
IN CHANCERY OF NEW JERSEY.

Between

DE GRASSE B. FOWLER and JULIA C.,

his wife,

Complainants,

and

MORGAN G. COLT, et al.,

Defendants.

} On Bill, &c.

PETITION.

[Filed December 4, 1872.]

*To the Honorable Abraham O. Zabriskie, Chancellor of the state
of New Jersey.*

The petition of Edward Salisbury and Maria Theresa, his wife, formerly Maria Theresa Colt, respectfully showeth—that your petitioner, the said Maria Theresa Colt, is one of the grandchildren of Roswell L. Colt, mentioned in his last will, set forth in the proceedings in this cause.

And your petitioners show, that they intermarried on the 10 twentieth day of March, eighteen hundred and sixty-seven, or thereabouts.

And your petitioners further show, that on the seventh day of July, one thousand eight hundred and seventy-two, your petitioner, the said Maria Theresa, attained the age of twenty-five years, and became entitled, under said last will and the codicil thereto annexed, to the payment of the legacy therein bequeathed to her.

And your petitioners show, that it is necessary and desi-

able to take an account of the amount due upon said legacy, according to the true intent of said will, with the increase thereon by way of accumulation.

And your petitioners show, that the said legacy vested immediately upon the death of the testator.

And your petitioners further show, that the said Maria Theresa Colt has been residing abroad for several years past, and prior to her said marriage. And that your petitioners are informed and believe that during said period, and while the
10 said Maria Theresa resided out of the United States, an interlocutory decree was made in this cause, bearing date the fifteenth day of September, 1868, whereby among other things it was ordered and decreed, that the surviving executor of said Roswell L. Colt, should take assignments of certain bonds and mortgages, guaranteed by the Society for
Establishing Useful Manufactures to them, as trustees for your said petitioner's brother and herself; which bonds and mortgages are in said decree particularly set forth; and that
20 said executors should hold the same as trustees for the benefit of your said petitioner and her said brother, subject to the trusts created for them by the said will and codicil; and that the said surviving executors should be discharged as such executors from all claim or liability on account of the same as in and by the said decree, reference being thereunto had, will more fully appear.

And your petitioners show, that the said decree recites, and is founded upon a report made by William Gledhill, Esq., one of the masters of the said court, and dated the first day of July, one thousand eight hundred and sixty-eight, which report
30 recites that your petitioner, guardian *ad litem* in said cause, was represented before said master by a solicitor; but your petitioner insists that the said report and the decree therein, was founded upon mistake as to the rights of your petitioner; and your petitioners pray that the said decree may be reviewed and set aside, and your petitioner be heard upon the merits thereof, and that it be referred to a master of this court to take and state an account of the principal and interest due your petitioner, the said Maria Theresa, upon her said legacy, charging your petitioner with payments heretofore made
40 to her, but crediting your petitioner with all commissions,

with which she has been heretofore charged in account by the said executors.

And your petitioners will ever pray, &c.

PARKER & KEASBEY,
Solicitors of petitioner.
J. H. TEESE,
of counsel.

Essex county, ss.—*Richard Wayne Parker* being duly sworn, saith—that he is authorized to act as agent and attorney for said petitioners, and that according to the best of his information and belief, the facts in said petition stated are true.

RICHARD WAYNE PARKER.

Sworn and subscribed this third day of December, A. D., 1872, before me.

CHARLES T. GLEN, *N. P.*

ANSWER.

[Filed February 12, 1873.]

The answer of Morgan G. Colt, sole surviving executor of the will of Roswell L. Colt, deceased, and one of the defendants in the above stated cause, to the petition of Edward Salisbury and Maria Theresa Salisbury, his wife. 20

This defendant, now and at all times hereafter, saving and reserving to himself, all and all manner of advantage of exception that can or may be taken to the many errors, uncertainties, and other imperfections contained in the said petition, for answer thereunto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, the said defendant answers and says—

That he admits that the petitioner, Maria Theresa Salisbury, is one of the grandchildren of Roswell L. Colt, deceased, mentioned in his last will and testament, set forth in the proceedings in the above stated cause; and that the said 30

petitioners intermarried, but this defendant does not know at what precise time the said marriage took place.

And said defendant further answering, admits that the said petitioner attained the age of twenty-five years on the seventh day of July last past, and became entitled to the payment of her legacy, by the will and codicil of the said Roswell L. Colt.

And this defendant further answering, admits that the said petitioner is entitled to have an accounting of the said
10 legacy, and accumulation according to the true intent and meaning of said will, and this defendant joins in the prayer of the said petition, that it may be referred to a master of this court to state such account.

And this defendant further answering says, that he is now and always has been, willing to account for the said legacy, principal, interest, and accumulation thereon.

And this defendant further answering says, that he admits that this legacy vested upon the death of the said testator.

20 And this defendant admits, that the said petitioner has resided abroad for several years past and prior to her said marriage, and that an interlocutory decree was made in this cause, dated the fifteenth day of September, eighteen hundred and sixty-eight, whereby it was ordered and decreed, in the manner and to the purport and effect as stated in the said petition, and that the said decree was based upon the report of William Gledhill, Esq., then one of the masters of this court, dated July first, eighteen hundred and sixty-eight,
30 and that said report states that the said petitioner, then a minor, was represented before the master by a solicitor.

And this defendant states, that the said proceedings were taken in good faith, and without any wish or intention to take any advantage of the absence or minority of the petitioner; and that the solicitor of this petitioner's guardian appeared before the said master was consulted and acquiesced in the said report.

And this defendant says, that the accounts of the estate of the testator and of this petitioner, were settled in this honorable court from time to time, in a proper and fair manner,
40 and in accordance with the practice and course of proceed-

ings in this court, and that the said petitioner is bound by the same, and by the decrees made from time to time; and that the said accounts and decrees are entitled to be considered settled accounts, conclusive and binding upon the said petitioner, unless the same be impeached in some particular or particulars; but this defendant says, that he is willing to have the said accounts restated if this honorable court shall think that equity so requires.

And this defendant further answering says, that he does not know whether said petitioner is entitled to have the said 10 decree reviewed and set aside, or whether the said petitioner is now to be credited with the commissions heretofore charged to her said legacy in the several accounts heretofore or not, but prays that these several questions be decided and determined by this honorable court.

All which said several matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct.

WILLIAM PENNINGTON,

Solicitor of defendant.

20

MORGAN G. COLT.

State of New Jersey, Passaic county, ss.

Morgan G. Colt, defendant in the above answer named being by me duly sworn according to law, on his oath says—that the facts, matters, and things in the foregoing answer set forth, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

MORGAN G. COLT.

Sworn and subscribed to this twelfth day of February, A. D. 30
1873.

JOHN S. BARKALOW, *M. C.*

ORDER OF REFERENCE.

[Filed March 18, 1873.]

This matter coming on to be heard before the Chancellor, in the presence of Mr. Cortland Parker, of counsel for the petitioner, and Mr. Benjamin Williamson, of counsel for the respondents, and the Chancellor having heard the argument of counsel upon the petition, and the answer thereto, and it appearing to the court that the petitioner, Maria Theresa Salisbury, formerly Colt, wife of said petitioner, Edward
10 Salisbury, granddaughter of Roswell L. Colt, deceased, and beneficiary legatee in his last will and codicil, has lately arrived at the age of twenty-five years, at which time, according to said last will and codicil, she became entitled to the legacy thereby bequeathed to her, and in the hands of the respondent, as surviving executor and trustee, for her use; that the said legacy hath been in the hands of said respondent for the maintenance of said Maria Theresa since the testator's death, and that no final account hath been had with her of the amount due upon her said legacy.

20 And it further appearing, that an interlocutory decree was made in this cause, bearing date the 15th day of September, 1868, whereby it was decreed, that the surviving executors of Roswell L. Colt should take assignments of certain bonds and mortgages to them, as trustees, for the said petitioner and her brother, and that the said surviving executors should be discharged as such from all claims or liability on account of the same. And it appearing that the right of said legacy vested in the said petitioner prior to the year 1861, and that
30 the petitioner was a non-resident infant at the time of the making said report on which said decree was founded, and of said decree, and that said report and decree were made under mistake as to the rights of the said petitioner, in that she has been charged with commissions on the said legacy and in other respects; and said petitioners having now filed said petition, asking that said report and decree may be reversed and set aside, and the petitioners heard upon the merits thereof, and that it be referred to a master of this

court to take and state an account of the principal and interest due said Maria Theresa upon said legacy, charging her with all payments heretofore made to her, but not with anything by way of commissions, although such commissions have been charged against her in said account of said executors, and allowed in said report; and the right of said petitioner to a re-statement of said account, wherein erroneous, not being denied by the said answer—It is therefore, upon this 18th day of March, 1873, on motion for Parker & Keesbey, solicitors of said petitioners, ordered and decreed, 10 that said interlocutory decree, dated the 15th day of September, 1868, be vacated and set aside, and that it be referred to William Patterson, Esquire, one of the special masters of this court, to take and state an account of the amount due for principal and interest upon said legacy to said Maria Theresa Salisbury, and that he allow her interest after the rate of seven per cent. per annum, for all the time during which said executors received interest at that rate upon said money in their hands, belonging to said Maria Theresa, and for all other time after the rate allowed by law at 20 that time, and that he do credit said executors in said account with all moneys by them paid for or to said Maria Theresa, but not with any commissions, although heretofore charged by them, and that he do make such report with all convenient speed, and all further equity is reserved until the coming in of said report.

A. O. ZABRISKIE, C.

REPORT OF SPECIAL MASTER.

[Filed May 3, 1873.]

In pursuance of an order of this court, made in the above 30 stated cause on the eighteenth day of March, anno domini eighteen hundred and seventy-three, by which it was ordered that it be referred to the subscriber, one of the special masters of this court, to take and state an account of the amount due for principal and interest to the said petitioner, Maria

Theresa Salisbury, *nee* Maria Theresa Colt, upon the legacy devised to her in and by the last will and testament of Roswell L. Colt, lately of the city of Paterson, deceased; and that in stating such account, he do allow her interest after the rate of seven per cent. per annum, for all the time during which the executors of said last will and testament of Roswell L. Colt, deceased, received interest at that rate upon the money in their hands, belonging to said Maria Theresa, and for all other times after the rate allowed by law at that time, 10 and that he do credit said executors in said account, with all moneys by them paid for or to said Maria Theresa, but not with any commissions by them heretofore charged.

I, William Paterson, special master aforesaid, do make report to the Chancellor: that first, having duly notified the defendant, Morgan G. Colt, who is the surviving executor and trustee, under the aforesaid will of Roswell L. Colt, deceased, I was attended at my office, in the city of Newark, by Parker & Keasbey, solicitors and of counsel with the petitioner, and by William Pennington, solicitor and of 20 counsel with the defendant, Morgan G. Colt, and in their presence have considered the matters that have been referred to me in and by said order.

And I do report further, that it was agreed between the said parties, in my presence, that reference should be had by him and them to the will of the deceased, accounts and other proceedings heretofore filed in this cause, and the various books, papers, and minutes of "the Society for Establishing Useful Manufactures," which had been examined by me in the matter of the petition of Roswell L. Colt. And also, to 30 the evidence taken on said petition, for the purpose of the reference in this cause and the taking of said account.

And I do certify and report, that pursuant to the terms of the order of reference aforesaid, taken on petition of the said Maria Theresa Salisbury, I have taken and stated an account of the amount due for principal and interest upon the legacy bequeathed to her, in and by the last will and testament of the testator, Roswell L. Colt, deceased, upon the principle directed in said order of reference, which statement or account is contained in the schedule annexed, hereto marked

number 1 (one), forming part of this report, and to which for greater certainty I would refer.

And I do report and certify further, that it appears from the evidence that has been taken before me, on the petition of said Roswell L. Colt, and from the admissions of the counsel of the defendant, Morgan G. Colt, that the estate of the testator, Roswell L. Colt, consisted principally of shares in the capital stock of the said Society for Establishing Useful Manufactures, and that for the purpose contemplated in this report it may be, and is assumed, that all the income of the 10 estate of the said testator was and has been derived from the dividends, which were declared and paid, from time to time, by the directors or managers of said society.

And I do certify and report further, that from the deposition of Richard Rossiter, the clerk of said society, which I caused to be taken, in the reference had on petition of Roswell L. Colt, Jr., and which is annexed to the report in that cause, and also from an examination of the minute book of said society, in which is recorded the action and proceedings of its directors or managers, it would, and does appear, that 20 dividends of the profits or surplus earnings of said society were made at various times by the said directors or managers since the death of the said Roswell L. Colt, which dividends were declared and paid upon the par value of the shares of the capital stock of the said society, said par value being one hundred dollars (\$100) for each share; and that from and after the time of the death of the said testator, on or about the twenty-second day of November, anno domini eighteen hundred and fifty-six, to the fifteenth day of March, anno domini, eighteen hundred and sixty-six, when the 30 legal rate of interest became fixed by law at seven per cent. per annum, the following rate of dividends were declared and paid by the said society upon the par value of the capital stock thereof, to wit, in the year eighteen hundred and fifty-seven, five per centum; in the year eighteen hundred and fifty-eight, none; in the year eighteen hundred and fifty-nine, four per centum; in the year eighteen hundred and sixty, eight per centum; in the year eighteen hundred and sixty-one, seven per centum; in the year eighteen hundred and sixty-two, six per centum; and in the other and remain- 40

ing years, to the fifteenth day of March, eighteen hundred and sixty-six, at least seven per centum in each and every such year.

And I do certify and report further, that from an examination and inspection of the books of account of said testator, Roswell L. Colt, which have been produced before me by the said executor, I am satisfied that his executors have received from "The Society for Establishing Useful Manufactures," since the death of the said testator, and up to the
10 aforesaid date, to wit, the fifteenth day of March, anno domini eighteen hundred and sixty-six, dividends upon the shares of the capital stock of said society, belonging to the said estate of said testator, at the rates mentioned, and during the years set forth in the preceding paragraph of this report.

And I do certify and report further, that as the estate of said testator was invested by him in the capital stock of the society aforesaid and so continued to the date of his death, and as the legacy devised to the petitioner in this matter,
20 must be paid out of the proceeds of said capital stock belonging to said estate; and as the said executors have received from said society, interest on the par value of their shares of the said capital stock, as hereinbefore stated, I have considered, and do so report that said executors should be charged with every year's interest received on the legacy bequeathed as aforesaid to the said petitioner, at the rate of six per centum per year, for each year during which they have received dividends on the capital stock of the said society, at the rate of six per centum or less, being the years
30 commencing twenty-second November, eighteen hundred and fifty-six, and ending twenty-second November, eighteen hundred and fifty-seven; commencing twenty-second November, eighteen hundred and fifty-seven, and ending twenty-second November, eighteen hundred and fifty-eight; commencing twenty-second November, eighteen hundred and fifty-eight, and ending twenty-second November, eighteen hundred and fifty-nine; commencing twenty-second November, eighteen hundred and sixty-one, and ending twenty-second November, eighteen hundred and sixty-two, and for all other
40 years to the date of the fifteenth day of March, eighteen

hundred and sixty-six; and from thence to the date of this report, interest at the rate of seven per centum for each and every year.

And I do certify and report further that the statement of account which I have taken and made pursuant to the aforesaid order of reference, and which is contained in *Schedule No. 1*, (one) annexed hereto, has been so made and stated, and the accumulation thereof ascertained, by adding or charging interest at the rates aforesaid, upon the balance which was found to be due at the close of each year, ending on the twenty-second day of November. 10

And I do certify and report further, that in making and stating said account I have not credited said executors with any of the commissions heretofore charged by them in their accounts filed in this cause.

And I certify and report further, that the disbursements which appear generally for each year in said statement of account, (*Schedule No. 1*) have been taken by me from the accounts rendered heretofore and stated in this cause and since the date of the said statement made thereof, from 20 vouchers which have been presented to me, and which I have examined and marked as exhibits in the matter of this petition, and proved to my satisfaction to be correct and proper evidences of discharge and payment by the executors of said Roswell L. Colt, deceased, a statement of which paid vouchers will appear in *Schedule No. 2*, (two) annexed hereto and forming part of this my report.

And I do certify and report further, that no exception has been taken to the disbursements mentioned in said account on file in this cause, except to certain payments of internal 30 revenue taxes of the United States, a list whereof, with their dates, is annexed hereto, marked *Schedule No. 3*, (three) which I have considered, and therefore do report should not be charged against the said legacy as disbursements made on account of the petitioner, but should be paid by the executors out of the general estate or the residuary part thereof, and I have therefore not allowed said disbursements in said report in making the said *Schedule No. 1*, (one) but for the purpose of avoiding delay in case it shall appear to his Honor the Chancellor that such taxes should be allowed as 40

such disbursements, I have annexed hereto a *Schedule* marked *No. 4*, (four) showing an account of the amount due for principal and interest upon said legacy in case said taxes should be allowed by the Chancellor.

And I do report and certify further, that after having credited the said executors with all disbursements for money paid in former settlements and for which proper vouchers have been exhibited and proven since, before me, except said taxes, there is due to the petitioner aforesaid for principal and interest on her said legacy, this day, the sum of twenty-seven thousand eight hundred and ninety-six dollars and twenty-five cents, but in case said taxes should be allowed as disbursements by his Honor the Chancellor, that there is due to the petitioner aforesaid for principal and interest on her said legacy, this day the sum of twenty-seven thousand five hundred and forty-four dollars and ninety-nine cents, (\$27,554.99.)

Dated 1873.

Submitted respectfully, by

WILLIAM PATERSON,
Special Master.

20

Newark N. J., 22d April, 1873.

SCHEDULE, No. 1.

Showing the amount of principal and interest due to the petitioner, Maria Theresa Salisbury, at the date of this report, allowing interest at the rate of six per centum, and of seven per centum, in each year, as received by the executors of Roswell L. Colt, deceased.

Principal of legacy.....		\$20,000 00
Interest from 22d November, 1856, to 22d November, 1857.....	\$1,200 00	
Disbursements.....	983 44	
		<u>216 56</u>
Balance.....		\$20,216 56
Balance, 22d November, 1857.....	\$20,216 56	
Interest from 22d November, 1857, to 22d November, 1858.....	1,212 99	
		<u>\$20,429 55</u>

Amount carried over.....	\$20,429 55	
Disbursements.....	1,356 48	
	<hr/>	
Balance.....		\$20,073 07
Balance, 22d November, 1858.....	\$20,073 07	
Interest from 22d November, 1858, to 22d November, 1859.....	1,204 38	
	<hr/>	
	\$21,277 45	
Disbursements.....	956 60	
	<hr/>	
Balance.....		20,320 85
Balance, 22d November, 1859.....	\$20,320 85	10
Interest from 22d November, 1859, to 22d November, 1860.....	1,422 46	
	<hr/>	
	\$21,743 31	
Disbursements.....	913 75	
	<hr/>	
Balance.....		20,829 56
Balance, 22d November, 1860.....	\$20,829 56	
Interest from 22d November, 1860, to 22d November, 1861.....	1,458 06	
	<hr/>	
	\$22,287 62	
Disbursements.....	875 00	20
	<hr/>	
Balance.....		21,412 62
Balance, 22d November, 1861.....	\$21,412 62	
Interest from 22d November, 1861, to 22d November, 1862.....	1,498 88	
	<hr/>	
	\$22,911 50	
Disbursements.....	875 00	
	<hr/>	
Balance.....		22,036 50
Balance, 22d November, 1862.....	\$22,036 50	
Interest from 22d November, 1862, to 22d November, 1863.....	1,542 55	30
	<hr/>	
	\$23,579 05	
Disbursements.....	875 00	
	<hr/>	
Balance.....		22,704 05
Balance, 22d November, 1863.....	\$22,704 05	
Interest from 22d November, 1863, to 22d November, 1864.....	1,589 28	
	<hr/>	
	\$24,293 33	

14 IN CHANCERY OF NEW JERSEY.

	Amount carried over.....	\$24,293 33	
	Disbursements.....	918 00	
		<hr/>	
	Balance.....		\$23,375 33
	Balance, 22d November, 1864.....	\$23,375 33	
	Interest from 22d November, 1864, to 22d November, 1865.....	1,636 27	
		<hr/>	
		\$25,011 60	
	Disbursements.....	2,027 35	
		<hr/>	
	Balance.....		22,984 25
10	Balance, 22d November, 1865.....	\$22,984 25	
	Interest from 22d November, 1865, to 22d November, 1866.....	1,608 89	
		<hr/>	
		\$24,593 14	
	Disbursements.....	932 17	
		<hr/>	
	Balance.....		23,660 97
	Balance, 22d November, 1866.....	\$23,660 97	
	Interest from 22d November, 1866, to 22d November, 1867.....	1,656 26	
		<hr/>	
		\$25,317 23	
	Disbursements.....	1,023 59	
		<hr/>	
20	Balance.....		24,293 64
	Balance, 22d November, 1867.....	\$24,293 64	
	Interest from 22d November,* 1867, to 22d November, 1868.....	1,699 85	
		<hr/>	
		\$25,993 49	
	Disbursements.....	1,238 22	
		<hr/>	
	Balance.....		24,755 27
	Balance, 22d November, 1868.....	\$24,755 27	
	Interest from 22d November, 1868, to 22d November, 1869.....	1,732 16	
		<hr/>	
		\$26,487 43	
	Disbursements.....	635 65	
		<hr/>	
30	Balance.....		25,851 78
	Balance, 22d November, 1869.....	\$25,851 78	
	Interest from 22d November, 1869, to 22d November, 1870.....	1,808 91	
		<hr/>	
		\$27,660 69	

Amount carried over.....	\$27,660 69	
Disbursements.....	1,554 41	
Balance.....		\$26,106 28
Balance, 22d November, 1870.....	\$26,106 28	
Interest from 22d November, 1870, to 22d November, 1871.....	1,826 73	
	\$28,933 01	
Disbursements.....	933 33	
Balance.....		26,999 68
Balance, 22d November, 1871.....	\$26,999 68	10
Interest from 22d November, 1871, to 22d November, 1872.....	1,889 27	
	\$28,888 95	
Disbursements.....	1,200 00	
Balance.....		27,688 95
Balance, 22d November, 1872.....	\$27,688 95	
Interest from 22d November, 1872, to 22d April, 1873.....	807 30	
	\$28,496 25	
Disbursements.....	600 00	20
Balance.....		27,896 25
Balance due petitioner 22d April, 1873.....	\$27,896 25	

WILLIAM PATERSON, M. C.

SCHEDULE NO. 2.

Exhibiting the disbursements of the surviving executor of Roswell L. Colt, deceased, for moneys paid and expended on account of the legacy of Maria Theresa Salisbury.

1868.			
Oct. 8th.	By cash paid for account book.....	\$ 25	
Oct. 8th.	By " " " Recording assignment.....	2 50	
1869.			
May 24th.	By " " " Collector of revenue tax.....	10 00	30
June 30th.	By " " " Brown, Bro's & Co.....	300 00	
1868.			
Aug.	By " " " Brown, Bro's & Co.....	300 00	
Nov.	By " " " " "	300 00	
Dec.	By " " " Acknowledgment of assignment.....	17	
Dec.	By " " " Collector of taxes, 1868.....	18 48	

		1869.					
		Nov. 16th.	By	cash paid for Brown, Bro's & Co.....		\$300	00
		Nov. 23d.	By	" " " " " "		300	00
		1870.					
		Feb. 10th.	By	" " " Brown, Bro's & Co.....		300	00
		May 21st.	By	" " " " " "		300	00
		June 10th.	By	" " " Revenue tax.....		9	50
			By	" " " " " "		7	41
		Aug. 24th.	By	" " " Brown, Bro's & Co.....		300	00
10		Oct. 12th.	By	" " " Taxes		37	50
		Nov. 22d.	By	" " " Brown, Bro's & Co.....		300	00
		1871.					
		Feb. 25th.	By	" " " " " "		300	00
		May 22d.	By	" " " " " "		300	00
		Aug. 29th.	By	" " " " " "		300	00
		Oct. 6th.	By	" " " Taxes.....		33	33
		Dec. 26th.	By	" " " Brown, Bro's & Co.....		300	00
		1872.					
		Feb. 21st.	By	" " " Roswell L. Colt.....		300	00
20		May 22d.	By	" " " " " "		300	00
		Nov. 14.	By	" " " Brown, Bro's & Co.....		300	00
		1872.					
		Dec. 23d.	By	" " " Roswell L. Colt.....		300	00
		1873.					
		Feb. 22d.	By	" " " " " "		300	00
		1869.					
		Oct. 4th.	By	" " " Collector of taxes for 1869.....		7	00
						\$5,526	14

WILLIAM PATERSON, M. C.

30

SCHEDULE NO. 3.

Exhibiting the amount of internal revenue tax charged by the executors of Roswell L. Colt, deceased, to the petitioner in *Schedule No. 2*, of the report of William Gledhill, master in chancery.

Revenue taxes assessed during the years on 1864, 1865, and 1866	\$600	00
Revenue taxes assessed during the year on 1867.....	130	00
		\$730
		00

This sum is what was paid by the said executors for taxes due from the estate of Roswell L. Colt, deceased. If allowed as a charge of disbursement against the petitioner, the amount thereof, which is one-third part of the whole, will be \$243.33.

40

WILLIAM PATERSON, M. C.

SCHEDULE No. 4.

Exhibiting the amount of principal and interest that will be due to the petitioner if the taxes in the last schedule are charged as disbursements in the account of said executors.

Balance—22d November 1866—from schedule 1.....	\$23,660 97	
Interest from 22d Nov., 1866, to 22d Nov., 1867.....	1,656 26	
	<hr/>	
	\$25,317 23	
Disbursements	1,266 92	
	<hr/>	
Balance		\$24,050 31 10
Balance—22d Nov., 1867	\$24,050 31	
Interest from 22d Nov., 1867, to 22d Nov., 1868.....	1,682 82	
	<hr/>	
	\$25,733 13	
Disbursements	1,238 22	
	<hr/>	
Balance.....		24,494 91
Balance—22d Nov., 1868.....	\$24,494 91	
Interest from 22d Nov., 1868, to 22d Nov., 1869.....	1,713 94	
	<hr/>	
	\$26,208 85	
Disbursements.....	635 65	
	<hr/>	
Balance.....		25,573 20 20
Balance—22d Nov., 1869.....	\$25,573 20	
Interest from 22d Nov., 1869, to 22d Nov., 1870.....	1,789 42	
	<hr/>	
	\$27,362 62	
Disbursements.....	1,554 41	
	<hr/>	
Balance.....		25,808 21
Balance—22d Nov., 1870.....	\$25,808 21	
Interest from 22d Nov., 1870, to 22d Nov., 1871.....	1,805 87	
	<hr/>	
	\$27,614 08	
Disbursements.....	933 33	
	<hr/>	
Balance.....		26,680 75 30
Balance—22d Nov., 1871.....	\$26,680 75	
Interest from 22d Nov., 1871, to 22d Nov., 1872.....	1,866 94	
	<hr/>	
	\$28,547 69	
Disbursements	1,200 00	
	<hr/>	
Balance		27,347 69
Balance—22d Nov., 1872.....	\$27,347 69	

Amount carried over.....	\$27,347 69
Interest from 22d Nov., 1872, to 22d April, 1873.....	797 30
	<hr/>
Disbursements	\$27,144 99
	600 00
	<hr/>
Balance.....	\$27,544 99
	<hr/>
Balance due petitioner, 22d April, 1873.....	\$27,544 99

WILLIAM PATERSON, M. C.

16 Evidence taken before William Paterson, special master, on reference had by order made on the petition of Roswell L. Colt, and agreed to be used in this matter.

Statement of dividends declared and paid by "The Society for Establishing Useful Manufactures," since November, A. D. 1856.

1857.	October,	Five	(5)	dollars per	share.
1859.	"	Four	(4)	"	"
1860.	May.	Four	(4)	"	"
1860.	October.	Four	(4)	"	"
1861.	April.	Three	(3)	"	"
1861.	"	Four	(4)	"	"
20 1862.	"	Three	(3)	"	"
1862.	"	Two	(2)	"	"
1863.	"	Seven	(7)	"	"
1864.	"	Eight	(8)	"	"
1865.	"	Ten	(10)	"	"
1866.	"	Fifteen	(15)	"	"
1867.	"	Seventeen	(17)	"	"

RICHARD ROSSITER,
Secretary.

State of New Jersey, county of Passaic, ss.

30 *Richard Rossiter*, being duly sworn deposes and says—that he is the secretary of the society named above; that he is familiar with the affairs of the said society as made and recorded in their books, and that the above statement exhibits all the dividends that have been declared and paid by said

society from November, A. D. 1856, to October, A. D. 1867, and that the same were so declared and paid on the par value of shares of the capital stock of said society of one hundred (\$100) dollars each.

RICHARD ROSSITER,

Sworn and subscribed this 5th April, A. D. 1871, before me.

WILLIAM PATERSON, *M. C.*

State of New Jersey, county of Passaic, ss.

Morgan G. Colt, being duly sworn, deposes and says—

I live at present in the city of New York; I am one of 10 the executors of the last will of Roswell L. Colt, lately of the city of Paterson, in the state of New Jersey, and one of his sons; my father died in November, A. D. 1856; his will was proven by all the executors; beside myself, there were three, viz., William Pennington, Aaron S. Pennington, and my brother, Thomas O. Colt.

The inventory was filed in the Orphans Court of the county of Passaic, and the accounts of the executors were settled in that court; the estate of Roswell L. Colt consisted principally of personal property and the greater part of that 20 was in stock of the Society for Establishing Useful Manufactures; my father owned almost all of the stock of that society; there are only some seven or eight held by others, and the owners or the persons in whose names such shares appear are not known; the par value of the shares is \$100; no claim has been made on behalf of any person for the shares that do not stand in the name of my father, or are held under his will; as an executor, I assisted in appraising the value of the shares of that society; John Colt and Wil- 30 liam Ridgway were the appraisers of the inventory; this stock was appraised at \$250 a share; there were 2293 shares; I presume that was the value of the stock at that time; the society did not make dividends every year; when dividends were declared, they were so declared and paid on the par value of the shares; the estate of Roswell L. Colt had no other personal property from which any income was derived; there was one house and lot in the town of Paterson; no income has been derived from that property because it is

subject to a life estate not yet terminated; the only income was derived from the stock of the society; it was in the shape of dividends on that stock; between 1856, when my father died, and October, 1867, there were no transfers by that society to the executors as such, or personally of any real estate; at the time of the death of my father the society owed about \$200,000, secured by their bonds; secured in some cases by mortgage; after his death this sum was increased and had been reduced up to the year 1867; since 10 the death of my father the society has purchased real estate; there were two tracts, and the two cost about \$50,000; one of these was bought within the last three years.

The executors of my father have bought no real estate since his death; the society has both bought and sold land; some of what was bought has not as yet been paid for in whole.

The executors of my father controlled the society practically; they drew from that body dividends as they needed them.

20

MORGAN G. COLT.

Subscribed and sworn this 5th April, 1871, before me.

WILLIAM PATERSON, *M. C.*

State of New Jersey, county of Essex, ss.

Morgan G. Colt, the witness whose deposition was taken on 5th April 1871, being sworn anew at this time, deposes and says—

In 1868 the executors of Roswell L. Colt had to pay a large amount of legacies—somewhere about \$64,000—they obtained that money by a dividend from the society—I do 30 not know what amount of dividends have been made since, for I am not connected with the society. [A paper purporting to be a copy of the inventory and appraisement of the estate of Roswell L. Colt, deceased, taken by the executors, and John Colt and Wm. Ridgway, appraisers, duly certified by the surrogate of the county of Passaic, is offered in evidence on the part of the executors of said estate, and is marked *Exhibit A* for said executors.]

I do not rememeber how the appraisers came to put the

valuation of \$250 on the stock at the time of the estate—the appraisal was determined pretty much by Mr. Ridgway and Mr. A. S. Pennington—I remember Mr. Pennington saying it was a matter of little importance whether the value of the stock was appraised more or less; he thought it would be better to put it at a moderate value; the executors purchased stock of the Society for Establishing Useful Manufactures—they purchased from my brother, T. O. Colt and myself; I cannot answer as to the exact figures, the books will show—it was 14 or 15 years ago—they bought also two shares from Mr. Scott; I think the price paid for the latter stock was \$300 per share, but am not positive as to that; 10 I do not remember the precise amount paid, as I have not looked at the figures—the purchase was made at least 12 years ago.

We, that is to say, my brother Thomas and myself, transferred the stock to the executors at a valuation of \$300 a share, soon after the death of my father; we received no money for the transfer; it was credited on indebtedness; the purchase from Mr. Scott was made by the executors a year or so afterwards; those shares were for sale and the society thought the executors ought to have them, in order to 20 have full control of the society; from the death of my father, to the year 1862, the financial condition of the society was rather bad; there was a good deal of indebtedness; there was no danger of insolvency, though the debt was large; the debts were not pressing; they were secured by mortgage; the interest was paid regularly; since that time the financial condition of the society has been very good and improving steadily; I sold out my interest in the estate in 1868, together with ten shares of my own stock in the society; I had one-third interest and sold that for \$325,000; 30 previous to 1862, when, I said, the financial condition of the society was rather bad, all of the debts were not secured by mortgage; immediately after the death of my father the debts of the society were not reduced, but rather increased; we had to live and our income was from the dividends only, and so we had to borrow money; the affairs of the society did not authorize dividends at that time; the executors and the society were pretty much the same thing, and we bor-

rowed money in the name of the society and so lived; better times did not come until the war, in 1861 or 1862, and then the society paid off most of the old indebtedness mostly out of the profits of the society from sales of real estate; I could not say how much of the debt was created after the death of my father by this borrowing of money; I can only make a rough statement without being sure that is correct; I should say about \$25,000 or \$30,000.

[The representative of the executors of R. L. Colt, deceased, offers in evidence a paper purporting to be a statement by said deceased, made 25th September, 1855, of the supposed valuation of his estate at that] time, which is admitted by council for petitioner to be in his handwriting, but exception is taken by them to said paper as being illegal and irrelevant, and the same is taken subject to such exception, and is marked *Exhibit B* on the part of said executors.]

MORGAN G. COLT.

Sworn and subscribed, this 7th April, 1871, before me.
20 WILLIAM PATERSON, M. C.

EXCEPTIONS TO MASTER'S REPORT.

[Filed May 14, 1873.]

Exceptions taken by the defendant, Morgan G. Colt, sole surviving executor of Roswell L. Colt, deceased, to the report made on the twenty-second day of April, eighteen hundred and seventy-three, by William Paterson, Esq., one of the special masters of this court, to whom certain matters arising under said petition were referred by an order of this court, dated March eighteenth, eighteen
30 hundred and seventy-three.

First exception. For that the said master has allowed interest on the legacy due to the said petitioner from the estate of Roswell L. Colt, deceased, both on the principal and the several accumulations thereof, at the rate of seven

per cent. from November twenty-second, eighteen hundred and fifty-nine, to November twenty-second, eighteen hundred and sixty-one, and from November twenty-second, eighteen hundred and sixty-two, until November twenty-second, eighteen hundred and sixty-six, whereas said master should have allowed only six per cent. during said periods.

Second exception. For that the said master has calculated the interest received by the executors on said legacies, during the said periods at seven per cent. on the ground, that the said executors received on their shares of stock of 10 the Society for Establishing Useful Manufactures during said periods, dividends at the rate of seven dollars per share. Whereas, the said master ought to have allowed only six per cent. on the same, the estate of the said testator having received less than seven per cent. during said periods on its value, as appears by the evidence before the said master.

Third exception. For that the said master has stated the said account with annual rests, thus allowing interest on interest, contrary to the accounting heretofore had in this court, in regard to this legacy, and contrary to equity. 20

Fourth exception. For that the said master has not allowed to the said executor certain disbursements made by the said executors, on account of the petitioner for internal revenue taxes of the United States, which said disbursements are more particularly stated in said report, and in the schedule marked *Schedule, No. 3*, of the said report, contrary to the accounting heretofore had in this court in regard to this legacy, and contrary to the terms of said order of reference and to equity.

Fifth exception. For that the said master has not allowed 30 the executor commissions on the principal sum of said legacy.

In which said several matters this exceptant excepts to the said report and prays that the same be set aside or corrected, and prays the judgement of the court upon the same.

WILLIAM PENNINGTON,

Solicitor and of Counsel with Morgan G. Colt, surviving executor of R. L. Colt, dec'd.

A true copy.—H. S. LITTLE, *Cl'k.*

SCHEDULE A.

Extract from the will of Roswell L. Colt, deceased.

"In the name of God, amen. I, Roswell Lyman Colt, of Paterson, in the county of Passaic, and state of New Jersey, being in good health, &c., &c.

"*First.* I do hereby appoint Morgan Gibbes Colt, Thomas Oliver Colt, Aaron S. Pennington, and William Pennington, executors of this, my last will and testament, &c., giving to them, and to the survivor, Morgan Gibbes Colt, power to
10 carry out the will, sell land, and settle claims.

"*Second.*" Appoints guardian of Julia C. Colt.

"*Third.*" Certain charitable bequests.

"*Fourth.* I direct next, that the sum of ten thousand dollars be paid out of my estate to Aaron S. Pennington, for his services as acting executor and trustee of this, my last will and testament; and if he shall die before settling the preceding bequest, I then desire that William Pennington shall be the acting executor and trustee of my estate, and that the said sum of ten thousand dollars in this case be
20 paid to him, and I desire my said executors to employ some competent and trustworthy person as agent or clerk, to collect the trusts, issues, or profits of my estate, and deposit the same in some safe institution, and to keep in proper books accounts of receipts and payments had and made under the provisions of this will: for those services I authorize my executors to pay a fair compensation, to be charged, share and share alike, to my four children, to whom I hereafter
30 devise my estate, and I direct that neither my sons Morgan G. Colt or Thomas O. Colt, shall be allowed any compensation for acting as executors or trustees, but I am sure they will cheerfully act as such out of regard to their father's wishes.

"*Fifth.*" After reciting a separation from his wife, and that she had engaged to support certain children, "it being understood that I shall support Roswell L. Colt, Junior, since dead, leaving three children, Morgan G. Colt, Thomas O.

Colt, and Julia C. Colt as I may think proper. Therefore in consideration," &c. * * "I do positively order and direct that my executors having made the division of all the rest and residue of my estate as before directed, and having estimated in it for this purpose, which I now again direct, all sums of charges now made or which hereafter shall be made, to the debit of either of my said four children, to wit, the estate of Roswell L. Colt, Jr., (now deceased) Morgan Gibbes Colt, Thomas Oliver Colt, and Julia Catherine Colt, in my said ledger or journal at the time of my death, but 10 on such debits no interest is to be charged; such debits as so stated in my books to be taken and considered as conclusive evidence against my said children respectively, and shall not be diminished or increased at the instance of any of my children or otherwise, for any reason whatever; and the aggregate of said debits being added to the rest and residue of my said property, their whole amount so formed is to be divided into four equal shares, and the sum charged to any child to whom a share shall be allotted is first to be deducted before the residue coming to said child shall, as is 20 hereinafter ordered to be paid or held in trust for said child, as the case may be. I do then order and direct that my executors shall appropriate one of said equal shares or a fourth part of my estate, after deducting the sum which my deceased son Roswell L. Colt, Jr., may stand charged with on my books at the time of my decease, said residue of said fourth to be held for the benefit of my grandchildren, Roswell Lyman Colt, now Junior, Maria Theresa Colt, and Margaret Oliver Colt. Said property to be held by them, and survivor of them and the executor or administrator of 30 such survivor, in trust, first for the purpose of properly and handsomely supporting and giving a good education to each of my said grandchildren, and as they respectively arrive at the age of twenty-one years, then to pay each of them their share of the income of said fund, held in trust for them, may produce share and share alike, during their natural lives, and at their respective deaths to pay over to the lawful issue, if of legal age, if not, then to such guardians as may be appointed, the share such lawful issue would be entitled of its parent's interest in my said estate; and if any 04

of said grandchildren shall die without lawful issue, then the income, and finally the principal, of such share shall go to the others of my said grandchildren, and their lawful issue, upon the same trusts and conditions as the whole share is given: but if all my said grandchildren die without lawful issue, I then order and direct my said trustees, and the survivors, &c., of them, to dispose of this share of my property as I have directed my property to be disposed of in my will of such of my children dying without lawful
 10 issue before my said estate is distributed. And I further direct that my acting executors and trustees, Aaron S. Pennington and William Pennington, for taking charge of such share, be allowed a commission of five per cent. on the yearly income of said share, until same shall be disposed of as before directed. One other of said equal or fourth parts of my estate I will and direct they shall pay and hand over said share to my son Morgan Gibbes Colt; that is to say, after first deducting the sum, &c., &c.

“*Sixth.* If all my three grandchildren die leaving no lawful
 20 issue, and my sons, Morgan G. Colt and Thomas O. Colt, and my daughter; Julia C. Colt, die, leaving no lawful issue surviving me, then I will and direct the rest and residue of all my estate, not already divided, to be divided, &c.”

In witness whereof, I, the said Roswell L. Colt, have hereunto signed my name and affixed my seal this twelfth day of October in the year of our Lord eighteen hundred and fifty-two.

ROSWELL L. COLT. [L. s.]

Signed, sealed, published, and declared by Roswell L. Colt,
 30 as and for his last will and testament in our presence, who have hereunto subscribed our names in his presence and in the presence of each other.

CORS. G. GARRISON,
 WM. GLEDHILL,
 THOS. O. SMITH.

I, Roswell Lyman Colt, of Paterson, in New Jersey, do hereby make and declare this instrument of writing to be a codicil to my last will and testament hereunto annexed,

made the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-two, hereby revoking so much thereof as relates to my son Roswell L. Colt, Junior, and his children, and in lieu of the provisions made therein for him and his three children, I do hereby direct my said executors, the survivors and survivor of them, his executors and administrators named in said annexed will, to charge in my books, to the debit of profit and loss, the amount which stands to the debit of my said son, the late Roswell L. Colt, Junior, now in page one hundred and seventy-six in my ledger, and discharge his estate from the payment of the same; and in lieu of the provisions made in my said aforesaid will, in favor of said three grandchildren, which, as before said, are hereby revoked and declared null and void; I do hereby will and direct that my said executors, the survivor and survivors of them, and the executors and administrators of such survivor of my said will of 12th October 1852, shall hold in trust for the benefit of my said grandson, Roswell L. Colt, Junior, the sum of forty thousand dollars, to be paid to him when he shall arrive at the age of twenty-five years, with the increase thereon from accumulation. But if my said grandson, Roswell L. Colt, Junior, shall die before he shall arrive at the age of twenty-five years, then I direct that if he shall leave lawful issue, that the said sum of forty thousand dollars, with the accumulation thereon, be paid to the legal guardians of such lawful issue, for the use of such issue to be divided among them; according to the laws of New Jersey, for the distribution of the estate of those dying intestate. But if my said grandson, Roswell L. Colt, Junior, shall die before he shall arrive at the age of twenty-five years, without issue, then I direct the sum of forty thousand dollars, with the accumulation thereon, to be added to my general estate and to be considered as part and parcel thereof, and to be divided into three shares, as hereinafter provided for. It is my wish and desire, however, and so I order and direct, that after my said grandson, Roswell L. Colt, Junior, shall arrive at the age of twenty-one years, the whole yearly income of said forty thousand dollars to be paid to him, until he shall arrive at the age of twenty-five

years, if he shall live so long ; and in the meantime, that he be well educated and properly supported out of the income he derives from his father's estate, and from the interest of this conditional bequest.

In the next place, I will and direct, that the said executors of my said will, the survivors and survivor of them, and his executor or administrator, shall hold in trust for the benefit of my granddaughter, Maria Theresa Colt, the sum of twenty thousand dollars, to be paid to her when she shall arrive at
10 the age of twenty-five years, with the increase thereon from accumulation.

But if my said granddaughter, Maria Theresa Colt, shall die before she shall arrive at the age of twenty-five years, then I direct, that if she shall leave lawful issue, that the said sum of twenty thousand dollars, with the accumulation thereon, be paid to the legal guardians of said lawful issue, for the use of such issue, to be divided among them, according to the laws of New Jersey, for the distribution of the estate of those dying intestate. But, if my said grand-
20 daughter, Maria Theresa Colt, shall die before she shall arrive at the age of twenty-five years without issue, then I direct the said sum of twenty thousand dollars, with the accumulation thereon, to be added to my general estate, and to be considered as part and parcel thereof, and to be divided into three shares as hereinafter provided for.

It is my wish and desire, however, and so I order and direct, that after my said granddaughter, Maria Theresa Colt, shall arrive at the age of eighteen years, or shall marry, that the whole yearly income on the said sum of twenty
30 thousand dollars be paid to her, for her separate use and control, married or unmarried, until she shall arrive at the age of twenty-five years, if she shall live so long, and in the meantime, that she be well educated and supported out of the income she derives from her father's estate, and from such part of the income from this conditional bequest as may be necessary.

In the next place, I will and direct my aforesaid executors, the survivors and survivor of them, and the executors or administrators of such survivors, to hold in like manner, for
40 the conditional benefit of my granddaughter, Margaret Oliver

Colt, the like sum of twenty thousand dollars, subject to all and every the limitations, conditions, restrictions, and reservations in every respect whatsoever, with remainder, in case of need, for benefit of my general estate, as is provided for in the last foregoing conditional bequest in favor of my granddaughter, Maria Theresa Colt, and my said executors having thus far provided for the bequests, and grants under this codicil, and the bequests and grants in my said will of the 12th of October, 1852, up to the fifth item; I then order and direct my said executors, instead of dividing the rest and 10 residue of my said estate, real and personal, into four parts as directed by said will, to divide the same into three equal shares or parts, one of which shares or third of my estate to be paid to Morgan Gibbes Colt, under the provisions, limitations, and conditions in the fifth clause in my said will mentioned; one other share or third part of my estate to be paid to my son Thomas Oliver Colt, under the provisions, limitations and conditions in the fifth clause in my said will mentioned; and the remaining share or third part of my said estate to be held in trust by my said executors, 20 acting as trustees for the benefit of my daughter, Julia Catharine Colt, under the provisions, limitations, and conditions in the fifth clause in my said will mentioned; except as to the said three shares; if any of my said three children shall die, leaving no lawful issue, the share of such child so dying shall go to others, and not to the children of my son Roswell, my intention and will being to leave the residue of my estate to and among my said three children and their heirs, exclusive of the children of 30 my son Roswell, as I have in this codicil otherwise provided for them. It is further my will, and I do direct, that Aaron S. Pennington, or the acting executor under the trust created by this codicil, shall charge a commission of two and one-half per cent. on the sums he shall pay out of the trust created for the support and education of my said three grandchildren.

ROSSELL L. COLT. [L. s.]

—Signed, sealed, published, and declared by the said Roswell Lyman Colt, as and for a codicil to his last will and testament, and to be taken as part thereof, in the presence

of us whose names are hereunder subscribed as witnesses, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses, this twenty-fifth day of September, eighteen hundred and fifty-five.

THOS. O. SMITH,
C. H. GARRISON,
ISAAC VAN WAGONER.

Recorded in Passaic county.

es,
of
it-
n-

OPINION.

THE CHANCELLOR. On the fifteen of September, 1868, an interlocutory decree was made in this cause, whereby, among other things, it was ordered and decreed that the surviving executor of the last will and testament of Roswell L. Colt, deceased, should take assignments of certain bonds and mortgages in the decree mentioned and set forth, guaranteed by the Society for Establishing Useful Manufactures, to them as trustees for Roswell L. Colt, junior, and his sister, Maria Theresa, and that the executor should hold the bonds as trustee for the benefit of Roswell L. Colt, junior, and his sister, Maria Theresa, subject to the trusts created for them by the will of Roswell L. Colt and the codicil thereto, and that the surviving executor should be discharged as such executor from all claim or liability on account of the same. When this decree was made, Maria Theresa, who had then intermarried with Edward Salisbury, resided out of the United States. It was based on a report made by a master, on the hearing before whom Mrs. Salisbury, who was then a minor, was represented by the solicitor of her guardian *ad litem*.

On the fourth of December, 1872, Mr. Salisbury and his wife filed their petition in this suit, setting forth these circumstances and insisting that the report and decree were founded on mistake as to Mrs. Salisbury's rights, and praying that the decree might be reviewed and set aside, and that it might be referred to a master of this court to take and state an account of the principal and interest due her upon her legacy, charging her with payments theretofore made, but crediting her with all commissions which she had been charged in the account by the executors. The legacy referred to in the petition is one of \$20,000, given to Mrs. Salisbury in the codicil above mentioned. The surviving executor answered the petition, admitting the truth of its statements, and joining in the prayer for an account of Mrs. Salisbury's legacy and the accumulations thereon, but insisting on the bona fides and

fairness of the decree and of the account on which it was based, and that his accounts, as executor, had been fairly made and were conclusive and binding on the petitioners, unless impeached, but submitting it to this court to determine whether those accounts should be re-stated, and expressing willingness to acquiesce in the decision. On this petition and answer, an order was made on the eighteenth of March, 1872, vacating and setting aside the decree of September fifteenth, 1868, and referring it to one of the

10 special masters of this court, to take and state an account of the amount due to Mrs. Salisbury for principal and interest on her legacy, and directing him to allow her interest after the rate of seven per centum per annum, for all the time during which the executors of Roswell L. Colt, deceased, received interest at that rate upon the money in their hands belonging to her, and for all other time after the rate allowed by law at that time. He was further directed to credit the executors in the account with all moneys paid by them for or to her, but not with any commissions, although

20 theretofore charged by them. The special master reported that, as the estate of the testator was invested by him in the capital stock of the above mentioned society, and so continued to the date of his death, and as the legacy bequeathed to Mrs. Salisbury must be paid out of the proceeds of that stock belonging to the estate; and as the executors had received from the society dividends, of which he states an account on the par value of their stock, they should be charged with interest on the legacy at six per cent. per annum for every year during which they received

30 dividends on the stock at the rate of six per cent. or less, which were the years 1856, 1857, 1858, 1859, 1861 and 1862, and for all other years to the fifteenth of March, 1866, and from thence to the date of this report (April twenty-second, 1873,) at the rate of seven per cent. per annum. The master disallowed certain payments for which the executors claimed credit, as having been made for the internal revenue tax assessed upon the legacy. To the report the surviving executor excepted, as follows:

First. To the allowance of interest on the legacy and its accumulations at the rate of seven per cent. per annum from November twenty-second, 1859, to November twenty-second, 1861, and from November twenty-second, 1862, to November twenty-second, 1866, the exceptant insisting that the master should only have allowed six per cent. during those periods.

Second. To the charge of interest during those periods at seven per cent., on the ground that the executors received on their shares of the stock during those periods, dividends at the rate of seven dollars per share, whereas it ought to have been only six per cent., because the executor of the testator received less than seven per cent. during those periods on the value of the stock. 10

Third. To the statement of the account with annual rests.

Fourth. To the refusal to allow the payments made for internal revenue tax, and

Fifth. To the refusal to allow to the executor commissions on the principal of the legacy. 20

This court, in *Fowler v. Colt*, 7 C. E. G. 44, 47, 49, upon exception to a master's report made on petition of Roswell L. Colt, junior, in respect to his legacy under the codicil above mentioned, passed upon the very questions raised by the third and fifth exceptions, as to the propriety of stating account with annual rests and the right to commissions as against the legatee. The disposition there made of these questions is entirely satisfactory to me. Besides, it may be remarked that the order of reference in this case expressly forbids the master to allow commissions. 30
These two exceptions will be overruled.

The question raised by the second exception was also considered and decided in *Fowler v. Colt*, but not under such circumstances as to make that decision authoritative in this case. That question is whether, seeing that the stock is valued at \$300 per share, its par value being \$100, a dividend of the par value ought not to be regarded as a dividend on the stock at its true value, and therefore in reality only a dividend of one-third of its nominal amount; so that a dividend of six per cent. on the par value would 40

really be one of only two per cent. on the true or market value. This distinction is urged because of the fact that the whole or nearly all of the testator's estate was at the time of his death invested in the stock mentioned in the master's report, and it is deemed unjust to hold his estate to the payment of interest on the basis of the dividends received on the par value of the stock.

10 A statement made by the testator, in which the amount of his estate is estimated with reference to his will and the disposition therein made, was introduced by the executor. In that estimate the stock is put down at \$300 per share, and appears to have constituted all of his large estate of over \$700,000, except real estate of the value of \$5,000. This paper is inadmissible as evidence in this cause on plain principles. *Leigh v. Savage*, 1 *McCart*. 124. But if it were admitted, it would not affect the question now before me. The codicil directs that the executors and the survivors and survivor of them and his executor or administrator shall hold in trust for the benefit of the testator's
20 granddaughter, Maria Theresa Colt, the sum of \$20,000, to be paid to her when she shall arrive at the age of twenty-five years, with the increase thereon from accumulation. It further directs that if she shall die before she arrives at that age, leaving lawful issue, the legacy with the accumulation thereon be paid to the legal guardians of such issue for the use of such issue, to be divided among them according to the laws of New Jersey for the distribution of the estates of those dying intestate. But if she shall die before attaining to that age, without issue, the testator directs that the
30 said sum of \$20,000, with the accumulations thereon, be added to his general estate, and be considered part and parcel thereof, and be divided into three shares, to go to his two sons and his daughter, or to their issue. He further ordered and directed, that after Maria Theresa should arrive at the age of eighteen years, or should marry, the whole yearly income of the \$20,000 be paid to her for her separate use and control, married or unmarried, until she should arrive at the age of twenty-five years, if she should live so long, and that in the mean time she be well educated and
40 supported out of the income she should derive from her

father's estate and from such part of the income from that "conditional" bequest as might be necessary. It will be seen that the testator's intention was that his executors should set apart for Maria Theresa the sum of \$20,000 to be accumulated. He provided for supplementing her income from her father's estate with so much of the income of the \$20,000 as might be necessary for her proper support up to the age of eighteen years, after which time, until she should attain the age of twenty-five years, she was to have the whole income of the twenty thousand dollars. Under the 10 directions and provisions above stated it was the duty of the executors to separate, within a reasonable time, the \$20,000 from the estate and put it at interest with a view to accumulation, and the necessities of the support and education of the legatee. For aught that appears, they might have done this immediately after the death of the testator.

The master seems to have considered that no investment was necessary, in view of the fact that the testator's whole estate was invested at his death in the stock, and he there- 20 fore, to a certain extent, treated the matter as if the investment had been directed by the will to be continued in that stock. It was argued by the counsel of the exceptant that the executors were not required to withdraw the money from this investment in which the testator himself had placed it. If this were conceded, it would not affect the conclusion at which I have arrived, for it is impossible, from the case as it stands before me, to determine what the income of the stock was during the period covered by the report. The dividends made cannot be regarded as evi- 30 dence of the income. The exceptant testified before the master that the executors controlled the society practically, and draw from that body dividends as they needed them. In 1868, he says, they had to pay a large amount of legacies, somewhere about \$64,000, and they obtained the money by a dividend from the society. It is evident that the dividends are no guide to the earnings or profits. They cannot fairly be regarded as evidence of the income from the shares. As was said in *Fowler v. Colt*, they were irregular and desultory, not according to or based on the 40

earnings of the society, but upon the necessities of the executors and the testator's children. But, if the dividends be taken as evidence of the full net earnings or profits of the society, the master has strictly complied with the directions of the order of reference as to all of the periods of time (from November twenty-second, 1859, to November twenty-second, 1861, and from November twenty-second, 1862, to November twenty-second, 1866,) mentioned in the first exception, with the exception of that in which the year 1862 is embraced; for, for the year 1860, the society paid a dividend of \$8 per share; for 1861, \$7; for 1863, \$7; for 1864, \$8; for 1865, \$10, and for 1866, \$17. In 1862, a dividend of less than seven per cent. was paid on the par value of the stock. The dividends amounted in the aggregate, from 1857 to 1867, both inclusive, to \$86 per share, an average of about \$8 per share at the par value. In 1868, as has been stated, a dividend of over \$30 per share was paid in order to pay legacies. It is obvious, then, that these dividends cannot be regarded as the interest received by the executors on the legacy of Mrs. Salisbury, within the meaning of the order of reference. Under the circumstances, the liability of the exceptant to the payment of interest must be fixed without reference to the dividends.

The codicil directs that the executors and the survivors and survivor of them, and the executors and administrators of the survivor, hold certain sums of money in trust for Roswell L. Colt, Maria Theresa Colt and Margaret O. Colt, the children of the testator's deceased son Roswell, viz.: For Roswell L. Colt, \$40,000; for Mrs. Salisbury, \$20,000, and for Margaret O. Colt, \$20,000, on the trusts declared in the codicil in respect to those moneys, and then directs that the residue of the estate be equally divided between the testator's three children, declaring it to be his intention to leave the residue of his estate to and among his said three children and their heirs exclusive of the children of his deceased son Roswell. Roswell L. Colt, Mrs. Salisbury and Margaret O. Colt, therefore, have no interest in the estate of the testator, beyond the legacies given to them. These legacies are pecuniary legacies. They are not payable in stock. No direction is given as to the postponment of pay-

ment of them in the interest of the estate at large, nor is any such intention indicated by the will or codicil. The testator did not direct the executors to continue the investment he had made of this money. They were bound to separate these amounts from the estate and securely invest them within a reasonable time. They did not do so. As before remarked, it does not appear that it was not practicable for them to do it very soon after the death of the testator. It may have been, and probably was for the interest of the residuary legatees that this money should not be taken out of the estate until a late day, and it was probably for this reason that the separation and investment were not made. That, however, is no excuse for the neglect or omission of the executors in the premises. Their liability is fixed by the established principles governing such cases. Their unexcused failure to make such separation and investment is a breach of their trust, for which they are chargeable with interest. *Perry on Trusts*, §§ 449, 453, 462, 465. They are, however, chargeable with interest only at the legal rate for the time being, in the absence of special agreements. *Perry on Trusts*, § 468; *Graver's Appeal*, 50 *Penn. St.* 189. They are therefore chargeable with interest at the rate of six per centum per annum, up to the year 1866, in which, by statute of March fifteenth, interest at the rate of seven per cent. per annum was legalized as a common rate. The master erred in charging the executor with interest at seven per cent. during the periods mentioned in the first exception. The legal rate of interest, in the absence of special contract, then was six per cent., and the executor should have been charged at that rate. The first exception must be sustained. The second exception will be overruled.

It remains to consider the fourth exception, which is founded on the refusal of the master to allow to the executor certain disbursements, which, he alleges, he made on account of Mrs. Salisbury for internal revenue taxes from 1862 to 1869, both inclusive. There is no evidence before me as to these disbursements, except receipts of the collector of internal revenue. None of them, except those for 1868 and 1869, appear to be for assessments in respect of Mrs.

Salisbury's income from her legacy. The first of these is on an income of \$200, and the tax paid was ten dollars. The other was upon an income of \$190, and the tax paid was nine dollars. The others are for assessments against the executors or executor, and are for different amounts of tax, the amounts of income on which they were paid varying from \$445 to \$32,678. I am unable to determine whether any part of the payments made by the executors for internal revenue tax, except as above stated in the years 1868 and 1869, was made on account of Mrs. Salisbury's income. The fourth exception will be allowed, so far as the tax paid for 1868 and 1869 is concerned. The result is: The first and fourth exceptions are allowed. The rest are overruled.

ORDER OF REFERENCE AND FOR PAYMENT.

This matter coming on to be heard in the presence of the Chancellor, in the presence of R. Wayne Parker and Cortlandt Parker, of counsel with said petitioners, and Benjamin Williamson, Ashbel Green and William Pennington, of counsel with said executor, on exceptions filed by said executor to the report of William Paterson, Esquire, to whom it was referred to take and state an account of the amount of the principal and interest due to the said petitioner, Maria Theresa Salisbury, on her legacy, by interlocutory decree, dated the eighteenth day of March, eighteen hundred and seventy-three, and having been fully argued and the opinion of the Chancellor filed therein—

It is, on this nineteenth day of October, in the year one thousand eight hundred and seventy-four, ordered, adjudged and decreed by Theodore Runyon, Chancellor of the State of New Jersey, that the first exception made to said report that the said master had allowed interest on the legacy and accumulations, at the rate of seven per cent., from November twenty-second, eighteen hundred and fifty-nine, to the same day in eighteen hundred and sixty-one, and from

November twenty-second, eighteen hundred and sixty-two, to November twenty-second, eighteen hundred and sixty-six, be, and the same is allowed, the Chancellor being of the opinion that the said master should only have allowed six per cent. during said periods.

And it is further ordered, adjudged and decreed, that the fourth exception that the master has not allowed the executors certain alleged disbursements for United States revenue taxes mentioned in said report, be, and the same is allowed, so far as respects the years eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and the taxes reported as paid in those years, but as to the other taxes set forth in the said accounts of the said executor, and mentioned in said report, that the same be disallowed.

And it is further ordered, adjudged and decreed, that it be referred to said William Paterson to restate the account annexed to said report, and that he do allow to the petitioner only the amount of six per cent. interest in the years above stated, and that he allow the said executors the taxes mentioned in said report as paid in said years eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, but none other; and that the rest of the exceptions to said former report be and they are hereby disallowed, and that said master do make his report with all convenient speed.

And it further appearing that more than the sum of fifteen thousand dollars is admitted by the said executor to be due and to be held in trust by him for said petitioner, it is ordered that he do pay to the solicitors of said petitioner the said sum of fifteen thousand dollars, on account, within ninety days herefrom; and all further equity is reserved till the coming in of said master's report.

THEODORE RUNYON, C.

PETITION OF APPEAL.

Between	}	On bill, &c.
DeGrasse B. Fowler et als, Complainants,		
and		
Morgan G. Colt, surviving executor, et als.,		
Defendants.		

To the Honorable the Judges of the Court of Appeals, in the last resort in all causes of law: Your petitioners, Maria T. Salisbury, and Edward Salisbury, her husband, file this, their petition, and state that they feel aggrieved

10 by a certain decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of the State of New Jersey, and by so much thereof as decrees that the first and fourth exceptions filed by said executor to the report of William Paterson, Esquire, to whom it was referred to take and state an account of the amount of principal and interest due to said petitioner, Maria T. Salisbury, on her legacy, be allowed; and that it be referred to said William Paterson to restate the account annexed to said report, and that he

20 do allow to the petitioner only the amount of six per cent. interest from November twenty-second, eighteen hundred and fifty-nine, to the same day in eighteen hundred and sixty-one, and from November twenty-second, eighteen hundred and sixty-two, to November twenty-second, eighteen hundred and sixty-six, which decree was made and dated the nineteenth day of October, eighteen hundred and seventy-four; and your petitioners desire to appeal therefrom, in the Court of Appeals, in the last resort in all causes of law.

30 And your petitioners pray that this their appeal may be heard and adjudged by your Honor, and that the said decree may be, in the particulars aforesaid, reversed, set aside

and for nothing holden; and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated October 24, 1874.

PARKER & KEASBEY,
Solicitors of Petitioners.

RICHARD WAYNE PARKER,
Of Counsel.

PETITION OF APPEAL.

To the Honorable the Judges of the Court of Errors and Appeals of the State of New Jersey: Your petitioner, Morgan G. Colt, sole surviving executor of the last will and testament of Roswell L. Colt, deceased, files this his petition, and states that he finds himself aggrieved by so much and such part of a certain decree made in the Court of Chancery, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, in the above stated cause, dated the nineteenth day of October, eighteen hundred and seventy-four, as decrees that the second exception filed by the said surviving executor to the report of Mr. William Paterson, Master in Chancery of New Jersey, to whom it was referred to take and state an account of the amount due to the said petitioner, Maria T. Salisbury, on her legacy under the will of Roswell L. Colt, be disallowed.

And your petitioner humbly appeals from that part of the said decree which disallows the said second exception, on the ground that the said part of said decree disallowing the said second exception was erroneous.

And your petitioner therefore prays that the said part of said decree may be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to your honors may seem meet.

November 21st, 1874.

(Signed) WILLIAM PENNINGTON.

Solicitor, and of Counsel with the Petitioner, Morgan G. Colt, surviving executor, &c.

MEMORANDUM IN HANDWRITING OF R. L. COLT.

25 September, 1855. Supposed value of R. L. Colt, estate.

	Page 176, 2,360 shares of stock of the society,	
	at 300 dollars per share,	\$708,000
	50, House and lots on Market and Smith streets, subject to a lease to my 3 sisters for life, free of rent, say,	5,000
10	70 shares of American Life Insurance and Trust Co., may be worth a trifle.	

\$713,000

Deduct to pay life insurance for

Mr. Hornblower,	\$600 00
-----------------	----------

Deduct to pay executor,	10,000 00
-------------------------	-----------

Deduct to pay annuity to Genl.

D'Everuex, say at least,	10,416 42
--------------------------	-----------

21,016 42

20

\$691,983 58

To this I have ordered what I have advanced my children to be added, say to R. L. Colt, junior,

\$77,092 64

To M. G. Colt,

53,530 00

To T. O. Colt,

41,544 01

To Julia C. Colt,

2,463 10

\$866,613 33

Pass by clause of my will, 1-10th to charity,

\$86,661 33

30 Have already exceeded this sum, (see page 195 in ledger),

88,746 42

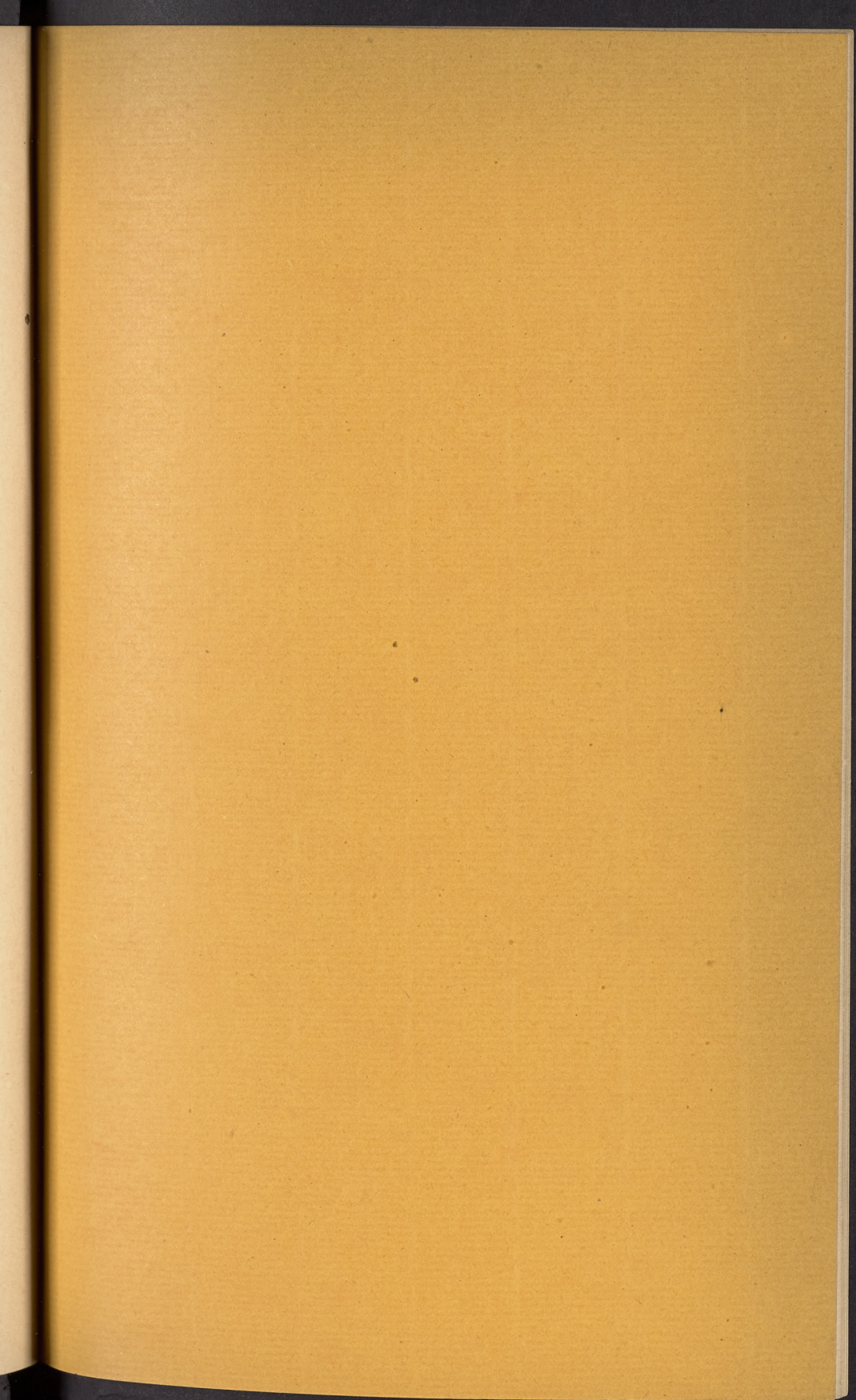
Of course nothing further to be paid under this clause giving 1-10,

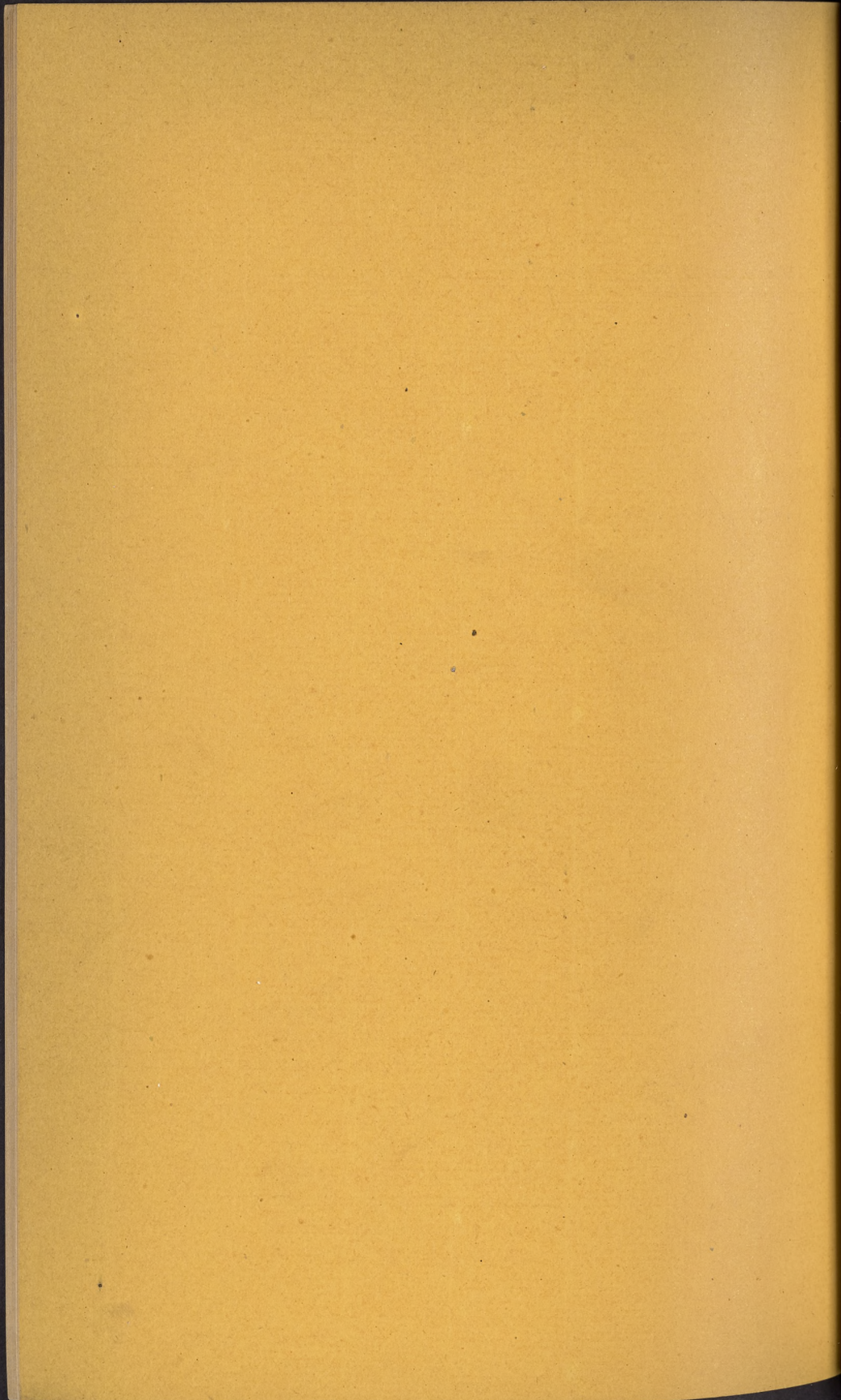
From this deduct the sum charged		
R. L. Colt, junior,		77,092 64
		<hr/>
		789,520 69
Deduct this sum to pay R. L. Colt,		
junior, 3 children,		80,000 00
		<hr/>
		\$709,520 69
$\frac{1}{3}$ for M. G. Colt,	\$236,506 89	
Less paid him,	53,530 00	
	<hr/>	\$182,976 89
$\frac{1}{3}$ for T. O. Colt,	236,506 90	
Less paid him,	41,544 01	
	<hr/>	194,962 89
$\frac{1}{3}$ for Julia C. Colt,	236,506 89	
Less paid,	2,463 10	
	<hr/>	234,043 79
		<hr/>
		\$611,983 57
Paid the 3 children,		97,537 11
		<hr/>
		\$709,520 68

STATEMENT OF THE RECEIPTS AND DISBURSMENTS OF THE

DATE	DESCRIPTION	AMOUNT
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900







=

C

B

T

o
i
o
e
s
o
u
l
s
c