deceased, Edwin Gould, Helen G. Shepard and Howard Gould severally for themselves and their respective executors and administrators agree to make payments as follows:

(a) Edwin Gould agrees, in said event, to pay to the trustees of the trust for the Duchesse de Talleyrand and remaindermen, to the credit of the principal of said trust, the sum of One hun-

dred and sixty-six thousand six hundred and sixty-six dollars and sixty-six cents ($166,666.66) if Helen G. Shepard shall have predeceased said Howard Gould, and the sum of One hundred and thirty-three thousand three hundred and thirty-three dollars and thirty-three cents ($133,333.33) if she shall survive said Howard, and that in the latter event he will also pay to said trustees to the credit of said principal the further sum of Thirty-three thousand, three hundred and thirty-three dollars and thirty-three cents ($33,333.33) on the death of said Helen G. Shepard provided any such issue of said Howard Gould shall survive her; and Edwin Gould further agrees, in the same events, to make payments in like amounts to the trustees of the trust for Frank Jay Gould and remaindermen, and agrees in the same events to make payments in like amounts to the issue of George J. Gould by his first wife, considered as a class, living on the happening of the several events in equal shares *per stirpes* and not *per capita.*

(b) Helen G. Shepard agrees to make payments to the trustees of the trust for the Duchesse de Talleyrand and remaindermen and to the trustees of the trust for Frank Jay Gould and remaindermen, and to the issue of George J. Gould by his first wife, considered as a class, *per stirpes* and not *per capita* in the same events and amounts as Edwin Gould by subdivision (a) hereof agrees to make payments to them respectively.

(c) Howard Gould agrees that his executors or administrators shall make payments to the trustees of the trust for the Duchesse de Talleyrand and remaindermen and to the trustees of the trust for Frank Jay Gould and remainder-

men, and to the issue of George J. Gould by his first wife, considered as a class, *per stirpes* and not *per capita* in the same events and amounts as Edwin Gould by subdivision (a) hereof agrees to make payments to them respectively.

(d) In the event that the Duchesse de Talleyrand or Frank Jay Gould shall be dead at the time when any of the above amounts are stated to be payable to the trustees of their respective trusts, then such amounts shall be paid to the issue of the Duchesse de Talleyrand or of Frank Jay Gould living at the time or times when any such amounts are payable in equal shares, *per stirpes* and not *per capita.*

(e) To secure the performance of their respective obligations, hereinbefore in this subdivision "First" of Clause "D" of this paragraph II provided for and as collateral security therefor, Edwin Gould, Helen G. Shepard and Howard Gould severally agree each for himself and herself to deposit forthwith upon the entry of the judgment in this Stipulation provided for the then market value of Five Hundred Fifty Thousand ($550,000) Dollars in bonds of the United States Government or of the State of New York or of the City of New York or of any or all of such issues with The Equitable Trust Company of New York (hereinafter referred to as the "depositary") of 37 Wall Street, Borough of Manhattan, City of New York, as trustee to hold, manage and deal with said securities or any other securities substituted therefor or added thereto, as hereinafter provided, upon the following terms, trusts and conditions, that is to say:

Forthwith upon the receipt thereof to divide the securities deposited by each depositor in kind into three parts as nearly equal as possible and to

designate and hold one such part of the securities deposited by each depositor as collateral security for the faithful performance by each such depositor of his and her separate and several obligations as expressed in subdivisions (a), (b) and (c) above.

The depositary shall receive and collect the income from the securities deposited with it and, after deducting one per cent (1%) of such income as and for its compensation, shall pay the depositor the balance of the income derived from his or her deposit, so long as he or she shall not be in default with respect to any obligation arising under this subdivision "First" of Clause "D" of this paragraph II.

Each depositor shall have the right at any time to substitute for any of the securities so deposited other United States Government bonds or bonds of the State of New York or of the City of New York of equal market value at the time of the substitution.

If at any time the market value of the securities so deposited by any depositor including securities substituted and added, if any, falls below Five Hundred Twenty-five thousand Dollars ($525,000) the depositary shall withhold payment of income to such depositor and add the income to his or her deposit fund until the market value of the securities plus cash in his or her deposit fund shall equal Five Hundred Fifty Thousand Dollars ($550,000) and shall forthwith call upon the depositor or his personal representatives to deposit cash or additional like securities sufficient to restore the market value of the securities and cash in his or her deposit fund to the sum of Five Hundred Fifty Thousand Dollars ($550,000); and the depositors severally

each for himself and herself and his and her respective executors and administrators agree forthwith to make such deposit; and if there shall be a default for the period of thirty (30) days in the performance of this obligation, the depositary shall apply at the foot of the judgment to be entered herein for a direction to the depositor in default on a call to make good the deposit.

The call for additional deposit above provided for may be made by telephone, telegram or letter to the business address last known to the depositary of said Edwin Gould, Helen G. Shepard and Howard Gould, or their respective executors or administrators.

In the event that any of the persons obligated to make the payments provided for in subdivisions (a), (b) or (c) of this subdivision "First" of Clause "D" of this paragraph II shall fail in whole or in part to make the same within thirty (30) days after the time herein provided for the making thereof, provided there shall be no bona fide controversy with respect to Howard Gould's having left him surviving issue entitled to take under the will and codicils thereto of Jay Gould, deceased, the depositary shall perform or complete the performance of the obligation of the depositor by delivering to the persons corporate or individual to whom the payment should have been made by the depositor sufficient of the securities or funds, so held as security, to discharge in full the obligation of the depositor who shall be in default and shall, in like manner, perform or complete the performance of the obligation in behalf of the depositor as soon as it shall be finally adjudicated by the highest court before which the question is

brought, in the event that a bona fide controversy shall have arisen with respect thereto, that Howard Gould left him surviving issue entitled to take under the will and codicils thereto of Jay Gould, deceased; and it is understood and agreed that the foregoing provisions of this paragraph shall not alter or modify in any way the covenants and obligations hereinabove contained in subdivisions (a), (b) and (c) of this subdivision "First" of Clause "D" of this paragraph II.

The depositary shall invest any moneys in the deposit funds in its hands for the account of the respective depositors to whom such moneys belong, in such securities as it may select of the class of securities permitted for the investment of trust funds under the laws of the State of New York.

All securities acquired by or for the deposit funds above described other than United States Government bonds or bonds of the State or City of New York shall be listed upon the New York Stock Exchange and the term "market value" used in this subdivision "First" of Clause "D" of this paragraph II means the price for which the particular bond is selling on the day in question upon the New York Stock Exchange if listed on said Exchange or the average price of the sales on that day, if not so listed, to be determined by the depositary, or the medium between bid and asked price on that day if no sales are ascertained to have been made.

If, at any time, the obligations under subdivisions (a), (b) and (c) above are reduced to One Hundred Thousand Dollars ($100,000) each, then the depositors or their executors or administrators may withdraw from the depositary the securities in their respective deposit funds over

and above securities and funds of the then market value of One Hundred Ten Thousand Dollars ($110,000), which securities and funds, to be retained by the depositary, shall be selected by it and shall *mutatis mutandis* remain subject to all of the terms and conditions herein provided respecting deposits. If Howard Gould shall die leaving no issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, or when all of the obligations herein provided for in this subdivision "First" of Clause "D" of this paragraph II shall have been fulfilled, the respective depositors or their respective executors, administrators or assigns shall be entitled to withdraw from the depositary all securities and cash deposited by him or her or for his or her account and then in his or her deposit fund, excepting the sum of Two Thousand Seven Hundred Fifty ($2,750) Dollars with respect to each depositor which amount the depositary shall be entitled to retain as and for full compensation for its services as depositary.

SECOND: Edwin Gould agrees, for himself and his executors and administrators, that on the death of Howard Gould, in the event that Howard Gould shall pre-decease Helen G. Shepard leaving issue entitled to take under the will and codicils thereto of Jay Gould, deceased, he or his executors or administrators will forthwith pay to the trustees of the trust for his benefit to the credit of the principal thereof, or to his issue then living, equally *per stirpes* and not *per capita* if he be then dead, the sum of Four hundred thousand dollars ($400,000) and the further sum of One hundred thousand dollars ($100,000) on the death of Helen G. Shepard if at that time any such issue as above described of Howard Gould

is living, or if Howard Gould shall have survived Helen G. Shepard leaving him surviving any such issue as above described the sum of Five hundred thousand dollars ($500,000).

THIRD: Howard Gould agrees for himself and his executors and administrators, that in the event that he shall die leaving issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, his executors or administrators will pay forthwith to the trustees of the trust for his benefit

(a) Five hundred thousand dollars ($500,000) if Helen G. Shepard shall have survived him and

(b) Nine hundred thousand dollars ($900,000) if Helen G. Shepard shall have predeceased him, which payments shall become and be dealt with as part of the corpus of the trust held for his benefit for life.

The payments to be made as provided in subdivisions "First", "Second" and "Third" of this clause "D" of paragraph II shall be due as of the dates of death of Howard Gould and Helen G. Shepard and shall bear interest at the rate of 5% per annum from said due dates until paid.

Additional immediate payments by Executors of George J. Gould

III. The executors of the estate of George J. Gould, deceased, agree to pay the following amounts to the trustees of the following named residuary trusts created by the Last Will and Testament and Codicils thereto of Jay Gould, deceased:

(a) Sixty thousand dollars ($60,000) to the trustees of the trust for George J. Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from

November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(b) Sixty thousand dollars ($60,000) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(c) Sixty thousand dollars ($60,000) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(d) Sixty thousand dollars ($60,000) to the trustees of the trust for Howard Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(e) Sixty thousand dollars ($60,000) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(f) Sixty thousand dollars ($60,000) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November

1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(g) Forty thousand dollars ($40,000) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(h) Forty thousand dollars ($40,000) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(i) Forty thousand dollars ($40,000) to the trustees of the trust for Howard Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(j) One hundred and seventy-five thousand dollars ($175,000) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $175,000 from November 1, 1926, to the date of entry of judgment herein.

(k) One hundred and seventy-five thousand dollars ($175,000) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $175,000 from November 1, 1926, to the date of entry of judgment herein.

One-third of each of said payments provided for in subdivisions (g) to (k) to the credit of income shall be in settlement of income due the life beneficiary prior to March 1, 1913, and two-thirds in settlement of income due the life beneficiary subsequent to March 1, 1913.

Reimbursement of certain beneficiaries for fees of attorneys, counsel and other expenses

IV. A. Sums to be determined as hereinafter set forth shall be paid by the Trustees of the six separate trusts as contribution toward the fees of the attorneys and counsel of the following beneficiaries, parties to this action, viz:

Duchesse de Talleyrand,
Adult children of Duchesse de Talleyrand,
Frank Jay Gould,
Adult children of Frank Jay Gould,
Adult children of George J. Gould, deceased, and their assignees,
Frank M. Gould

for services rendered in this action and in the actions, suits and proceedings hereinbelow described and also to reimburse said beneficiaries for all other expenses incurred by them or on their behalf in connection with this action and in connection with any suit or proceeding in the State of New Jersey commenced or intervened in or participated in by any of said beneficiaries for the purpose of establishing a claim or of obtaining a judgment in New Jersey against the estate of George J. Gould on account of his acts or omissions as executor or trustee of the will of his father, Jay Gould, or for the purpose of enforcing against his estate any judgment which might be obtained in this action against the executors of said George J. Gould, or for the purpose of preserving the assets of said estate to meet and satisfy any such judgment in

New Jersey or New York, together with all expenses of the trial of this action and the expenses of the reference upon this compromise, provided, however, that such contribution above described shall not affect any contract or agreement, express or implied, with any adult beneficiary as to the payment of such fees which may exist in this action.

The Trustees of the six separate trusts shall also pay to all guardians *ad litem* for their services, counsel fees and expenses, incurred as above set forth, sums to be determined in the manner hereinafter provided.

The amounts of such payments above provided to be made shall be determined by agreement if possible but in the event of a failure to so agree then the amounts not agreed upon shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

The sums above provided to be paid shall be paid in equal shares by the trustees of the six separate trusts and charged in whole to principal or in part to the principal and in part to the income of such separate trusts in such proportions as may be agreed upon or in the event of a failure to agree such proportions shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

B. The reasonable expenses of the corporate Trustees for counsel fees and expenses in this action and in proceedings in the State of New Jersey of the nature more fully referred to above shall be paid out of the funds of the trusts in behalf of which such counsel fees and expenses were incurred and the amounts thereof shall be fixed by agreement between each corporate trus-

tee and the beneficiaries of each particular trust if possible and shall be charged in whole to principal or in part to the principal and in part to the income of the respective trusts in such proportions as may be agreed upon and in the event of a failure to agree shall be fixed and apportioned by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

C. Plaintiffs Edwin Gould, Howard Gould, Helen G. Shepard, the surviving accounting Executors and Trustees herein, and the Executors of George J. Gould, deceased, an accounting Executor and Trustee plaintiff herein, shall each pay individually the fees of attorneys and counsel retained by or representing him, her or them in this action and shall individually bear all expenses incurred in this action by him, her or them and no part of such fees or expenses shall be charged upon any of the trusts (except the payments made from the trust funds prior to May 26, 1922, to Alton B. Parker and to Chadbourne & Shores and its successor firms), provided, however, that the fees heretofore paid to Messrs. De Forest Brothers and to Messrs. Taylor, Knowles & Hack as attorneys of record for the plaintiff executors and trustees shall be deemed to have been paid properly from the trust funds, such payments, however, as have been made subsequent to May 26, 1922, shall be charged 40% thereof to principal and 60% to income and one-sixth of said proportions shall be charged on the accounts of each of the six separate trusts from May 26, 1922, and they shall receive such further sums for fees and disbursements as shall be agreed upon as proper under the circumstances and the amounts thereof shall be payable by the six trusts in equal one-sixth shares each such

one-sixth share to be charged in whole to principal or in part to principal and in part to income in such proportions as shall be agreed upon as aforesaid and in the event of the failure of agreement either as to the amounts or the proportions, the same shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

Stipulation not to delay Findings and Report

V. This Stipulation shall not be and shall not be urged as a reason for delaying the preparation of Findings of Fact and Conclusions of Law pursuant to the opinion heretofore rendered in this action dated November 10, 1925, nor the signing or filing of the Referee's Report on such Findings and Conclusions, but final judgment on such report of the Referee herein shall not be entered before January 1, 1927, provided Edwin Gould, Howard Gould and Helen G. Shepard, the surviving plaintiff executors and trustees shall be proceeding with all reasonable speed to bring about the sanction by the Supreme Court of the compromise hereinabove provided for before said date.

Special provisions as to Findings, Report and Arbitrations

VI. In the event that the terms of this Stipulation cannot be fully carried out to and including the entry of the judgment herein provided for, no matter what the cause of such failure may be, and in the further event that for any cause the Referee herein, Hon. James A. O'Gorman, should be unable himself to pass upon proposed findings of fact and conclusions of law or to make and sign a report containing findings of fact and conclusions of law based upon his opinion rendered herein, it is hereby stipulated that said opinion rendered on or about November 10th, 1925, shall be filed herein and carried into effect by any

referee who may be appointed herein by passing upon proposed findings of fact and conclusions of law and making and signing a report containing findings of fact and conclusions of law in accordance with said opinion, and that such report may be filed and judgment entered in accordance therewith, without prejudice, however, to the right of any person aggrieved to except to such findings of fact and conclusions of law and to appeal from such judgment in the manner provided by law in the same way and with the same effect only as if such judgment had been entered upon identical findings of fact and conclusions of law made by Hon. James A. O'Gorman, Referee, herein.

The settlement and compromise herein provided for shall in no event fail by reason of the inability or failure, for any reason, of the referee and arbitrator named herein to act, but in such event, the reference and/or arbitration herein provided for shall be proceeded with before such other referee and/or arbitrator as the parties hereto may agree upon or as the Court may appoint.

This Stipulation no estoppel

VII. This Stipulation is entered into solely for the purpose of compromise and settlement of matters in dispute among members of the Gould family and to bring about the speedy termination of a long litigation and prevent said litigation from continuing for an indefinite period in the future and neither this stipulation nor any negotiations leading up to it can be used or urged in any proceedings in this action or in any other action, suit or proceeding in this or any other Court as an admission or estoppel against any party to it or in favor of any party to this

action or to any other action, suit or proceeding in this or any other Court and it shall not prejudice any party to this action in any manner or at any time or in any manner affect the rights of the several parties to this action in the event of the compromise herein sought to be effected failing, in whole or in part, of consummation, and except as herein provided nothing herein shall operate to change, alter, modify or diminish the rights, interests or estates legal or equitable given, granted, bequeathed or devised to any person or persons in and by the last will and testament and codicils thereto of Jay Gould, deceased. No covenant herein by or on the part of the Executors of George J. Gould, deceased, shall impose any individual liability on either of them or affect other than the assets in the Estate of George J. Gould, nor shall the signing of this stipulation be deemed a present waiver of any of the jurisdictional objections heretofore claimed and urged by them in this action.

Approval by New Jersey Courts of plan of adjustment and compromise

VIII. The signing of this stipulation for compromise by the executors of the Estate of George J. Gould, deceased, now in process of administration in the State of New Jersey and by the attorneys for the adult children of George J. Gould, deceased, and their assignees and the infant children of George J. Gould, deceased, by their guardians ad litem is conditional upon the approval, by the Courts of that State of an agreement entered into between them and others not parties to this action, which agreement among other things provides for the creation of trust funds each in the sum of One hundred thousand ($100,000) Dollars for the benefit of each of the three children of George J. Gould by his second wife and the payment of Two hundred seventeen

thousand, eight hundred fifty-seven and one-seventh ($217,857 1/7) Dollars to each of the seven children of George J. Gould by his first wife; and upon the signing hereof by or on behalf of the parties hereto as hereinbefore provided, the executors of the Will of George J. Gould will forthwith take steps to submit the aforesaid agreement and this Stipulation for Compromise to the proper Courts of the State of New Jersey for approval and for instructions with respect thereto; and it is understood and agreed that all acts done or to be done and payments to be made hereunder by parties to the action who are interested in the Estate of George J. Gould, deceased, are subject to the approval of and to be performed under the authority and direction of the Courts of the State of New Jersey.

Dated at New York City, December 4, 1926.

Signatures.

HELEN G. SHEPARD
EDWIN GOULD
ARCHIBALD R. WATSON
Attorney for Howard Gould
WATSON, GODLEY, SHEPPARD & WILGUSS
Attorneys for Howard Gould
KINGDON GOULD
SCHUYLER NEILSON RICE } As New Jersey Executors of the last Will of George J. Gould, deceased and not waiving, but expressly reserving, all objection heretofore urged by each in the action in which this stipulation is entitled, to the jurisdiction of the Court of New York over them

Signatures.

DE FOREST BROS
Attys for Plffs

TAYLOR KNOWLES & HACK
Attys for Plffs and defendant Edwin Gould

LEONARD & WALKER
Attorneys for defendant Frank Jay Gould

COUDERT BROTHERS
Attorneys for Duchesse de Tallyrand defendant

O'BRIEN BOARDMAN FOX & EARLY
Attorneys for Helen G. Shepard

WM. NELSON CROMWELL
Guardian ad litem for Charles Maurice Jason Howard, Duke de Sagan, and Helene Violette de Talleyrand, and Anna Eleonor Marie Raymonde de Castellane, and Pauline Beatrix Yvonne Helene Florinda de Castellane.

SULLIVAN & CROMWELL
Attorneys for Marie Louis Jean Jay Georges Paul Ernest Boniface de Castellane, and Georges Gustave Marie Antoine Boniface Charles de Castellane, and Jason Honore Louis Sever de Castellane.

HENRY H. PIERCE
Attorney for Wm. Nelson Cromwell, Guardian ad litem for Charles Maurice Jason Howard, Duke de Sagan, and Helene Violette de Talleyrand.

PHILIP L. MILLER per H. H. P.,
Attorney for Wm. Nelson Cromwell, Guardian ad litem for Anna Eleonor Marie Raymonde de Castellane, and Pauline Beatrix Yvonne Helene Florinda de Castellane.

PIERCE & GREER
Attys for Frank M. Gould, defendant

DAVIS, POLK, WARDWELL, GARDINER & REED

WM. WALLACE, Jr. CHADBOURNE, STANCHFIELD & LEVY and

GILLESPIE & O'CONNOR
As attorneys for the Executors of the last Will of George J. Gould, deceased, with like reservations as hereinbefore made in signing by the said Executors.

KINGDON GOULD
By Gillespie & O'Connor attys

JAY GOULD
By Griffiths & Content, Attorneys

Signatures.

BANKERS TRUST COMPANY
by White & Case
Attorneys

THE EQUITABLE TRUST COMPANY OF NEW YORK
by Murray Aldrich & Roberts
Attorneys

THE EQUITABLE TRUST COMPANY OF NEW YORK
by Winthrop W. Aldrich
Attorney

UNITED STATES TRUST COMPANY OF NEW YORK
by George L. Shearer
Attorney

THE FARMERS' LOAN AND TRUST COMPANY
by Geller Rolston & Blanc
Attorneys

ROBERT L. LUCE
Guardian ad litem for Gioia Bishop.

DUNNINGTON WALKER & GREGG
Attorneys for Guardian ad litem for Gioia Bishop.

MARJORIE G. DREXEL
by Owen B. Huntsman, Attorney in Fact.

VIVIEN DECIES
by Owen B. Huntsman, Attorney in Fact.

CRAVATH, HENDERSON & de GERSDORFF
Attorneys for defendants Marjorie G. Drexel and Lady Decies.

STOTESBURY & MINER
Attorneys for Defendant Edith Gould Wainwright and for Defendants Commercial Trust Company of New Jersey and Schuyler Neilson Rice as Trustees for Jay Gould and Edith Gould Wainwright under deeds of trust,

J. ARTHUR LEVE for CHADBOURNE, STANCHFIELD & LEVY,
Attys for Geo. J. Gould Jr

MALCOLM SUMNER
Guardian ad litem for Jay Gould, Jr., George J. Gould 3rd, Maughan Carter Gould, Stuyvesant Wainwright, Caroline de Peyster Wainwright and Carroll Livingston Wainwright, Jr.

LEO OPPENHEIMER
Attorney for Malcolm Sumner, Guardian ad litem for Jay Gould, Jr., George J. Gould, 3rd, Maughan Carter Gould, Stuyvesant Wainwright, Caroline de Peyster Wainwright and Carroll Livingston Wainwright, Jr.

Signatures.

WILLIAM A. W. STEWART

Guardian ad litem for Gloria Gould Bishop, Edith K. Drexel, Anthony J. Drexel 3rd, Marjorie Gould Drexel, Eleanor Gould, Anne Douglas Gould, Eileen Vivien de a Poer Beresford, Catherine Maya Beresford and Arthur Georges Marcus Douglas Horsely de lar Poer Bresford.

STEWART & SHEARER

Attorneys for William A. W. Stewart guardian ad litem for Gloria Gould Bishop, Edith K. Drexel, Anthony J. Drexel 3rd, Marjorie Gould Drexel, Eleanor Gould, Anne Douglas Gould, Eileen Vivien de la Poer Bresford, Catherine Maya Bresford and Arthur Georges Marcus Douglas Horsely de la Poer Bresford.

JOHN J. O'CONNOR

Guardian ad litem for Sylvia Annunciata Gould, Edith Kingdon Gould and Kingdon Henry Gould.

ROBERT L. LUCE Attorney for John J. O'Connor

Guardian ad litem for Sylvia Annunciata Gould, Edith Kingdom Gould and Kingdon Henry Gould.

THOMAS F. KEOGH

Guardian ad litem for infant defendants George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, subject to approval of court, and to approval of decree to be entered in proposed New Jersey suit so far as the provisions of said decree shall affect said infants.

DAVID L. WEIL

Attorney for guardian ad litem for infant defendants George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould, subject to approval of court, and to approval of decree to be entered in proposed New Jersey suit so far as the provisions of said decree shall affect said infants.

THOS. S. FULLER

Attorney for Helen Gould de Montenach.

THOS. S. FULLER

Guardian ad litem for Helene Daniele de Montenach.

HUGHES ROUNDS SCHURMAN & DWIGHT

Attorney for Dorothy Gould de Graffenried de Villars.

ROBERT LEE MORRELL

Guardian ad litem for Marianne Alice Gould, an infant defendant.

Acknowledgments.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

On this 6th day of December, 1926, before me personally came EDWIN GOULD to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

WM. E. LA PLANTE,
(Notarial Seal) Notary Public
New York County No. 48.
New York Register No. 8014
Term Expires March 30, 1928

STATE OF NEW YORK
COUNTY OF NEW YORK, } *ss.*

On this 4th day of December, 1926, before me personally came HELEN G. SHEPARD to me known and known to me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

WM. E. LA PLANTE,
(Notarial Seal) Notary Public
New York County No. 48.
New York Register No. 8014
Term Expires March 30, 1928

Exhibit C.

AGREEMENT, made the 16th day of December, 1926, between KINGDON GOULD, JAY GOULD, MARJORIE G. DREXEL (formerly Marjorie G. Gould) LADY DECIES (formerly Vivien Gould), GEORGE J. GOULD, JR., EDITH GOULD WAINWRIGHT (formerly Edith C. Gould), and GLORIA GOULD BISHOP (formerly Gloria Gould) by Kingdon Gould, her General Guardian, all being children of George J. Gould, deceased, by his first wife, Edith Kingdon Gould, (hereinafter called the "Seven"), parties of the first part; GEORGE SINCLAIR GOULD, JANE SINCLAIR GOULD, and GUINIVERE GOULD, children of George J. Gould, deceased, by his second wife, Guinivere Sinclair Gould (now Dunsford), acting by said Guinivere Dunsford and Schuyler Neilson Rice, as Testamentary Guardians of the persons and property of said children (hereinafter called the "Three"), parties of the second part; GUINIVERE SINCLAIR GOULD (DUNSFORD), (hereinafter called "Lady Dunsford"), party of the third part; KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the will of George J. Gould, deceased (hereinafter called the "Executors"), parties of the fourth part.

WHEREAS, An action is pending in the Supreme Court of the State of New York, which was originally brought by the four Executor-Trustees under the Last Will of Jay Gould, deceased, as plaintiffs, against the children of said deceased and others, as defendants, for the settlement of the accounts of said plaintiffs under said Will, in which suit the Seven and the Three are parties, and in which a general opinion was rendered, under date of November 10, 1925, by the Referee appointed to hear and determine the issues.

That opinion, if adhered to and applied, would seriously prejudice the accounts of said Executor-Trustees under said Will, by surcharges which might utlimately imperil the estate of George J. Gould, deceased, including the $4,000,000 preferential trust provided for in Article Third of his Will.

As a result of protracted negotiations looking toward a settlement of all matters in dispute in said action, a Stipulation for Compromise has been reduced to definite form. A copy of that Stipulation is hereto attached and marked Exhibit No. 1 and made a part hereof, and this Agreement is the one referred to in paragraph VIII, page 32, of said Stipulation for Compromise. The performance of said Stipulation for Compromise would definitely determine the volume of the assets of the Estate of George J. Gould, and all the stipulated payments required to be made from that estate but for this agreement would be made from the residuary estate, which would also insure the integrity of said preferential trust, in which the Three and Lady Dunsford are primarily interested.

The Seven are willing to sign such Stipulation on condition that an equitable adjustment be made, as herein provided, of the loss which would otherwise fall exclusively on the said residuary, and which would result from making the payments called for by said Stipulation, and also on condition that an appeal taken to the Appellate Division by the Guardian Ad Litem of the Three, who was appointed in the said New York action, from certain portions of a separate judgment entered in said action on December 16, 1925, shall be withdrawn, and the Guardian Ad Litem was unwilling to sign said Stipu-

lation for Compromise and to recommend the approval of the said settlement and to agree to withdraw the appeal taken by him as aforesaid, unless provisions should be made for the Three as in said Stipulation for Compromise and as herein provided.

In consideration of the foregoing and of the mutual covenants herein, the undersigned adult parties in person and the undersigned infant parties by their respective guardians, and subject to approval by the Court in New York and New Jersey, as hereinafter provided, agree:

1. The Seven, the Three and Lady Dunsford unite in requesting the Executors to execute said Stipulation for Compromise.

2. If and when the Stipulation for Compromise and this Agreement shall have been approved by the Court of Chancery of New Jersey, and the Stipulation for Compromise by said Supreme Court, and said Supreme Court shall have authorized the dismissal of the said appeal of the Three, the Executors will pay out of the assets of the Estate of George J. Gould in their hands, and charge against the capital of the preferential trust, and distribute equally among the Seven as soon as may be after said compromise payments shall have been made, the sum of $1,525,000.

3. If and when the said Stipulation for Compromise and this Agreement shall have been approved as aforesaid, the Executors will also transfer out of the assets of the estate of George J. Gould, deceased, in their hands, and charge against the capital of the preferential trust, the sum of Three hundred thousand dollars ($300,000) and pay over the same unto Commercial Trust

Company of New Jersey, and Schuyler Neilson Rice as Trustees, to hold in trust, one-third thereof, or the sum of One hundred thousand dollars ($100,000), for the benefit of each of the Three, on the terms of a certain trust agreement, the form whereof is hereto annexed, marked Exhibit No. 2, and made a part hereof.

The form of the Trust Agreement referred to in paragraph Second, page 11, of the said Stipulation for Compromise is hereto annexed, marked Exhibit No. 3, and made a part hereof.

4. Upon the execution hereof, the Executors may, and upon the request of any party hereto shall, apply to the Court of Chancery of the State of New Jersey for its approval of said Stipulation for Compromise, and for the approval of this Agreement, and for instructions to these Executors and to the Guardians of all the infant parties hereto respectively. All parties hereto will cooperate to secure the approval of said Stipulation for Compromise and this Agreement by the said Courts and to carry out the provisions thereof.

In Witness Whereof the parties above-named have hereunto set their hands and seals the day and the year aforesaid.

Kingdon Gould

Jay Gould

Marjorie G. Drexel by
Owen B. Huntsman, Attorney in Fact

Vivien Decies by
Owen B. Huntsman, Attorney in Fact

George J. Gould by
J. Arthur Leve, Attorney in Fact

Edith Gould Wainwright

GLORIA GOULD BISHOP by
Kingdon Gould, General Guardian
GEORGE SINCLAIR GOULD
JANE SINCLAIR GOULD
GUINIVERE GOULD } By Guinevere Dunsford

Schuyler Neilson Rice,
as Testamentary Guardians of the person and property of said children.

GUINEVERE DUNSFORD
KINGDON GOULD
SCHUYLER NEILSON RICE
Executors of the Will of George J. Gould, deceased.

Exhibit No. 1.

SUPREME COURT,

NEW YORK COUNTY.

KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of George J. Gould, deceased, Executor and Trustee under the last Will and Testament and Codicils thereto of Jay Gould, deceased, EDWIN GOULD, HELEN G. SHEPARD (formerly Helen M. Gould) and HOWARD GOULD, as Executors and Trustees under the Last Will and Testament and Codicils thereto of Jay Gould, deceased,

Plaintiffs,

against

KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of George J. Gould, deceased, individually and as Receiver of the surplus income of Duchesse de Talleyrand (formerly Anna Gould); EDWIN GOULD; HELEN G. SHEPARD (formerly Helen M. Gould) individually and as Receiver of the surplus income of Duchesse de Tallyrand (formerly Anna Gould); HOWARD GOULD; DUCHESSE DE TALLEYRAND (formerly Anna Gould); FRANK JAY GOULD; KINGDON GOULD; JAY GOULD; MARJORIE G. DREXEL (formerly Marjorie Gould); LADY DECIES (formerly Vivien Gould); GEORGE J. GOULD, JR.; EDITH GOULD WAINWRIGHT (formerly Edith C. Gould); GLORIA GOULD

County Clerk's Index No. 19346—1916.

BISHOP (formerly Gloria Gould); FRANK M. GOULD; HELEN GOULD DE MONTENACH (formerly Helen Margaret Gould); DOROTHY GOULD DE GRAFFENRIED DE VILLARS (formerly Dorothy Gould); MARIE LOUIS JEAN JAY GEORGES PAUL ERNEST BONIFACE DE CASTELLANE; GEORGES GUSTAVE MARIE ANTOINE BONIFACE CHARLES DE CASTELLANE; JASON HONORE LOUIS SEVER DE CASTELLANE; CHARLES MAURICE JASON HOWARD, DUKE DE SAGAN; HELENE VIOLETTE DE TALLYRAND; EDITH K. DREXEL; ANTHONY J. DREXEL, 3RD; MARJORIE GOULD DREXEL; ELEANOR GOULD; ANNE DOUGLAS GOULD; JAY GOULD, JR.; EILEEN VIVIEN DE LA POER BERESFORD; CATHERINE MAYA BERESFORD; ARTHUR GEORGE MARCUS DOUGLAS HORSELY DE LA POER BERESFORD; SYLVIA ANNUNCIATA GOULD; EDITH KINGDON GOULD; GEORGE J. GOULD, 3RD; MAUGHAN CARTER GOULD; STUYVESANT WAINWRIGHT; GEORGE SINCLAIR GOULD; JANE SINCLAIR GOULD; GUINEVERE GOULD; UNITED STATES TRUST COMPANY OF NEW YORK, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Frank Jay Gould and Remaindermen; BANKERS TRUST COMPANY, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Edwin Gould and Remaindermen and Helen G. Shepard and Remaindermen; THE EQUITABLE TRUST COMPANY OF NEW YORK, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Howard Gould and

Remaindermen and George J. Gould and Remaindermen; THE FARMERS' LOAN AND TRUST COMPANY, as substituted Trustee under the Will of Jay Gould, deceased, for the benefit of Duchesse de Talleyrand and Remaindermen; THE EQUITABLE TRUST COMPANY OF NEW YORK, as Trustee for Lady Decies (formerly Vivien Gould) under a Deed of Trust dated December 14, 1920; COMMERCIAL TRUST COMPANY OF NEW JERSEY and SCHUYLER NEILSON RICE, as Trustees for Jay Gould under a Deed of Trust dated October 19, 1922, and a Deed of Trust supplemental thereto dated November 10, 1922; COMMERCIAL TRUST COMPANY OF NEW JERSEY and SCHUYLER NEILSON RICE, as Trustees for Edith Gould Wainwright under a Deed of Trust dated October 31, 1922; HELENE-DANIELE DE MONTENACH; KINGDON HENRY GOULD; CAROLINE DEPEYSTER WAINWRIGHT; GIOIA BISHOP; ANNA ELEONOR MARIE RAYMONDE DE CASTELLANE; MARIANNE ALICE GOULD; CARROLL LIVINGSTON WAINWRIGHT, JR.,

Defendants.

STIPULATION FOR COMPROMISE.

In view of the fact that the above entitled administration action has been pending for ten years; that there are upwards of fifty parties to said action, most of them members of the same family and descendants of Jay Gould, the testator the administration of whose estate is the subject matter of said action; that the interests of said

parties are complicatedly diverse; that the record in said action is of unprecedented length and complication in an action of this character; and that in consequence, if appeals should be prosecuted to the court of last resort, a final judgment determining all the issues in the said action might not be had for many years to come; and that the preparation and argument of such appeals would add greatly to the already great costs and expenses of the action, to the prejudice of all the interested parties; and

In view of the further fact that a settlement and compromise of said action would tend to compose family differences which have arisen out of the administration of the estate of the common ancestor, the said Jay Gould, and out of the trial of said action, and would tend to remove existing impediments to sentiments of family unity, and would also the sooner permit the said estate to be administered in accordance with the intention of the testator, the said Jay Gould, and freed from the administrative embarrassment to which continued litigation for possibly many years to come would subject it; and further

In view of the opinion of the Referee herein to hear and determine, rendered under date of November 10, 1925, and taking into consideration the uncertainty of the result of the appeals which all the parties to this action would be entitled to take unless the action is settled and compromised,

Now, THEREFORE, the undersigned adult parties to this action, by their attorneys of record herein, and the undersigned guardians ad litem of the respective infant parties to this action, (the latter having carefully considered the terms and provisions of the settlement and compromise herein-

after provided for and believing said settlement and compromise to be one which should be submitted to the Court for its determination as to whether it is in the best interests of their respective wards, and being prepared, when the same is so submitted to the Court, to give the Court their views, as such guardians, in the premises) and the corporate substituted Trustees who also have carefully considered the terms and provisions of said settlement and compromise and believe it to be one which should be submitted to the Court for its determination as to whether it is in the best interests of the life tenants and remaindermen of said trusts respectively, and who are prepared when so submitted to express to the Court their views that said proposed settlement and compromise is in their judgment wise and proper and that they should be authorized and directed by the Court to enter into it, hereby stipulate as follows:

General Provisions

I. Immediately upon the signing of this Stipulation by the attorneys of record herein for Edwin Gould, Howard Gould and Helen G. Shepard, individually and as executors and trustees under the last will and testament and codicils thereto of Jay Gould, deceased, Kingdon Gould and Schuyler Neilson Rice as Executors of the Last Will and Testament of George J. Gould, deceased, the Bankers Trust Company as substituted trustee of the trusts for Edwin Gould and remaindermen and Helen G. Shepard and remaindermen respectively, The Equitable Trust Company of New York as substituted trustee of the trusts for George J. Gould (now deceased) and remaindermen and Howard Gould and remaindermen re-respectively, The Farmers' Loan and Trust Company as substituted trustee of the trust for

the Duchesse de Talleyrand and remaindermen, United States Trust Company of New York as substituted trustee of the trust for Frank Jay Gould and remaindermen, the Duchesse de Talleyrand and her adult children, Frank Jay Gould and his children, the adult children of George J. Gould and their assignees, the guardian ad litem for Gloria Gould Bishop, (minor child of George J. Gould), Frank M. Gould and by the guardian ad litem for the infant children of the Duchesse de Talleyrand, and by the guardian ad litem of the other minor children of George J. Gould, the surviving accounting plaintiffs herein Edwin Gould, Howard Gould and Helen G. Shepard will move in this action together with any others of the parties hereto who may join with them either on notice or *ex parte* and without notice which is hereby waived, for leave to settle and compromise this action in accordance with the terms of this Stipulation and for the appointment of a guardian or guardians for any unborn remaindermen under any of the trusts created by and under said will and codicils thereto of Jay Gould, deceased, if in the opinion of the Court such appointment is necessary. Said moving parties shall pray that the motion be referred to the Hon. James A. O'Gorman, the referee who tried this action, to hear and report upon the said proposed compromise. As soon as said report is signed, any party to this action may file the same, and if said report shall approve the compromise herein provided for then forthwith upon notice of the filing of said report being given to them by mailing a copy of such notice addressed to

Schuyler Neilson Rice, Executor of the Estate of George J. Gould, deceased, Highland Park, New Brunswick, New Jersey.

Kingdon Gould, executor of the Estate of George J. Gould, deceased, Lakewood, New Jersey.

Kingdon Gould, Executor of the Estate of George J. Gould, deceased, 160 East 72nd Street, New York City, New York.

Kingdon Gould and Schuyler Neilson Rice, Executors of the Estate of George J. Gould, deceased, 15 Exchange Place, Jersey City, New Jersey.

Kingdon Gould and Schuyler Neilson Rice, Executors of the Estate of George J. Gould, deceased, 165 Broadway, Borough of Manhattan, New York City, New York.

the said executors of the estate of George J. Gould will, by their attorneys, enter their general appearance in this action, and consent to the entry of judgment in this action on said report. Immediately upon the filing of a report approving the compromise herein provided for any party to this action may move for confirmation thereof and for judgment in accordance therewith, in which judgment there shall be incorporated provisions for the payment of the amounts to be paid under and pursuant to the provisions of Paragraphs II and III hereof and such other provisions as may seem to the Court wise or necessary. Execution upon such judgment shall not be issued until thirty (30) days shall have expired after the entry thereof.

The amounts to be paid pursuant to Paragraph IV hereof shall be forthwith paid by the trustees of the respective trusts to the parties entitled thereto, but in the event that any such payment or payments shall not be made within thirty (30) days after the agreement upon the amount

or the signing of the award as the case may be, any party entitled to such payment or payments may move the court herein for an order directing that a provision for the payment thereof be incorporated in the judgment to be entered herein or if the same shall have been theretofore entered for the addition thereof at the foot of the judgment.

It is the intent and purpose of this Stipulation to provide for a settlement and compromise of all the issues heretofore raised in this action, including the issues involved in the appeal taken by the three children of George J. Gould by his second wife from the separate judgment on severed issues duly entered herein on December 16, 1925, and to provide for a final judgment herein judicially settling the accounts of the Executors of the Last Will and Testament and Codicils thereto of Jay Gould, deceased, and judicially settling the accounts of the Trustees of the residuary trusts under said Last Will and Testament and Codicils thereto to and including the 31st day of December, 1925, as hereinbelow provided; and the judgment provided for by this Stipulation shall expressly be declared to be a judgment judicially settling the accounts of said Executors and Trustees as aforesaid, and said judgment, together with the judgment upon the aforesaid severed issues as it now stands, shall constitute the final judgment or judgments in this action.

The sums to be paid under the paragraphs of this Stipulation numbered II and III are to be in full settlement and compromise of all the objections filed herein to the accounts of the Executors and Trustees to and including the 26th day of May, 1922.

Re: Accounts

The objections filed herein to the accounts of the Trustees of the six separate trusts from the 26th day of May, 1922, to and including the 31st day of December, 1925, shall be dealt with and the said accounts shall be restated, and as restated approved, as follows: Said accounts are to be approved as they stand, except that

A. The testamentary compensation of the Testamentary Trustees charged on said accounts since May 26, 1922, shall be charged against income.

B. The ordinary expenses of administering the said trusts (exclusive of the costs and expenses of this action), charged on said accounts since May 26, 1922, shall be charged against income.

C. The costs and expenses of this action, charged on said accounts since May 26, 1922, including counsel fees to counsel for the Trustees, individual and corporate, for legal services in connection with this action, shall be charged 60% to income and 40% to principal.

D. As to the securities received by the Trustees upon the reorganization of the Denver & Rio Grande Railroad Company, the apportionment thereof between income and principal adopted by the Trustees of the separate trust in favor of Frank Jay Gould and remaindermen is to be followed by the Trustees of the other five separate trusts, and their accounts restated accordingly.

E. The interested parties will endeavor to agree upon a restatement of said accounts, in accordance with the provisions of "B" and "C", above, and in the event of their failure to agree

with respect to any item or items on said accounts the decision as to the item or items in controversy shall be finally determined by the referee appointed on the motion for leave to compromise.

Immediate Payments by accounting plaintiffs

II A. First: Edwin Gould, Helen G. Shepard, Howard Gould and the executors of the estate of George J. Gould, deceased, agree to pay the following amounts to the trustees of the six residuary trusts created by the Last Will and Testament and codicils thereto of Jay Gould, deceased;

(a) Two million dollars ($2,000,000.) to the trustees of the trust for George J. Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $2,000,000 from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(b) Two million dollars ($2,000,000.) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the principal of said trust.

(c) Two million dollars ($2,000,000.) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the principal of said trust.

(d) Two million dollars ($2,000,000.) to the trustees of the trust for Howard Gould and remaindermen to the credit of the principal of said trust.

(e) Two million dollars ($2,000,000.) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of

$2,000,000. from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(f) Two million dollars ($2,000,000.) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $2,000,000. from June 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(g) Two million seven hundred fifty thousand dollars ($2,750,000.) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $2,750,000. from June 1, 1926, to the date of entry of judgment herein.

(h) Two million seven hundred fifty thousand dollars ($2,750,000.) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $2,750,000. from June 1, 1926 to the date of entry of judgment herein.

One-half of each of said payments of $2,750,000. to the credit of income shall be in settlement of income due the life beneficiary prior to March 1, 1913, and one-half in settlement of income due the life beneficiary subsequent to March 1, 1913.

SECOND: (a) Edwin Gould, Helen Gould Shepard and Howard Gould agree to pay The Equitable Trust Company of New York of 37 Wall Street, Borough of Manhattan, City of New York the sum of Three hundred thousand ($300,000) Dollars to be held by said Trust Company in three (3) separate trusts of One hundred thou-

sand ($100,000) dollars each, one for each child of George J. Gould by his second wife in accordance with the trust agreements agreed upon between the guardian ad litem of said children and the parties interested, subject to the approval of the Court. The said three children of George J. Gould by his second wife, by their guardian ad litem agree, subject to the approval of the Court, to withdraw their pending appeal from the judgment upon the severed issues, upon the entry of a judgment confirming the report approving this compromise.

(b) Edwin Gould, Helen Gould Shepard and Howard Gould agree to pay the sum of Fifty thousand ($50,000) dollars to the seven (7) children of the said George J. Gould, deceased, by his first wife to be divided equally between them.

B. Edwin Gould, Helen G. Shepard and Howard Gould jointly and severally for themselves, their executors and administrators, covenant as follows:

Annual payments

First: That Edwin Gould, his executors and administrators, will, during the lives of Helen G. Shepard and Howard Gould and of the survivor of them, pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as Helen G. Shepard and Howard Gould are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of either Helen G. Shepard or Howard Gould and during the life of the survivor of Helen G. Shepard and Howard Gould.

Should Edwin Gould die before the death of the survivor of Helen G. Shepard and Howard Gould, said payments are to be continued by his executors or administrators during the aforesaid term of said obligation.

In the event that the Duchesse de Talleyrand or Frank Jay Gould dies before the death of the survivor of Helen G. Shepard and Howard Gould, said payments shall be continued during the aforesaid term of said obligation to her or his issue surviving on her or his death in equal shares, *per stirpes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of each shall be ratably reduced according to the date of his or her death; and in the event of the death of the Duchesse de Talleyrand or of Frank Jay Gould before the death of the survivor of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of the Duchesse de Talleyrand or of Frank Jay Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue according to the date of her or of his death.

SECOND: That Helen G. Shepard, her executors and administrators, will pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as she and Howard Gould are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of herself or Howard Gould and during the life of the survivor of herself and said Howard Gould.

Should Helen G. Shepard die before Howard Gould said payments are to be continued by her executors or administrators during the aforesaid term of said obligation.

On the death of the Duchesse de Talleyrand or Frank Jay Gould said payments shall continue during the aforesaid term of said obligation to her or his issue surviving on her or his death in equal shares, *per stirpes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould the amount payable during the payment year of the death of each shall be ratably reduced according to the date of her or his death; and in the event of the death of the Duchesse de Talley-

rand or Frank Jay Gould before the death of the survivor of Helen G. Shepard and Howard Gould, the amount payable during the payment year of the death of the Duchesse de Talleyrand or of Frank J. Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue, according to the date of her or of his death.

THIRD: That Howard Gould, his executors and administrators, will pay annually to the Duchesse de Talleyrand and to Frank Jay Gould and their respective issue as hereinbelow provided in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests with respect to each of them in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided):

(a) Eighteen thousand dollars ($18,000) to each of them so long as he and Helen G. Shepard are both living;

(b) Ten thousand dollars ($10,000) to each of them after the death of himself or Helen G. Shepard and during the life of the survivor of himself and said Helen G. Shepard.

Should Howard Gould die before Helen G. Shepard, said payments are to be continued by his executors or administrators during the aforesaid term of said obligation.

On the death of the Duchesse de Talleyrand or Frank Jay Gould said payments shall continue during the aforesaid term of said obligation to her or his issue surviving on her or his death in

equal shares, *per stirpes* and not *per capita,* and to the executors and administrators of such issue.

The first year of the aforesaid payments shall be taken as commencing June 1, 1926, and on the deaths of Helen G. Shepard and Howard Gould the amount payable during the payment year of the death of each shall be ratably reduced according to the date of her or his death; and in the event of the death of the Duchesse de Talleyrand or of Frank Jay Gould before the death of the survivor of Howard Gould and Helen G. Shepard the amount payable during the payment year of the death of the Duchesse de Talleyrand or of Frank Jay Gould shall be apportioned between her and her issue or (as the case may be) between him and his issue, according to the date of her or of his death.

FOURTH: That Edwin Gould, Helen G. Shepard and Howard Gould, their executors and administrators, in order to make up for the loss of income resulting from the deferment of the vesting in possession of the aggregate $900,000 remainder interests in the trust funds for the benefit for life of Helen G. Shepard and Howard Gould (or the guaranteed sum in lieu of the remainder interest in Howard Gould's trust as hereinafter provided), will make the same annual payments as provided in the foregoing subdivisions "FIRST," "SECOND" and "THIRD" to the seven children of George J. Gould by his first wife considered as a group, each child receiving one-seventh (1/7) thereof, to wit, to Kingdon Gould, Jay Gould, George J. Gould, Jr., Marjorie Gould Drexel, Lady Decies, Edith Gould Wainwright and Gloria Gould Bishop and their respective executors and administrators, that is, an aggregate sum of $54,000 annually until the death of

either Howard Gould or Helen G. Shepard and thereafter and until the death of the survivor of said Howard Gould and Helen G. Shepard an aggregate sum of $30,000, such payments to be made upon the same terms and conditions in all respects as the annual payments are to be made to the Duchesse de Talleyrand or her issue and to Frank Jay Gould or his issue.

The annual payments to be made pursuant to clause "B" of this paragraph shall be made in equal one-half parts semi-annually, the first payment to be made as of January 1, 1927.

FIFTH: In each and every instance in which a joint and several liability shall be imposed by the judgment to be entered herein, each of the judgment debtors, if any, who may pay more than his or her equal share shall have a right of contribution as against the other judgment debtors jointly liable with him or her.

Payments to certain trusts on deaths of Helen G. Shepard and Howard Gould

C. First: Edwin Gould, the Duchesse de Talleyrand and Frank Jay Gould hereby agree, each for himself and herself, that, following the death of Helen G. Shepard and upon receipt by them respectively or by their respective executors or administrators of their distributive shares of the trust fund held for the benefit of Helen G. Shepard, they each or their executors or administrators will pay from the said distributive shares so received by them or by their executors or administrators to the trustees of their respective trusts, to be added to the corpus thereof, the sum of $400,000 if Helen G. Shepard shall die before Howard Gould or $500,000 if Helen G. Shepard shall have survived Howard Gould and on her death there shall be no living issue of Howard Gould entitled to take under the will and codicils

thereto of Jay Gould, deceased, but if such issue shall then be living the amount shall be $400,000 instead of $500,000.

Second: Edwin Gould, the Duchesse de Talleyrand and Frank Jay Gould hereby agree, each for himself and herself, that, following the death of Howard Gould in the event that he shall die leaving no issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, and upon receipt by them respectively or by their respective executors or administrators of their distributive shares of the trust fund held for the benefit of Howard Gould, they each or their executors or administrators will pay from the said distributive shares so received by them or by their executors or administrators to the trustees of their respective trusts to be added to the corpus thereof, the sum of $400,000 if said Howard Gould shall pre-decease Helen G. Shepard, leaving no issue as above described him surviving, or $500,000 if said Howard Gould shall die after the death of Helen G. Shepard, leaving no issue as above described him surviving.

Re: Death of Howard Gould leaving issue entitled to take under the will and codicils thereto of Jay Gould, deceased

D. First: In the event that Howard Gould shall die leaving him surviving issue in any degree entitled to take under the will and codicils thereto of Jay Gould, deceased, Edwin Gould, Helen G. Shepard and Howard Gould severally for themselves and their respective executors and administrators agree to make payments as follows:

(a) Edwin Gould agrees, in said event, to pay to the trustees of the trust for the Duchesse de Talleyrand and remaindermen, to the credit of the principal of said trust, the sum of One hundred and sixty-six thousand six hundred and

sixty-six dollars and sixty-six cents ($166,666.66) if Helen G. Shepard shall have predeceased said Howard Gould, and the sum of One hundred and thirty-three thousand three hundred and thirty-three dollars and thirty-three cents ($133,333.33) if she shall survive said Howard, and that in the latter event he will also pay to said trustees to the credit of said principal the further sum of Thirty-three thousand, three hundred and thirty-three dollars and thirty-three cents ($33,333.33) on the death of said Helen G. Shepard provided any such issue of said Howard Gould shall survive her; and Edwin Gould further agrees, in the same events, to make payments in like amounts to the trustees of the trust for Frank Jay Gould and remaindermen, and agrees in the same events to make payments in like amounts to the issue of George J. Gould by his first wife, considered as a class, living on the happening of the several events in equal shares *per stirpes* and not *per capita.*

(b) Helen G. Shepard agrees to make payments to the trustees of the trust for the Duchesse de Talleyrand and remaindermen and to the trustees of the trust for Frank Jay Gould and remaindermen, and to the issue of George J. Gould by his first wife, considered as a class, *per stirpes* and not *per capita* in the same events and amounts as Edwin Gould by subdivision (a) hereof agrees to make payments to them respectively.

(c) Howard Gould agrees that his executors or administrators shall make payments to the trustees of the trust for the Duchesse de Talleyrand and remaindermen and to the trustees of the trust for Frank Jay Gould and remaindermen, and to the issue of George J. Gould by his

first wife, considered as a class, *per stirpes* and not *per capita* in the same events and amounts as Edwin Gould by subdivision (a) hereof agrees to make payments to them respectively.

(d) In the event that the Duchesse de Talleyrand or Frank Jay Gould shall be dead at the time when any of the above amounts are stated to be payable to the trustees of their respective trusts, then such amount shall be paid to the issue of the Duchesse de Talleyrand or of Frank Jay Gould living at the time or times when any such amounts are payable in equal shares, *per stirpes* and not *per capita.*

(e) To secure the performance of their respective obligations, hereinbefore in this subdivision "First" of Clause "D" of this paragraph II provided for and as collateral security therefor, Edwin Gould, Helen G. Shepard and Howard Gould severally agree each for himself and herself to deposit forthwith upon the entry of the judgment in this Stipulation provided for the then market value of Five Hundred Fifty Thousand ($550,000) Dollars in bonds of the United States Government or of the State of New York or of the City of New York or of any or all of such issues with The Equitable Trust Company of New York (hereinafter referred to as the "depositary") of 37 Wall Street, Borough of Manhattan, City of New York, as trustee to hold, manage and deal with said securities or any other securities substituted therefor or added thereto, as hereinafter provided, upon the following terms, trusts and conditions, that is to say:

Forthwith upon the receipt thereof to divide the securities deposited by each depositor in kind into three parts as nearly equal as possible and to designate and hold one such part of the securi-

ties deposited by each depositor as collateral security for the faithful performance by each such depositor of his and her separate and several obligations as expressed in subdivisions (a), (b) and (c) above.

The depositary shall receive and collect the income from the securities deposited with it and, after deducting one per cent (1%) of such income as and for its compensation, shall pay the depositor the balance of the income derived from his or her deposit, so long as he or she shall not be in default with respect to any obligation arising under this subdivision "First" of Clause "D" of this paragraph II.

Each depositor shall have the right at any time to substitute for any of the securities so deposited other United States Government bonds or bonds of the State of New York or of the City of New York of equal market value at the time of the substitution.

If at any time the market value of the securities so deposited by any depositor including securities substituted and added, if any, falls below Five Hundred Twenty-five thousand Dollars ($525,000) the depositary shall withhold payment of income to such depositor and add the income to his or her deposit fund until the market value of the securities plus cash in his or her deposit fund shall equal Five Hundred Fifty Thousand Dollars ($550,000) and shall forthwith call upon the depositor or his personal representatives to deposit cash or additional like securities sufficient to restore the market value of the securities and cash in his or her deposit fund to the sum of Five Hundred Fifty Thousand Dollars ($550,000); and the depositors severally each for himself and herself and his and her respective execu-

tors and administrators agree forthwith to make such deposit; and if there shall be a default for the period of thirty (30)days in the performance of this obligation, the depositary shall apply at the foot of the judgment to be entered herein for a direction to the depositor in default on a call to make good the deposit.

The call for additional deposit above provided for may be made by telephone, telegram or letter to the business address last known to the depositary of said Edwin Gould, Helen G. Shepard and Howard Gould, or their respective executors or administrators.

In the event that any of the persons obligated to make the payments provided for in subdivisions (a), (b) or (c) of this subdivision "First" of Clause "D" of this paragraph II shall fail in whole or in part to make the same within thirty (30) days after the time herein provided for the making thereof, provided there shall be no bona fide controversy with respect to Howard Gould's having left him surviving issue entitled to take under the will and codicils thereto of Jay Gould, deceased, the depositary shall perform or complete the performance of the obligation of the depositor by delivering to the persons corporate or individual to whom the payment should have been made by the depositor sufficient of the securities or funds, so held as security, to discharge in full the obligation of the depositor who shall be in default and shall, in like manner, perform or complete the performance of the obligation in behalf of the depositor as soon as it shall be finally adjudicated by the highest court before which the question is brought, in the event that a bona fide controversy shall have arisen with respect thereto, that

Howard Gould left him surviving issue entitled to take under the will and codicils thereto of Jay Gould, deceased; and it is understood and agreed that the foregoing provisions of this paragraph shall not alter or modify in any way the covenants and obligations hereinabove contained in subdivisions (a), (b) and (c) of this subdivision "First" of Clause "D" of this paragraph II.

The depositary shall invest any moneys in the deposit funds in its hands for the account of the respective depositors to whom such moneys belong, in such securities as it may select of the class of securities permitted for the investment of trust funds under the laws of the State of New York.

All securities acquired by or for the deposit funds above described other than United States Government bonds or bonds of the State or City of New York shall be listed upon the New York Stock Exchange and the term "market value" used in this subdivision "First" of Clause "D" of this paragraph II means the price for which the particular bond is selling on the day in question upon the New York Stock Exchange if listed on said Exchange or the average price of the sales on that day, if not so listed, to be determined by the depositary, or the medium between bid and asked price on that day if no sales are ascertained to have been made.

If, at any time, the obligations under subdivisions (a), (b) and (c) above are reduced to One Hundred Thousand Dollars ($100,000) each, then the depositors or their executors or administrators may withdraw from the depositary the securities in their respective deposit funds over and above securities and funds of the then market value of One Hundred Ten Thousand Dollars

($110,000), which securities and funds, to be retained by the depositary, shall be selected by it and shall *mutatis mutandis* remain subject to all of the terms and conditions herein provided respecting deposits. If Howard Gould shall die leaving no issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, or when all of the obligations herein provided for in this subdivision "First" of Clause "D" of this paragraph II shall have been fulfilled, the respective depositors or their respective executors, administrators or assigns shall be entitled to withdraw from the depositary all securities and cash deposited by him or her or for his or her account and then in his or her deposit fund, excepting the sum of Two Thousand Seven Hundred Fifty ($2,750) Dollars with respect to each depositor which amount the depositary shall be entitled to retain as and for full compensation for its services as depositary.

SECOND: Edwin Gould agrees, for himself and his executors and administrators, that on the death of Howard Gould, in the event that Howard Gould shall pre-decease Helen G. Shepard leaving issue entitled to take under the will and codicils thereto of Jay Gould, deceased, he or his executors or administrators will forthwith pay to the trustees of the trust for his benefit to the credit of the principal thereof, or to his issue then living, equally *per stirpes* and not *per capita* if he be then dead, the sum of Four hundred thousand dollars ($400,000) and the further sum of One hundred thousand dollars ($100,000) on the death of Helen G. Shepard if at that time any such issue as above described of Howard Gould is living, or if Howard Gould shall have survived Helen G. Shepard leaving him surviving any

such issue as above described the sum of Five hundred thousand dollars ($500,000).

THIRD: Howard Gould agrees for himself and his executors and administrators, that in the event that he shall die leaving issue him surviving entitled to take under the will and codicils thereto of Jay Gould, deceased, his executors or administrators will pay forthwith to the trustees of the trust for his benefit

(a) Five hundred thousand dollars ($500,000) if Helen G. Shepard shall have survived him and

(b) Nine hundred thousand dollars ($900,000) if Helen G. Shepard shall have predeceased him, which payments shall become and be dealt with as part of the corpus of the trust held for his benefit for life.

The payments to be made as provided in subdivisions "First", "Second" and "Third" of this clause "D" of paragraph II shall be due as of the dates of death of Howard Gould and Helen G. Shepard and shall bear interest at the rate of 5% per annum from said due dates until paid.

Additional immediate payments by Executors of George J. Gould

III. The executors of the estate of George J. Gould, deceased, agree to pay the following amounts to the trustees of the following named residuary trusts created by the Last Will and Testament and Codicils thereto of Jay Gould, deceased:

(a) Sixty thousand dollars ($60,000) to the trustees of the trust for George J. Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(b) Sixty thousand dollars ($60,000) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(c) Sixty thousand dollars ($60,000) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(d) Sixty thousand dollars ($60,000) to the trustees of the trust for Howard Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(e) Sixty thousand dollars ($60,000) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(f) Sixty thousand dollars ($60,000) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the principal of said trust, together with interest at the rate of 5% per annum upon said sum of $60,000 from November 1, 1926, to the date of entry of judgment herein to the credit of the income of said trust.

(g) Forty thousand dollars ($40,000) to the trustees of the trust for Edwin Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(h) Forty thousand dollars ($40,000) to the trustee of the trust for Helen G. Shepard and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(i) Forty thousand dollars ($40,000) to the trustees of the trust for Howard Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $40,000 from November 1, 1926, to the date of entry of judgment herein.

(j) One hundred and seventy-five thousand dollars ($175,000) to the trustees of the trust for the Duchesse de Talleyrand and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $175,000 from November 1, 1926, to the date of entry of judgment herein.

(k) One hundred and seventy-five thousand dollars ($175,000) to the trustees of the trust for Frank Jay Gould and remaindermen to the credit of the income of said trust, together with interest at the rate of 5% per annum upon said sum of $175,000 from November 1, 1926, to the date of entry of judgment herein.

One-third of each of said payments provided for in subdivisions (g) to (k) to the credit of income shall be in settlement of income due the life

beneficiary prior to March 1, 1913, and two-thirds in settlement of income due the life beneficiary subsequent to March 1, 1913.

Reimbursement of certain beneficiaries for fees of attorneys, counsel and other expenses

IV. A. Sums to be determined as hereinafter set forth shall be paid by the Trustees of the six separate trusts as contribution toward the fees of the attorneys and counsel of the following beneficiaries, parties to this action, viz:

Duchesse de Talleyrand,
Adult children of Duchesse de Talleyrand,
Frank Jay Gould,
Adult children of Frank Jay Gould,
Adult children of George J. Gould, deceased, and their assignees,
Frank M. Gould

for services rendered in this action and in the actions, suits and proceedings hereinbelow described and also to reimburse said beneficiaries for all other expenses incurred by them or on their behalf in connection with this action and in connection with any suit or proceeding in the State of New Jersey commenced or intervened in or participated in by any of said beneficiaries for the purpose of establishing a claim or of obtaining a judgment in New Jersey against the estate of George J. Gould on account of his acts or omissions as executor or trustee of the will of his father, Jay Gould, or for the purpose of enforcing against his estate any judgment which might be obtained in this action against the executors of said George J. Gould, or for the purpose of preserving the assets of said estate to meet and satisfy any such judgment in New Jersey or New York, together with all expenses of the trial of this action and the expenses of the reference upon this compromise,

provided, however, that such contribution above described shall not affect any contract or agreement, express or implied, with any adult beneficiary as to the payment of such fees which may exist in this action.

The Trustees of the six separate trusts shall also pay to all guardians *ad litem* for their services, counsel fees and expenses, incurred as above set forth, sums to be determined in the manner hereinafter provided.

The amounts of such payments above provided to be made shall be determined by agreement if possible but in the event of a failure to so agree then the amounts not agreed upon shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

The sums above provided to be paid shall be paid in equal shares by the trustees of the six separate trusts and charged in whole to principal or in part to the principal and in part to the income of such separate trusts in such proportions as may be agreed upon or in the event of a failure to agree such proportions shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

B. The reasonable expenses of the corporate Trustees for counsel fees and expenses in this action and in proceedings in the State of New Jersey of the nature more fully referred to above shall be paid out of the funds of the trusts in behalf of which such counsel fees and expenses were incurred and the amounts thereof shall be fixed by agreement between each corporate trustee and the beneficiaries of each particular trust if possible and shall be charged in whole to principal or in part to the principal and in part to

the income of the respective trusts in such proportions as may be agreed upon and in the event of a failure to agree shall be fixed and apportioned by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

C. Plaintiffs Edwin Gould, Howard Gould, Helen G. Shepard, the surviving accounting Executors and Trustees herein, and the Executors of George J. Gould, deceased, an accounting Executor and Trustee plaintiff herein, shall each pay individually the fees of attorneys and counsel retained by or representing him, her or them in this action and shall individually bear all expenses incurred in this action by him, her or them and no part of such fees or expenses shall be charged upon any of the trusts (except the payments made from the trust funds prior to May 26, 1922, to Alton B. Parker and to Chadbourne & Shores and its successor firms), provided, however, that the fees heretofore paid to Messrs. De Forest Brothers and to Messrs. Taylor, Knowles & Hack as attorneys of record for the plaintiff executors and trustees shall be deemed to have been paid properly from the trust funds, such payments, however, as have been made subsequent to May 26, 1922, shall be charged 40% thereof to principal and 60% to income and one-sixth of said proportions shall be charged on the accounts of each of the six separate trusts from May 26, 1922, and they shall receive such further sums for fees and disbursements as shall be agreed upon as proper under the circumstances and the amounts thereof shall be payable by the six trusts in equal one-sixth shares each such one-sixth share to be charged in whole to principal or in part to principal and in part to income in such proportions as shall be agreed

upon as aforesaid and in the event of the failure of agreement either as to the amounts or the proportions, the same shall be finally fixed by Hon. James A. O'Gorman as arbitrator hereby mutually agreed upon.

Stipulation not to delay Findings and Report

V. This Stipulation shall not be and shall not be urged as a reason for delaying the preparation of Findings of Fact and Conclusions of Law pursuant to the opinion heretofore rendered in this action dated November 10, 1925, nor the signing or filing of the Referee's Report on such Findings and Conclusions, but final judgment on such report of the Referee herein shall not be entered before January 1, 1927, provided Edwin Gould, Howard Gould and Helen G. Shepard, the surviving plaintiff executors and trustees shall be proceeding with all reasonable speed to bring about the sanction by the Supreme Court of the compromise hereinabove provided for before said date.

Special provisions as to Findings, Report and Arbitrations

VI. In the event that the terms of this Stipulation cannot be fully carried out to and including the entry of the judgment herein provided for, no matter what the cause of such failure may be, and in the further event that for any cause the Referee herein, Hon. James A. O'Gorman, should be unable himself to pass upon proposed findings of fact and conclusions of law or to make and sign a report containing findings of fact and conclusions of law based upon his opinion rendered herein, it is hereby stipulated that said opinion rendered on or about November 10th, 1925, shall be filed herein and carried into effect by any referee who may be appointed herein by passing upon proposed findings of fact and conclusions of law and making and signing a report containing

findings of fact and conclusions of law in accordance with said opinion, and that such report may be filed and judgment entered in accordance therewith, without prejudice, however, to the right of any person aggrieved to except to such findings of fact and conclusions of law and to appeal from such judgment in the manner provided by law in the same way and with the same effect only as if such judgment had been entered upon identical findings of fact and conclusions of law made by Hon. James A. O'Gorman, Referee, herein.

The settlement and compromise herein provided for shall in no event fail by reason of the inability or failure, for any reason, of the referee and arbitrator named herein to act, but in such event, the reference and/or arbitration herein provided for shall be proceeded with before such other referee and/or arbitrator as the parties hereto may agree upon or as the Court may appoint.

This Stipulation no estoppel

VII. This Stipulation is entered into solely for the purpose of compromise and settlement of matters in dispute among members of the Gould family and to bring about the speedy termination of a long litigation and prevent said litigation from continuing for an indefinite period in the future and neither this stipulation nor any negotiations leading up to it can be used or urged in any proceedings in this action or in any other action, suit or proceeding in this or any other Court as an admission or estoppel against any party to it or in favor of any party to this action or to any other action, suit or proceeding in this or any other Court and it shall not prejudice any party to this action in any manner or at any time or in any manner affect the rights

of the several parties to this action in the event of the compromise herein sought to be effected failing, in whole or in part, of consummation, and except as herein provided nothing herein shall operate to change, alter, modify or diminish the rights, interests or estates legal or equitable given, granted, bequeathed or devised to any person or persons in and by the last will and testament and codicils thereto of Jay Gould, deceased. No covenant herein by or on the part of the Executors of George J. Gould, deceased, shall impose any individual liability on either of them or affect other than the assets in the Estate of George J. Gould, nor shall the signing of this stipulation be deemed a present waiver of any of the jurisdictional objections heretofore claimed and urged by them in this action.

Approval by New Jersey Courts of plan of adjustment and compromise

VIII. The signing of this stipulation for compromise by the executors of the Estate of George J. Gould, deceased, now in process of administration in the State of New Jersey and by the attorneys for the adult children of George J. Gould, deceased, and their assignees and the infant children of George J. Gould, deceased, by their guardians ad litem is conditional upon the approval, by the Courts of that State of an agreement entered into between them and others not parties to this action, which agreement among other things provides for the creation of trust funds each in the sum of One hundred thousand ($100,000) Dollars for the benefit of each of the three children of George J. Gould by his second wife and the payment of Two hundred seventeen thousand, eight hundred fifty-seven and one-seventh ($217,857 1/7) Dollars to each of the seven children of George J. Gould by his first wife; and upon the signing hereof by or on

behalf of the parties hereto as hereinbefore provided, the executors of the Will of George J. Gould will forthwith take steps to submit the aforesaid agreement and this Stipulation for Compromise to the proper Courts of the State of New Jersey for approval and for instructions with respect thereto; and it is understood and agreed that all acts done or to be done and payments to be made hereunder by parties to the action who are interested in the Estate of George J. Gould, deceased, are subject to the approval of and to be performed under the authority and direction of the Courts of the State of New Jersey.

Dated at New York City, December , 1926.

Signatures.

Signatures.

Signatures.

Acknowledgments.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of December, 1926, before me personally came EDWIN GOULD to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowleged to me that he executed the same.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of December, 1926, before me personally came HELEN G. SHEPARD to me known and known to me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Acknowledgments.

Acknowledgements.

Agreement of December 16, 1926.

Exhibit No. 2.

THIS INDENTURE, made this day of December, one thousand nine hundred and twenty-six, by and between KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of George J. Gould, deceased, of the
hereinafter called the grantor, parties of the first part, and COMMERCIAL TRUST COMPANY, a corporation having its principal office at No.
and SCHUYLER NEILSON RICE, residing at
hereinafter called the trustee, parties of the second part;

WITNESSETH:

That pursuant to directions of the Court of Chancery of the State of New Jersey, and for and in consideration of one dollar and other good and valuable considerations to the grantor in hand paid, the grantor does hereby pay unto the trustee the sum of three hundred thousand ($300,000) dollars, IN TRUST, nevertheless, upon the following uses and trusts:

1. As to one hundred thousand ($100,000) dollars thereof, to invest and reinvest the same, IN TRUST, for the benefit of George Sinclair Gould; and as to one hundred thousand ($100,000) dollars thereof, to invest and reinvest the same for the benefit of Jane Sinclair Gould; and as to the remaining one hundred thousand ($100,000) dollars thereof, to invest and reinvest the same for the benefit of Guinevere Gould, (the said George Sinclair Gould, Jane Sinclair Gould and Guinevere Gould being the three children of the said George J. Gould by his second wife), and to collect and receive the income and profits

therefrom arising, and after deducting the expenses of this trust, to apply the net income remaining, or so much thereof as may be necessary, to the support, maintenance and education of the said children respectively named for whose benefit the said sum is directed to be held in trust, accumulating the balance of said net income during the minority of such child, and as he or she respectively arrives at the age of twenty-one years to pay over the amount of income so accumulated to such child absolutely, and thereafter to hold the said principal for the benefit of the said child who shall have attained the age of twenty-one years paying over to him or her the entire net income accruing therefrom until he or she shall attain the age of twenty-five years, whereupon the principal of the said amount held in trust for such infant shall be paid to him or her absolutely.

In case of the death of any of the said children of George J. Gould before arriving at the age of twenty-five years, leaving issue him or her, surviving, then to pay over the principal of the said trust fund held for the benefit of such child so dying together with any accumulations of income therefrom to and among such issue absolutely, such issue together taking by representation per stirpes and not per capita. But in case such child so dying shall leave no issue him or her surviving, then to continue to hold said principal sum which had been held for the child so dying, IN TRUST, paying over one-half of the net income arising therefrom to each of the surviving children of George J. Gould by his second wife until one of them shall attain the age of twenty-five years or die, whichever event may first happen, and upon such child attaining the age of twenty-

five years, then to pay over unto him or her one-half of said principal sum (in addition to the one hundred thousand ($100,000) dollars principal of trust fund held for such child as hereinbefore provided for); and in the event of the death of one of said children before attaining the age of twenty-five years leaving issue him or her surviving, to pay over the principal sum then held in trust for such child to and among such issue absolutely in equal shares per stirpes and not per capita; and if such child so dying before attaining the age of twenty-five years shall leave no issue him or her surviving, then to continue to hold the entire principal sum then held, IN TRUST, under this agreement until the survivor of said three children shall reach the age of twenty-five years or die, paying over the net income thereof to such child, until the happening of either of such events, and upon such child arriving at the age of twenty-five years, to pay over the said entire principal sum then held in trust under this agreement unto such child absolutely, but if such child shall die before reaching the age of twenty-five years leaving issue, then to pay over the said entire amount unto such issue, in equal shares, per stirpes and not per capita. In case all three of said children of George J. Gould shall die before reaching the age of twenty-five years, without leaving issue him or her surviving, then to continue to hold the entire amount of the said trust funds during the lifetime of Guinevere Lady Dunsford, formerly Gould, mother of said children, paying over the net income thereof unto her, and upon her death, to pay over the said principal sum in equal shares to and among the seven children of George J. Gould by his first wife, the issue in the event of the death of any such children to

take the share the parent would be entitled to if living per stirpes and not per capita.

Provided, however, that the trustee be and is hereby authorized at any time after any of said three children of George J. Gould shall attain the age of twenty-one years, to transfer and pay over unto him or her any part of the trust fund at that time held for the benefit of said child, if, in the discretion of the said trustee, the same would be to the benefit of the said child.

2. The trustee is hereby expressly authorized and empowered in its discretion:

(a) To retain, without sale, any property purchased with said trust fund and to invest and reinvest such trust fund in such stocks and bonds or other securities which it may deem suitable, provided, however, that said securities are legal investments for trust funds under the laws of the State of New Jersey.

(b) To exchange any property purchased with said trust fund for other property of the character in which reinvestments may be made, with the same effect as if the trust property had been sold and the property taken in exchange had been purchased at the prices agreed upon between the trustee and the other party to said exchange as the fair market value in each case.

(c) To exercise in respect to any corporation whose stock constitutes at any time a part of the trust property, all of the powers of a stockholder in said corporation, including the right to vote at corporate meetings by proxy; to subscribe for and to pay for or to sell or to decline to accept any stock or other rights which may be issued to the holders thereof, and to participate in, consent to or dissent from any plan for consolidation, mer-

ger, reorganization or financial readjustment all as fully and with the same force and effect as if the trustee owned such stock absolutely and not in its fiduciary capacity; to select any person to represent such stock on behalf of the trustee upon the board of directors of any such corporation and in the event of the election of such person to such board to transfer to him any and so many shares of the stock of such corporation as may be necessary to qualify him as director; to register or transfer any or all of the trust property in the name of the trustee; either as trustee or not, or in the name of any other person or persons, but at all times with full responsibility as trustee in respect to any such transfer or registration.

(d) To hold securities owned or purchased for the trust property at a premium, without being required to set aside any part of the income therefrom as a sinking fund to retire or absorb such premium.

To consider stock dividends and extraordinary cash dividends which may be received by it as income and to be accumulated accordingly, or as to principal, and if it is determined that any such dividend shall be received and held as principal, such application thereof shall not be deemed an accumulation of income but shall be taken as an increase of principal.

3. It is agreed that the trustees under this instrument be paid one commission as follows: a total commission of two and one-half per cent. on income received and distributed; and two per cent. on principal, to be paid when principal is distributed.

4. The trustee by joining in the execution of this instrument signifies acceptance of the trust hereby created.

IN WITNESS WHEREOF, the parties of the first part and the said Schuyler Neilson Rice individually have hereunto set their hands and seals, and the corporate trustee has caused these presents to be signed by its proper officers and its corporate seal to be hereunto affixed, the day and year first above written.

.....

.....

.....

Trust Company

By.....

.....

Attest:

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of 1926, before me personally came KINGDON GOULD and SCHUYLER NEILSON RICE, to me known and known to me to be the individuals described in and who as executors of the last will and testament of George J. Gould, deceased, executed the foregoing instrument, and they duly acknowledged to me that they executed the same.

STATE OF
COUNTY OF } ss.:

On this day of 1926, before me personally came to me known, who, being duly sworn, deposes and says that he resides in that he is the of TRUST COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of One thousand nine hundred and twenty-six (1926), before me personally came SCHUYLER NEILSON RICE, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, who duly acknowleged to me that he executed the same.

Exhibit No. 3.

THIS INDENTURE, made this day of December, one thousand nine hundred and twenty-six, by and between EDWIN GOULD, HELEN GOULD, and HOWARD GOULD, hereinafter called the grantors, parties of the first part, and THE EQUITABLE TRUST COMPANY OF NEW YORK, a corporation having its principal office at No. 37 Wall Street, Borough of Manhattan, City of New York, hereinafter called the trustee, party of the second part; WITNESSETH:

That for and in consideration of one dollar and other good and valuable considerations to each of the grantors in hand paid, the grantors do hereby pay unto the trustee the sum of one hundred thousand ($100,000) dollars, IN TRUST, nevertheless, upon the following uses and trusts:

1. To invest and reinvest the said sum of one hundred thousand ($100,000) dollars, to collect and receive the income and profits therefrom and after deducting the expenses of this trust to pay so much of said income as may be necessary for the support, education and maintenance of George Sinclair Gould, one of the children of George J. Gould, deceased, by his second wife, residing at , during the minority of the said George Sinclair Gould and to accumulate the balance of said income during the minority and for the benefit of said George Sinclair Gould; and upon the said George Sinclair Gould arriving at the age of twenty-one years the trust as to accumulation to cease and to pay over the amount of such accumulated income to the said George Sinclair Gould; and to pay over the net income of said principal fund to the said George Sinclair

Gould after he arrives at the age of twenty-one years and until he arrives at the age of twenty-five years; and upon the said George Sinclair Gould arriving at the age of twenty-five years said trust shall cease and the trustee shall transfer and pay over to the said George Sinclair Gould the said fund or such part thereof as shall then remain in the possession of the trustee. The trustee being authorized in its uncontrolled discretion, after the said George Sinclair Gould arrives at the age of twenty-one years, to transfer and pay over all or any part of the corpus of said trust fund to the said George Sinclair Gould.

2. In the event of the death of said George Sinclair Gould before arriving at the age of twenty-five years leaving issue him surviving, said trust shall forthwith cease, and if said George Sinclair Gould shall have died after arriving at the age of twenty-one years, the corpus of said trust fund (or such part thereof as shall then remain in the possession of the Trustee), or, if said George Sinclair Gould shall have died before reaching the age of twenty-one years, the corpus of said trust fund, together with any accumulations of income then in the possession of the Trustee shall be paid over and distributed to the issue of said George Sinclair Gould then living, in shares of equal value, *per stirpes,* and not *per capita.*

3. In the event of the death of said George Sinclair Gould before arriving at the age of twenty-five years without leaving issue him surviving, said trust shall forthwith cease, and if said George Sinclair Gould shall have died after arriving at the age of twenty-one years, the corpus of said trust fund (or such part thereof

as shall then remain in the possession of the Trustee), or, if he shall have died before arriving at the age of twenty-one years, the corpus of said trust fund, together with any accumulations of income then in the possession of the Trustee, shall be paid over and distributed by the Trustee in the following manner:

If Jane Sinclair Gould and Guinivere Gould sisters of said George Sinclair Gould, shall both survive said George Sinclair Gould, to said Jane Sinclair Gould and said Guinivere Gould in equal shares;

If one of said sisters of said George Sinclair Gould shall survive said George Sinclair Gould and the other of said sisters shall die before said George Sinclair Gould, leaving issue who shall survive said George Sinclair Gould, to said surviving sister and the issue collectively of such deceased sister, in equal shares, the issue of such deceased sister to take in shares of equal value, *per stirpes* and not *per capita;*

If one of said sisters shall survive said George Sinclair Gould and the other of said sisters shall die before said George Sinclair Gould without leaving issue who shall survive said George Sinclair Gould, to said surviving sister;

If both of said sisters shall die before said George Sinclair Gould and both shall leave issue who shall survive said George Sinclair Gould, to the surviving issue collectively of each of said sisters, in equal shares, said issue of each deceased sister to take in shares of equal value, *per stirpes* and not *per capita;*

If both of said sisters shall die before said George Sinclair Gould and one of said sisters shall leave issue who shall survive said George

Sinclair Gould, to such surviving issue of such deceased sister, in shares of equal value, *per stirpes* and not *per capita;*

If both of said sisters shall die before said George Sinclair Gould (he dying without issue before arriving at the age of twenty-five years) without leaving issue who shall survive said George Sinclair Gould, to the seven children of George J. Gould by his first wife and the issue then living of any of such children who may have died before said George Sinclair Gould, in shares of equal value, *per stirpes* and not *per capita.*

4. The trustee is hereby expressly authorized and empowered in its discretion:

(a) To retain, without sale, any property purchased with said trust fund and to invest and reinvest such trust fund in such stocks and bonds or other securities which it may deem suitable, provided, however, that said securities are legal investments for trust funds under the laws of the State of New York.

(b) To exchange any property purchased with said trust fund for other property of the character in which reinvestments may be made, with the same effect as if the trust property had been sold and the property taken in exchange had been purchased at the prices agreed upon between the trustee and the other party to said exchange as the fair market value in each case.

(c) To exercise in respect to any corporation whose stock constitutes at any time a part of the trust property, all of the powers of a stockholder in said corporation, including the right to vote at corporate meetings by proxy; to subscribe for and to pay for or to sell or decline to

accept any stock or other rights which may be issued to the holders thereof, and to participate in, consent or to dissent from any plan for consolidation, merger, reorganization or financial readjustment all as fully and with the same force and effect as if the trustee owned such stock absolutely and not at its fiduciary capacity; to select any person to represent such stock on behalf of the trustee upon the board of directors of any such corporation and in the event of the election of such person to such board to transfer to him any and so many shares of the stock of such corporation as may be necessary to qualify him a director; to register or transfer any or all of the trust property in the name of the trustee, either as trustee or not, or in the name of any other person or persons, but at all times with full responsibility as trustee in respect to any such transfer or registration.

(d) To hold securities owned or purchased for the trust property at a premium, without being required to set aside any part of the income therefrom as a sinking fund to retire or absorb such premium.

5. It is understood that the trustee shall receive as commission under this agreement a total of two and a half (2½%) per cent. on income received and distributed; and two (2%) per cent. on principal, to be paid when the principal is distributed.

6. The trustee by joining in the execution of this instrument signifies its acceptance of the trust hereby created.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused

these presents to be signed by its proper officers and its corporate seal to be hereunto affixed, the day and year first above written.

.....

.....

.....

Trust Company

By.....

.....

Attest:

.....

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of December, 1926, before me personally came EDWIN GOULD, HELEN GOULD and HOWARD GOULD, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they duly acknowledged to me that they executed the same.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this day of December, 1926, before me personally came to me known, who, being by me duly sworn, deposes and says that he resides in that he is the of THE EQUITABLE TRUST COMPANY OF NEW YORK, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Extracts from Supplement to Fourth Account.

IN CHANCERY OF NEW JERSEY

BETWEEN KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors, Etc., of GEORGE J. GOULD, Deceased, *Complainants,* *and* COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.*, *Defendants.*	62/608 On Bill, Etc. On Fourth Accounting of Complainants. Supplement to Fourth Account.

The Supplement to Fourth Account of KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors of the Last Will and Testament of GEORGE J. GOULD, shows as follows:

THESE ACCOUNTANTS CHARGE THEMSELVES WITH:

By Balance of Corpus and Income at August 31, 1927, as shown on page 69 of printed account	$4,988,441.89	
Exhibit I. Changes in Corpus (Information Exhibit)		
Exhibit II. By Receipts of Income	92,041.23	
Gross Income	$93,073.86	
Less: Administration Expenses	1,032.63	
Exhibit III. Gains	302.75	
Total Charges		$5,080,785.87

THESE ACCOUNTANTS PRAY ALLOWANCE AS FOLLOWS:

Exhibit IV. Losses	$ 23,678.91	
Exhibit V. Trustees for Guinevere S. Dunsford	2,175,000.00	
Total Credits		$2,198,678.91
		$2,882,106.96
Balance, September 7, 1927, Corpus	$1,466,170.63	
Income	1,415,936.33	

See Exhibit VI, Inventory at September 7, 1927.

EXHIBIT V.

ESTATE OF GEORGE J. GOULD

SUPPLEMENT TO FOURTH ACCOUNT
AUGUST 31, 1927, TO SEPTEMBER 7, 1927.

Securities and Cash turned over September 6, 1927, to Commercial Trust Co. of New Jersey and Schuyler Neilson Rice, Trustees for Guinevere S. Dunsford, under the Third Clause of the Will of George J. Gould, deceased.

Par Value in Thousands	Security	Rate %	Interest Dates	Book Value as Appraised at May 16, 1923
5	Atlantic County	4½	M. & N.	$ 5,005.00
5	Atlantic County	4½	J. & D.	4,978.00
13	Bayonne	5		13,804.70
50	Bloomfield	4½		49,671.70
60	Boonton	5		63,589.10
37	Boonton	5½		39,325.10
19	Camden	4½	M. & S.	18,982.90
50	Camden	4½	M. & N.	50,589.80
44	Cape May County	5		46,860.00
25	Clifton	5		26,001.50
48	East Orange	5		50,475.00
25	Edgewater	5		25,406.20
50	Englewood	5		52,465.00
50	Hackensack	5		51,644.60
25	Hoboken	4½		24,410.00
6	Jersey City	5½		6,252.60
25	Jersey City	4¾		25,125.00
50	Kearny	4½		50,081.80
25	Kearny	4¾		25,665.00
25	Lakewood	4½		24,625.00
25	Linden	4¾		25,076.00
10	Merchantville	5		10,288.00
150	Middlesex County	4½		150,103.00
43	Monmouth County	4½		43,553.30
50	Montclair	4½		50,778.80
27	Montclair	4½		27,138.00
25	Montclair	5		27,097.50
95	Morris County	4½		95,610.20
97	Newark	4½		98,213.10
25	Newark	5	M. & S.	27,394.70

Extracts from Supplement to Fourth Account.

EXHIBIT V (*Continued*)

SECURITIES AND CASH TURNED OVER (*Continued*)

Par Value in Thousands	Security	Rate %	Interest Dates	Book Value as Appraised at May 16, 1923
50	New Brunswick	4¾		52,920.20
10	Norwood	5		10,123.70
75	Nutley	4½		75,000.00
25	Perth Amboy	5		25,500.00
20	Plainfield	4½		19,980.00
5	Plainfield	4½		5,006.50
25	Rahway	4½		24,625.00
50	Red Bank	5		52,223.00
9	Rensselaer	4½		9,129.35
50	Ridgefield Park	5		51,642.50
30	Ridgewood	4½		29,716.00
50	Rutherford	4½		50,121.00
50	South Orange	4½		50,122.30
25	South Orange	5		26,315.00
52	Summit	4½		52,111.10
25	Trenton	5		25,640.90
100	Union County	4¼		99,470.00
1,835	Securities			$1,869,857.15
	Bond & Mtge. of Arthur Brisbane, 5½%			27,000.00
	Bond & Mtge. of Georgian Court College, 5%			175,000.00
	Times Publishing Co. of Detroit, Bond 7%			100,000.00
				$2,171,857.15
	Cash			3,142.85
	Total, carried to Summary			$2,175,000.00

The foregoing securities were turned over to the Trustees upon their agreement to refund to the Executors any Inheritance Tax which may be found to be due on said legacy of $2,175,000, and the amount of which Inheritance Tax is at this date, September 6, 1927, undetermined.

Exhibit V.

Petition on Fourth Account.

IN CHANCERY OF NEW JERSEY

BETWEEN KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors, etc., of GEORGE J. GOULD, Deceased, *Complainants,* *and* COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.*, *Defendants.*	62/608 On Bill, etc. On Fourth Accounting of Complainants. Petition.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of KINGDON GOULD, of the Township of Lakewood, in the County of Ocean and State of New Jersey, and SCHUYLER NEILSON RICE, of the Borough of Highland Park, in the County of Middlesex and State of New Jersey, respectfully shows as follows:

1. Your petitioners are complainants in the above entitled cause and are the Executors of the Last Will and Testament of George J. Gould, deceased, late of Lakewood aforesaid.

2. Your petitioners present herewith their fourth account of their administration of the estate of said George J. Gould, deceased.

3. The names and addresses of all persons interested in said accounting are as follows:

Name	Address
Kingdon Gould	160 East 72nd St., N. Y.
Marjorie Gould Drexel	Biarritz, France.
Jay Gould	1107 Fifth Ave., New York
Vivien Decies	22 Down St., London, England.
George J. Gould, Jr.	165 Broadway, N. Y.
Edith Gould Wainwright	Easthampton, N. Y.
Glora Gould Bishop	165 Broadway, N. Y.
George Sinclair Gould	c/o Equitable Trust Co., Madison Ave. & 45th St., N. Y.
Jane Sinclair Gould	c/o Equitable Trust Co., Madison Ave. & 45th St., N. Y.
Guinevere Gould	c/o Equitable Trust Co., Madison Ave. & 45th St., N. Y.
Guinevere Dunsford	c/o Equitable Trust Co., Madison Ave. & 45th St., N. Y.

Name	Address
Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as Trustees under the Will of George J. Gould, Deceased	15 Exchange Place, Jersey City, N. J.

Petition on Fourth Account.

All of the foregoing are of full age except those whose names are hereinafter stated. The names and addresses of the guardians of such minors, if any, or if there be no guardians, the names and addresses of the parents, or other persons in *loco parentis* to the said minors, are hereinafter given.

Name	Name of Guardian or Person in Loco Parentis	Address of Guardian or Person in Loco Parentis
George Sinclair Gould Jane Sinclair Gould Guinevere Gould	Guinevere S. Dunsford and Schuyler Neilson Rice	c/o Commercial Trust Co., Jersey City, N. J.

4. The following is a summary of the aforesaid account:

THESE ACCOUNTANTS CHARGE THEMSELVES AS FOLLOWS:		
By Balance of Corpus and Income at December 31, 1925	$12,541,311.10	
By Receipts of Income	547,448.15	
By Gains	84,449.39	
By Receipts of Corpus Not on Inventory	41,690.07	
Total Charges		$13,214,898.71
THESE ACCOUNTANTS PRAY ALLOWANCE AS FOLLOWS:		
Administration Expenses	$ 885,134.99	
Payments *re* Gould *vs.* Gould suit	1,825,000.00	
Payments *re* Gould *vs.* Gould suit	5,442,392.55	
Losses	52,582.78	
Total Credits		8,205,110.32
Balance in Hands of Accountants June 30, 1927, Corpus and Income		$ 5,009,788.39

Your petitioners pray that their said account may be audited and allowed and that an order may be made for the allowance of commissions and counsel fees and that your petitioners may have such other and further relief as may be proper.

KINGDON GOULD,
SCHUYLER NEILSON RICE,
Petitioners.

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

KINGDON GOULD, being duly sworn, according to law, upon his oath deposes and says: That he is one of the petitioners in the foregoing petition named; and that the matters and things therein contained are true to the best of his knowledge and belief.

KINGDON GOULD.

Sworn to and subscribed before me
this day of September, 1927.
(SEAL)

Notary Public of New Jersey.

Extracts from Fourth Account.

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

SCHUYLER NEILSON RICE, being duly sworn, according to law, upon his oath deposes and says: That he is one of the petitioners in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

SCHUYLER NEILSON RICE

Sworn to and subscribed before me
this day of September, 1927.
(SEAL)
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY

BETWEEN KINGDON GOULD and SCHUYLER NEILSON RICE, as Executors, Etc., of GEORGE J. GOULD, Deceased, *Complainants,* *and* COMMERCIAL TRUST COMPANY OF NEW JERSEY, *et als.*, *Defendants.*	62/608 On Bill, etc. On Fourth Accounting of Complainants. Account.

The Account of Kingdon Gould and Schuyler Neilson Rice, as Executors of the Last Will and Testament of George J. Gould, deceased, shows as follows:

THESE ACCOUNTANTS CHARGE THEMSELVES WITH:

By Balance of Corpus and Income at December 31, 1925, as shown in Third Account, Exhibit V., page 57		$12,541,311.10
Exhibit I. Changes in Corpus (Information Exhibit)		
Exhibit II. By Receipts of Income		547,448.15
Gross Income	$898,412.34	
Less: Charges	350,964.19	
Exhibit III. By Gains		84,449.39
Exhibit IV. By Receipts of Corpus Not on Inventory		41,690.07
Total Charges		$13,214,898.71

Extracts from Fourth Account.

THESE ACCOUNTANTS PRAY ALLOWANCE AS FOLLOWS:

Exhibit V. Administration Expenses	$ 885,134.99	
Exhibit VI. Payments *re* Gould *vs.* Gould	1,825,000.00	
Exhibit VII. Payments *re* Gould *vs.* Gould	5,442,392.55	
Exhibit VIII. Losses	52,582.78	
Total Credits		8,205,110.32
Balance, June 30, 1927, Corpus and Income, Exhibit IX		$5,009,788.39

EXHIBIT V.

ESTATE OF GEORGE J. GOULD
DECEMBER 31, 1925, TO JUNE 30, 1927.

ADMINISTRATION EXPENSES
(Including Taxes, Executors' Commissions, Legal Fees, Debts, Legacies, etc.)

DISBURSEMENTS, 1926

Date Paid 1926		Voucher No.		
Jan.	6	1597	Commercial Trust Co., rent of Jersey City office, January	$34.00
		1598	Consolidated Coal Co., January rent, November current	272.65
		1599	Crystal Spring Water Co., water	3.50
		1600	J. H. Johnson, laundry, office towles	5.06
		1601	C. H. Heidenheim, December office expenses	29.19
	12	1602	Western Union Tel. Co., messages	1.51
		1603	N. Y. Telephone Co., to Dec. 20	23.83
		1604	Arthur Young & Co., services, Jay Gould Accounting Suit	2,035.00
	15	1605	Bergen Storage Warehouse, Oct. 18-Jan. 18	180.00
		1606	H. Janssen, Jr., salary, Jan. 1-15	25.00
	21	1607	Lincoln Safe Deposit Co., Oct. 1-Jan. 1	94.50
		1608	L. W. Lawrence, stationery	8.72
	25	1609	Geo. P. Langford, January salary	50.00
		1610	H. Janssen, Jr., salary, Jan. 15-31	25.00
		1611	C. H. Heidenheim, January salary	250.00
Feb.	1	1612	Commercial Trust Co., rent, Jersey City office, February	34.00
		1613	Consolidated Coal Co., February rent, December current	273.12
	6		(Journal) Recording Fees, Bryant Mtge. Credit to Interest (Other)	13.50
	3	1614	Crystal Spring Water Co., water	3.00
		1615	N. Y. Tel. Co., Dec. 20-Jan. 20	35.91
		1616	C. H. Heidenheim, January office expenses	14.64
	15	1617	H. Janssen, Jr., salary, Feb. 1-15	25.00
Jan.	22	1618	Benedict & Benedict, insurance premiums to July 31, 1925	127.86
	28	1619	Chadbourne, Stanchfield & Levy. Gould *vs.* Gould, services $75,000, disbursements $222.37; McMasters *vs.* Gould, services $10,000, disbursements $108.33	85,330.70
Feb.	1	1620	A. G. Hubert, February salary	625.00

New Jersey State Library

Jan.	28	1621	Peck & Durham, printing 3rd Account	450.00
Feb.	24	1622	L. W. Lawrence, stationery	9.95
		1623	Bergen Storage Warehouse, Jan. 18-Feb. 18	60.00
		1624	Western Union Tel. Co., radio to Lord Dunsford	3.78

Disbursements—Administration Expenses. Exhibit V.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1926		No.		
Feb.	24	1625	Arthur Young & Co., services Jay Gould Accounting Suit	758.00
	25	1626	Geo. P. Langford, February salary	50.00
		1627	H. Janssen, Jr., salary, Feb. 15-28	25.00
		1628	C. H. Heidenheim, February salary	250.00
		1629	Lincoln Safe Deposit Co., Jan. 1-15	14.70
Mar.	1	1630	Commercial Trust Co., rent, Jersey City office, March	34.00
		1631	Bergen Storage Warehouse, Feb. 18-Mar. 18	60.00
		1632	Crystal Spring Water Co., water	3.00
		1633	Jos. A. Lynch, insurance on paintings, Jersey City to New York	125.00
		1634	C. H. Heidenheim, February office expenses	14.02
		1635	A. G. Hubert, March salary	625.00
	3	1636	Consolidated Coal Co., March rent, January current	273.08
	16	1637	Commercial Trust Co., rent of safes B.B. and C.C., 1 year to March 1, 1927	500.00
		1638	Arthur Young & Co., services, Jay Gould Accounting Suit	2,159.50
		1639	L. W. Lawrence, stationery	1.15
		1640	N. Y. Telephone Co., Jan. 21-Feb. 20	26.13
		1641	H. Janssen, Jr., salary, Mar. 1-15	25.00
	17	1642	Western Union Tel. Co., messages	6.98
	26	1643	H. Janssen, Jr., salary, Mar. 15-31	25.00
		1644	Geo. P. Langford, March salary	50.00
		1645	C. H. Heidenheim, March salary	250.00
	29	1656	Bankers Trust Co., draft, Dr. Edmund Gros, for 2,894.36 francs; fee for medical examination of Frank J. Gould; Jay Gould Accounting Suit	100.00
Apr.	1	1657	A. G. Hubert, April salary	625.00
		1658	Geo. P. Langford, expenses, moving office	44.05
		1659	N. Y. Safe & Lock Co., moving office safe	25.00
	9	1660	Jos. Lynch, insurance on paintings and statuary	208.98
		1661	Bergen Storage Warehouse, Mar. 18-Apr. 18	66.00
		1662	C. H. Heidenheim, March office expenses	20.95
		1663	Crystal Spring Water Co., water	3.00
		1664	Consolidated Coal Co., April rent, February current	272.43
		1665	J. H. Johnson, laundry, office towels	4.85
		1666	L. W. Lawrence, stationery	22.80
		1667	Commercial Trust Co., April rent, Jersey City office	34.00
		1668	Arthur Young & Co., services, Jay Gould Accounting Suit	2,432.50

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1926	Voucher No.		
Apr. 1	1669	H. Janssen, Jr., salary, Apr. 1-15	25.00
12	1670	N. Y. Telephone Co., Feb. 21-Mar. 20	23.19
16	1671	E. L. Newsom, 2 window ventilators	12.50
19	1672	Standard Envelope Co., Dixie cups	7.38
26	1673	Geo. P. Langford, April salary	50.00
	1674	H. Janssen, Jr., salary, Apr. 15-30	25.00
	1675	C. H. Heidenheim, April salary	250.00
May 1	1676	A. G. Hubert, May salary	625.00
3	1677	Commercial Trust Co., May rent, Jersey City office	34.00
	1678	Crystal Spring Water Co., water	5.50
	1679	Bergen Storage Warehouse, Apr. 18-May 18	66.00
	1680	C. H. Heidenheim, April office expenses	32.87
	1681	Benenson Investing Co., May rent	266.67
7	1682	Western Union Tel. Co., cable	5.04
	1683	L. W. Lawrence, stationery	5.15
	1684	N. Y. Telephone Co., Mar. 21-Apr. 20	42.40
12	1685	W. C. Fairway, cases; carting old records to Jersey City	174.75
	1686	H. Janssen, Jr., salary, May 1-15	25.00
14	1687	Burroughs Adding Machine Co., maintenance	5.55
	1688	Ballou Press, printing McMasters *vs.* Gould	192.10
27	1689	Jos. A. Lynch, insurance on art works, Jersey City to New York	635.60
	1690	F. S. Webster, typewriter coupon book	11.00
	1691	Jersey City Tax Collector, Personal Taxes, 1926	17.91
		(See refund of $.26 on above, June 7, 1926)	
	1692	C. O. Fogg, Surrogate, 1 certificate	.50
	1693	Geo. P. Langford, May salary	50.00
	1694	H. Janssen, Jr., salary, May 15-31	25.00
	1695	C. H. Heidenheim, May salary	250.00
25	1696	A. G. Hubert, June salary	625.00
June 4	1697	W. C. Fairway, cartage, Jersey City to New York	25.00
	1698	Benenson Investing Co., June rent	266.67
	1699	Bergen Storage Warehouse, May 19-June 19	66.00
	1700	C. H. Heidenheim, May office expenses	14.94
	1701	Crystal Spring Water Co., water	3.50
10	1702	Arthur Young & Co., services, Jay Gould Accounting Suit	821.00
	1703	L. W. Lawrence, stationery	13.50
	1704	N. Y. Telephone Co., Apr. 21-May 21	24.56

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1926	Voucher No.		
June 14	1705	H. Janssen, Jr., salary, June 1-15	25.00
June 25	1706	Geo. P. Langford, June salary	50.00
	1707	H. Janssen, Jr., salary, June 15-30	25.00
	1708	C. H. Heidenheim, June salary	250.00
June 28	1720	A. G. Hubert, July salary	625.00
July 1	1721	Com'l Trust Co., June rent, J. City office	34.00
	1722	F. S. Webster Co., carbon paper	4.00
	1723	Consol. Coal Co., current for March	5.98
	1724	Com'l Trust Co., July rent, J. City office	34.00
July 2	1725	Benenson Investing Co., July rent	266.67
	1726	Crystal Spring Water Co., water	3.00
	1727	Bergen Storage W'hse, June 18 July 19	66.00
	1728	C. H. Heidenheim, June office expenses	15.60
July 8	1729	Kingdon Gould, a/c of Executor's fees on 1925 receipts, as per order of Judge Kirkpatrick, dated July 7, 1926, a/c Principal, $2,991.69, a/c Income, $10,104.38	13,096.07
	1730	S. N. Rice, same a/c Principal, $2,991.68, a/c Income, $10,104.38	13,096.06
		5 following, per same order dated July 7, 1926:	
	1731	Gillespie & O'Connor, legal fees	45,000.00
	1732	McCarter & English, legal fees	45,176.38
	1733	Taylor, Knowles & Hack, legal fees	10,000.00
	1734	Harrison & Roche, legal fees	10,000.00
	1735	Clinton O. Fogg, Surrogate, fee	957.00
	1736	Consol. Coal Co., current, Mar. 18-May 1	8.39
July 14	1737	H. Jannsen, Jr., salary, July 1-15	25.00
	1738	L. W. Lawrence, stationery	7.45
July 21	1739	Jos. A. Lynch, ins. on property in Bergen W'hse	358.63
July 24	1740	Geo. P. Langford, July salary	50.00
July 23	1741	H. Janssen, Jr., salary, July 15-31	25.00
July 24	1742	C. H. Heidenheim, July salary	250.00
July 21	1743	Von Lengerke & Detmold, storage and ins. on guns	40.00
	1744	N. Y. Telephone Co., May 21-June 20	30.11
July 23	1745	H. Janssen, Jr., salary, Aug. 1-15	25.00
July 28	1746	Geo. P. Langford, August salary	50.00
July 29	1747	A. G. Hubert, August salary	625.00
July 30	1748	C. H. Heidenheim, August salary	250.00
Aug. 2	1749	Benenson Investing Co., Aug. rent and current	289.57

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1926	Voucher No.		
Aug. 5	1750	Com'l Trust Co., Aug. rent, J. City office	34.00
	1751	Crystal Spring Water Co., water	3.00
	1752	C. H. Heidenheim, July office expenses	46.95
	1753	Bergen Storage W'hse, July 19-Aug. 19	66.00
Aug. 10	1754	N. Y. Telephone Co., June 20-July 20	45.64
Aug. 24	1755	Henry Janssen, Jr., salary, Aug. 15-31	25.00
Sept. 1	1756	Benenson Investing Co., Sept. rent, and current	279.03
	1757	Com'l Trust Co., Sept. rent, J. City office	34.00
Sept. 2	1758	Crystal Spring Water Co., water	3.50
Sept. 14	1759	Bergen Storage W'hse, Aug. 19-Sept. 19	66.00
Sept. 8	1760	N. Y. Telephone Co., July 21-Aug. 20	54.00
Sept. 14	1761	Henry Jannsen, Jr., salary, Sept. 1-15	25.00
Sept. 24	1762	Henry Janssen, Jr., salary, Sept. 15-30	25.00
Aug. 27	1763	A. G. Hubert, Sept. salary	625.00
Sept. 24	1764	Geo. P. Langford, Sept. salary	50.00
	1765	C. H. Heidenheim, Sept. salary	250.00
Aug. 10	1766	C. W. Lawrence, stationery	13.36
	1767	Western Union Tel. Co., messages	8.68
	1768	Gallo & Ackerman, printing, McMasters *vs.* Gould	90.00
Sept. 22	1771	L. W. Lawrence, stationery	10.25
	1772	Western Union Tel. Co., messages	7.14
	1773	C. H. Heidenheim, Aug. office expenses	16.30
Sept. 28	1774	Gallo & Ackerman, printing, Gould *vs.* Gould	308.80
Oct. 1	1785	A. G. Hubert, October salary	625.00
Oct. 5	1786	Bergen Storage W'hse, Sept. 19-Oct. 19	66.00
	1787	Com'l Trust Co., Oct. rent, J. City office	34.00
	1788	Crystal Spring Water Co., water	3.00
	1789	Benenson Bldg. Corp'n, Oct. rent, and current	295.63
	1790	C. H. Heidenheim, Sept. office expenses	15.31
Oct. 6	1791	N. Y. Telephone Co., Aug. 21-Sept. 20	45.12
Oct. 7	1792	Arthur Young & Co., services, Jay Gould accounting suit	744.00
	1793	L. W. Lawrence, stationery	5.60
	1794	Collector of Internal Revenue, additional Income Tax, year 1923, $51,787.18 and Interest, $8,415.42	60,202.60
Oct. 14	1795	Henry Janssen, Jr., salary, Oct. 1-15	25.00
Oct. 26	1797	Geo. P. Langford. Oct. salary	50.00
	1798	C. H. Heidenheim, Oct. salary	250.00

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1926	Voucher No.		
Oct. 26	1799	H. Janssen, Jr., salary, Oct. 15-31, $25, Oct. increase $25	50.00
	1800	A. G. Hubert, November salary	625.00
Nov. 1	1801	Bergen Storage W'hse, Oct. 18-Nov. 18	66.00
	1802	C. H. Heidenheim, Oct. office expenses	20.34
	1803	Benenson Investing Corp'n, Nov. rent, and current	278.85
Nov. 3	1804	Com'l Trust Co., Nov. rent, J. City office	34.00
	1805	Crystal Spring Water Co., water	3.00
	1806	Collector of Internal Revenue, tax on Initiation Fee, Green Meadow Country Club	105.00
Nov. 8	1807	Burroughs Adding Machine Co., maintenance	5.55
	1808	L. W. Lawrence, stationery	46.91
Nov. 9	1809	Peck & Durham, check book and cash book	68.00
	1810	Jos. A. Lynch, ins. on art works at 510 Madson Ave	610.60
	1811	N. Y. Telephone Co., to Oct. 20	43.70
Nov. 15	1812	H. Janssen, Jr., salary, Nov. 1-15	37.50
Nov. 16	1813	Gallo & Ackerman, printing, Gould *vs.* Gould	278.40
Nov. 17	1814	Standard Envelope Co., drinking cups	7.38
Nov. 24	1815	H. Janssen, Jr., salary, Nov. 15-30	37.50
	1816	Geo. P. Langford, Nov. salary	50.00
	1817	C. H. Heidenheim, Nov. salary	250.00
Dec. 1	1818	Benenson Investing Corp'n, Dec. rent, current, etc	284.97
	1819	J. H. Johnson, laundry, office towels	10.51
	1820	Bergen Storage W'hse, Nov. 19-Dec. 19	66.00
	1821	Gallo & Ackerman, printing, Gould *vs.* Gould	27.35
	1822	A. G. Hubert, Dec. salary	625.00
	1823	C. H. Heidenheim, Nov. expenses	22.45
Dec. 3	1824	Com'l Trust Co., Dec. rent, J. City office	34.00
	1825	Crystal Spring Water Co., water	3.00
Dec. 10	1826	N. Y. Telephone Co., Oct. 21-Nov. 21	32.67
	1827	L. W. Lawrence, stationery	8.25
	1828	Standard Stamp Works, rubber stamp	1.70
Dec. 14	1829	H. Janssen, Jr., salary, Dec. 1-15	37.50
Dec. 17	1830	J. J. Kerr, ins. prem., Met. Casualty Co.	183.56
Dec. 27	1831	Geo. P. Langford, Dec. salary	50.00

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid	Voucher No.		
1926			
Dec. 27	1832	H. Janssen, Jr., salary, Dec. 15-31	37.50
	1833	C. H. Heidenheim, Dec. salary	250.00
			$313,396.83

CREDITS

1926			
June 7		Refund a/c Jersey City Personal taxes	.26
June 23		Return prem., L. L. & Globe Ins. Co.	112.22
Dec. 2		Return prem., Com'l Union Ins. Co.	53.00
			165.48
		Total Disbursements, 1926, carried to Summary Administration Expenses	$313,231.35

DISBURSEMENTS, 1927.

1927			
Jan. 3	1844	A. G. Hubert, Jan., salary	$625.00
5	1845	Benenson Bld'g Corp'n, Jan. rent & el.	280.43
	1846	Bergen Storage Wh'se, Dec. 19-Jan. 19	60.00
	1847	Com'l Trust Co., Jan. rent, J. C. office	34.00
	1848	C. H. Heidenheim, Dec. expenses	30.88
	1849	Crystal Spring Water Co., water	3.50
7	1850	W. Union Tel. Co., cables and telegrams	47.94
14	1851	L. W. Lawrence, stationery	13.65
	1852	H. Janssen, Jr., salary, Jan. 1-15	37.50
	1853	N. Y. Telephone Co., Nov. 21-Dec. 20	34.68
27	1854	Geo. P. Langford, Jan. salary	50.00
	1855	H. Janssen, Jr., salary, Jan. 15-31	37.50
	1856	C. H. Heidenheim, Jan. salary	250.00
Feb. 1	1857	A. G. Hubert, Feb. salary	625.00
	1858	Benenson Bldg. Corp'n, Feb. rent & el.	282.48
	1859	Com'l Trust Co., Feb. rent, J. C. office	34.00
	1860	F. S. Webster Co., carbon paper	4.50
	1861	Bergen Storage Wh'se, Jan. 18-Feb. 18	60.00
	1862	Crystal Spring Water Co., water	3.00
	1863	N. Y. Telephone Co., Dec. 21-Jan. 20	35.30

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1927	Voucher No.		
Feb. 1	1864	C. H. Heidenheim, Jan. expenses	39.00
7	1865	Western Union Tel. Co., cables	31.49
	1866	Von Lengerke & Detmold, storage on guns	10.00
	1867	L. W. Lawrence, stationery	3.25
15	1869	H. Janssen, Jr., salary, Feb. 1-15	37.50
23	1870	C. H. Brown Co., cleaning office rugs	78.80
25	1871	Geo. P. Langford, Feb. salary	50.00
	1872	H. Janssen, Jr., salary, Feb. 1-15	37.50
	1893	C. H. Heidenheim, Feb. salary	250.00
Mar. 1	1874	A. G. Hubert, Mar. salary	625.00
	1875	J. City personal taxes, last half 1924 and 1925	19.77
2	1876	Benenson Bldg. Corp'n, Mar. rent & el	280.48
	1877	Com'l Tr. Co., Mar. rent, J. C. office	34.00
	1878	Bergen Storage Wh'se, Feb. 18-Mar. 18	71.00
	1879	Com'l Tr. Co., rent of box C.C. 1 year to Mar., 1928	250.00
	1880	C. H. Heidenheim, Feb. expenses	15.96
	1881	Crystal Spring Water Co., water	3.00
4	1882	Coll'r of Internal Rev., Income Tax, 1926	9,100.94
8	1883	L. W. Lawrence, stationery	39.75
11	1884	N. Y. Tell. Co., Jan. 1-Feb. 20	32.57
	1885	West. Union Tel. Co., messages	2.52
14	1886	H. Janssen, Jr., salary, Mar. 1-15	37.50
21	1887	Kominsky Desk Co., repair office chairs	22.00
24	1888	Geo. P. Langford, Mar. salary	50.00
	1889	H. Janssen, Jr., salary, Mar. 15-31	37.50
	1890	C. H. Heidenheim, Mar. salary	250.00
Apr. 1	1901	A. G. Hubert, April salary	625.00
4	1902	Crystal Spring Water Co., water	3.50
	1903	Com'l Tr. Co., April rent, J. C. office	34.00
	1904	Benenson Bldg. Corp'n, Apr. rent & el	280.74
	1905	C. H. Heidenheim, Mar. expenses	16.81
	1906	Bergen Storage Wh'se, Mar. 18-Apr. 18	60.00
	1907	N. Y. Tel. Co., Feb. 21-Mar. 20	33.65
6	1908	L. W. Lawrence, stationery	35.82
	1909	W. Union Tel. Co., cables	55.19
15	1910	H. Janssen, Jr., salary, Apr. 1-15	37.50
21	1911	Jos. A. Lynch, ins. prems. on fine arts	327.60

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Date Paid 1927	Voucher No.		
Apr. 28	1912	C. H. Heidenheim, April salary	250.00
	1913	H. Janssen, Jr., Apr. 15-30 salary	37.50
29	1914	Geo. P. Langford, April salary	50.00
May 2	1915	A. G. Hubert, May salary	625.00
3	1916	Com'l Tr. Co., May rent, J. C. office	34.00
11	1917	Benenson Bldg. Corp'n, May rent, Apl. el	282.81
4	1918	C. H. Heidenheim, Apr. expense	16.54
16	1919	Bergen Storage Wh'se, Apr. 18-May 18, and cartage	159.00
6	1920	N. Y. Tel. Co., Mar. 21-Apr. 20	34.40
14	1921	H. Janssen, Jr., salary, May 1-15	37.50
20	1922	Godfrey Nelson, services re 1926 Income Tax	50.00
	1923	L. W. Lawrence, stationery	4.40
	1924	Crystal Spring Water Co., water	3.50
	1925	W. Union Tel. Co., cables	9.22
	1926	N. Y. Safe & Lock Co., changing combination	4.00
	1927	J. City personal taxes, 1927	17.88
	1928	Com'l Tr. Co., armored truck service	129.90
27	1929	H. Janssen, Jr., salary, May 15-31	37.50
	1930	Geo. P. Langford, salary, May	50.00
	1931	C. H. Heidenheim, salary, May	250.00
June 1	1934	A. G. Hubert, June salary	625.00
7	1947	Bergen Storage Wh'se, May 19-June 19	6.00
	1948	Burroughs Ad. Mch. Co., repairs	5.55
	1949	Com'l Tr. Co., June rent, J. C. office	34.00
	1950	Crystal Spring Water Co., water	3.50
8	2060	McCarter & English, a/c legal services	50,000.00
7	2061	Benenson Bldg. Corp'n, June rent, May el	280.14
	2062	C. H. Heidenheim, May expenses	59.77
	2063	J. H. Johnson, laundry, office towels	3.67
	2064	L. W. Lawrence, stationery	16.45
	2065	N. Y. Tel. Co., Apr. 21-May 20	34.31
8	2066	Standard Env. Co., Dixie cups	7.25
	2067	F. S. Webster Co., stationery	4.50
	2068	West. Union Tel. Co., cables	28.45

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

Following legal services and expenses (vouchers 2069-2080) allowed by Vice-Chancellor Backes, by Court Decree (N. J.) dated June 7, 1927:

Date Paid	Voucher No.		
1927			
June 8	2069	Lum, Tamblyn & Collier	17,500.00
	2070	George W. Wickersham	50,000.00
	2071	Merritt Lane	20,000.00
	2072	Wilfred H. Jayne, Jr.	5,000.00
	2073	John P. Manning	5,500.00
	2074	Pitney, Hardin & Skinner	5,000.00
	2075	Harrison & Roche	28,500.00
	2076	Lindabury, Depue & Foulks	6,000.00
	2077	Fisk & Fisk	15,000.00
9	2078	Chadbourne, Stanchfield & Levy	146,344.97
	2079	McCarter & English, exp. to June 4, 1927	602.60
8	2080	Gillespie & O'Connor, on account	50,000.00
10	2081	L. W. Lawrence, stationery	23.59
	2082	Gillespie & O'Connor, expenses to June 7, 1927	403.98
15	2084	H. Janssen, Jr., salary, June 1-15	37.50
28	2087	Geo. P. Langford, June salary	50.00
	2088	C. H. Heidenheim, June salary	250.00
	2089	H. Janssen, Jr., salary, June 15-30	37.50
			$418,910.58

CREDITS.

1927				
Feb. 23	Jos. A. Lynch, return premium, Com'l Union No. 32156		$103.70	
May 19	Jos. A. Lynch, ret. prem. on art works		32.26	
June 15	Estate of Edith K. Gould. Refund for its share of carrying charges on Art Objects, etc., from Date of Death of G. J. G., May 16, 1923, to date of Court Decree, July 7, 1925	$34,432.44		
	Refund for its share of Marx bill for appraisal	16,000.00		
			50,432.44	
				50,568.40
	Total Disbursements, six months ended June 30, 1927, carried to Summary Administration Expenses			$368,342.18

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)
LEGACIES UNDER THE WILL OF GEORGE J. GOULD, PAID AS FOLLOWS:

1927					
June	4	V. No. 1942	Guinevere S. Dunsford as assignee of John Spensley	$5,000.00	
		V. No. 1943	George Philip Langford	5,000.00	
		V. No. 1944	William Bishop	5,000.00	
		V. No. 1945	Gottfried Fluckiger	5,000.00	
		V. No. 1946	David Sommer	5,000.00	
			Total Legacies carried to Summary Administration Expenses		$25,000.00

DEBTS PAID AS FOLLOWS:

		Voucher No.	Claimant	Claim	Interest
June	4	1951	Antonides, B. H.	$130.82	$27.47
		1952	Altman & Co., B.	4.50	.96
		1953	Andrus, Harry E.	58.72	12.33
		1954	Beeson Hardware Co.	65.74	13.81
		1955	Bishop, Estate of F. W.	47.84	10.05
		1956	Boeddiker Pharmacy	4.00	.84
		1957	Bonwit, Teller & Co.	432.00	90.72
		1958	Brentano's	3.75	.79
		1959	H. K. Brewer & Co.	12.85	2.70
		1960	Bloomingdale Bros.	.94	.20
		1961	Ballou Press	1,733.35	364.00
		1962	Bussy & Co., L.	42.18	8.86
		1963	Cartier	261.00	54.81
		1964	Catskill Mt. News	15.25	3.20
		1965	Cella Market Co.	110.81	23.27
		1966	Clayton, Jos. J.	216.16	45.39
		1993	Commercial Trust Co.	125.00	26.25
		1967	Dean's, Inc.	26.40	5.54
		1968	Ely, C. E.	54.55	11.46
		1969	Essex Hotel	54.00	11.34
		2056	Everson, Estate of W. S.	372.10	78.14
		1970	F I A T Repairs Co.	28.35	5.95
		1971	Grant's Sons, Inc., J.	46.75	9.82
		1972	Harrington, J. A.	364.35	76.51
		1973	Haug, George	19.75	4.15

Disbursements—Administration Expenses. Exhibit V.

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

	Voucher No.	Claimant	Claim	Interest
1927				
June 4	1974	Havens & Son, J. D.	27.73	6.03
	1975	Henderson & Co., Peter	8.55	1.80
	1976	Hollander Co., L. P.	590.00	123.90
	1977	Hubbell Bros.	9.78	2.05
	1978	Hughes Bros.	36.10	7.58
	1979	Ideal Steam Laundry	3.10	.65
	1980	Independent Storage Co.	87.00	18.27
	1981	Jackson Stationery Co.	6.50	1.37
	1982	Justice Drug Co.	4.95	1.04
	1983	Kent, A.	25.00	5.25
	1984	Korn, Samuel	4.54	.95
	1985	Langford, Geo. P.	86.45	18.15
	1986	LeCompte Coal Co., C. R.	53.90	11.32
	1987	Lundi Tire & Rubber Co.	74.40	15.62
	1988	Lakewood Coal Co.	27.05	5.68
	1989	Lakewood Gas Co.	26.16	5.49
	2058	Lincoln Safe Deposit Co.	51.62	10.84
	1990	McNamara, Francis	200.73	42.15
	1991	McNeice, H.	46.45	9.75
	1992	McPherson, John	124.94	26.24
	1994	Marceau, Ltd.	550.00	115.50
	1995	Michaels & Mourre	110.00	23.10
	1996	Miller & Sons, I.	39.50	8.30
	1997	Morris, Geo. A. M.	150.00	31.50
	1998	Morrison, Marie	35.25	7.40
	1999	Newman, Harry E.	250.00	52.50
	2000	Newman, W. Preston	20.00	4.20
	2001	New York Yacht Club	55.00	1.65
	2002	N. Y. Edison Co.	1.21	.25
	2003	N. Y. Steam Corp.	850.40	178.58
	2004	N. Y. Telephone Co.	83.68	17.57
	2005	Park & Tilford	37.15	7.80
	2006	Parker, W. H.	50.00	10.50
	2007	Patterson & Co.	39.50	8.30
	2008	Plaza Hotel	35.20	7.39
	2009	Prentiss, Dr. E. B.	4.00	.84
	2010	Peck & Peck	55.55	11.67

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

	Voucher No.	Claimant	Claim	Interest
1927				
June 4	2011	Robinson & Co., H. A.	870.22	182.75
	2012	Rogers & Hayes	45.45	9.54
	2013	Scribner's Sons, Chas.	172.00	36.12
	2014	Seager Telephone Co.	8.00	1.68
	2015	Stern Brothers	91.66	19.25
	2016	Stilwell's Bakery	11.69	2.45
	2057	Standard Oil Co.	100.33	21.07
	2017	Standard Oil Co.	59.20	12.43
	2018	Leon A. Taylor	8.90	1.87
	2019	Tilton's City Dairy	51.22	10.76
	2020	Tiffany & Co.	1.50	.32
	2021	Thompson, W. R.	200.00	42.00
	2022	Universal Road Mach. Co.	16.35	3.43
	2023	Wanamaker, John	7.23	1.52
	2024	Whipple, S. T.	46.06	9.67
	2025	Woodlawn Cemetery	50.00	10.50
	2026	Wiley & Horner	78.68	16.52
	2027	White Co., The	69.31	14.55
	2028	Western Un. Tel. Co.	210.92	44.29
	2029	Ward & Ward	8.60	1.91
	2030	Wynne & Treanor	58.24	12.23
	2031	Wallace Bros. Mach. Works	62.41	13.10
	2032	Wallace Bros. Mach. Works	51.80	10.88
	2033	Edith Gould Wainwright	945.05	198.46
	2034	O'Connor, W. B.	19.27	4.05
	2035	Larchmont Yacht Club	110.00	23.10
	2036	Wilson Motor Co.	19.45	4.08
	2037	High Point Hardware Co.	86.95	18.26
	2038	Meyer Gotlieb	351.50	73.82
	2039	Fraulein Helene Schacko (wages)	90.00	18.90
	2040	Camper & Nicholson, £107-19-9	499.23	104.85
	2041	Purdey & Sons, £12-0-0	55.53	11.66
	2042	Beale & Pyper, £17-15-3	82.17	17.25
	2043	McDougal & Co., £11-5-0	52.05	10.93
	2044	C. W. Hacking & Co., £112-4-2	519.24	109.04
	2045	Union Cold Storage Co., £26-1-10	120.55	25.32
	2046	C. L. Woodward, £337-6-0	1,560.84	327.78

Extracts from Fourth Account.

EXHIBIT V (*continued*)

DISBURSEMENTS, ADMINISTRATION EXPENSES (*continued*)

		Voucher No.	Claimant	Claim	Interest
1927					
June	4	2047	W. W. Cumming, £20-10-0 @ 462¾	94.86	19.72
		2048	Dr. Bulkley Gavin, £4-4-0 @ 462¾	19.43	4.08
		2049	Hatchard, £1-5-9 @ 462¾	5.96	1.25
		2050	Stetson, Jennings & Russell	21,414.83	4,497.11
		2051	Godfrey Nelson	1,500.00	315.00
		2052	Gillespie & O'Connor	20,000.00	4,200.00
		2053	Taylor, Knowles & Hack	7,646.82	1,605.83
		2054	Stanchfield & Levy	20,580.95	4,321.90
		2055	Chadbourne, Babbitt & Wallace	34,574.12	7,260.57
			Total Debts paid, carried to Summary Administration Expenses	$120,722.12	
			Total Interest, carried forward to Exhibit II, Schedule 6, Charges Against Income		$25,341.54

SUMMARY ADMINISTRATION EXPENSES.

		Year 1926, brought forward	$313,231.35
		Six months ended June 30, 1927, brought forward	368,342.18
		Legacies under the Will, brought forward	25,000.00
		Debts brought forward	120,722.12
June	4	Debts, Estate of Edith K. Gould, settlement of claim	30,156.58
		Debts. Commercial Trust Co. and S. N. Rice, Trustees, to repay overdraft of Income in the Trust for Jay Gould, of which George J. Gould was Trustee and which overdraft of Income existed at date of death, May 16, 1923	27,682.76
		Total, Administration Expenses, Carried to Summary	$885,134.99

Summary—Administration Expenses—Exhibit V.

Extracts from Fourth Account.

EXHIBIT VI.

ESTATE OF GEORGE J. GOULD.
DECEMBER 31, 1925, TO JUNE 30, 1927.

PAYMENTS MADE UNDER AGREEMENT OF DECEMBER 16, 1926.

THE PARTIES TO THIS AGREEMENT WERE AS FOLLOWS:
Seven children of George J. Gould, parties of the first part.
Guardians of three children, parties of the second part.
Guinevere S. Dunsford, party of the third part.
Executors of the Estate of George J. Gould, parties of the fourth part.

Under Paragraph 2 of the Stipulation for Compromise the Estate of George J. Gould on May 31, 1927, to Commercial Trust Co. and S. N. Rice, Trustees for the three children of Guinevere S. Dunsford	$300,000.00
Under Paragraph 3 of the S. for C. the Estate of George J. Gould paid on June 1, 1927, to the following:	
Kingdon Gould, Voucher No. 1935	$217,857.14
Jay Gould, Voucher No. 1936	217,857.14
Marjorie G. Drexel, Voucher No. 1937	217,857.14
Vivien G. Decies, Voucher No. 1938	217,857.14
George J. Gould, Voucher No. 1939	217,857.14
Edith G. Wainwright, Voucher No. 1940	217.857.15
Gloria G. Bishop, Voucher No. 1941	217,857.15
	1,525,000.00
Total payments made under Agreement of December 16, 1926, carried to Summary	$1,825,000.00

Payments made under Agreement of December 16, 1926. Exhibit VI.

Extracts from Fourth Account.

EXHIBIT VII.

ESTATE OF GEORGE J. GOULD.
DECEMBER 31, 1925, TO JUNE 30, 1927.

PAYMENTS IN SETTLEMENT OF GOULD *vs.* GOULD.

The following payments in settlement of the above entitled litigation were made by order of the Supreme Court of N. Y. County, under a Judgment entered under date of May 31, 1927. County Clerk's Index No. 19346—1916. Signed by Justice John M. Tierney. Referee James A. O'Gorman.

Under date of May 31, 1927, the Executors of the Estate of George J. Gould accepted the offer of the Equitable Trust Company of New York to act as Clearing Agent in making the payments ordered by the Court.

In accordance with this arrangement the E. T. Co. disbursed for the Estate of George J. Gould the sum of.....$5,610,350.85

Of this sum, there is chargeable to Income, as set forth on Exhibit II, Schedule 6..... 167,958.30

The balance, chargeable to Corpus is.....$5,442,392.55

Representing:

Est. of G. J. G.'s ¼ share of $17,500,000 (see following)..	$4,375,000.00
Legal bills (see following).....	237,392.55
Personal Liability of G. J. G. (see following).....	830,000.00

Total Payments in Settlement of Gould *vs.* Gould, Carried to Summary $5,442,392.55

COMPOSITION OF $4,375,000

1927	Paragraph Nos.	Pay't a/c	Amount
June 1	27/29	George	$ 2,000,000.00
	31/35	Edwin	2,000,000.00
	37/41	Helen	2,000,000.00
	43/47	Howard	2,000,000.00
	49/55	Anna	2,000,000.00
	51/55	Anna	2,750,000.00
	59/63	Frank	2,000,000.00
	59/63	Frank	2,750,000.00
			$17,500,000.00

¼ paid by Est. G. J. G. $4,375,000.00

Extracts from Fourth Account.

EXHIBIT VII (*continued*)

PAYMENTS IN STATEMENT OF GOULD VS. GOULD (*continued*)
COMPOSITION OF $237,392.55

Counsel fees and expenses, pursuant to paragraphs 5 and 6 of Final Judgment:

1927		
June 1	Murray, Aldrich & Roberts	$ 11,589.92
	Leonard & Walker	92,526.33
	Thomas S. Fuller	4,177.76
	Walter F. Carter	2,083.33
	Hughes, Rounds, Schurman & Dwight	5,109.25
	John R. Halsey	208.34
	Coudert Brothers	12,666.66
	William Nelson Cromwell	47,488.74
	Gillespie & O'Connor	4,166.67
	Griffiths & Content	2,093.98
	Cravath, Henderson and De Gersdorff	4,316.23
	Winthrop W. Aldrich	1,666.67
	Chadbourne, Stanchfield & Levy	3,750.00
	Stotesbury & Miner	4,166.66
	William A. W. Stewart	6,607.55
	Charles D. Donohue	833.33
	John J. O'Connor	1,250.00
	Malcolm Sumner	2,920.09
	Robert L. Luce	1,682.93
	Thomas F. Keogh	4,276.47
	Pierce & Greer	6,250.00
	Robert Lee Morrell	416.66
	De Forest Brothers	10,423.93
	Taylor, Knowles & Hack	6,721.05
		$237,392.55

Payments in Settlement of Gould vs. Gould. Exhibit VII.

EXHIBIT VII (*continued*)

PAYMENTS IN STATEMENT OF GOULD VS. GOULD (*continued*)
COMPOSITION OF $830,000.

1927	Paragraph Nos.	Pay't a/c	Amount
June 1	28	George	$ 60,000.00
	32	Edwin	60,000.00
	33	Edwin	40,000.00
	38	Helen	60,000.00
	39	Helen	40,000.00
	44	Howard	60,000.00
	45	Howard	40,000.00
	50	Anna	60,000.00
	53	Anna	175,000.00
	58	Frank	60,000.00
	61	Frank	175,000.00
			$830,000.00

THE FUNDS FOR THE PAYMENT OF $5,610,380.85 WERE PROVIDED AS FOLLOWS:

The Equitable Trust Co. applied the total amount of "Withheld Income" in their hands as per their final statement of that account, namely	$1,530,261.53
The Estate of George J. Gould gave the Equitable Trust Co. a check dated May 31, 1927, for	4,080,089.32
Total	$5,610,350.85

Disbursed as follows:

¼ of $17,500,000	$4,375,000.00
Legal bills	237,392.55
a/c Personal Liability	830,000.00
Interest (see Ex. II, Schedule 6)	167,958.30
	$5,610,350.85

See Journal Entries on pages 56 to 62, both inclusive.

OPINION OF SUPREME COURT.

Filed October 17, 1930.

NEW JERSEY SUPREME COURT.

No. 224, October Term, 1930.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, Deceased.	*On Certiorari.*

Argued October 8, 1930. Decided 1930.

For prosecutor, McCarter & English.

For the State, William A. Stevens.

Before Justices Campbell and Bodine.

PER CURIAM: The writ brings up for review a decree of Vice-Ordinary Backes sustaining a tax levied on the transfer of property by the last will and testament of George J. Gould, deceased, a former resident of Lakewood, N. J.

On March 21, 1923, decedent transferred $1,000,000 in United States Liberty Bonds to his wife. He died May 16, 1923, and the Vice-Ordinary held that the bonds were property assessable.

Pamphlet Laws 1922, p. 294, provides, so far as pertinent, as follows: "When the transfer is of property made by a resident * * * in contemplation of the death of the grantor * * *

Every transfer * * * made within two years prior to the death of the grantor * * * of a material part of his estate * * * without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section."

The transfer was of about one-sixth of the net estate—certainly a material part thereof. It was made within two months of death by a man who knew he was in the last stages of arterio sclerosis. The transfer is said to have been for an adequate valuable consideration. There was no attempt whatever to show any consideration for the transfer at the time the same was made. The death of Mr. Gould precipitated many suits. Some of his ten children assailed this transfer. In a family settlement, it was confirmed and it is said that the consideration for the settlement affords consideration for the transfer.

Vice-Ordinary Buchanan said of the statute in question In re Kraft's Estate, 143 Atl. Rep. 765, 766; "The broad purpose of the legislation is to tax successions, at death. Originally the statutory tax was imposed only upon testate and intestate successions. When it was found that the object of the act could be, and was being, defeated by transfers prior to death but in the nature of testamentary dispositions, the statute was amended so as to tax such transfers also. This was the purpose of the first sentence of the paragraph of the statute quoted above.

"* * * The transfer in the instant case being concededly made in contemplation of death, the burden of proof was on the executors to bring the case within the implied exception to the statute, or to prove that some additional excep-

tion is to be implied and bring the case within that.

"* * * Obviously, then, it is only when the adequate valuable consideration, of substantially equal value to the property transferred is received by the transferor, that the transfer in contemplation of death is not taxable."

The third paragraph of the will creates a trust fund of $4,000,000 with income to the widow for life with power to appoint to their children. At the time of Mr. Gould's death, a suit was pending against him growing out of mismanagement of his father's estate. This was compromised and a part of the compromise, $1,525,000, was deducted from the widow's trust and distributed among the first wife's seven children. A trust fund of $300,000 was also set up for the second wife's three children. Vice-Ordinary Backes said: "Their contention that the State is not entitled to a transfer tax because the payment of $1,525,000 out of the widow's trust reduced by that sum the inheritable property of Mr. Gould upon the theory that it was made in discharge of an obligation of his estate is not admissible. * * * The thing taxable was the transfer by the will of the four million dollar trust fund for the widow and her children. The seven took $1,525,000 of the widow's trust not by the will of their father, but contrary to it, by transfer from the widow and her children. That transfer was not taxable. That she and they chose to bargain with the seven to surrender a portion of their trust to induce them to subject their inheritance under their father's will to the burden of the $5,442,392.55 due the Jay Gould estate, and to reimburse them for the consequent depreciation of their shares of that inheritance is wholly irrele-

vant to the power to levy a tax upon the transfer of property by death. * * * At all events the State is not interested, and it was the privilege of the comptroller to take no notice of the manipulation of the property by the beneficiaries as between themselves."

Obviously, the transfer of the $4,000,000 trust fund was under the will of the testator and taxable. Settlement agreement between private parties cannot affect the rights of the state to collect its taxes.

The assessment, as corrected by decree of the Vice-Ordinary, is affirmed and the writ is dismissed.

ORDER OF AFFIRMANCE.

Filed October 27, 1930.

NEW JERSEY SUPREME COURT.

No. 224, October Term, 1930.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, Deceased.	*Writ of Certiorari.* *Order of Affirmance.*

This cause, coming on to be heard at the October term, 1930, of this Court, and the Court having inspected the return to the writ of certiorari issued therein and the Court having con-

sidered the reasons assigned for the setting aside of the transfer inheritance tax assessment in the matter of the estate of the above named decedent, as corrected by a decree of the Prerogative Court in the above-entitled cause, and the Court being of the opinion that said assessment as corrected by said decree should be affirmed,

It is on this twenty-seventh day of October, 1930, ORDERED that the assessment of transfer inheritance taxes, in the matter of the Estate of George J. Gould, deceased, late of Ocean County, New Jersey, as corrected by the final decree of the Prerogative Court allowed February 25, 1930, be and the same is hereby affirmed and the writ of certiorari issued in this cause is hereby dismissed.

On motion of

WILLIAM A. STEVENS,
Attorney-General of New Jersey,
Attorney for Defendants.

Entered October 27, 1930.

NOTICE AND GROUND OF APPEAL.

Filed November 1, 1930.

NEW JERSEY SUPREME COURT.

IN THE MATTER OF THE TRANSFER INHERITANCE TAX IN THE ESTATE OF GEORGE J. GOULD, Deceased.	*On Certiorari.* *Notice of Appeal.*

SIR:

TAKE NOTICE, that the prosecutors hereby appeal from the order of affirmance entered on the 27th day of October, 1930, in the above-entitled cause, to the Court of Errors and Appeals, on the following **ground:**

Because the Supreme Court erred in affirming the decree of the Ordinary.

Yours respectfully,

McCARTER & ENGLISH,
Attorneys for Prosecutors-Appellants.

To William A. Stevens, Esq., Attorney-General of New Jersey, attorney of defendant.

Service of within notice of appeal acknowledged this 30th day of October, 1930.

WILLIAM A. STEVENS,
Attorney-General of N. J.,
Attorney for Defendant-Appellee.

A-5

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

In the Matter of the Transfer Inheritance Tax on the Estate of George J. Gould, deceased.	*On Appeal from Supreme Court.*

BRIEF FOR APPELLANTS.

Statement.

This is an appeal by the executors of George J. Gould, deceased, from a judgment of the Supreme Court (470) affirming a decree of the Ordinary (31) on the advice of Backes, *V. O.*, which decree had been brought to the Supreme Court by certiorari. The Ordinary's decree modified and affirmed an assessment of transfer inheritance taxes upon the estate of the appellants' decedent made by the Comptroller. Although three questions were mooted before the Vice Ordinary, as to one of these—the valuation of stock in the Consolidated Coal Company—the appellants have acquiesced in the Ordinary's affirmance of the Comptroller, leaving only two questions that were argued in the Supreme Court or are to be argued here. They are:

I.

The Comptroller erroneously concluded that the transfer of $1,000,000.00 par value First Liberty Loan bonds by the decedent in his lifetime to a trust theretofore established for the benefit of his second wife for life and after her death to her children, was made by him in contemplation of death, and therefore taxable.

New Jersey State Library

II.

The Comptroller erred in not allowing as a deduction payments totalling $1,825,000 made to the seven children of the decedent by his first wife and in trust for the three children of the decedent by his second wife, paid as part of the settlement of claims asserted against the estate of the decedent for his breaches of trust as executor of and trustee under the will of his father, Jay Gould, and as settlement of a suit in the Supreme Court of the State of New York known as Gould *vs.* Gould.

I.

The Comptroller erroneously concluded that the transfer of $1,000,000.00 par value First Liberty Loan Bonds by the decedent in his lifetime to a trust theretofore established for the benefit of his second wife for life and after her death to her children, was made by him in contemplation of death, and therefore taxable.

The decedent died May 16, 1923 (Record 48). Everything done by the decedent to effectuate the gift of the Liberty Bonds was done by him on March 21, 1923 (Record 302), and therefore well within two years prior to his death. The Comptroller contends that by virtue of Chapter 174 of the Laws of 1922, which we refer to as the presumption statute, the gift is presumptively in contemplation of death, and the burden of showing that it is not is on the prosecutors.

1. The Presumption Statute, Chapter 124 of the Laws of 1922, does not apply.

The material part of this statute reads:

> "* * * Every transfer by deed, grant, bargain, sale or gift, made within two years

> prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section."

From a reading of this statute it clearly appears that for it to apply and the presumption in favor of the state to be effective in the case of a transfer made within two years prior to the decedent's death, three requirements must appear.

1. The transfer must be of a material part of the donor's estate; or

2. In the nature of a final disposition or distribution thereof; and

3. Without an adequate valuable consideration.

This case is not within the statute, because there was an adequate valuable consideration. It is true that there was no consideration for the acts of transfer or attempted transfer by the decedent himself. His acts, however, were not of themselves effective to vest title in the transferee. The transfer or attempted transfer was attacked by the executors. A suit to determine its validity was pending undetermined when a settlement was entered into between the executors, the widow, the ten children, and the executors of the decedent's first wife. This settlement was embodied in a decree of the Court of Chancery (125). By this settlement so embodied in a decree something was given up by all parties beneficially interested. The seven children by the first marriage received the proceeds accruing to them by the art treasures going to the estate

of the first wife, their mother (128). The widow and her three children, the beneficiaries of the trust into which the million dollars was placed or attempted to be placed, suffered by the estate of George J. Gould being diminished by the value of the art treasures. They benefited by the million dollars fund in question (120, 128) going into the trust for the widow for life and after her death to the three children (96). The executors of George J. Gould benefited by a settlement of a disputed claim with Jay Gould, the son of our decedent (131, 148).

The art treasures which went to the estate of the first wife had a total value of $700,321.08 (114). In view of the fact that the million-dollar transfer was disputed and attacked, this must be deemed adequate valuable consideration. The decree of the Court of Chancery adjudging the settlement proper is a conclusive adjudication that the several considerations thereby paid and received were adequate under the circumstances. The consideration of this settlement was necessary in addition to the donative intent of George J. Gould and his act expressive thereof, to make the transfer actually effective. It cannot be said, therefore, that the transfer was without an adequate valuable consideration. So the presumption statute does not apply. In the Courts below the Comptroller contended that *In re Kraft,* 6 Adv. Rep. 1832 (Buchanan, *V. O.* 1928) was an authority for the principle that the presumption statute requires that the consideration must be received by the decedent, and he argued, therefore, that as none of the consideration was actually received by the decedent the case was within the presumptive statute. An examination of the opinion of the Vice Ordinary in *In Re Kraft,* however, shows that the case did not at all deal

with the presumptive statute. The transfer in that case was admittedly in contemplation of death, and it was argued that it was taxable because it was not a gift, consideration having been received for it. The Vice Ordinary very properly decided that the language of the statute taxed all transfers within contemplation of death, but that there had been by decisions engrafted upon that language an exception which eliminated from the class of taxable transfers in contemplation of death those for which an adequate financial consideration had been received by the transferrer, so that his estate for tax purposes was not diminished. The opinion can be searched in vain for any reference to the presumption clause of the statute.

2. Outside the scope of the Presumption Statute the burden is on the State to establish that the gift was made in contemplation of death.

This, we believe, is conceded by the respondent, as it was conceded in his brief below. If authority is needed, we cite *In re Sacks Estate,* 101 Equity 709.

3. The State cannot show that the transfer was made in contemplation of death.

The appellants of course do not deny that when the transfer was made or attempted to be made by the decedent he was a very sick man, and sick of the illness of which he died approximately two months thereafter. We do contend, however, that the record shows clearly, first, that at the time of making the transfer the decedent did not expect that he would die of that illness, or had any particular expectation of death; and, second,

that the motive actuating the transfer was not to provide for the second wife and their children after his death, but to provide for them as against his creditors. In other words, it may have been fraudulent as against creditors, but it was not made in contemplation of death.

The claims of creditors arose as follows: The decedent was one of the four executors and trustees under the will of his father, Jay Gould. The latter had died domiciled in New York and an accounting of the administration of his estate was being had in the Supreme Court of New York. That suit was known as *Gould* v. *Gould*. In it very serious charges of maladministration were made by various beneficiaries of the Jay Gould estate against all four executors and trustees thereof generally, and specially against our decedent, George J. Gould. As a result of some of these charges he had been removed as executor and trustee. If the charges were sustained in anything like the amount asserted George J. Gould would be broken financially. The evidence is clear that our decedent was painfully aware of this.

When the decedent died he was in his fifty-ninth year (158). He sailed for Europe approximately a year before his death. Mr. Rice, who had been his confidential secretary for many years, testified that when he sailed he did not think his health was bad, and, indeed, if he had thought so he would not have gone at all (161). When Rice arrived in March, 1923, at Cap Martin the decedent told him that he, the decedent, had been very sick, that he had had pneumonia in Egypt, and that although he was suffering from high blood pressure he did not talk about it (163). While he knew he was then a sick man he did not talk of his chances of living or dying (172). He

insisted that the letter intended to effectuate the transfer be executed (307) although Rice advised against it (307) and read the decedent a copy of his will, emphasizing apparently in view of its provisions the mistake of the intended gift (307). George P. Langford testified that the decedent spent the summer in Scotland, where he took part in sports, playing golf, shooting, etc. (182), that he was always around and had no fear of himself at all, but he rested at times when his blood pressure bothered him (183). When the decedent moved to Cap Martin he complained of blood pressure, but he was not aware of his heart condition and went motoring and walking, the avocations appropriate to the season and place (184). Miss Davie, one of his trained nurses, testified at the time of the visit in consultation of Lord Dawson, the eminent British physician, the decedent talked about going to Scotland the following summer, saying he would consult Lord Dawson as to what place to go to (192). This was corroborated by Dr. Rendall (237). It was at the time of Lord Dawson's visit that the document intended to effect the transfer was signed.

The Supreme Court in the opinion referring to the transfer said: "It was made within two months of death by a man who knew he was in the last stages of arterior sclerosis" (Record 468, l. 12). From this charge that the decedent *knew* of his condition, we vigorously dissent. It has no support in the evidence.

It is of course an undoubted fact that the decedent had on his trip to Egypt early in 1923 a severe attack of bronchial pneumonia (212), but he recovered from this attack sufficiently to return to the south of France. One concludes, therefore, that the decedent at the time of actually signing the instrument of transfer, while a

sick man, undoubtedly thought that he was simply convalescing from the attack of pneumonia and had no expectation that he would never recover. Everybody knows that pneumonia is a most serious disease, and there is no reason to be surprised at a long convalescence.

In the record are some very significant letters written by the decedent to Mr. Rice from Scotland and from Cap Martin prior to going to Egypt. In the letter of September 21st appears the following:

> "What kind of a plan would it be to transfer the trust at the Bankers to New Jersey, and make it a *permanent trust there?* Would it be more safe from attack by Walker or others" (75).

In the letter of November 10th the decedent wrote:

> "I really think it wise to transfer that trust to New Jersey, and I favor *making it permanent,* Mrs. Gould and the children must be taken care of—Why defer it and why not put it in as safe a shape as possible, but we will see what Knowles has to say" (76).

Mr. Knowles referred to in the letter was a member of the firm of Taylor, Knowles and Hack, the personal counsel of the decedent in the New York accounting suit (167). In the letter of November 19th appeared the following:

> "I am debating whether it would not be part of wisdom for me to discontinue the trust at the Bankers, and give those securities or others, more suitable for a trust to Mrs. Gould to establish her's in the Commercial. When you get a chance talk this over with Knowles and give me your joint advice" (77).

The trust in the Bankers Trust Company was in the record at page 88, the revocation thereof

at page 86, and the trust with the Commercial Trust Company of New Jersey and Mr. Rice as trustees, into which the fund in question was directed to be put, is at page 96. At the time the trust was changed from the Bankers Trust Company as trustee to the trust with citizens of New Jersey, the decedent had been by order of the Supreme Court of New York removed from office as executor and trustee of the Jay Gould estate on the ground of his malfeasance as such (180). Mr. Rice testified that the decedent was fearful that this trust might be seized by Mr. Walker, general counsel for Frank Gould, the leading antagonist in the New York suit (180).

The decedent's will had been executed only as recently as May 27, 1922 (47). It made a very even distribution of the property over which he had power of disposal between the children by his first marriage and his second wife and their children. There is no evidence of any change of heart from his children by his first marriage to his second wife and their children. There is evidence, and lots of it, to which the Court's attention has just been called, of increasing worry over what his creditors in Gould *vs.* Gould might do. The motive for the transfer seems clear—to protect his wife and children immediately from any attack by the New York adversaries. This, we submit, cannot be said to be a transfer in contemplation of death.

Whether or not the gift is taxable as a gift in contemplation of death is all a question of the donor's intent. Of course a gift, even of a million dollars, made by a man in his fifties, is not necessarily in contemplation of death. Indeed, it was held by Vice Ordinary Backes, *in re Sacks*, 101 Eq. 709, that a substantial gift when the deceased was past seventy was not of itself

persuasive that it was made in contemplation of death, but merely a circumstance to be considered. Counsel for the respondent emphasizes the fact that the decedent was in very poor health when he actually signed the letter of gift. We must bear in mind, however, that he had formed the intent some time previously. This appears from the letters quoted hereinabove. At that time the only significant fact about his health was that he had high blood pressure. Many people in middle life, however, have high blood pressure and live for years. Before the decedent actually carried into effect the intent which he had formed he suffered from an attack of bronchial pneumonia. This is a serious disease, which may occur to anybody at any age, and from the acute condition of which our decedent recovered, but never really got well. There is nothing to show, however, that when he signed the donative letter he did not think that he was still simply convalescing from the attack, nor had any reason to suppose that he would not get well.

Again, we cannot too strongly emphasize the fact that the decedent's letters and other evidence show that the object of making the gift was to protect the decedent's wife and infant children from his creditors. Such a transfer, while it was subject to have been set aside by the creditors, cannot be said to be a gift in contemplation of death.

Every gift is made with an intent to benefit the donee, and everybody knows that he will die some day. *In re Sacks Estate, supra,* Backes, *V. O.,* held that a gift by a man over seventy, in value one-third of the estate of which he died possessed, within two years before his death, was not in contemplation of death. The Vice Ordinary found that the purpose was to establish and stabilize

the donee's financial and social independence. So it is in the case at bar.

4. The respondent contends that the Comptroller's determination is not to be reversed unless against the clear weight of the evidence. This is not correct. The facts themselves must be reviewed.

The Supreme Court, as well as the Ordinary, should review the assessment on the facts, and not merely decide that there was evidence upon which the Comptroller's figure may lawfully be based. We concede that a contrary doctrine has been followed by certain decisions in the Prerogative Court. Those cases all cite and go back to the case of *in re Pierce's Estate,* 89 Eq. 171. That line of cases is fundamentally unsound for two reasons:

(A) That doctrine is inconsistent with the well established principle that in matters of tax the Supreme Court will review the facts on which the assessment is based.

It is, of course, well settled that in proceedings such as these the action of the Ordinary is subject to review by the Supreme Court on certiorari. It cannot be that on certiorari to the Ordinary the Supreme Court will go into questions of fact to which the Ordinary will not. If the Supreme Court will review questions of fact then, *a fortiori,* the Ordinary, the Supreme Court's inferior for present purposes, also must, and should review questions of fact upon which the assessment is based. It is well settled that in matters of tax the Supreme Court reviews questions of fact. This is based, not upon any special provision of the Tax Act, but either upon that Court's in-

herent power, or Section 11 of the Certiorari Act of 1903, C. S. 405, which reads:

> "In all cases of writs of certiorari now pending or hereafter brought to remove any tax or assessment, or other order or proceeding touching any local or public improvement, or to review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county or municipal, from which he is removable only for cause and after trial, the court shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed, which testimony shall be considered by the court the same as if it had been taken by deposition on notice, and either party may take additional testimony. The Court may reverse or affirm, in whole or in part, such tax or assessment, or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank reviewed."

The command of that section is applicable to this case, even without considering the language of the transfer inheritance tax act, section 20 of that act, C. S. 5309, which reads:

> "The ordinary of this state shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this Act."

"All questions" certainly include questions of fact.

In *Gibbs* v. *State Board of Taxes, etc.*, 3 N. J. Adv. Rep. 986 (C. E. A. 1925), 101 N. J. L. 371, it was held by this Court that where the Supreme Court failed to weigh the evidence upon certiorari

and rendered such a decision as it thought proper according to the view it took of the evidence, the case would be remanded to the Supreme Court for that purpose. To the same effect is *Trenton and Mercer Traction Company* v. *Mercer Co. Board of Taxation,* 92 Law 398 (C. E. A. 1918).

There is no logical basis for making any distinction between inheritance tax cases and others. The citizen has the same right to a fair assessment in one case as in the other. Nothing in the statute granting a review in inheritance tax cases in any way limits this right, which the citizen enjoys generally in other cases of tax. Indeed, there is a stronger reason for giving the right of review in inheritance tax cases. In other tax cases there is a statutory review by the various tax boards before which the taxpayer is accorded a hearing. In transfer inheritance tax cases there is absolutely no hearing. The proceeding is *ex parte,* and if the rule contended for is sound the very official whose duty it is to get as much for the State as he can is the final judge on questions of value, subject only to review for legal error.

While the Comptroller has the power to call for additional evidence and to have an investigation, as he did in the case at bar, on the question of the gift in contemplation of death, and while at such an investigation the taxpayer may have the right to cross examination accorded him as, in this case, nevertheless, no right is given to the taxpayer to cross examine the Comptroller's witnesses, so to speak, or even to know on what he relies, nor has he the right to any hearing or argument.

These are all very cogent facts why the same rule that applies in other tax cases should apply in transfer inheritance tax cases.

(B) If the rule of In Re Pierce's Estate be followed, then the statute is unconstitutional and violative of the Fourteenth Amendment to the Constitution of The United States, because the procedure is not due process of law.

In *Ohio Valley Water Company* v. *Ben Avon Borough,* 253 U. S. 287, the Supreme Court of the United States held that a State statute under which a utility was not given a judicial review of the facts on which rates were based was violative of the Fourteenth Amendment. If there is no review, whether judicial or administrative of the facts, found by the Comptroller, then obviously the proceedings would come within the condemnation of the Supreme Court of the United States under the doctrine of the Ben Avon Borough case.

II.

The Comptroller erred in not allowing as a deduction payments totalling $1,825,000.00 made to the seven children of the decedent by his first wife, and in trust for the three children of the decedent by his second wife, paid as part of the settlement of claims asserted against the estate of the decedent for his breaches of trust as executor of and trustee under the will of his father Jay Gould, and as settlement of a suit in the Supreme Court of the State of New York known as Gould vs. Gould.

When these payments are fully explained and fully understood the Comptroller's error and that of the Courts below will clearly appear, but a rather careful scrutiny of the facts is necessary to a proper understanding of the situation.

Our decedent by his will, in the first paragraph, exercised the power of appointment given him

by the will of his father, Jay Gould, and appointed the remainder expectant upon his life interest in Jay Gould's estate equally among his seven children by his first wife. In the second clause he gave five legacies of $5,000.00 each. In the third clause he bequeathed $4,000,000.00 to his trustees in trust to pay the income to his widow for life; after her death to his children by her for their lives, and after their deaths as they should by will appoint, and in default of appointment among their next of kin. In the fourth clause he left his residue to his trustees in trust to pay the income to his ten children for life, and upon their deaths among their issue as they should appoint, and in default of appointment to their next of kin. He appointed testamentary guardians for his three minor children by his second wife, appointed executors and trustees (42-47).

George J. Gould, the decedent, was one of the four executors and trustees named in the will of his father, Jay Gould. The other executors and trustees were his brothers Howard and Edwin Gould, and his sister, Helen Gould Shepard. There were two other younger children of Jay Gould—Anna, Duchesse de Talleyrand, and Frank J. Gould, who were neither executors nor trustees. Jay Gould's will left his fortune with directions to his trustees to divide the same into six parts, one for each of the six children, and to pay the income thereon to each child for his or her life. After each child's death his share was left to his issue as he should by his will appoint, and in default of appointment, then among his issue per stirpes. If a child should die without issue living at his death, then his share was to be divided among the surviving children and among the issue of a child or chil-

dren then deceased. At the time of the death of George J. Gould, our decedent, neither Howard Gould nor Helen Gould Shepard had any issue and the facts were that in all human probability they never would leave any issue.

Jay Gould died a resident of New York State, and a suit for the judicial settlement of the accounts of his executors and trustees was started in the Supreme Court of the State of New York. Upon this accounting various serious breaches of trust were charged against all of the four executors and trustees, and in addition thereto, some were charged especially against George J. Gould, our decedent. This suit in the New York Supreme Court has been commonly called, and will hereafter, be referred to as Gould *vs.* Gould. After our decedent's death large claims were filed with his executors by various of the beneficiaries for life and in remainder of the Jay Gould Estate, such claimants being also parties to Gould *vs.* Gould. These claims were disallowed by the executors of George J. Gould, and within due time suits to enforce them were commenced in the New Jersey Court of Chancery.

Meanwhile, the litigation in the New York Supreme Court in Gould *vs.* Gould went forward to the point of an opinion by the Honorable James J. O'Gorman the referee to hear and determine that action. From this opinion it clearly appeared that a judgment would be entered in such an enormous amount against the estate of George J. Gould that if that judgment stood the test of appeals and was valid and effective generally rather than merely against so much of the estate of George J. Gould as was within the jurisdiction of the New York Court, the estate of George J. Gould would be completely wiped out. The same event was promised if the suits started by the

claimants as hereinabove mentioned in our Court of Chancery should be prosecuted to decrees.

In this situation negotiations for a settlement of Gould *vs.* Gould and of the liability of the four trustees of Jay Gould for their mismanagement and for the separate liability of George J. Gould himself were entered into.

George J. Gould, our decedent, having died, the remainder expectant upon his life estate under the will of Jay Gould had vested in possession. By paragraph First of our decedent's will (42) he exercised the power of appointment in Jay Gould's will, and appointed that remainder equally among his seven children by his first marriage. Obviously, those seven children, as remaindermen of the Jay Gould trust, were among the persons damaged by the breaches of trust committed by their father, our decedent, and the other trustees of the estate of Jay Gould, deceased, and they were therefore so to speak "on the receiving end" of any adjustment by way of settlement or by way of judgment of the New York accounting suit of Gould *vs.* Gould. They were, of course, parties to that suit, and decedent's three children by his second marriage were also parties to the New York suit. The latter were all infants and by their guardians *ad litem* they claimed that they also were on the receiving end of any settlement of that suit. They claimed that they, as well as the seven children by the first marriage, were issue of George J. Gould, and further claimed that such being the case, under the language of Jay Gould's will, the power of appointment could not be exercised so as to exclude them from sharing its benefits. They also claimed that they, together with the seven children of the first marriage, were entitled to share in any of the cross remainders expectant upon any of the

deaths of any of the five surviving children of Jay Gould without issue, *e. g.*, on the deaths of Howard Gould or Helen Gould Shepard.

Whether either or both of these positions taken on behalf of the three children of the second marriage would have been ultimately sustained by the New York Courts we cannot say. They were parties to that suit, however, and their guardians *ad litem* had to be parties to any settlement, and therefore had to be satisfied that their wards' interests were properly taken care of in any such settlement. All ten of the children of George J. Gould, therefore, as prospective recipients of the sums paid in settlement of Gould *vs.* Gould had to be satisfied with and agree to any such settlement. On the other hand, all ten of them were "on the paying end" of any adjustment, because all of them were beneficiaries for life in equal 1/10th parts in the residuary estate of our decedent (43, 44). Moreover, the three children by the second marriage were also interested as remaindermen in the preferential trust of $4,000,000.00 created by paragraph third of our decedent's will, of which trust his widow was the life beneficiary (43).

Under this peculiar situation of conflicting interests negotiation of the settlement was obviously a matter of nice adjustment. The litigation was settled and the settlement was embodied in two documents: (1) The stipulation for compromise entitled in the New York suit of Gould *vs.* Gould (347 to 384); and, (2) The agreement of December 16, 1926, between the seven children of our decedent by his first wife, the three children by the second wife, acting through their testamentary guardians, the decedent's widow, who by that time had remarried and was Lady Dunsford, and the decedent's executors (385-442).

The stipulation for compromise is entitled in the New York case of Gould *vs.* Gould and commences with a recital of the history of the litigation and of the desirability of its being compromised. It calls for immediate payments by Edwin Gould, Helen Gould Shepard, Howard Gould and the executors of George J. Gould of sums of $2,000,000.00 to the trustees of each of the six trusts under the will of Jay Gould, with certain interest thereon, and of additional payments of $2,750,000.00 each to the trustees of the trusts for Anna and Frank. Then Edwin, Helen and Howard all agreed to pay $300,000.00 to the Equitable Trust Company, to be held by it in three separate trusts of $100,000.00 each for the three children of George J. Gould by his second wife in accordance with trust agreements agreed upon. Edwin, Helen and Howard also agreed to pay $50,000.00, to be divided among the seven children of George J. Gould by his first wife. Edwin, Helen and Howard agreed to make certain payments during their lives to Anna and Frank. The executors of George J. Gould, in settlement of his separate liability, agreed to pay $60,000.00 to the trustees of each of the six trusts under the will of Jay Gould for the credit of the principal of each of those trusts, $40,000.00 to the trustees of the trusts for Edwin, Helen and Howard for the credit of the income of those trusts, and $175,000.00 to the trustees of the trusts for Anna and Frank for the credit of the income of those trusts. It was then provided in Clause IV of the Stipulation for the payment of the fees of counsel and guardians *ad litem*. In Clause VIII it is provided that the signing of the stipulation by the executors of George J. Gould and by or on behalf of his children was conditional upon the approval of the Courts of that

State of the stipulation for compromise and of the other agreement dated December 16, 1926.

That agreement was between the ten children of our decedent, his widow, his executors, and the three children by the second marriage, signed by their testamentary guardians. This agreement expressly referred to the stipulation for compromise, recited that the seven children by the first marriage were unwilling to sign the latter without the provisions for their benefit called for by the agreement of December 16, 1926 being made, and recited that the guardian *ad litem* of the three children of the second marriage was unwilling to sign the stipulation for compromise unless the provisions for the benefit of the said three provided by the agreement of December 16, 1926, were met. The agreement provided that upon its approval and of the stipulation for compromise by the Court, and upon the dismissal of an appeal by the three from an order of the New York Supreme Court adjudging that they had no interest in the remainder of the trust under the Jay Gould will for the benefit of George J. Gould for his life, that the executors would pay the seven $1,525,000.00, to be distributed equally among them, and to be charged against the capital of the preferential trust. The agreement also provided that at the same time $300,000.00 should be paid to the Commercial Trust Company of New Jersey and Schuyler Neilson Rice, as trustees for the three children of the second marriage, upon trusts set forth in an exhibit to the stipulation for compromise. These payments also were to be charged to the capital of the preferential trust. By the "preferential trust" is meant the trust of $4,000,000, created by the third clause of our decedent's will for the benefit of his widow for life and

after her death for his three children by her (42). The execution by the executors of George J. Gould of the settlement—that is to say—of the stipulation for compromise and of the agreement of December 16, 1926, was approved by decree of the Court of Chancery, and the specific performance thereof directed (320).

Although the settlement was embodied in these two separate documents it was nevertheless but one settlement. The two documents by their express terms were mutually interdependent. Paragraph VIII of the stipulation for compromise (379) expressly provided that its execution by the executors of our decedent, by the attorneys of his adult children and their assigns, and by the infant children of our decedent by their guardians *ad litem,* was conditional upon the approval by the Courts of New Jersey, not only of the stipulation for compromise, but of the other agreement. Paragraph VIII goes on to provide that all those signatory parties should forthwith take steps to submit the stipulation for compromise and the said other agreement to the proper Courts of New Jersey for approval.

On the other hand, the second document expressly recites that the stipulation for compromise:

> "As a result of protracted negotiations looking toward a settlement of all matters in dispute in said action, a Stipulation for Compromise has been reduced to definite form. A copy of that Stipulation is hereto attached and marked Exhibit Number 1 and made part hereof and this Agreement is the one referred to in Paragraph VIII, page 32 of said Stipulation for Compromise" (386).

On the same page of the agreement is the following recital:

> "The Seven are willing to sign such Stipulation on condition that an equitable adjustment be made, as herein provided, of the loss which would otherwise fall exclusively on the said residuary, and which would result from making the payments called for by said Stipulation, and also on condition that an appeal taken to the Appellate Division by the Guardian Ad Litem of the Three, who was appointed in the said New York action, from certain portions of a separate judgment entered in said action on December 16, 1925, should be withdrawn, and the Guardian Ad Litem was unwilling to sign said Stipulation for Compromise and to recommend the approval of the said settlement and to agree to withdraw the appeal taken by him as aforesaid, unless provisions should be made for the Three as in said Stipulation for Compromise and as herein provided."

The separate judgment of December 16, 1925 adjudged that the three children by the second marriage were not entitled to share in the remainder of the trust for George J. Gould for life. The withdrawal of that appeal therefore effectually eliminated the three from that trust and left it to be divided among the seven children by the first marriage. The stipulation for compromise itself in Paragraph I thereof provided that it was the intent and purpose thereof to provide for a settlement of all issues in Gould *vs.* Gould, including the above mentioned appeal from the separate judgment of December 16, 1925 (354).

It is of course legally possible for one agreement to be embodied in more than one written instrument. For example, contracts are often made by an exchange of correspondence. It is hard to see how two separate documents could

expressly be made more mutually interdependent and parts of one and the same agreement than has been done in the case of the two documents under consideration. The whole settlement, both the stipulation for compromise and the separate agreement, were approved both by the Supreme Court of New York and the Court of Chancery of New Jersey, the latter by the decree, a copy of which has been made part of the record in this case (320).

Pursuant to this settlement, embodied, as we have seen, in two documents, certain payments were made by the executors of George J. Gould. They appear clearly from the following tabular statement:

Arbitrary Number	Account Paid	Where Called For by Settlement	Where Shown in Account	Amount of Payment
1	Jay Gould Trustees, George Gould's share of joint and several liability	Section II A, First of Stipulation for compromise (356)	Exhibit VII (464)	$4,375,000.00
2	Jay Gould Trustees settlement of George Gould's personal liability	Section III of Stipulation for compromise (371)	Exhibit VII (464,466)	830,000.00
3	Fees of counsel and guardians ad litem of certain parties to Gould v. Gould	Section IV A of Stipulation for compromise (374)	Exhibit VII (465)	237,392.55
4	Seven children by first marriage	Section 2 of separate agreement (387)	Exhibit VI (463)	1,525,000.00
5	Trustees for three children by second marriage	Section 3 of separate agreement (387)	Exhibit VI (463)	300,000.00

Payments numbered 1, 2 and 3, totalling $5,442,-392.55, were allowed by the Comptroller as proper deductions. Payments 4 and 5, however, totalling $1,825,000, were disallowed, and it is this disallowance that is complained of. The last mentioned sum was paid by the executors out of the decedent's estate in addition to the sums totalling $5,442,392.55, which were allowed, and the estate of the decedent passing under his will to his beneficiaries was thereby further diminished by payments 4 and 5. To allow payments 1, 2 and 3 as deductions and disallow the additional payments, totalling $1,825,000 is to make a distinction without a difference.

The settlement was not reached and the payments were not made until long after the original affidavit had been filed by the present appellants with the Comptroller, and long after a tentative payment under protest had been made (66). After the settlement had been made and the sums paid, Mr. Rice, one of the executors, filed a supplemental affidavit (113 to 120) in which credit was claimed for the total of all of the above payments (118). Although, as above stated, the Comptroller in his assessment included payments totalling $5,442,392.55 in the deduction for debts, expenses, etc. (36) his treatment of the last two payments, totalling $1,825,000, was wholly unjustified. In the first place, he deducted the $1,825,000 from the $4,000,000 preferential trust. This appears in the assessment of the widow's life interest therein (36) and in the assessment of the remainder therein (37).

When he came to analyze the estate of the ten children, life tenants of the residuary estate, he valued according to their several ages the life interest of each of the ten children in that residue (37 to 40). He then arbitrarily added to the re-

spective life interests of each of the seven children of the first marriage the sum of $217,857.14, describing this sum in each instance as "legacy from above trust fund under agreement of December 16, 1926." The sum of $217,857.14 added to the estate of each of the seven children is of course one-seventh of $1,525,000, the sum paid to them pursuant to Section 2 of the agreement of December 16, 1926. The sums of $100,000 in trust for each of the three children of the second marriage were not added to their life interests, as was done with the seven, but were put in the remainder (41).

It will be seen, therefore, that the Comptroller arbitrarily treated these payments as if they passed under the residuary clause of the will of George J. Gould. As a matter of fact, they did not pass under the will at all. The Ordinary corrected this error and directed the Comptroller to assess the tax upon the trust fund of $4,000,000 without any diminution whatsoever as against the beneficiaries thereof (32). This is equally erroneous.

Counsel for the respondent argued in the courts below, that the payments totalling $5,442,392.55 were the total payments made in satisfaction of settlement of the Jay Gould estate litigation. That simply is not so. For some reason, which we cannot understand, the payments totalling $1,825,000 are in the executors' fourth account listed in Exhibit VI, whereas all of the other payments in settlement of Gould *vs.* Gould, that is to say, the payments allowed by the Comptroller, are listed in Exhibit VII, which is headed "Payments in Settlement of Gould *vs.* Gould" (464). In the summary of that account (447), however, both Exhibit VI and Exhibit VII are properly described as "Payments re Gould

vs. Gould.'' It cannot be said, therefore, that the account, taken as a whole, is in any way on admission that the $1,825,000 was not paid as part of the settlement of Gould *vs.* Gould.

This, moreover, might be said in explanation. Primarily payments in settlement of liability for breaches of trust of the Jay Gould Estate would be made to the various substituted trustees of that estate. Even though the trust for George J. Gould for life had terminated by his death, so that the remainders vested in possession, still no distribution of that remainder had been made, and payments had to pass through the hands of the trustee. As we have pointed out, however, the ten children have to be content with the settlement, and could insist and did insist on additional collateral payments being made. Some of these payments were to counsel and are included in the $5,442,392.55 to which no objection is made. The other ten payments constitute the $1,825,000 in controversy. Those payments might be considered as a sort of ''hold up'' but the recipients thereof had the whip hand and could insist upon the payments being made. Strictly speaking, the ten recipients are not residuary legatees under the will of our decedent. Those legatees are the Commercial Trust Company of New Jersey and Schuyler Neilson Rice. The ten recipients of the sum in controversy are only the life beneficiaries of the trusts of which the residuary legatees are trustees. The sum in controversy was paid, not to the residuary legatees under the will not under the will, but outright to the seven children and in trust for the three, upon trusts different from those declared in the residuary clause of our decedent's will. (Compare 44 with 429.) The $1,825,000.00 has gone out of our decedent's estate, has not gone to

the trustees of the residuary trust, and will never be accounted for by them.

How the payments are captioned or labelled in the executors' account is really of little importance, however. The decision as to the propriety of the deduction should be based upon the real facts of the case, and not upon labels.

Counsel for the respondent insists on stating that the disputed payment takes nothing more out of the estate of George J. Gould than the allowed deductions totalling $5,442,392.55. He says that it is merely a re-adjustment of the burden of that payment of $5,442,392.55 as between the residuary estate and the preferential trust to the widow for life. That is not so. The settlement agreement *might* have provided that a certain proportion of the $5,442,392.55 should be borne by and charged against the preferential trust. Had the agreement so provided it would have the effect contended for by the respondent, but it did not so provide. On the other hand, it called for payments totalling $1,825,000 *in addition to* the payments totalling $5,442,392.55. These additional payments were taken out of the decedent's estate and by that much reduced the net total of his estate passing under his will. This clearly appears from the summary of the Fourth Account, where this sum is included among the amounts for which the executors pray allowance, and which, along with the $5,442,392.55 and other administration expenses and losses, goes to reduce the estate from $13,214,898.71 to $5,009,788.39 (447). This payment was in fact made, and, as we have seen, in fact reduced the estate affected by or passing under the decedent's will.

Carefully analyzed, the agreement of December 16, 1926, calls for two separate and distinct transactions. The first is the payment to the seven children and in trust for the three of sums totalling $1,825,000.00. By operation of law the payment of that sum *pro tanto* diminished the residue of our decedent's estate. Then comes the second step or transaction, the reimbursement of the residue by the preferential trust.

As a result of this reimbursement the full burden of the payments totalling $1,825,000.00 falls on the preferential trust. We will concede that the Vice Ordinary was right in holding that the second step, the shifting of the burden from the residue to the preferential trust, will not be noticed by the state for tax purchases. That is something which the legatees of the preferential trust did with their legacy after receiving it. We will concede, therefore, that the decree of the Ordinary was right in directing the Comptroller to assess a tax upon the trust fund of $4,000,000.00 without any diminution whatsoever (32). The serious and palpable error lies in the failure of the Comptroller and of both of the courts below to give effect to the first step in the agreement of December 16, 1926, namely, the payment by the estate of $1,825,000.00.

A few tables or sets of figures will demonstrate the incorrectness of the position that there is merely a shifting as between the preferential trust and residue of the burden of the payments totalling $5,442,392.55 allowed by the Comptroller as deduction, or that there is merely a shifting of a legacy. The first table shows the condition of our decedent's estate before making any payments in settlement of the Jay Gould estate liability.

TABLE 1.

Preferential Trust.....	$ 4,000,000.00
Residue before making any payments in settlement of Jay Gould Estate liability	10,419,499.51
Total Estate.....	$14,419,499.51

Now let us consider what the situation would have been had the only payments in settlement of the Jay Gould liability been those allowed by the Comptroller, totalling $5,442,392.55. To show this we have:

TABLE 2.

Preferential Trust...		$4,000,000.00
Residue as in Table 1	$10,419,499.51	
Deduct payment in settlement of Jay Gould Estate liability allowed by Comptroller	5,442,392.55	4,977,106.96
Total Estate.....		$8,977,106.96

As we have seen, however, the ten children would not have been satisfied with this and the settlement agreement as made was different. Suppose, however, that the settlement agreement had been as counsel for the defendant contends it really was, namely, that the burden of the $5,442,392.55 was partially shifted from the residuary to the preferential trust. The result in that case is evidenced by

TABLE 3.

Preferential Trust ...	$4,000,000.00	
Deduct	1,825,000.00	$2,175,000.00
Residue from Table 2	4,977,106.96	
Add sum deducted for payment	1,825,000.00	6,802,106.96
Total Estate		$8,977,106.96

It will be seen that Table 3 leaves the sum of $1,825,000.00 in the residue. That is not what happened. It was paid to or in trust for the ten, outside of the estate, and never went to the trustees of the residuary trust. Suppose the ten had insisted merely on that payment being made directly to them, and had not also insisted on the shifting of the burden thereof from the residue to the preferential trust. We should have the situation disclosed by

TABLE 4.

Preferential Trust....		$4,000,000.00
Residue from Table 2	$4,977,106.96	
Deduction sum in controversy	1,825,000.00	3,152,106.96
Total Estate.....		$7,152,106.96

But the arrangement set forth in Table 4 was not satisfactory to the ten, and they insisted that the burden of the $1,825,000.00 paid out of the estate to or in trust for them should be transferred from the residue, where it otherwise would have lain, to the preferential trust. We have actually, therefore, the result disclosed by

TABLE 5.

Preferential Trust .	$4,000,000.00	
Deduct	1,825,000.00	$2,175,000.00
Net residue from Table 4	3,152,106.96	
Add sum deducted from Preferential Trust	1,825,000.00	4,977,106.96
		$7,152,106.96

With respect to the foregoing tables, the Court should note that the figures given for the residue do not take into account the five small legacies given in paragraph 2 of our decedent's will, nor certain other deductions which have been allowed by the Comptroller. The tables, however, are absolutely accurate with respect to the amount of the preferential trust, with respect to the sum of $5,442,392.55 allowed by the Comptroller as deductions in settlement of the Jay Gould estate liability, and of course with respect to the sum in controversy of $1,825,000. These crucial figures being accurate and consistent throughout the tables and the addition and subtraction being arithmetically correct, the tables are consistent with each other, and are valid and helpful for the purposes of illustrating the basis of assessment and of demonstrating the errors complained of.

Table 3 shows what the situation would be were there merely a shifting as between the preferential trust and the residue of the burden of payment of $5,442,392.55. It sets forth in other words what the situation would be if the agreement of December 16, 1926 contained only the second step or transaction into which it can be analyzed. On the other hand, Table 4 sets

out clearly what the situation would be if the agreement of December 16, 1926 contained only the first step or transaction; because Table 4 shows a payment out of the estate of $1,825,000.00, and shows that the burden of that payment is left where the law would leave it—on the residue. We venture the suggestion that if that had been the form of the agreement of December 16, 1926, and if therefore the burden of the payment were left on the residue, the Comptroller would have allowed the deduction. The mere fact that the agreement goes on to provide that the payment having been made the residue should be reimbursed for it by the preferential trust, does not negative the fact of the payment. Allowance for that payment should be made therefore, and the State should recognize the fact that that large sum has gone out of the State in settlement of claims against it, and is in no sense present in the estate for tax purposes. Table 5 shows both steps in the agreement of December 16, 1926, and shows the payment out of the estate and the reimbursement of the residue by the preferential trust. As hereinabove stated, however, we concede that for tax purposes the second step will be disregarded. In other words, for tax purposes the State will stop when the first step, that set forth in Table 4, has been reached. This means that notwithstanding the second step in the agreement, the preferential trust will be assessed at $4,000,000.00, and the residue at the lower figure before it received the reimbursement of $1,825,000.00 from the preferential trust. The Comptroller in making his assessment used the set-up of Table 3. The Ordinary modified this by directing him to use the set-up of Table 2. Both were wrong, because they failed to allow the

deduction of $1,825,000.00, which properly should be deducted as set forth in Table 4.

It may be argued by opposing counsel that the payment of $1,825,000 is not a settlement of a claim, but a mere shifting of legacies, because (1) It is paid to or in trust for persons who are also beneficiaries of our decedent's estate; (2) Because it is charged against the principal of the preferential trust; and (3) Because it is not paid to persons entitled to receive the same under the Jay Gould trust.

We shall take up and answer these points in order.

Answering the first point, it is, of course, quite possible for the same person or group of persons to be both creditors of an estate and legatees thereof. Under the terms of Jay Gould's will the ten persons who were life tenants of George J. Gould's residuary trusts were also among those persons who were damaged by his misfeasance as an executor and trustee of the Jay Gould Estate. The seven children by the first marriage clearly were, and the three children by the second marriage claimed to be, and had to be bought off. No settlement could be effected without the approval of all ten, and any money paid to them or for them was unmistakably part of the payments made in settlement of the Jay Gould litigation.

The payments being clearly in settlement of the Jay Gould litigation and in settlement of our decedent's liability for misfeasance as executor and trustee of the Jay Gould estate, they do not cease to be such because they are by agreement of the parties charged against the preferential trust instead of against the residuary estate, where in the absence of agreement, they would be

charged. It cannot have any effect upon the fact that the $1,825,000.00 should not be included in the estate for tax purposes.

Our answer to the argument that the sum in question was not paid to beneficiaries of the estate of Jay Gould is two-fold. In the first place, as we have pointed out, the seven children clearly were beneficiaries of that estate, and the three claimed to be, and had to be satisfied or there could be no settlement of the litigation over the Jay Gould estate. In the second place, as long as money is paid in settlement of the litigation it is not necessary that it be paid to beneficiaries of the estate of Jay Gould. For example, over $200,000.00 was paid to counsel and guardians *ad litem* as part of the settlement of the Jay Gould litigation (465), and not even the Comptroller claimed that this was not a proper deduction.

A very convincing fact that the sum in question was paid in settlement of a claim and not by way of adjustment of legacies is that though it was paid to persons who are life tenants of the residuary estate of our decedent, it was not paid to them in accordance with his will. It was paid outright to the seven, and in trust for the three upon trusts different than those set up in the residuary estate. (Compare 44 with 429.) If they did not receive it in accordance with the terms of the will they could receive it only in settlement of their claims against George J. Gould's estate for his misfeasance as one of his father's executors and trustees.

In the courts below counsel for the Comptroller cited a number of cases to the effect that compromises do not alter or affect an estate for transfer tax purposes. The compromises with

which those cases have to do are all what might be called testamentary compromises, that is to say, compromises with respect to the validity of a will or its construction, by which the estate is distributed otherwise than under the will. We have no quarrel with those cases. None of them, however, holds that where one who is a beneficiary under a will also has a claim against the estate as a creditor thereof, and his claim is either paid in full or compromised, that the amount he receives in settlement should be taxed as if he received it under the will. That is a very different situation, and is the situation here. The real truth of the matter is that the sum of $1,825,000 was paid by the executors out of the estate in part settlement of claims against the estate. It, just as much as the other sums paid in settlement of such claims or in discharge of other claims, should be allowed as a deduction.

CONCLUSION.

The decree of the Ordinary should be reversed with the following directions to the Comptroller:

1. To exclude from the estate for tax purposes the transfer of $1,000,000.00 par value First Liberty Loan bonds by the decedent in his lifetime.

2. To allow the sum of $1,825,000.00 as a deduction and not to include the same in the residuary estate.

Respectfully submitted,

G. W. C. McCARTER,
Of Counsel with the Appellants.

February Term, 1931.

New Jersey Court of Errors and Appeals

In the Matter of the Transfer Tax in the Estate of **GEORGE J. GOULD,** Deceased.	*On Certiorari.* / *On Appeal.*

BRIEF FOR DEFENDANT-APPELLEE, COMPTROLLER OF THE TREASURY.

This appeal is to review a judgment of the Supreme Court (On Certiorari) affirming a decree of the Prerogative Court, entered February 25, 1930, (advised by V. O. Backes) which affirmed, with a slight exception, an assessment of transfer inheritance taxes by the Comptroller of the Treasury in the matter of the estate of George J. Gould, deceased, late of Ocean County, New Jersey.

No attempt will be made at this point to state, in detail, the facts upon which the issues in this case rest since they must be dealt with at length in the argument to follow. To recite them here would, for the most part, be merely duplication. The usual Statement of Facts preceding the argument will, therefore, be dispensed with.

POINTS AT ISSUE.

The reasons assigned by appellants before the Supreme Court for a reversal of the decree of the Prerogative Court and the setting aside of the assessment by the Comptroller are as follows: (R. 3, 4)

(1) Because the Ordinary erred in holding that payments totaling $1,825,000 made by the executors to, or in trust for, the ten children of George J. Gould, deceased, were not deductible as payments made in settlement of claims against the estate of the said decedent.

(2) Because the Ordinary erred in holding that a transfer of First Liberty Loan Bonds of the par value of $1,000,000 made by the decedent to his wife in his lifetime was taxable as a gift in contemplation of death.

It might be noted that while the decree of the Prerogative Court (R. 31, 32) remands the assessment to the Comptroller for correction, this has to do simply with the method employed in levying the tax and the allocation thereof, and does not disturb the Comptroller's findings that the payment of $1,825,000 was not a debt of the decedent and that the transfer of $1,000,000 in Liberty Loan Bonds was made in contemplation of death. To the contrary the decree of the Prerogative Court, as affirmed by the Supreme Court sustains the assessment in these particulars.

The points at issue will be considered in the order set forth above.

ARGUMENT.

POINT I.

THE ITEM OF $1,825,000 IS NOT A PROPER DEDUCTION IN DETERMINING THE TRANSFER INHERITANCE TAXES DUE THE STATE.

It is appellee's contention that this point resolves itself to a question of fact; or, perhaps, more nearly to a question of very simple arithmetic. The Comptroller in levying the assessment allowed as a deduction, in ascertaining the net estate of the decedent, the sum of $5,442,392.55, representing the amount paid by the executors in full settlement of the estate's liability in certain litigation hereinafter referred to as *Gould* v. *Gould*. He disallowed as a debt of the estate the further sum of $1,825,000 claimed by appellants as an additional payment in settlement of that suit. The Comptroller determined that the last mentioned sum was in fact not an additional liability of the estate but an apportionment of the original liability of $5,442,392.55 against a certain preferential trust of the widow of the decedent as created by the third clause of his will, which otherwise would have been unimpaired, to the detriment of the residuary beneficiaries, who were the ten children of the decedent. Since the determination of the issue is dependent almost entirely upon the facts surrounding the *Gould* v. *Gould* litigation and the compromise settlements entered into between the various parties thereto, the circumstances thereof will be set forth with as much brevity as possible.

George J. Gould was one of four trustees under the will of his father, Jay Gould, who died Decem-

ber 2, 1892, a resident of the State of New York. (R. 330, 331). Said trustees entered upon their duties and continued in their fiduciary capacity without any judicial settlement of their accounts down to July 26, 1916. At that time, the trustees instituted a suit in equity in the Supreme Court of the State of New York (the N. Y. Supreme Court entertains both equity and law actions) for a judicial settlement of their accounts (R. 331). However, numerous objections to the proposed accounts were filed alleging, *inter alia,* improper handling of trust property and the commingling of trust assets with the trustees' personal assets, and as a result the settlement of the accounts dragged for years. Finally, however, and on the 10th day of November, 1925, the referee to whom the matter had been referred to hear and determine the many exceptions to the accounts, filed his opinion or report wherein he found that the four trustees were guilty of numerous breaches of trust and that they should be ordered to reimburse the various trusts for the losses sustained, although he failed to report the exact pecuniary liability incurred by each trustee. It was generally understood, however, that such liability would run into many millions of dollars. Claims in staggering sums had been duly presented to the New Jersey executors of George J. Gould's estate by the several litigants in the New York action of *Gould* v. *Gould,* all of which were disallowed by the executors and suits instituted thereon in this State within the statutory period. (R. 332, 333.)

Subsequently, and on December 4, 1926, a conditional Stipulation for Compromise was entered into between the various litigants involved in the New York suit of *Gould* v. *Gould* (R. 347, 380) whereby the actual pecuniary liability of the four trustees, including the Estate of George J. Gould, was defi-

nitely fixed. The Stipulation for Compromise was conditional, however, (R. 379, 380) upon the approval by the courts of the State of New Jersey of a certain Compromise Agreement to be entered into between the beneficiaries, executors and trustees of the estate of George J. Gould, deceased, and which agreement bears date of December 16, 1926. (R. 385, 389.)

This latter agreement recites that, whereas, if the New York litigation of *Gould* v. *Gould* should terminate somewhat in the manner of the referee's report, the estate of George J. Gould would incur liabilities which quite likely would impair the entire estate of said decedent, including a certain $4,000,000 preferential trust provided for his wife, Guinevere S. Gould, under clause three of decedent's will, and all parties to said agreement being desirous of having the Stipulation for Compromise of December 4, 1926 carried out, provided that some equitable adjustment of the estate's total liability under the Stipulation for Compromise could be reached whereby all should bear some portion thereof which would otherwise fall solely on the residuary beneficiaries of the estate, it was mutually agreed that the Executors of the estate should transfer from the $4,000,000 preferential trust under paragraph three of the will for the benefit of Guinevere S. Gould, the sum of $1,825,000, and distribute said sum; $100,000 in trust, for each of the three children of the decedent by his second wife, and $1,525,000 equally (*i. e.* $217,857.14 each) to the seven children of the decedent by his first wife. This Compromise Agreement, as well as the Stipulation for Compromise, was approved by Decree of the Court of Chancery, dated March 29, 1927, entered in the case of *Schuyler N. Rice, et als.*, v. *Commercial Trust Co.* (62/608-721). (R. 321, 325.)

Under paragraph "II A. First" (R. 356) of the Stipulation for Compromise, the four trustees were to pay to the several trusts therein designated, the total sum of $17,500,000; the Estate of George J. Gould being liable for the sum of $4,375,000 as his proportionate share—representing one-fourth of the total amount—he being one of the four trustees. Under paragraph III (R. 371, 374) of this Stipulation for Compromise, the Estate of George J. Gould was also individually liable for the payment to the several trusts of the total sum of $830,000. And, under paragraph IV-C (R. 376, 377), the estate also had to assume the payment of certain counsel fees and costs, subsequently determined to aggregate $237,392.55. These liabilities of the estate may be summarized as follows: (R. 464)

Liability to trusts under par. "II A-First"	$4,375,000.00
Personal liability under par. III	830,000.00
Liability for counsel fees under par. IV	237,392.55
Total Liability in settlement of Gould *v.* Gould	$5,442,392.55

The fourth account of the executors shows very clearly that the "Total payments in settlement of *Gould* v. *Gould*" aggregated $5,442,392.55. (R. 464). This was in full satisfaction of the liabilities of the estate of George J. Gould as determined by the Stipulation for Compromise of December 4, 1926. It should be clearly understood that the executors of the estate of George J. Gould did not pay, in addition to the aforementioned amount, the sum of $1,825,000. in final settlement of the estate's liability. That is purely a matter of fact, and it is

appellee's claim that a reading of the Stipulation for Compromise and an examination of the fourth account, as above pointed out, will conclusively prove that the only sum paid by the executors and for which they asked and were allowed credit in their account is $5,442,392.55.

There is, of course, no doubt about the fact that the Comptroller in determining the net taxable estate of the decedent allowed the sum of $5,442,-392.55 as a deduction. The analysis of tax (R. 36) shows that the Comptroller allowed deductions in the total sum of $8,268,953.88. Schedule "D" of the Executors' Inheritance Tax Report (R. 56) which schedule sets forth an itemization of this total demonstrates clearly that the sum of $5,442,-392.55, representing payments in settlement of *Gould* v. *Gould,* was included in this total and therefore allowed as a deduction in fixing the net estate.

Since the record proves that the only sum which the Executors of the estate of George J. Gould were required to pay in full liquidation of its liability under the New York suit was $5,442,392.55, and since the record also establishes beyond argument that the Comptroller allowed this sum as a deduction in arriving at the net taxable estate, appellee is at a loss to understand upon what basis the estate should be further charged with the sum of $1,825,-000 in determining the tax due the State.

It is appellee's contention that the record, through the executors' fourth account, including its supplement and the Compromise Agreement of December 16, 1926, between the beneficiaries of the estate, definitely establishes that the sum of $1,825,000 does not represent a debt of the estate of George J. Gould but is merely a distribution of his estate, to that extent, contrary to the terms of his will, and

with which the State of New Jersey in the matter of an inheritance tax is not in the slightest degree concerned.

The compromise agreement charging the widow's $4,000,000 preferential trust to the extent of $1,825,000, in favor of the ten children of the decedent merely allocates the total liability of $5,442,392.55 on account of the *Gould* v. *Gould* litigation among the widow and children rather than solely against the children as the residuary beneficiaries. Vice Ordinary Backes entertained no doubt about the correctness of this view, and incidentally the Vice Ordinary was thoroughly familiar with all of the facts connected with the Compromise agreement and the settlement of the *Gould v. Gould* litigation since he, as Vice Chancellor, advised the decree in *Schuyler Neilson Rice and Kingdon Gould, as Executors, etc., of George J. Gould, deceased,* v. *Commercial Trust Co. of N. J.* (*62/608*) which judicially approved the signing of both the Stipulation for Compromise of December 4, 1926 and the Agreement of December 16, 1926, by the widow, the children, the executors and the trustees of George J. Gould (R. 321, 325) and also advised the decree in *Kingdon Gould, et als., executors of George J. Gould, deceased* v. *Jay Gould, et als., executors of Edith K. Gould, deceased,* (57/479)—(R. 125, 133). In view of the Vice Ordinary's previous connections with the legal entanglements of the Gould Estates he was exceptionally well versed in all of the facts and circumstances of the Compromise agreements and his conclusions as to the effect thereof are grounded in a more intimate knowledge of the matter than would be the case under ordinary circumstances.

The opinion of the Vice Ordinary can leave no doubt of his view of the matter. After reciting the

pertinent paragraphs of the agreement of December 16, 1926 between the widow, the ten children and the executors of George J. Gould's estate, the Vice Ordinary says: (R. 27)

> "Plainly, the money was to be paid to the seven to offset *pro tanto* their loss in the residue of their father's estate and not for the damage suffered to their inheritance under their grandfather's will. Their contention that the State is not entitled to a transfer tax because the payment of $1,825,000 out of the widow's trust reduced by that sum the inheritable property of Mr. Gould upon the theory that it was made in discharge of an obligation of his estate is not admissible. * * *"

Appellants say that (Brief, p. 27)

> "* * * The settlement agreement might have provided that a certain proportion of the $5,442,392.55 should be borne by and charged against the preferential trust. Had the agreement so provided it would have the effect contended for by the respondent but it did not so provide. * * *"

It is respectfully submitted that the Compromise Agreement between the widow and ten children (R. 385, 389) not only does this very thing, but in plain English expresses this as its only object. The recital portion of the agreement in unmistakable terms says that the purpose thereof is to effect an "equitable adjustment," (R. 386) as between "Lady Dunsford," the "Seven" and the "Three," of the entire liability of the George J. Gould estate in settlement of the New York litigation. In fact, absolutely no other purpose is even intimated in the agreement. Let us turn to the agreement for just a moment and see exactly what it says. The following excerpt is taken from the recital portions of the Compromise Agreement which appears at page 386 of the record:

"As a result of protracted negotiations looking toward a settlement of all matters in dispute in said action, a stipulation for compromise has been reduced to definite form. A copy of that stipulation is hereto attached and marked 'Exhibit No. 1' and made a part hereof, and this agreement is the one referred to in paragraph 8, p. 32, of said stipulation for compromise. The performance of said stipulation for compromise would definitely determine the volume of the assets of the estate of George J. Gould, *and all the stipulated payments required to be made from that estate but for this agreement would be made from the residuary estate, which would also insure the integrity of said preferential trust, in which the three and Lady Dunsford are primarily interested.*
The seven are willing to sign such stipulation on condition that an *equitable adjustment* be made as herein provided, *of the loss which would otherwise fall exclusively on the said residuary, and which would result from making the payments called for by said stipulation,* * * *"

(Italics appellee's)

In view of the foregoing statements found in the agreement itself, can there be any doubt as to the end to be accomplished? The parties thereto are "Lady Dunsford," the widow; the "Three" children of the second marriage and the "Seven" children of the first marriage. Of course, Lady Dunsford was most anxious that the New York litigation be brought to a final conclusion on the basis of the settlement proposed in the Stipulation for Compromise, since that would "insure the integrity" of her $4,000,000 preferential trust under paragraph 3 of George J. Gould's will, but the "Seven" and the "Three," especially the former, would not fare so well under any such settlement because it contemplated the payment of $5,442,392.55 which would eventually fall entirely on them as residuary bene-

ficiaries, and, accordingly, they were not agreeable thereto unless some "equitable adjustment" of this payment could be made between all parties concerned. It will be remembered that the signing of the Stipulation for Compromise, by paragraph 8 thereof, (R. 379) was specifically made contingent, in so far as the Estate of George J. Gould, his seven adult children and his three infant children were concerned, upon the execution of the Compromise Agreement of December 16, 1926. In other words, the children of George were not to be bound by the Stipulation for Compromise unless they could agree with the widow of George Gould as to an apportionment of the liability fixed by that stipulation. How are appellants able to explain away these facts, and does not their concession as above referred to completely dispose of the question?

It has been appellee's contention from the start that the total liability of the Estate of George J. Gould in settlement of *Gould* v. *Gould* is definitely fixed by paragraphs 2, 3 and 4 of the New York Stipulation for Compromise in the sum of $5,442,-392.55, which amount has been allowed by the Comptroller in its entirety as a deduction in determining the net taxable estate and that, therefore, no further sum can be taken into account in so far as the inheritance taxes are concerned. The fourth account of the executors (R. 464)—see also appellants' brief p. 23—clearly shows the following as the total of payments under paragraphs 2, 3 and 4 of the Stipulation for Compromise:

Par. 2	$4,375,000.
Par. 3	830,000.
Par. 4	237,392.55
	$5,442,392.55

And they concede that this sum has been allowed as a deduction.

No mention, whatsoever, is made either in the Stipulation for Compromise or the Compromise Agreement of December 16, 1926 that an additional sum of $1,825,000 is to be charged against the estate of George J. Gould in settlement of the New York litigation or any other litigation or claims. In fact, as hereinbefore pointed out, the Compromise Agreement is clear to the effect that the $1,825,000 represents merely an "equitable adjustment" between the widow and the ten children of the entire liability of $5,422,392.55.

It must be apparent from a reading of the agreement that the children of George J. Gould, who were his residuary beneficiaries and who would have to bear the entire burden of this enormous sum, were not agreeable to go ahead with the settlement of the New York litigation unless the widow who was receiving a $4,000,000 preferential trust under the will was agreeable to bear a proportionate share thereof. And it is certain from the record that this figure of $1,825,000 which the preferential trust was to bear as its share of the total liability of $5,442,392.55 was not picked out of the air. The following facts demonstrate the soundness of the statement.

The net estate of George J. Gould, exclusive of the liability to the Jay Gould heirs as of the time of the execution of the Compromise Agreement (December, 1926) was in the neighborhood of $12,000,000. (R. 447). While the fourth account does not show the exact net estate as of December, 1926, because it is stated as of June 30, 1927, it is evident, from the facts set forth on page 447 of the transcript, that the net estate would approximate $12,-

000,000 after making adjustments for "administration expenses" and "losses" and apportionment of the income for that period. Of this net estate, Guinevere Gould would have been entitled to $4,000,000 under the preferential trust, and the remaining $8,000,000 would have formed a part of the residue for the ten children. It is apparent that the respective fractions are 1/3 and 2/3. Now, why was the sum of $1,825,000 decided upon as the share which the $4,000,000 preferential trust should bear of the total liability of $5,442,392.55? Simply because it represented a sum about as near 1/3 of that entire liability as it was possible to make it. (1/3 of $5,442,392.55=$1,814,130.85) Before the children of George J. Gould would enter into the New York Stipulation for Compromise they insisted that the widow bear some share of the total liability fixed by that Compromise. Since she took 1/3 of the estate of George J. Gould it was only logical that her proportion of the total liability should be in that fraction, and the Compromise Agreement fixed the round figure of $1,825,000 as her share. It is respectfully submitted that the foregoing supplies the facts upon which this apportionment was based and is cumulative evidence in support of appellee's claim that the sum of $1,825,000 represents merely an allocation of the original liability of $5,442,392.55 and not an additional liability in that amount.

The executors' fourth account (R. 464) shows the total of payments in settlement of *Gould* v. *Gould* as $5,442,392.55. Had there been no compromise agreement between the beneficiaries of the Gould estate, such as was executed on December 16, 1926, it is apparent that the ten residuary beneficiaries would have received only the sum of $1,271,002.50, as shown by the proposed fifth account of the executors, (R. 84) plus whatever might be left of the estate then remaining undistributed ($757,277.62—

R. 84) after the adjustment of administration expenses, counsel fees and taxes. Under the compromise agreement of December 16, 1926, their share of the estate was increased, however, to the extent of $1,825,000, and the interest of Guinevere S. Gould was proportionately reduced. In other words, she assigned that amount of the trust created for her benefit to the ten residuary beneficiaries in order to apportion the loss sustained by the estate in settling the Jay Gould accounting suit. This was an assignment of her interest to them, pure and simple. It did not increase or decrease the net estate of George J. Gould.

While, as a practical matter, the executors would pay out of the general assets of the estate in their hands the sum of $5,442,392.55 in full settlement of the liability of the estate under the Stipulation for Compromise, (R. 464) and transfer $1,825,000 from the preferential trust of the widow (R. 444, 445) over to the ten children (R. 463) in accordance with the terms of the Compromise Agreement, nevertheless, the substantial effect of the Compromise Agreement of December 16, 1926 was merely to allocate the total liability of $5,442,392.55 among the several beneficiaries of the estate instead of having it fall entirely on the residuary beneficiaries, who, otherwise, quite likely, would not have been agreeable to the settlement as proposed by the Stipulation for Compromise, since they would have had to bear the entire burden, resulting in a very small residuary share for each of them. Whether this was accomplished by paying the total sum out of the general estate of the decedent, and then reimbursing the ten residuary beneficiaries out of the preferential trust, or by directly charging the preferential trust with $1,825,000 as its share of the total liability and making up the difference out of the general estate, is immaterial so far as the amount of the net estate

of the decedent is concerned. It is apparent that the net estate of George J. Gould would remain the same under either procedure. By no calculation known to the appellee, can this second agreement be taken to increase the liability of the estate by $1,825,000, as claimed by the appellants. All the estate of George J. Gould was ever required to pay, and, in fact, ever did pay, in full settlement of its liability under the New York litigation, was $5,442,-392.55. The Compromise Agreement of December 16, 1926 did not increase this liability by a single penny. The net estate of George J. Gould had to remain the same, whether this agreement was executed or not. The second agreement represented merely a settlement between the parties themselves of the differences existing between them with respect to the allocation of the burden of this charge, and could not alter to the slightest extent either the net estate of the decedent or the distribution thereof as made by the terms of his last will and testament.

In re Reed's Estate, 162 N. Y. S. 412, 413.

This brings us to a discussion of the only principle of law involved under this point, viz: whether a compromise agreement between the legatees and devisees of the testator can affect the value of the net estate of the decedent or its distribution under the terms of his will insofar as the assessment of inheritance taxes is concerned.

Surrogate Fowler in *In re Reed,* supra, speaking of the effect of a compromise agreement such as we are concerned with here says: (162 N. Y. S. 412-413)

> "But such an agreement could not alter the terms of the will, or diminish the value of the property transferred by it, and it is upon the transfer effected by the will that the tax is imposed."

Perhaps, there is no more firmly settled principle of inheritance taxation than that which holds that the right of the State to an inheritance tax cannot be controlled or affected to the slightest extent by compromise settlements between the beneficiaries themselves, having for their purpose the distribution of the estate contrary to the terms of a will, either in settlement of actual or threatened litigation involving the distribution of the testator's estate.

MacKenzie v. *Wright,* 252 Pac. Rep. 521;
People v. *Upson,* 170 N. E. Rep. 276;
Estate of Graves, 242 Ill., 212;
Matter of Cook, 187 N. Y. Rep. 253;
People v. *Kaiser,* 306 Ill. 313;
Matter of Murray, 155 N. Y. S. 185;
In re Estate of Wells, 142 Iowa 255;
In re Estate of Sanford, 90 Neb. 410;
Baxter v. *Treas. & Rec. Gen'l.,* 209 Mass. 459;
In re Waldron's Estate, 267 Pac. Rep. 191;
Matter of Supplee, 187 N. Y. S. 560;
Matter of Stockwell, 158 N. Y. S. 320;
Matter of Reed, 162 N. Y. S. 412;
Matter of Rossi, 169 Cal. 148.

The Supreme Court of Illinois in the *Estate of Graves, supra,* says: (242 Ill. 212, at 218)

> "No changes of title, transfers or agreements of those who succeed to the estate, among themselves or with strangers, can affect the tax. All questions concerning it must be determined as of the date of the decedent's death.
> * * *
>
> Henry Graves died testate. His will disposes of all his estate. The whole of the residuary estate vested, at the instant of death, in the residuary legatees. The inheritance tax was then due and payable. The beneficial interest in the property then passed to the legatees and

their succession gave rise to the tax. Subsequent events did not affect it. (In re Cooke, 187 N. Y. 253)."

The Supreme Court of Arizona in the case of *MacKenzie* v. *Wright* reasons as follows: (252 Pac. Rep. 521, at 522)

"* * * The residuary legatee became, as of the date of the testator's death, the absolute owner of the residium, and on that date the State's tax, at the rate fixed for a legate of his class, fell due and became a lien thereon until paid. Nor do we think these results are defeated or changed by a compromise agreement of the parties that consents to the probate of the will on condition that the residuary legatee will give to the contestant a named portion of the legacy to withdraw the protest, even though such agreement is approved by the court in its order of distribution. The portion received by Booth was not nominated in the will nor did he inherit it. Though it may have come from the testator's estate, it was not of the estate, but of the property of the residuary legatee. Booth did not receive it as heir to Souffrien nor as devisee or legatee. * * * Booth's succession was through MacKenzie and not Souffrien."

This rule works both ways, and so it has been held that where the residuary estate was left to charitable institutions entitled by Statute to exemption from the transfer tax, and the probate of the will was objected to by the next-of-kin, resulting in a compromise agreement whereby the residuary beneficiaries consented to the transfer of one-third of the estate to the next-of-kin who were in the taxable class, the State was not entitled to a tax on the one-third portion acquired under the compromise agreement by the next-of-kin, since they took not as next-of-kin or legatees of the decedent but as assignees of

New Jersey State Library

the residuary beneficiaries. (*In re Murray's Estate,* 155 N. Y. S. 185.)

There is nothing mysterious about this rule which refuses to take cognizance of compromise agreements insofar as the assessment of inheritance taxes is concerned. It is fundamental that the tax is laid on the transfer by will or the intestate laws of the net estate of which the decedent died seized. Once that transfer takes place, the tax attaches and becomes a lien upon all of the property, and subsequent arrangements between the parties can have no effect upon the State's right to a tax. If the beneficiaries under the will see fit to assign their inheritances to others, either gratuitously or because of necessity, in order to halt actual or threatened litigation by disgruntled heirs at law or next of kin regarding the disposition of the testator's estate, that is solely their concern. The State lays no tax on transfers by assignment. The only devolution which is subject to the tax is the one from the dead to the living. The benefited parties under a compromise agreement take as assignees of the legatees and not as legatees of the estate.

As pointed out above in the case of *MacKenzie* v. *Wright,* "though it (the property assigned) may have come from the testator's estate, it was not of the estate, but of the property of the residuary legatee." The Court of Appeals of New York in the *Matter of Cook, supra,* says: (p. 259)

> "A succession tax is measured by the legal relation which the legatee bears to the testator and is not affected by the relation which an assignee of the legatee bears to him."

It seems so obvious that the transferee under a compromise agreement takes not as a legatee under the

will of the testator but as an assignee under the agreement, as to require no further citations of authority.

Matter of Cook, supra.

The compromise settlement, under which the widow agreed to transfer $1,825,000 out of her $4,000,000 trust to the ten children of the decedent, is nothing more nor less than an assignment to that extent to the ten children of the testator. Under the third clause of the will, $4,000,000 passed in trust for the benefit of the widow. If she did not acquire it under the will, then she could not have assigned, since it could pass to her in no other manner. The residue of the estate passed to the ten children. It is fundamental that the legatees and devisees of the testator cannot by compromise between themselves change the terms of the testator's will or any distribution of his estate made thereunder.

Matter of Cook, supra.

The Court of Appeals of New York in that case says: (p. 259)

> "The compromise did not change the will. No settlement could change a word that the testator wrote. The will stands as it is written and the most solemn instrument executed by all parties interested could not convert a bequest to the nephews and nieces into a bequest to the widow."

While the widow and ten children of the decedent may by agreement distribute the estate of the testator among themselves in a manner contrary to that which he has done by his will, nevertheless, they cannot by such an agreement alter the terms

of that will, affect the amount of the net estate of the decedent, or change the amount of inheritance tax due the State of New Jersey.

The mere fact that the compromise agreement in the instant case assumes the dignity of a decree of the Court of Chancery, does not place it on any higher plane than any ordinary compromise settlement insofar as the matter of inheritance tax is concerned.

> *Baxter* v. *Treas. & Rec. Gen'l.,* 209 Mass. 459;
>
> *MacKenzie* v. *Wright,* 252 Pac. Rep. 521;
> *People* v. *Kaiser,* 306 Ill. 313;
> *In re Estate of Wells,* 142 Iowa 255.

The Supreme Court of Massachusetts in *Baxter* v. *Treas. & Rec. Gen'l.,* upon this specific point says: (p. 463)

> "* * * In the case before us there can be no doubt if the will had been admitted to probate without a record of the agreement the tax would have been assessed in accordance with the terms of the will, although the agreement as to the division of the estate would have been perfectly valid. *For reasons hereinbefore stated the amount of the tax is not changed by the fact that the agreement was approved by the court and made a part of the decree.*"
>
> (Italics appellee's.)

Prosecutors candidly admit all of these rules and Vice-Ordinary Backes had no doubt of their applicability to the case sub judice as is evidenced by the syllabus to his opinion: (R. 24)

> "1. A transfer tax, upon the death of a testator, may be levied only upon the transfer of

property as directed by his will. A transfer over of such property by one beneficiary to another by way of an equitable distribution is not taxable."

The opinion itself is, of course, more explicit on this phase of the case (R. 27, 28, 29).

"* * * The tax however should not have been levied against them, and for this reason the tax is imposable only upon the transfer of the property by will. The thing taxable was the transfer by the will of the four million dollar trust fund for the widow and her children. The seven took $1,525,000 of the widow's trust not by the will of their father, but contrary to it, by transfer from the widow and her children. That transfer was not taxable. That she and they chose to bargain with the seven to surrender a portion of their trust to induce them to subject their inheritance under their father's will to the burden of the $5,442,392.55 due the Jay Gould estate, and to reimburse them for the consequent depreciation of their shares of that inheritance is wholly irrelevant to the power to levy a tax upon the transfer of property by death. It is true that a transfer tax is measured by the net amount passing to the beneficiary; and that rule would be satisfied by levying the tax against the widow's trust as an entirety for it was transferred from the dead to the living in its entirety; in fact, the contract presupposes its integrity in providing that the $1,525,000 to be paid the seven shall be charged 'against the capital of the preferential trust.' It cannot escape tax by the beneficiaries making part of it over to others any more than if they had made it over to strangers. It may be entirely equitable, as the appellants submit, that the widow's trust should not be taxed for more than the reduced amount of the trust but that is an equity between the seven and the widow and her children with which the State has no concern. The adjustment of the equities must be left to them

> to their contract or conscience. At all events the State is not interested, and it was not the privilege of the Comptroller to take notice of the manipulation of the property by the beneficiaries as between themselves. His duty began and ended with levying the tax imposed by the statute on the transfer of property by the will of Mr. Gould. * * *"

The last will and testament of George J. Gould was admitted to probate and must stand as a valid and lawful disposition of his estate until set aside, and the tax due the State of New Jersey must be assessed in accordance with the provisions of said will, and no agreement among the beneficiaries thereunder, even though it may have been approved by a decree of the Court of Chancery, can alter a single provision of that will or affect in any way the amount of the taxes due the State.

Guinevere S. Gould, under the third clause of the will, succeeded to a preferential trust of $4,000,000, and unless it be definitely established that she has renounced the provisions of the will for her benefit, the tax must be assessed accordingly. Perhaps the best evidence of the fact that she has not elected to renounce the provisions of the 3rd paragraph of the will or any portion thereof, but did to the contrary take the full $4,000,000 trust, is the following statement contained in the fifth proposed account of the executors: (R. 85)

> *Accrued Interest on Primary Trust*
>
> Commercial Trust Company and Schuyler Nielson Rice, trustees for Guinevere S. Dunsford, interest on $4,000,000 legacy, as per Chancery Court decree of October 24, 1927 ..... $605,000.

I take it to be hornbook law that a legatee cannot take in part and renounce in part, so that prosecutors cannot urge that Mrs. Gould renounced the legacy to the extent of $1,825,000 and cannot, therefore, be taxed on the transfer thereof. It is, of course, conceded that a legatee cannot be forced to pay a tax on a transfer which he refuses to take. But, even conceding that Mrs. Gould be considered —admitting that she might legally do so—to have renounced her benefit to the extent of $1,825,000, it is obvious that the State's right to a tax would not be defeated, since, in that event, the portion renounced by her would fall into the residue and the transfer thereof to the residuary beneficiaries would be subject to the same tax as presently imposed.

At this point it might be noted that the assessment, in one respect, is technically incorrect. This fact was pointed out by appellee to the Prerogative Court and resulted in the decree containing a provision for remanding the assessment to the Comptroller for correction in that regard. While the Comptroller in levying the tax disallowed the prosecutors' claim for an additional deduction of $1,825,000, he did, however, compute the respective interests of the widow and ten children in accordance with the terms of the compromise agreement of December 16, 1926. In other words, instead of taxing the $4,000,000 preferential trust to the widow and the residuary estate to the ten children of the testator, as though the compromise agreement was nonexistent, the assessment was completed in accordance with the terms of the agreement, and the widow's share was determined to be $2,175,000 under clause three, representing $4,000,000, less the sum of $1,825,000 assigned by her to the ten residuary beneficiaries, and the transfer of the $1,825,000 was taxed to the ten children of the testator in accordance with the proportions set out

in said agreement. This course was adopted more as a matter of convenience to the estate than pursuant to the rule applicable in such cases. Of course, such action was clearly contrary to the rule as hereinbefore pointed out to the effect that the assessment of tax cannot be altered by compromise between the parties, and the Vice Ordinary accordingly directed that the assessment be corrected so as to entirely disregard the Compromise settlement. (R. 27, 28.) It is to be understood, however, that this change will result in an *increase* and *not a decrease* in the amount of taxes chargeable.

POINT II.

THE TRANSFER BY THE DECEDENT OF $1,000,000 IN LIBERTY LOAN BONDS ON MARCH 21, 1923 TO HIS WIFE WAS MADE IN CONTEMPLATION OF DEATH.

(A) Transfers in contemplation of death are taxable.

Ever since the passage of Chapter 227, Laws of 1906, transfers in contemplation of death have been subject to tax in this State. Chapter 228, Laws of 1909 (4 C. S. par. 537, p. 5301), being the basic act under which all taxes are at present levied, directs that transfers

> "by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor"

shall be taxed in the same manner as transfers by will or the intestate laws. Taxes levied on transfers of this nature have been sustained by our courts in numerous cases.

In re Bottomley, 92 N. J. Eq. 202;
In re Hall, 94 N. J. Eq. 398;
Modified 99 N. J. L. 1;
Affirmed, 100 N. J. L. 405;
Pierce v. *Bugbee,* 128 Atl. Rep. 252;
Affirmed 101 N. J. L. 411;
In re Dupignac, 96 N. J. Eq. 284;
Kunhardt v. *Bugbee,* 130 Atl. Rep. 660;
Re-argued 134 Atl. Rep. 118;
In re Kraft, 6 N. J. Adv. Rep. 1832.

(B) The transfer sub judice is presumed, by statute, to have been made in contemplation of death.

Prior to the passage of Chapter 174, laws of 1922 (effective March 11, 1922) the burden of establishing a gift to have been made in contemplation of death was upon the state.

In re Sacks's Estate, 101 N. J. Eq. 709;
Gleason & Otis on Inheritance Taxation, (4th ed.) p. 369.

Under this amendment, however, the burden is now cast upon the estate to prove that the transfer, if within two years of death, was not made by the donor in contemplation of death.

Kunhardt v. *Bugbee,* 130 Atl. Rep. 660;
In re Sack's Estate, supra.

Section 1, sub-section 3 of this amendment (Chapter 174, Laws of 1922—1911-1924 Cum. Supp. to C. S. par. 208-537, p. 3573) reads as follows:

"* * * Every transfer by deed, grant, bargain, sale or gift, made within two years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof,

> and without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section."

George J. Gould died May 16, 1923, and the transfer was perfected on March 21, 1923 (approximately two months prior to death) so that it is obvious that said transfer is, by statute, presumed to have been made in contemplation of death.

True it is that this statutory presumption may, by proof to the contrary, be rebutted, but it seems to appellee that the most minute examination of all of the evidence in the case will fail to disclose even the slightest bit of proof upon which to overcome this presumption. Of course it is clear that the burden of rebutting this presumption rests heavily upon the appellants.

> *Kunhardt* v. *Bugbee*, 130 Atl. Rep. 660;
> Re-argument, 134 Atl. Rep. 118.
> (*Not officially reported.*)

Absolutely no testimony has been introduced by them to show that the decedent was not in a bad way physically. In fact all of the testimony in the case is overwhelmingly to the contrary as will be fully shown under sub-point (C).

The only requirements of the act in order that the two year presumption clause may operate are that the transfer:

(a) Be of a material part of the donor's estate.

(b) *Or,* that it be in the nature of a final disposition or distribution of his estate.

(c) And, that it be without an adequate valuable consideration.

Surely, appellants do not claim that the transfer does not constitute a material part of the donor's estate. The gift approximated $1,000,000,—a sum which in itself would constitute a material part of any estate no matter how large.

Estate of Stephenson, 171 Wis. 452.

The Supreme Court of Wisconsin in that case, speaking of what constitutes a material portion of one's estate, says: (p. 460)

> "The size of the gift itself, irrespective of the size of the estate, has a direct bearing upon the answer. It was the legislative intent that a gift of a material part of an estate made within six years of the donor's death should not escape taxation. Now a large sum of money is a material part of any estate no matter how large, because it is a matter of substance—a matter that is not immaterial."

The decedent's net taxable estate as of the date of death (R. 9) totalled $6,498,533.09 which figure includes the $1,000,000 transfer of March 21, 1923, so that the transfer equalled approximately 15½% of the donor's estate. This is a sufficient percentage of an estate to constitute a material portion thereof, as has heretofore been held by the Prerogative Court *In re Dupignac's Estate,* 96 N. J. Eq. 284, 285. Vice-Ordinary Buchanan in that case says: (p. 285)

> "(There is a further condition precedent specified in this statute, namely, that the gift be of 'a material portion of his estate or in the nature of a final disposition or distribution thereof.' *This, however, need not here be considered, since the gifts were obviously of a ma-*

> *terial portion of the estate—the first one, $75,000, being approximately ten per cent. of the net estate, and the second, $127,000, being more than twenty per cent. of the net estate—and the appellants so concede.)"*
>
> (Italics appellee's.)

The Supreme Court in its opinion in the case *sub judice* says: (R. 468)

> "The transfer was of about one-sixth of the net estate—certainly a material part thereof. * * *"

Appellants cannot escape the statutory presumption upon the ground that the transfer was founded upon an adequate valuable consideration—a bona fide purchase and not a gift—since there is absolutely no proof of an adequate consideration therefor. Certainly there cannot be the slightest doubt in anyone's mind who had any connection with the suit of *Guinevere S. Gould against the Commercial Trust Company (54/539)* that the very foundation of Mrs. Gould's claim was that Mr. Gould had made a bona fide and completed *gift* to her and not that she was asserting her right of ownership on the basis of a purchase for full valuable consideration. The testimony in that suit seems definitely to put at rest any doubt upon this point. There is nothing in the record, so far as appellee is aware, and appellants point to nothing, that would establish the receipt by the decedent of a full valuable consideration for this transfer approximating $1,000,000.

Appellants in their brief (pp. 3, 5) urge that there was a consideration for the transfer and, therefore, that the statutory presumption cannot prevail. If we examine carefully the reasons supporting their contention it will be quite apparent, however, that the claim is not meritorious. It is readily admitted

by them that the transfer from the decedent to his wife was a "gift" pure and simple; further that "it is true that there was no consideration for the acts of transfer or attempted transfer by the decedent himself." These concessions, in themselves, are ample to establish that the transfer is within the statute since it is settled that the consideration necessary to take a transfer beyond the purview of the act must be received by the decedent (donor).

In re Kraft, 6 N. J. Adv. Rep. 1832, 1837.

Vice Ordinary Buchanan in *In re Kraft, supra,* very definitely establishes the rule: (p. 1837)

> "Obviously, then, it is only when the adequate valuable consideration of substantially equal value to the property transferred is received by the *transferor,* that the transfer in contemplation of death is not taxable."
> (Italics appellee's.)

Appellants urge that since an action was instituted by the executors of George J. Gould against the widow to set aside the gift, which was by compromise settled, along with several other actions pending between the parties, that such settlement must be looked upon as establishing a consideration for the gift. But this consideration urged by appellants, if there was any, passed between the widow, the children and the executors of George J. Gould, deceased, and not between the widow and Mr. Gould.

The following excerpt from the opinion of the Supreme Court (R. 468, 469) clearly shows that that Court had little doubt about the question of consideration:

> "* * * The transfer is said to have been for an adequate valuable consideration. There

was no attempt whatever to show any consideration for the transfer at the time the same was made. The death of Mr. Gould precipitated many suits. Some of his ten children assailed this transfer. In a family settlement, it was confirmed and it is said that the consideration for the settlement affords consideration for the transfer. * * *"

Quoting from *In re Kraft,* the Court continues:

"* * * *Obviously, then, it is only when the adequate valuable consideration, of substantially equal value to the property transferred is received by the transferor, that the transfer in contemplation of death is not taxable."*

(Italics appellee's.)

How any disposition of the subject matter of the gift made by the widow subsequent to the death of the donor can be looked to in order to establish an adequate valuable consideration as between the original donor and the donee is not at all clear. It is, perhaps, often the case that a donee may see fit to sell the property transferred for full consideration but how can that have any bearing upon the transaction between the decedent and the donee. Nor could the fact that the donee in turn transferred the property to a third person as a gift be material in considering its taxable status as between the donee and the decedent. What disposition Mrs. Gould saw fit to make of the gift subsequent thereto is of no concern to the state. The test of receipt of adequate valuable consideration by the donor, is "whether or not the net practical result and effect of the transaction is a substantial diminution of the assets of the decedent." (In re Hall, 94 N. J. Eq. 398, 404). Surely, appellants will have a very difficult task in establishing that the estate of George J. Gould was not diminished by

a million dollars immediately following the transfer to his wife.

Appellants say that *In re Kraft, supra,* does not support appellee's claim and that the opinion in that case "can be searched in vain for any reference to the presumption clause of the statute." Apparently appellants have overlooked the statements of the Vice Ordinary appearing at page 1836, of 6 N. J. Adv. Rep. with reference to the "second sentence" in the contemplation of death paragraph. The so-called "second sentence" is the presumption section of the statute. Further, it is quite clear from a reading of the entire case that the presumption raised by the statute had a material bearing upon the disposition of the case and that the subject of consideration received most careful attention by the Court. All that was said by the Court in the *Kraft Case* relative to consideration applies with equal force and effect to the present matter.

In order to avoid any possibility of misunderstanding, it might be well to state at this point that the statute does not require, as a prerequisite to the existence of the statutory presumption, that it be shown that the transfer was not only of a material part of the donor's estate, but also that it was in the nature of a final disposition or distribution thereof. It is to be particularly noted that the provisions of the statute are disjunctive in this regard. Every transfer of a material part of the estate *or* in the nature of a final distribution thereof is within the presumption. The act very specifically makes the transfer of any portion of the estate, if material, or the transfer of even the slightest fraction thereof, though not a material part of the estate, if in the nature of a final distribution, taxable. The legislature has very definitely—and wisely—

made these provisions disjunctive and not conjunctive.

But, even though the statute might be viewed otherwise, it is clear, beyond peradventure, that the transfer sub judice was testamentary in character and in the nature of a final distribution of that portion of his estate. It will be noted that the decedent in his will showed quite a preference for his wife by creating a trust in her favor under clause three in the sum of $4,000,000 (R. 42), leaving the residuary estate to his ten children (R. 43) which equalled only a very small fraction of this sum when divided among the ten.

It is appellee's contention that, even if the record were absolutely nude of all testimony and evidence relative to the decedent's physical condition at the time of the transfer, that the assessment must be affirmed, since appellants have failed utterly to introduce the slightest bit of proof to overthrow the statutory presumption. To the contrary, as will be pointed out immediately following, the record is bristling with evidence establishing that the decedent at the time of the gift was in a very serious physical condition and that he well realized the circumstances. In fact, the testimony is such, in appellee's humble opinion, as to warrant the conclusion that the gift was more in the nature of one *causa mortis* and not merely a gift *inter vivos*.

(C) Donor's physical condition, even in absence of statutory presumption, is sufficient to warrant the Comptroller's finding that the transfer was made in contemplation of death.

Never, in the history of the department, has it been called upon to defend in litigation an assessment of tax where the facts appear so overwhelm-

ingly to support the Comptroller's conclusion that the transfer was made by the donor in contemplation of death. It can be said, without much fear of contradiction, that appellants will have a very difficult task in locating a single case in this country, and certainly none in this State, holding that a transfer made under circumstances such as we have here, was not made by the donor in contemplation of death. In all of the New Jersey cases cited by appellee hereinbefore, the transfers were held to have been made in contemplation of death and under circumstances which bear not the slightest resemblance to those existing in the present matter.

While it is always difficult in cases of this kind, depending as they must in the final analysis upon their own individual facts, to cite decisions which are directly in point and dispositive of the issue, it does appear clear to appellee that the present matter is fully within and absolutely controlled by the decision of the Supreme Court in the matter of *Kunhardt* v. *Bugbee, supra.*

To recite in detail at this point all of the evidence upon which the Comptroller concluded that the transfer was made by Mr. Gould in contemplation of death, would be to copy verbatim practically the entire record pertaining to the decedent's physical condition, since it is all favorable to the State's claim.

The transfer, which is the subject of the tax, was involved in the chancery suit of *Guinevere S. Gould* v. *Commercial Trust Company (54/539),* where the validity of the gift was under attack. It is the testimony taken in that case, and which was made a part of the Comptroller's record in the inheritance tax proceeding, that supplies the facts principally upon which the assessment has been based, although

we also have the testimony of two witnesses taken by the Special Investigator appointed by the Comptroller to investigate this matter insofar as the inheritance tax proceeding was concerned. The testimony which appears in the State of the Case includes that of Mrs. Guinevere S. Gould, the donee (R. 291-299); at least three of the children of the decedent by his first marriage (R. 204-210; 225-227; 314-316) two doctors (R. 212-214; 233, 241-246); three nurses (R. 187-192; 282-290); and the decedent's personal secretary (R. 300-310) all to the effect that the donor, shortly preceding and on the very day of the transfer, was a *"very sick man."* In fact, he was so sick that he never left his room for the period commencing about a month prior to the transfer down to the time of his death. He actually survived the transfer by only fifty-six days.

In order to place the facts relative to the physical condition of the donor as clearly and as concisely as possible before the court, it is deemed advisable to treat them with respect to four separate periods, namely:

(1) *The period commencing with the Summer of 1922, down to March 1, 1923.*

(2) *The period commencing March 1, 1923 and ending March 21, 1923.*

(3) *The date of transfer, March 21, 1923.*

(4) *The period following March 21, 1923, and down to the date of death.*

(1) *The period commencing with the Summer of 1922, down to March 1, 1923.*

The testimony is to the effect that Mr. Gould sailed from America for Europe on May 30, 1922. (R. 159) He first went to England, and a short

time later moved over to Scotland, where he took up a shooting place. Mr. George T. Langford, an employee of Mr. Gould, sort of in the capacity of an advance agent, who was with him in Scotland, says that while there "he was laid up sometimes from his blood pressure." (R. 182) In fact, he testifies to the effect that Mr. Gould remarked that his high blood pressure was bothering him and that he must rest up. (R. 182, 183) Mr. Langford further establishes the fact that during his visit in that country Mr. Gould called in attendance a local physician, who prescribed a diet and directed the reduction of the decedent's general activities. (R. 183) There is also the testimony of Dr. Stanley Rendall to the effect that he treated the decedent about July or August of 1922. The following is an excerpt from his testimony relating to this particular period. (R. 234)

> "Q What was the first occasion upon which you treated him and where? A The first occasion on which I treated him was either July or August, last year.
>
> Q 1922? A At Aix les Bains.
>
> Q For what did you treat him at that time? A *For a general gouty condition and high blood pressure, arteriosclerosis.*
>
> Q How long did your treatment of him continue? A At that time, roughly, between three and four weeks."

It would appear that Mr. Gould remained in Scotland until about the 15th of September (R. 182) and then removed to Paris, (R. 159) finally taking up his residence at Cap Martin the latter part of October, 1922. (R. 184)

Again we have the testimony of Mr. Langford to the effect that Mr. Gould was under the care of a

local physician (Dr. Rendall) from the time of his arrival at Cap Martin about the latter part of October. (R. 184) Mr. Langford's testimony as to the period about November 28, 1922 is as follows: (R. 184)

> "Q Did you talk to Mr. Gould about his health at that time, or did he speak to you about it, I should say? A Oh yes,— just passingly, you know. He would have these spells of blood pressure; I would not say excessive blood pressure, but he suffered from high blood pressure and had spells.
>
> Q *He was complaining about blood pressure?* A *Yes.*
>
> Q *And he had been treated for it?* A *Yes, for some time.*"

Apparently the decedent remained under the care of Dr. Rendall from the time of his arrival at Cap Martin right down to the date of his departure for an Egyptian trip, as is evidenced by the following testimony of Dr. Rendall. (R. 234)

> Q What was the first occasion upon which you treated him and where? A The first occasion on which I treated him was either July or August, last year.
>
> Q 1922? A At Aix les Bains.
>
> Q For what did you treat him at that time? A For a general gouty condition and high blood pressure, arteriosclerosis.
>
> Q How long did your treatment of him continue? A At that time, roughly, between three and four weeks.
>
> Q Did you subsequently treat him again? A I subsequently treated him at Cap Martin, where he had a villa, Roquebruno Alpes Maritimes, France.

Q And for what condition did you treat him at that time? A The same condition.

Q When did you begin your treatment of him at that time? A * * * I cannot give you the date when I first saw him, but it must have been sometime in December."

Some time in January, 1923, the decedent, with a party, left on a trip to Egypt. The record is not quite clear as to the exact date of departure. The testimony of three or four witnesses, however, is very specific as to the condition of the decedent's health immediately preceding and on this trip.

Dr. Fellows Davis, a practicing physician, accompanied the decedent during the entire tour, and his testimony (R. 212) is to the effect that he suffered a very serious attack of bronchial pneumonia during the trip.

Lady Decies, a daughter of the decedent and one of the members of the party, in response to questions as to the condition of the decedent's health at that time of departure and during the tour, testified as follows: (R. 225)

"Q What was the condition of your father's health on that trip? A *I should consider very poor. He was very ill when we arrived at Marseilles.*

Q You refer to the return trip? A No. Before I left. When D and I were at Marseilles he was not at all well.

Q Did he become better or worse during the trip? A On the steamer he was very ill and never came on deck at all. He seemed to get better the first few days in Cairo and when we got to Luxor he had an attack of Bronchial pneumonia; and Dr. Davis was rather worried about him, or so he stated to me.

Q Did he recover from the attack of pneumonia? A The doctor, I believe, was rather anxious to get him back to Cairo as he was so worried, so as soon as he was able to travel and get out on the Dahabya we took him back to Cairo where he was very ill."

The following excerpt from the testimony of Lord Decies shows vividly the condition of the decedent's health at that time. (R. 230)

"Q You are the husband of Lady Decies, who has just testified, are you not? A Yes.

Q And you were with her and Mrs. Gould on the trip to Egypt in the Winter of 1923 A Yes.

Q Was Mr. Gould taken sick on that trip? A He got on the boat at Marseilles in a very bad state. I happened to go to the hotel when we arrived from the train at Marseilles and he was in a very bad shape then and it was very questionable at the minute whether he would be able to get on the boat or not.

Q And was he taken more seriously sick during the trip in Egypt? A Oh, yes, certainly much worse in Egypt."

* * *

"Q Did you leave Egypt at the time Lady Decies did? A Before.

Q When did you next see Mr. Gould after you left him in Egypt? A Well, I think I ought to tell you that my arrangements were to leave Egypt on February 5 but Mr. Gould was so ill to my mind that on Friday the 2d I went to see him in the afternoon *but he was so bad—talking about never seeing one again*— so I said if you like I will put my departure off for a week and I stayed another week. I eventually left on the 10th or 11th."

Mr. Gould finally returned to Cap Martin on February 26 or 27, 1923. (R. 235) Dr. Fellows Davis, who was with the decedent throughout the Egyptian tour, testified that on the afternoon or evening of the day of his return, the decedent suffered an arterial spasm. (R. 213) The following bit of testimony by Dr. Davis, demonstrates the seriousness of the attack: (R. 214)

> "Q What was his condition pending the arterial spasm you have referred to? A Convalescent from bronchial pneumonia.
>
> Q What I meant was, what was his condition pending the arterial spasm as compared with his condition immediately prior and subsequent to the arterial spasm? A During the spasm he lost to a great extent his power of speech and some power of motion but his mental condition was alright.
>
> Q Was not his loss of speech and motion during that spasm the result of a then existing condition of the arteries in his brain? A He had general arteriosclerosis."

Marjorie Gould Drexel was also present at the time of this attack, and testifies as follows: (R. 204)

> "Q Where was he when you saw him? A He was lying on a sofa surrounded by two nurses, his wife and his valet, John Spencely.
>
> Q What was his condition of health as far as you can see? A He had just come out of a fainting spell, he was crying and they were giving him brandy."

Dr. Rendall was immediately called and was in direct charge of the case from the day of his return from Egypt down to a short time prior to his death. (R. 238)

The foregoing constitutes the high-spots of the testimony covering the period from the time of Mr. Gould's departure from America down to March 1, 1923.

(2) *The period commencing March 1, 1923 and ending March 21, 1923.*

Mr. Gould was under the immediate care of Dr. Rendall from March 1 down to March 21, 1923, and Dr. Davis, decedent's own personal physician, also visited him twice a day down to March 12, when he finally left. (R. 189, 212) He was also under the constant care, day and night, of two graduate nurses. (R. 240, 287)

Mr. Schuyler N. Rice, personal secretary of the decedent for approximately twenty-two years prior to his death, and who has since qualified as executor and trustee under his last will and testament, testifying with respect to the condition of the decedent's health during the period March 1 to March 21, 1923, says:

(Record 158)

A I arrived at Cap Martin on March 16, 1923.

(Record 162)

A I saw him the next day.

Q Where was he? A He was in his bedroom.

Q In bed? A No,—sitting on the couch.

Q Did he have nurses? A Yes.

Q Who were they? Do you know? A I don't remember the names. They were English nurses, I remember.

Q Was there any doctor in attendance? A Yes.

(Record 162)

Q Did you talk to Mr. Gould? A Yes.

Q Did you talk about his illness? A No, I did not speak about his illness.

Q Did he speak about it to you? A *Yes, he told me had been very sick.*

(Record 172)

Q *He was very ill too?* A *He was very sick.*

Q *And had consulted specialists?* A *He had consulted specialists from England.*

Q *And he had a doctor in attendance?* A *Yes, had a doctor there every day—yes, sir.*

Q *And nurses?* A *Nurses, yes.*

Q A day nurse and a night nurse? A Yes sir, I think he did.

Q Did Mr. Gould talk to you about the chances of living or dying at that time? A No.

Q *He knew he was a very sick man, did he, from what he told you?* A *Oh, yes—he knew that he was a very sick man.*

(Record 300, 302)

Q Did you learn that Mr. Gould was ill, in this country—Did you learn that fact? A Oh yes.

Q And did you go abroad? A I went abroad and sailed on March 10th.

Q When did you reach Cap Martin? A March 17th.

Q What condition did you find him in at that time? That is, when you arrived there on the 17th of March? A *I found Mr. Gould in a very weak physical condition.*

Q *What was there in the way of artificial breathing?* A *Why he had some oxygen—a bag of oxygen, and he kept it on the sofa by him. He was sitting on the sofa.*

Miss Rose Davy, a nurse in attendance from March 1, testified as follows: (R. 193)

Q I notice that on the bottom of the page for March 17 you included in your notes among other things:—"No bad breathing attacks." Was he apt to have bad breathing attacks during that whole period? A Not all the period. When I first went Mr. Gould had rather serious breathing attacks. I think, due a great deal, to nervousness.

Again, at page 193, she says:

Q On March 20 I note that at 8:15 you have entered "Restless morning," and at 2:30 you have entered "Began to get very restless before 4 P. M." That was not an exceptionally good day? A No.

Miss D'Oyly Watkins, another nurse there during the same period, testifies as follows: (R. 200)

Q From the 1st of March up till the 22d and 23d what did you observe as to Mr. Gould's general and mental condition? A *His general condition was getting weaker.*

Miss Williams, another nurse in charge of one of the children of Mr. Gould, testifies to the following effect: (R. 288, 289)

Q And do you remember when oxygen was tapped so that he could breathe? A Yes.

Q When was that? A About February.

Q So that since February he had been compelled to use oxygen? A Only occasionally.

Q Once a month? A I would say oftener than that.

Q Once a week? A Perhaps.

Q Or once a day? A He wasn't compelled to use it, but it did make him more comfortable.

Q But he wasn't sick? A I said he was sick.

* * *

Q (By the Court) How frequently did he have oxygen? A Some days he did not have any at all.

Q About how often? A Two or three times a day, but not all the time.

Q Along about the 20th or 21st of March, how frequently was he inhaling it? A I don't think he used it at all that day. I don't remember.

Q I mean about that period; how often would he have occasion to use it? A I cannot say because I wasn't in the room all the time.

Some time prior to March 20 it was decided by the members of the family that it was advisable to call a specialist into consultation with Dr. Rendall. Marjorie Gould Drexel, a daughter of the decedent testifies that she, her husband, Howard Gould a brother of the decedent, and Schuyler Neilson Rice, insisted upon a specialist being called in. This was about two weeks prior to March 21, 1923. (R. 205, 206)

Dr. Rendall in testifying with regard to the necessity for a consultation says: (R. 243)

Q Do you recall the date when Lord Dawson consulted with you? A Lord Dawson of Penn, Tuesday, the 20th of March.

Q Did you send for him? A I did.

Q Why? A *Because Mr. Gould was not making satisfactory progress with developing signs of heart and kidney trouble.*

Q *Mr. Gould was on March 20th when Lord Dawson of Penn arrived a very sick man was he not?* A *Yes.*

The record is full of testimony to the effect that the decedent for several days prior to March 21, 1923 was under the influence of sedatives. (R. 192, 193; 201, 202; 235, 237)

On March 20 Lord Dawson, who it might be explained is one of the leading consulting physicians of England and London; the physician to the King; physician to the London Hospital (R. 235), made a thorough examination of the decedent, and the testimony is further to the effect that he did not talk much to Mr. Gould about his physical condition and illness at the time of this examination. (R. 191) So that down to one day prior to the date of the transfer, the decedent's physical condition was very grave, requiring, in the opinion of all concerned, a consultation by one of the leading consulting physicians of England. The testimony of all is to the effect that his condition was gradually growing weaker; that he required the comforting effects of oxygen, was continually under the influence of sedatives during this period, and on March 20, 1923 was "a very sick man."

(3) *Condition of decedent on March 21, 1923, the date of the transfer.*

From what has been said heretofore, it must be apparent that Mr. Gould on March 21 was not a

picture of health. Appellants cannot urge, as is usually the plea in matters of this kind, that the decedent "was in good physical condition, *for a man of his age.*" From all of the evidence, it would appear that at that time he was in the advanced stages of general arteriosclerosis. It will be recalled that he had already (on February 26 or 27) suffered an arterial spasm, or, in the parlance of the layman, a stroke. The day before the transfer and again on March 21st, he was thoroughly examined by one of the leading consulting physicians of Europe, and it would be an insult to the intelligence of a man of the apparent mental capacity of Mr. Gould to assume that he was so dull of apprehension as not to be thoroughly conversant with his physical condition and the ultimate outcome.

It will be remembered that the transfer of the $1,000,000 in U. S. Liberty Loan Bonds to Mrs. Guinevere Gould was perfected on the afternoon of March 21, 1923. Instructions with reference to the carrying out and perfecting of this gift were contained in a letter signed by Mr. Gould on that date and directed to the Commercial Trust Company, Jersey City, New Jersey. The letter is very brief and reads as follows: (R. 74)

March 21st, 1923

Villa Zoraide
Cap Martin
(A. M.)
Commercial Trust Company,
Jersey City, N. J., U. S. A.

Gentlemen:

Please deposit the $1,000,000 par value U. S. Liberty Loan 3½'s which you are holding for me, in the trust for Mrs. Geneviere S. Gould of which you and S. H. Rice are trustees.

Yours truly,

Geo. J. Gould

Received April 7, 1923.

There is considerable testimony of several witnesses with reference to Mr. Gould's physical condition on the day of the transfer. Mr. S. Neilson Rice testifies as follows (R. 173):

> Q *At the time he signed this letter, was he in a very weak physical condition?* A *Yes, I will say he was.*
>
> Q He was in bed, wasn't he? A Well, he was in the bed and on the sofa, too. At the time he signed the letter he was sitting up on the bed—leaning over the edge of the bed.

Mr. Rice further testifying with reference to the circumstances surrounding the actual signing of the letter by the decedent on the afternoon of March 21 and his physical condition at that time says (R. 173, 174):

> Q As a matter of fact, he was not able to guide the pen himself, was he? A Well he started to sign it, and then—Mr. Gould has a very quick movement. He started to sign it, and he drove the pen into the paper, and he called for his wife to come and help him to sign it. She got him another pen.
>
> Q She got him another pen; and then she rather guided his hand, did she? A Yes.
>
> * * *
>
> Q He was taking medicine, was he not, at that time, continually, for his illness? A He was taking something; mostly, I think, something to make him sleep; I think more of a bromide.
>
> Q He did not have pneumonia then, did he? A No, sir.
>
> Q Just blood pressure? A He had gotten over the pneumonia. He was just affected by the pneumonia.

Q His condition? A *Weakened condition.*

Q *His entire health was broken down, wasn't it? A Yes.*

Q *And he had that appearance, did he not?* A *Yes, sir.*

Mrs. Marjorie Gould Drèxel, a daughter of the decedent, testifies (R. 206) that in her opinion her father on March 21, 1923 was *"too mentally and too physically weak"* to transact any business, whatsoever.

Mr. Francis Carlin, who was in the employ of the decedent during the month of March, 1923, and who looked after the mail and the sending of cables, the obtaining of doctors, etc., testified as follows with reference to the condition of the decedent on the day of the transfer (R. 223):

Q What was his physical condition as far as you could see on March 21, 1923? A He was not so active as he was fifteen years previous.

Q He was a sick man? A He was not so strong as he was before.

Q He was sick enough to require the attendance of a day and a night nurse? A Yes.

Q And that had been going on ever since his return to France from his Egyptian trip? A Yes.

Q *And by March 21st he was physically very weak as far as you could see?* A *Yes.*

Dr. Rendall, further testifying as to the decedent's physical condition at the time of Lord Dawson's examination (March 20-21), says (R. 236):

Q When Lord Dawson saw him what was his condition? A *At that time his condition, apart from general weakness and evidence of*

dilated heart and arteriosclerosis and blood pressure—you mean his condition mentally?

The further testimony of Mr. Rice illustrates quite clearly what must have been the decedent's physical condition on the day this transfer took place (R. 303, 304):

Q How does that signature (referring to one on letter of March 21, 1923) compare with his regular signature? A It isn't as good, because he was very weak, physically.

Q *He was very weak?* A *Very weak.*

* * *

Q What have you to say as to the condition of Mr. Gould at the time that that document was signed? A Mr. Gould seemed clear; he seemed to know what he was doing; but he was very weak, physically.

* * *

Q *Are you clear that at the time that paper was signed Mr. Gould was competent to sign it?* A *On account of the weak condition I feel doubtful.*

(4) *Condition subsequent to March 21, 1923 and down to the date of death.*

While Mr. Gould survived the transfer by approximately 56 days (March 21, 1923 to May 16, 1923), the evidence clearly establishes the fact that his case was given up as hopeless within a very few days of the date of the transfer.

Miss Davy, one of the nurses, testifies that on the 27th of March the decedent had a *"very bad night"* (R. 194).

The testimony of Lady Decies, a daughter of the decedent, brings out the fact that on March 30 he suffered another attack, at which time he was extremely violent and subject to hallucinations (R. 227):

> Q What do you recall about the night of the 30th? A He had an awful attack. He sat on the table and fought his valet Spensley and the nurses. He thought warships were following him. He was very violent, and only was got to bed again after great trouble.

The following bit of testimony of Violet Williams, another nurse, shows the very advance stages of the decedent's illness during the latter part of March (R. 287):

> Q I refer you to one of the charts and ask ask you if, in the right-hand corner of the chart dated the 26th day of March, the words "Has been talking to Mrs. G. calmly" is in your handwriting? A Yes.
>
> Q What did you mean by "Has been talking to Mrs. G. calmly"? A *I meant that Mr. Gould seemed to know perfectly that he was going to die, and he was talking with Mrs. Gould.*
>
> Q *So on the 26th of March he knew as well as you that he was going to die?* A *Yes.*
>
> Q *And he knew it, too?* A *He did.*
>
> Q And then I find on the nurse's day record on the same date: "Very exhausted. Pulse weak. Has been more comfortable." Is that in your writing? A Yes.

Mr. Rice testifies (R. 304) that from March 21, 1923, the date of the signing of the letter, "He gradually grew weaker until March 30th."

The fact actually is that cablegrams and urgent telephone calls went out to various members of the family within three or four days of the date of the million dollar transfer calling the children to their father's bedside.

As early as March 23 Lady Decies received a cable from her sister (R. 226). On March 26 all were called urgently by telephone *"because he was supposed to be dying then"* (R. 226).

Mr. Rice testifies specifically as to a couple of cables which were sent by him two or three days after the making of the gift (R. 305):

> Q I show you a cable dated the 23d of March; look at it and refresh your recollection. It is from you, signed "Nelson." Now after having looked at it and refreshed your recollection, tell us what your recollection is as to his condition on that day. A *Well, his condition is exactly as I said in that cable; I considered his condition very grave, and I felt that there wasn't any hope.*
>
> * * *
>
> Q On the 24th did you send that cable? A Yes, I sent that cable.
>
> Q At that time what did you think of his condition? A *Well, that was the next day. I thought he was getting worse every day.*
>
> Q The cable reads: "Your father had a bad night. I think you should come as soon as possible and close all accounts." That is to Kingdon Gould? A Yes.
>
> Q On the 27th did you send that cable? A I sent that on March 27th.
>
> Q And does that correctly state the condition of things so far as you knew or was able to tell, at that time? A *Yes. I got the doc-*

tor's report, stating that he was very weak and that he wouldn't probably last until Sunday.

Q Now, on the 30th did you send that cable? A Yes.

Q *Stating that the doctor reports a slight change for the worse all the time and that he had several sinking spells?* A Yes.

Marjorie Gould Drexel testifies that her father, following the visit of Lord Dawson, was so "extremely physically weak" that he was not competent to transact any business. She further refers to his "terrible weakness"—"physical weakness" and that it was such that it "must have affected his mind" (R. 209).

Even Mrs. Guinevere Gould (wife—donee) was compelled, under the pressure of cross examination, to concede that the decedent was "seriously ill" (R. 298).

There is the testimony of Lady Decies (R. 225, 229); Lord Decies (R. 230, 232); and Dr. Rendall (R. 238, 239) respecting the physical condition of the decedent from the first of April to the time of his death, but there is little need of dwelling at length upon it, since at that stage there was no question but that it was just a matter of days when the end would be reached. The evidence is clearly to the effect that the doctors and all of the members of the family had given up hope for the recovery of Mr. Gould.

The foregoing excerpts from the testimony in this case must be sufficient to satisfy even the most skeptical that Mr. Gould on March 21, 1923 was a very sick man; that he fully realized his condition; and, did what he did in contemplation of death. If the fact that death was staring him in the face was not

the actuating cause for the transfer, then what was the reason which moved him to make a transfer of such a substantial sum to one of the natural objects of his bounty? Certainly there is nothing substantial in the record to show that any other exigency was for the first time present on that day. To the contrary, at least in defendant's view of things, the facts can lead to but one conclusion, viz: that the impelling motive prompting the transfer was the donor's expectation of death within the reasonably near future. In fact, the conclusion seems inescapable that the decedent was already in the throes of death.

It is hard to believe that it would be possible to concoct a hypothetical case which would be more clearly within the statute. The ideal situation from the tax-gatherer's point of view could never show more than that:

1. The transfer was of a material part of the donor's estate.

2. Donor was in a very bad way physically.

3. Donor survived the transfer by only a very brief period.

4. The transfer was testamentary in nature.

5. Donor realized his physical condition and must have known in the light of the circumstances that his end was close at hand.

It is respectfully submitted that every one of these elements is present, in the extreme, in the instant case. The previous review of the facts has dealt fully with the condition of health and also with the fact that the transfer was of a material part of the

estate. Those two elements, surely, require no further discussion.

As heretofore pointed out, the decedent survived the gift by only 56 days, a very brief period when compared with the average span of life. He had retained possession of this property just about as long as he could, safely, and still be certain of accomplishing his purpose before death overtook him.

In most of the New Jersey cases heretofore cited the donor survived a greater period.

In re Bottomley, approximately 1 year, 3½ months;

In re Hall, approximately 2 months;

In re Dupignac, 1 year, 5 months;

In re Cuthell, 1 year 6 months.

As to the testamentary character of the transfer, there would seem to be little doubt. It has not been stressed, heretofore, but it is a fact, as clearly established by the following excerpt from the testimony of S. Neilson Rice, the decedent's personal secretary, that three days before the transfer was made he called for and had his will read to him (R. 306, 307):

> Q Mr. Rice, you say that this paper (Ex. C. 4) signed by Mr. Gould had already been written by you before Mrs. Gould came into the room? A C. 4 had been written by me before Mrs. Gould came in the room.
>
> Q Had it been discussed before? A Yes.
>
> Q When? A On the Sunday after I arrived.
>
> Q The 18th of March? A Yes, sir.

Q Was Mr. Gould in favor of doing it? A *Yes. He asked me for his will at that time.*

Q *Did he remember the contents of his will?* A *Well, I read it to him. I read the will over to him first, to refresh his memory.*

Q And after he had done that— A (Interrupting.) He spoke about this million dollars the next day.

Q —you advised against it, I believe. A I told Mr. Gould I thought it would be a mistake, in view of what he had already given, to do this.

Q Did you also say you thought there would be trouble with his children? A Yes.

Whether it was Mr. Gould's intention to provide an additional million dollars for his wife over and above the four million dollar preferential trust under paragraph three of his will, or whether he had in mind the very doubtful outcome of the Jay Gould accounting suit in New York and the possibilities of the very serious impairment of his estate following his death in the event that that litigation should terminate adversely, and therefore desired to make sure, while he had the opportunity, that his wife should receive at least a million dollars whatever might be the benefits that she might eventually succeed to under the terms of his will, is immaterial, since it seems clear that in either event it was the testamentary disposition of his property with which he was concerned. The wife, under the will, was shown a marked preference and shared heavily of the decedent's bounty. This gift was in complete harmony with the testamentary disposition of his property. He made sure then of what he could not make sure of by will, namely, that she should have at least a million dollars, whatever might happen after death. The most logical thing for Mr. Gould to do, once having decided that he wished to further

benefit his wife, was to make the transfer by an immediate gift and not by a redrafting of his will. His will was a carefully prepared instrument, and his attorneys were in New York and not easily accessible to him at a time when speed was essential. He, apparently, had no desire to make a change in his will at that late date, with the possibilties of extended litigation on obvious grounds after his death. And why should he attempt to accomplish his purpose by that course, when a perfectly valid gift could be made by a very simple writing? There would, perhaps, have been no desire to make an immediate gift had his health been different, in which event, of course, the will would have effectuated his purpose, but, with death so near at hand, why withhold actual possession of the property for that short period? He had no more use for it, and it best suited his purposes to see his wife in immediate possession. Under his will, she might have to wait for many years, in view of the fact that the Jay Gould accounting suit had already been pending in New York for a period of six or seven years. And the circumstances subsequent to his death have proved that his precaution was well taken, since, although Mr. Gould died on May 16, 1923, Mrs. Gould did not receive any share of his estate, even though hers was a preferential trust, until September 6, 1927 (R. 444, 445), approximately four years after his death.

What better evidence of the testamentary character of a gift could there be than is present in this case? Vice Ordinary Buchanan, *In re Bottomley* (92 N. J. Eq. 202, at p. 207) as to the design of the statute to tax a transfer testamentary in character, says:

> "* * * Considering not only the language, but the nature and design of the entire statute, and the history of the legislation upon

> this subject, I am convinced that *a transfer* made in lieu of making a testamentary disposition comes within the expressed intent of this legislative provision."

So, where the transfer was perfected simultaneously with the execution of the decedent's will:

Kunhardt v. *Bugbee, supra;*

In re Miller, 98 N. J. Eq. 318,

or at the time of the execution of a codicil thereto:

In re Dupignac, supra,

it has been uniformly held testamentary in character and therefore taxable.

Appellants make some point of the fact that the decendent had evidenced an intention to make the transfer some time before. (B. 10) How this fact can affect the taxability of the gift is not clear, if, when he actually did carry out that intention, death was imminent. The statute saves transfers made in contemplation of death. There is no exception in the case of a preconceived transfer which is not effectuated until that time.

There can be no doubt of the fact, that the decedent was fully aware of his physical condition before and at the time this gift was made. By his own declarations, and by the circumstances with which he was fully conversant, it must be apparent that he knew the outcome. In fact, as early as the summer of 1922, Mr. Langford testifies that the decedent complained to him about his blood pressure and of the fact that he was required to diet and restrict his activities in general (R. 182, 183).

Mr. Rice testifies that the decedent said "That since he had pneumonia in Egypt it had left him very weak" (R. 163).

Mrs. Marjorie Gould Drexel testifies rather pointedly as to the decedents' attitude toward his physical condition (R. 205, 206):

> Q Did he show much, if any, interest in what was going on about him? A No, he did not, except that at first upon his return from Egypt he did show an interest and *seemed to be worried about his health, but after about a month after his return from Egypt his condition changed and he showed no interest.*
>
> Q *Can you fix the date of this change with reference to either Lord Dawson's visit or your father-in-law being operated upon, or the 21st of March, 1923?* A *The change came before Lord Dawson's visit.*
>
> Q *How long before?* A *I should say about two weeks before.*

This clearly demonstrates the fact that quite some time before the transfer of March 21st was perfected he had resolved himself to the inevitable. The Supreme Court in referring to the apparent knowledge of decedent regarding his physical condition says: (R. 468)

> "The transfer was of about one-sixth of the net estate—certainly a material part thereof. It was made within two months of death by a man who knew he was in the last stages of arterio sclerosis. * * *

Appellants in their brief (p. 7) say:

> "* * From this charge that the decedent *knew* of his condition, we vigorously dissent. It has no support in the evidence."

To believe that Mr. Gould, in view of all of the evidence in the case, was so dull of apprehension "as not to realize his dangerous physical condition, would be an insult to the intelligence of a man of Mr. Gould's mental capacity.

If the transfer *sub judice* is not within the intent and letter of the statute, it is hard to conceive of one that would be. When we remember that for nearly a year before the transfer the decedent was experiencing trouble from high blood pressure and a general gouty condition; that he was left very weak by the attack of bronchial pneumonia on his Egyptian tour, and that his condition then was very grave; that immediately upon his return from that trip he had an arterial spasm which affected his brain in the speech and locomotion areas—an attack of a very serious nature; that two doctors and day and night nurses were in immediate attendance right up to the day of the transfer; that the day previous thereto and on the day of the actual transfer he was thoroughly examined by the leading consulting physician of England; that within two or three days following the transfer his physical condition became so serious that his family was called to his bedside; that before the end of the very month in which the transfer was made he suffered another violent attack which affected his brain at which time he was delirious; and, that every one having lost all hope of his recovery within a few days of the transfer, and with death ensuing within two months of the date of the transfer, it certainly can be safely said *that the donor had such warnings of impending dissolution, as were held by the Supreme Court in the matter of Kunhardt* v. *Bugbee, supra, to place him on notice of the real condition of affairs, and that a transfer made in the light thereof must be held to have been made in contemplation of death.* It is respectfully submitted that

there is ample evidence upon which the Supreme Court, as well as the Prerogative Court and the Comptroller of the Treasury, found that the decedent was an ill man, and knew it.

(D) Comptroller's determination is not to be reversed unless against the clear weight of the evidence.

It is a well settled rule that the courts on the review of the Comptroller's assessment will not weigh the evidence and substitute their judgment for his. Their only duty is to ascertain whether the determination of the Comptroller is against the clear weight of the evidence. If there is any substantial evidence in support of the assessment, of course, it must be affirmed.

In re Pierce, 89 N. J. Eq. 171;

In re Hall, 94 N. J. Eq. 398;

In re Dupignac, 96 N. J. Eq. 284.

Vice Ordinary Buchanan, in re Dupignac, says (at page 287):

> "It is not the function of this court to weigh the evidence or substitute its judgment for that of the comptroller, but only to determine if error has been committed. In re Pierce, 89 N. J. Eq. 171; In re Hall, 94 N. J. Eq. 398. Hence, if there be any evidence—or, at least, any substantial evidence—in support of the comptroller's finding, this court is not at liberty to review and weigh the entire evidence and say that in its judgment the evidence seems to preponderate in favor of the decedent's estate on the issue in question and that the assessment should therefore be set aside."

While appellee believes that the evidence in this case is such as to prove beyond a shadow of doubt that the transfer was made in contemplation of death, it is respectfully submitted that no such burden is cast upon him. It is not at all necessary that the evidence should be so conclusive as to leave no room for doubt that the transfer was made in contemplation of death. It is enough if there be sufficient evidence,

> "* * * from which a reasonable man might fairly, even though not necessarily, draw the inference of fact that he made the gifts in contemplation of death."
>
> *In re Dupignac, supra.*

See also:

> *Conway's Estate,* 120 N. E. 717, 719;
>
> *In re Pauson,* 186 Cal. 358.

There is ample evidence justifying the Comptroller's conclusion that the transfer was made in contemplation of death, and his determination should not, therefore, be overruled. Two reviewing Courts have already placed their stamps of approval upon the sufficiency of the evidence in support of the Comptroller's assessment.

It is, of course, elementary that this court on an appeal from the findings of fact of a trial court will not weigh the evidence. Its duty is to affirm the judgment below if there be any legal evidence upon which it is founded.

> *Sexton* v. *Newark Dist. Tel. Co.,* 84 N. J. L. 85

Ryer v. *Turkel,* 75 N. J. L. 677

Martin v. *Smith,* 100 N. J. L. 50

Israelow v. *Kreitzer,* 2 N. J. Misc. Rep. 154.

Appellants point to no facts repugnant to the findings below.

They do claim, however, that the rule of the Prerogative Court as established in *In re Pierce, supra,* and those cases following it, is erroneous. But how can that fact assist appellants' cause, even though we might concede the claim—which, of course, we do not. If we are to resort to a weighing of the evidence it is apparent that the inevitable conclusion must be that Mr. Gould made the transfer in contemplation of death. Further, there is no contention made of the unconstitutionality of the presumptive phases of the statute and it is, therefore, hard to see how anyone, in the face of this statutory presumption, could find otherwise than that the transfer is tenable. There is absolutely no testimony adduced upon the part of the appellants which could be taken as sufficient to overcome this presumption.

For all of the reasons hereinbefore urged it is respectfully submitted that the judgment of the Supreme Court sustaining the decree of the Prerogative Court should be in all respects affirmed.

WILLIAM A. STEVENS,
Attorney-General of New Jersey,
Attorney for Defendant-Appellee.