

New Jersey Court of Errors and Appeals

Between

CARLOTTA HEATH,
Complainant-Appellant,

and

FREDERICK R. MADDOCK, execu-
tor, &c.,
Defendant-Respondent.

Brief of Appellant.

Statement of Case.

This suit was brought chiefly for the purpose of having the defendant removed from his office of executor and trustee under the will of Margaret C. Heath, deceased, and for an accounting, and incidentally for a construction of that will. The charges against him are set forth in the bill (pp. 4 to 20).

The bill was filed on December 15th, 1911. At that time the defendant had been removed by the Essex Orphans' Court as guardian of the complainant upon the same grounds upon which his removal was asked in this suit. The order of the Orphans' Court was then under review before the present Chancellor, then sitting as Vice-Ordinary. The Vice-Ordinary subsequently reversed the Orphans' Court (*Heath vs. Maddock*, 81 N. J. E., 470); and the Vice-Ordinary's decision was later and at the November term, 1913, affirmed by this court for the reasons given by the lower court.

These decisions having disposed of the principal issues involved in the suit, it became necessary to retain the suit only for the purpose of having decided

the incidental issues, which will be hereinafter particularly referred to.

The case was first referred to his Honor, Vice-Chancellor Emery (p. 61), who referred to Oscar Keen, Esquire, as Special Master, the account (p. 62) and he died without making a final report. At the suggestion of the Special Master Mr. Richard F. Stevens was engaged as an accountant to make up and state an account (p. 64), and this expert accountant on November 7, 1912, made his report (p. 108). The accountant's report deals only with the inventory, which was filed on September 26, 1911 (p. 4) and with the first account which was filed on October 16, 1911 (pp. 4, 77 *et seq.*).

Subsequently and because of the illness of Vice-Chancellor Emery the case was referred to the Honorable William J. Magie as Advisory Master (p. 66).

The defendant's second account was filed with the Advisory Master (pp. 112, 133, 164).

After the decisions in the guardianship matter the two questions in this suit which remained to be disposed of were these:

1. Whether the defendant should not be charged with the full value of the board and lodging of himself and his wife during the time he and she together occupied the homestead, No. 300 Roseville avenue, from April, 1909, to October, 1911; or with his proper proportion of the expenses connected with the maintenance of the house during that period.

2. Whether by the 6th, 7th and 8th clauses of the will the defendant was entitled to commissions in excess of the \$500 given to him in the 8th clause; and, incidental to this question, whether he having renounced under the statute the specific compensation given to him by the will, he must not forego the provisions for his benefit in the will, and take only the commissions allowed to him by law.

On these issues, and principally on the former one, hearings were had before the Advisory Master (pp. 133 to 203).

The Advisory Master found on both these issues against the complainant (pp. 204 & 209).

Grounds of Appeal.

1. That the decree (p. 209) fails to surcharge the defendant with his proportion of the expenses connected with the maintenance of the homestead of the decedent, No. 300 Roseville avenue, during the time he and his wife resided there, and with an adequate amount represented by their board and lodging (pp. 5, 41, 212, 214).

2. That the decree disregards the fact that by the true meaning and effect of the will of Margaret C. Heath, deceased, the legacy of \$9,000 given to the defendant in the sixth clause of the will, and the provisions for his benefit contained in the seventh clause were made by the testatrix with reference to his commissions, and with the \$500 named in the eighth clause, were given as his compensation for his services as executor and trustee under the will; and that the sum of \$500 given to him by the eighth clause was made with reference to the previous provisions for his benefit (pp. 212, 214).

3. That as it appeared that the defendant had renounced all claim to specific compensation under the will, he cannot have the compensation given to him by the 6th, 7th and 8th clauses of the will and he is limited to the fees allowed by law (p. 214).

4. That the renunciation of specific compensation was not made within the time allowed by law and the defendant, if the provisions for the benefit of the defendant contained in the 6th and 7th clauses of the will were not given as part of defendant's compensa-

tion, is limited to the \$500 given by the 8th clause of the will (p. 214).

5. That the defendant because of his neglect of duty is not entitled to an commissions or to an allowance of counsel fees (p. 214).

Brief of Argument.

I.

THE DECREE IS ERRONEOUS IN THAT IT FAILS TO CHARGE THE DEFENDANT WITH HIS PROPORTION OF THE EXPENSES OF MAINTAINING THE HOMESTEAD OF THE TESTATRIX AFTER HIS MARRIAGE, AND WHILE HE AND HIS WIFE RESIDED THERE FROM APRIL, 1909, TO OCTOBER, 1911.

This issue is raised by the pleadings (pp. 5, 20, 41).

In the Guardianship Case (81 N. J. E., p. 473), the Ordinary said that if the defendant has benefited because he had failed to pay proper board the remedy lies "in the accounting and not in the removal"; and it is this accounting that is now before the court.

The seventh clause of Mrs. Heath's will provides as follows:

"Seventh. I also give to my said nephew, Frederick R. Maddock, who now lives with me, the privilege of living in the same manner free of charge with my husband and my granddaughter, Carlotta C. Heath, in my dwelling house, No. 300 Roseville avenue, Newark, New Jersey, until my said granddaughter, Carlotta C. Heath, arrives at the age of twenty-one years *provided my said nephew remains single*. This privilege, however, is not to interfere in any way with the rights of my said husband or of my said granddaughter in said dwelling house but is to be exercised only in the same manner and to the same extent as it

is now exercised by my said nephew, and this privilege shall cease and be void in case my said granddaughter dies before she is twenty-one years of age or in case my executors shall sell my said dwelling house. If my said granddaughter and nephew should both remain single after my granddaughter arrives at the age of twenty-one years I would be glad to have this privilege continued to my said nephew for such further period as may be agreeable to my said husband, granddaughter and nephew but this shall be left entirely to the discretion of my said husband if living and my said granddaughter and this wish shall not be regarded as binding upon any of the parties or as giving my said nephew any further rights in the premises" (p. 25).

A.

The respondent, Maddock, had no right after marriage to occupy the homestead, No. 300 Roseville avenue, and had no right to introduce and provide for his wife there.

In approaching the question whether Maddock is to be charged his proportion of the expenses of Mrs. Heath's homestead for himself and his wife, after marriage, it is necessary to examine into his right to occupy and use the homestead. Appellant contends that on Maddock's marriage all his right to use or occupy the homestead ceased and he then became a trustee using the trust property without right and liable to pay into the trust fund the value of the benefits he received by his breach of trust.

By Mrs. Heath's will dated February 20th, 1904 (Schedule A., p. 23), she (p. 24, l. 13, &c.) gave her husband the use for life of her homestead, No. 300 Roseville avenue, Newark. She then, provided (p. 25, clause 7) that her nephew, Fred R. Maddock, should

have the privilege of living in the homestead free of charge, with her husband and her granddaughter, Carlotta, until the latter became twenty-one (p. 25, l. 7) "provided my said nephew remains single." The privilege was to cease if the granddaughter, Carlotta, should die before twenty-one, or in case of sale of the property. "If my said granddaughter and nephew should *both* remain single after my granddaughter arrives at the age of twenty-one," then testatrix expresses the wish that the same privilege should be continued to Maddock.

By the ninth clause (p. 25, l. 32) testatrix gives the homestead to Carlotta "subject to the use of my husband and subject to the privilege hereinbefore granted to Frederick R. Maddock" it being understood that the granddaughter, Carlotta, was to have the right to reside in the homestead free of charge until she enters in full possession.

By the eleventh clause (p. 26, l. 18) she authorizes her executors to maintain the homestead for the maintenance, comfort and education of her granddaughter, Carlotta, until she arrives at twenty-five, "and to employ and pay out of my estate a competent female to look after and care for her together with such other help as may be necessary."

By the twelfth clause (p. 26, l. 35 and p. 27) she allows her granddaughter, Marjorie, to live, free in the homestead "with my husband, nephew and granddaughter" in case her husband should not provide for Marjorie by his will.

The thirteenth clause is as follows (p. 27, l. 17) :

"If my executors or either of them deem it best they may give my granddaughter, Marjorie, permission to live in my said dwelling house free of charge for such term as my executors or either of them see fit, if she remains single, but it is my wish that no one other than my husband, my two granddaughters, Carlotta and Marjorie, and my

nephew, Frederick R. Maddock (together with those paid to serve therein) shall reside or remain in my dwelling house and I especially order and direct *that all other relatives of my nephew, Frederick R. Maddock*, and all other relatives of my son's wife shall be excluded therefrom."

Plainly the scheme of the will was that Carlotta should have the homestead maintained for her benefit and occupancy until she arrived at twenty-one; that competent female help should be provided and paid for by the estate. That testatrix's husband should have the right to reside in the house, during his life. That her granddaughter, Marjorie, also should have the right to reside in the house without charge if testatrix's husband did not provide for Marjorie and if he did they might still give her that privilege "if she remains single."

That her nephew, Maddock, should have the privilege of living in the house free of charge, until Carlotta became twenty-one, "if my said nephew remains single" and "if my said granddaughter (Carlotta) and my said nephew (Maddock) should *both* remain *single* after my granddaughter arrives at twenty-one," then testatrix would be pleased if Maddock should continue to be allowed to reside in the house.

The testatrix thus specifically directed who should be allowed to reside in the house, viz: Carlotta, Marjorie, her husband and Maddock, and as to the last three for how long viz: while they each remained single.

She also especially directed and declared that Maddock's relatives and her son's wife's relatives should be excluded therefrom, thus excluding her grandson, Edmund F. Heath, Jr.

Testatrix's husband died August 11, 1904. The testatrix thereafter made codicils to her will, the second codicil October 4th, 1904 (p. 30), reciting that she had given him certain rights and privileges in the

homestead, and giving him sole care of the house and of the manner of living and education of Carlotta. The provision is as follows:

"I do hereby declare it to be my desire that my nephew, Frederick R. Maddock, whom I have named in my said will as one of the guardians of my grand-child, Carlotta Heath, and to whom has been given certain rights and privileges in the lot of land, house and premises situate at No. 300 Roseville avenue in Newark, New Jersey, by me devised in and by said will to my said grand-child, Carlotta Heath, shall have the sole care and charge of the said house and home of my said grand-child, and of the manner of living and of the education of said grand-child without hindrance or interference from any person whatsoever, and of the hiring of proper and necessary assistants for the conduct of said house, restricting his control thereof only by limiting his right to hire, employ, procure or have as assistants, companions, help or in any capacity *such persons only as are not in any way related to himself* and denying him the right to hire, have, employ or procure any person or persons *who are related to him*, as assistants, companions or help. It is my desire that the control hereby given him over said house and the household of my said granddaughter shall be at the expense of my said grand-child and shall continue till she shall arrive at the age of twenty-four years unless she shall sooner marry and if she shall sooner marry then that it shall terminate on her marriage."

The effect of the codicil was to segregate the homestead and instead of putting it in charge of both her executors as provided by her will (clause 11, p. 26) it was put solely in Maddock's charge. But the codicil did not enlarge his rights to live in and enjoy the house. It would be absurd to contend that the other

executors named in the will had any right to live in and enjoy the house. Yet both had charge of it by the thirteenth clause of the will. Taking away the power of one executor could not give the other executor any new or greater right. Both the will (p. 26, l. 28) and the codicil (p. 30, l. 35) contemplated that the management of the homestead should be by employing a housekeeper, chaperon and governess for Carlotta, then a child of tender years.

Though his right to control and manage the house was enlarged, his right to occupy the house and enjoy its hospitality was not extended.

The right of occupation and enjoyment ceased at Maddock's marriage, and after that event Maddock had no right to continue at the house nor to permit his wife to reside there.

B.

The wife of respondent, Maddock, could not, under the terms of the trust be lawfully introduced into the homestead or remain there.

That the introduction and sheltering of Mrs. Maddock in the homestead was in defiance of the terms of the trust and the direction of the will and codicil is plain for the following reasons:

1. The will expressly excluded Maddock's relatives (will p. 27, l. 25) (codicil, p. 30, l. 36 and p. 31) and Mrs. Maddock was a relative within the meaning of the will. The word "relative" means one "connected by blood or affinity" (Webster's Dictionary). The will in this respect is not to be construed technically as a devise to "relatives" would be construed to mean blood relations. The testatrix is using the word colloquially and it must be so interpreted. That the wife is a relative has been decided by this court in the case of *Bennett vs. Van Riper*, 2 Dick., 563, overruling *Supreme Council vs. Bennett*, 2 Dick., 39, which

held to the contrary. This decision holds that the wife of a nephew was related to the deceased and entitled to have insurance made by the deceased in her favor.

2. Mrs. Maddock was further excluded because she was "not paid to serve therein." The will says (p. 27, l. 21) "It is my wish that no other than my husband, my two grand-daughters, Carlotta and Marjorie, and my nephew, Frederick R. Maddock (*together with those paid to serve therein*) shall remain in my dwelling house."

3. Mrs. Maddock was not among those elsewhere mentioned in will and codicil who were to be allowed to enjoy the house. Those were (p. 26, l. 28) "a competent female to look after and care for Carlotta" and to be employed and paid out of testatrix's estate and (codicil, p. 30, l. 35) necessary assistants "hired"; persons hired, employed, procured or had as assistants, companions and help or in any capacity.

The testatrix clearly had in mind that only persons regularly employed by Maddock, with the exception of her husband and grand-daughters, should be allowed to use and benefit by the maintenance of the household.

4. Testatrix was most determined in excluding all persons from the house except the persons specifically mentioned and paid. She did not give her grandson, Edmund F. Heath, Jr., the privilege of enjoying the homestead and expressly excluded him under the clause (p. 27, l. 27) excluding all relatives of her son's wife.

5. It can not be doubted that a relative of her son's wife, would include a brother-in-law or sister-in-law of the son's wife, that is to say, a relative by affinity. The words "relative" of Maddock's and "relative" of the son's wife are in close juxtaposition and should certainly receive the same construction.

6. One object of testatrix in excluding relatives of Maddock would be in order to prevent his being influenced by motives of regard and affection, in selecting the persons to be employed at his ward's home.

If Maddock selected relatives to take charge of the house he might be influenced by his affection to install or continue an unfit person. His judgment as to his wife's fitness for the position was likely to be even more biased than as to blood relatives. The reason for her exclusion was even stronger than for the exclusion of blood relatives. Testatrix forbade Maddock to live in the house while married. Testatrix in denying him the right to have relatives in the house, intended also to exclude his wife.

It is beside the mark to say that Carlotta asked him and his wife to continue at the house. Carlotta was an infant. She had no right to introduce or continue any one in the house as an inmate who was forbidden to be there by testatrix. It is idle to contend that the presence of Maddock and his wife was desirable for Carlotta—what others might think was desirable is immaterial when the testatrix had decided that point, and directed how her homestead should be occupied. That Maddock got a legal opinion as to the effect that a wife was not a relative within the meaning of the will did not justify him in violating the provision of the will or does it mitigate his liability to pay for what he and his wife wrongfully enjoyed.

II.

MADDOCK, EXECUTOR, GUARDIAN AND TRUSTEE, HAVING NO RIGHT, AFTER MARRIAGE, TO RESIDE IN AND ENJOY THE HOSPITALITY OF THE HOMESTEAD OR TO HAVE HIS WIFE THERE, COMMITTED A BREACH OF TRUST IN CONTINUING TO LIVE AT THE HOMESTEAD AND IN ALLOWING HIS WIFE TO LIVE THERE AND IS RESPONSIBLE TO THE ESTATE FOR VALUE OF ALL THE BENEFITS AND ADVANTAGES HE THUS WRONGFULLY OBTAINED.

Maddock was made executor of Mr. Heath's will. The homestead was by that instrument put in Maddock's charge as trustee to carry out certain trusts provided for by the will. One of the trusts and limitations imposed by the terms of the trust was that he should not remain in the house after marriage, nor should his wife be there. He disregarded the terms of his trust and brought his wife to the house and they both remained there for more than two and one-half years. Plainly this trustee having received from testatrix this trust estate has lived in affluent circumstances in a fine house, in a choice residential district, among agreeable neighbors at a paltry expense. And he got this personal benefit and advantage out of the trust estate, because to him had been committed the administration of the trust property.

"It is a general rule established to keep trustees in the straight line of their duty that they should not derive any personal advantage from the administration of their trust property."

Lewin on Trusts, Sec. 275.

The rule last stated is most important for it is intended to prevent a trustee from being influenced in his judgment, as to the management of the trust property.

There are several circumstances which might and probably did influence his judgment.

a. It might be that the fact that he had a pleasant home, would tend to cause him to keep the house open unnecessarily.

b. To neglect his duties as to the "moral training and education" of Carlotta, then a young lady seventeen years of age, who might be sent abroad to acquire further education.

c. His wife might wish to live in better style than was necessary, and he would be tempted to please his wife and keep the house open at an unnecessarily large expense.

d. He had full power of sale of the homestead. He might receive a highly advantageous offer to purchase the homestead. It would be his duty to sell it. Yet if he and his wife were living there this fact would operate against accepting a high price for the property. Other influences might be mentioned. But it is unnecessary to consider them. The rule that a trustee shall not obtain illegal benefit from his trust estate is inflexible. If a trustee receive such benefit the courts do not inquire whether it influenced his judgment in the management of the trust. Whatever benefit he receives belongs to the trust estate. *Jacobus vs. Munn*, Ct. Errors 1884, 11 Stew., 622.

The powers of the trust must be strictly performed. Whether Maddock's intentions were good is beside the mark. If a trustee does acts not in accordance with the terms of the trust he is liable though his intentions may be good. *Melick vs. Voorhees*, 9 C. E. Gr. 305. On appeal 10 C. E. Gr. 523.

The error of counsel cannot excuse a violation of trust. Maddock might have presented the question to the Court of Chancery and obtained directions of the court. That would excuse him but in taking the opinion of counsel he assumed the risk of counsel's

erring and as counsel did err, Maddock is in the position of a trustee wrongfully using the trust property for his own benefit and in violation of his trust.

“If through any misapprehension on the part of the trustee or the ill advice of counsel, the trust money finds its way into a channel not authorized by the terms of the trust, the trustee will be held responsible for his misapplication to the parties who can establish a better claim. ‘I have no doubt’ said Lord Redesdale upon one occasion ‘the executors *meant* to act fairly and honestly but they were misadvised; and this court must proceed, not upon the improper advice under which an executor may have acted, but upon the acts he has done. If under the best advice he could procure he acts wrongly, it is his misfortune: But public policy requires that that he should be the person to suffer.’”

Lewin on Trusts, No. 347, 11.

In continuing to occupy the house and in introducing his wife there against the terms of the trust Maddock became responsible to the estate to account for the value of such illegal use and occupation. The situation is the same as if he had introduced, and caused to be supported at the estate's expense, any other persons not entitled to be so sheltered and supported. In such case Maddock would be compelled to pay the full value of the benefits and advantages received with a reasonable profit. Maddock, as trustee, could not avoid liability by saying that the wrongful introduction of these people really did not increase expenses or cause the trust estate to pay any more than it would have done, if they had not been introduced—Equity would charge him with the full value of their benefits and advantages which they enjoyed at the expense of the estate and a reasonable profit thereon.

III.

THE ADVISORY MASTER ERRED IN HOLDING THAT MADDOCK'S CONTRIBUTIONS TO THE HOUSEHOLD EXPENSES, AFTER MARRIAGE, WERE SUFFICIENT AND THAT HIS ACCOUNT SHOULD NOT BE SURCHARGED AS ABOVE CONTENDED.

The advisory master doubted (P. 206, line 15) whether the arrangement of Maddock and his wife continuing to live in the house was "entirely judicious"—but (p. 206, line 22) reached the conclusion contrary to his first impression, that the question was not whether Maddock ought to be required to pay to the estate for the advantages he had, but whether the amount he contributed was sufficiently large to prevent any encroachment on the expenditure of Carlotta, and concluded (p. 206, line 30) that Maddock's contributions were in fact sufficient, and that his account ought not to be surcharged.

We have argued in vain if we have not demonstrated that the Advisory Master's "first impressions" were right and that Maddock ought to be compelled to pay to the estate for the advantages he had.

A.

What were these advantages?

The Master says "He obtained lodgings and board in a comfortable house with the use of many improvements."

The situation was as follows: From April, 1909, to September 30th, 1911, two and one-half years, Carlotta was away at boarding school during the school months. She frequently visited friends during vacation. Defendant and his wife had a large finely equipped house (p. 153) maintained nearly all the time for their own private use, where they entertained friends and relatives (p. 181), though the will di-

rected that Maddock's relatives should be excluded (p. 27, line 35); they kept a horse, a carriage, a coachman, a gardener (p. 183), three servants and part of the time four (p. 150) and Mr. Maddock maintained an automobile which the coachman attended to (p. 150). The servants wages amounted during the year 1910, to over \$1200 and during nine month of 1911 were at the rate of \$1600 per year (p. 111). The garage was built on estate property but no rent was ever paid for the use of the land (p. 185).

Here was a case of a fine house liberally maintained, provided with cook, maidservant, laundress and coachman, amid pleasant surroundings, kept in repair and heated all at the expense of the estate practically for the sole benefit of Maddock and his wife and which Carlotta could not enjoy for more than about three months in every year.

B.

What Maddock Contributed.

He claimed (Ex. D. 1, pp. 124 to 132) to have paid grocery bills and other charges to the amount of \$2,908.28. Of these certain items on p. 132, were disallowed amounting to.....\$1170 00
The balance being grocery bills paid were.. 1738 28

It may be remarked in this connection that Mr. Maddock produced, at the request of the complainant, his individual checks which paid the bills of the butcher and grocer, for which he admits his liability. These checks were only ten in number and they amounted in all to \$222.77. His counsel says that all other bills were paid in cash. Of the amount allowed by the Master \$222.77 alone was fortified with vouchers.

But assuming that he contributed \$1738.28 his weekly expenses for the 125 weeks in question was \$13.91 per week or a little less than one dollar a day

for each of the two people enjoying the fine house and its liberal maintenance, illegally as we contend. And the Master held this to be sufficient in this day of high prices!

C.

What Carlotta Contributed.

The expert accountant shows (Schedule 1, p. 111) that the total expense for all payment made during the 125 weeks in question was.....\$12976 04

Carlotta received directly

Cash\$1731 30

Personal items 3835 04

Schooling 854 44

Total\$6420 78 \$6420 78

making net expenses for household.....\$6555 26

Dividing this sum by the 130 weeks which Exhibit 1, covers makes Carlotta pay \$49.65 per week for the maintenance of the household enjoyed almost exclusively by Mr. and Mrs. Maddock.

In other words Carlotta paid over seven times what was contributed by each of the other persons enjoying the house.

D.

The amount contributed by Maddock for himself and wife, was grossly insufficient. They ought at least to pay besides what they did contribute two-thirds of what Carlotta paid.

IV.

THE BEQUEST TO THE DEFENDANT OF \$9,000.00 IN THE SIXTH CLAUSE OF THE WILL OF MARGARET C. HEATH WAS GIVEN AS PART OF HIS COMPENSATION FOR HIS SERVICES AS EXECUTOR AND TRUSTEE UNDER THE WILL.

By her will Mrs. Heath made a very considerable provision for the defendant.

1. In the first place she gives him a money legacy of \$9,000.00 in the following terms:

SIXTH. I give and bequeath unto my nephew, Frederick R. Maddock, nine thousand dollars in full settlement of all claims and demands of every kind and nature against my estate except such as are provided for in this my will (p. 24).

2. In the second place she gives him the privilege, free of charge, of continuing to live at the homestead of the testatrix, until her granddaughter becomes of age (she did not become of age until June 12, 1913) (see seventh clause of will, p. 25; second codicil, p. 30).

3. And she gives him \$500.00 saying that this sum was "In lieu of further commissions or allowances." (See eighth clause, p. 25, and also the last clause of the fourth codicil, p. 34.)

It is plain that the money legacy of \$9,000 given by the testatrix to the defendant was given to him as part of his compensation for all the services which either as executor or trustee he was to perform in carrying out the terms of the will, the rest being his free board and lodging, and the \$500.00 given to him by the eighth clause.

This is indicated by the terms of the bequest, by which the \$9,000.00 is given "*in full of all claims and*

demands of every kind and nature against my estate, except such as are provided for in this my will."

If the testatrix had intended to give the defendant a legacy or gift of \$9,000.00, the words employed would have been very different. The gift would then have been made and nothing else would have been said, as were the gifts which were made in the fourth and fifth clauses of the will. Employing the words she did the testatrix evidently intended the \$9,000.00 should be paid to him *for a consideration*. This consideration evidently was, either the relinquishment by him of some claim or demand he had against Mrs. Heath when the will was made; or of some claim or demand he would have against her estate, and this could have been only for the services which he would render the estate as her executor and trustee under the will.

That the \$9,000.00 was not given as the consideration for a release of any claim he had against the testatrix is plain enough; (1) because, otherwise, she would have used the personal pronoun, "me," and have said "against me"; whereas she declares that the claims are to be those "against her estate," plainly referring to such as would come from the performance of his duties as executor and trustee under the will; and (2) because there is not the slightest testimony in the case that the defendant had any claim or demand against the testatrix which arose in her lifetime. Before the words "against my estate" can be given a meaning which would include any claim of the defendant existing when the will was made, we must have evidence that such a claim did in fact exist.

That the \$9,000 was given as part of the defendant's compensation is further shown by the addition to the bequest of the words "Except such as are provided for in this will." These words must have reference not only to the free board and lodging but also

to the \$500 given in the eighth clause by way of the defendant's compensation, thus linking the three claims together, and plainly indicating that the \$9,000 the board and lodging and the \$500 are to be considered together.

That this is the true construction of the will is even more strongly shown by the words employed in the eighth clause. There \$500 is given to the defendant (and to his co-executor as well) "in lieu of further commissions or allowances." The word "further" must refer to the previous provisions in the will for the defendant's benefit, which, the inference is, were made as part of his compensation. It would seem as if the only logical construction that could be given to this will was that the bequest of \$9,000 in the sixth clause, the gift of free board and lodging in the seventh clause, and the \$500 in the eighth clause were each equally intended as and for the defendant's compensation as executor, and to be in full of such compensation, and of all allowances, and it is hardly to be denied that the compensation there provided for was very liberal.

To hold that the \$500 given in the eighth clause of the will was intended to be the only sum given the executor, Maddock, for commissions is to disregard the word "further" in another respect. There were two executors, Maddock and Atkins. No legacy or other benefit under the will was given to Atkins. Therefore as the word "further" was inappropriate as respects the \$500 given Atkins proper construction demands that it nevertheless be given some force and effect if possible. It cannot be wholly disregarded. The word can only be given any reasonable meaning by applying it to Maddock's commissions. The will then says "I have given to Maddock a certain legacy in lieu of commissions and allowance, I now give him \$500 more in lieu of *further* commissions.

The Advisory Master in his memorandum (pp. 207, line 20, &c.) disregards this cardinal rule of interpretation that every word must be given effect if possible. He says that the language of the \$9,000 bequest was to settle "all claim and demands except those otherwise provided for in the will and she made a provision for commissions." He thus wholly disregarded the word "further."

It follows from this construction of the will (if the court should hold that the executor has in fact, and by virtue of the 132nd Section of the Orphans' Court Act, 3 Compt. St., 3861), renounced the compensation given to him by Mrs. Heath's will (pp. 4, 36, 40) and the remuneration and compensation lawfully be made five and one-half years after probate of the will, then as the compensation plainly included the \$9,000 and the free board and lodging, which he has already received, he must now return the money, with interest, and pay for the board and lodging.

V.

THE RENUNCIATION OF SPECIFIC COMPENSATION MADE BY THE DEFENDANT UNDER THE PROVISION OF THE STATUTE NOT HAVING BEEN MADE UNTIL FIVE AND ONE-HALF YEARS AFTER THE DEFENDANT'S DEATH WAS TOO LATE.

Mrs. Heath died on March 18, 1906, and her will was admitted to probate on April 4, 1906. The renunciation of compensation was not filed by the defendant until October 16, 1911. In the meantime, the defendant and his co-executor, Charles T. Glen, had had the will admitted to probate; they had qualified as executors and trustees; and they performed the duties of their offices until the death of Mr. Glen on January 19, 1908, and after the death of the said Glen the defendant acted as surviving executor and

trustee of the estate. He paid Mr. Glen's estate \$500, the compensation which under the will Mr. Glen was entitled to (p. 68), which would seem to be evidence of the fact that he considered that the executors were bound by the fees fixed in the will. Before any renunciation he and his co-executor performed several duties in connection with their office, among others, they obtained leave of the court to invest the funds of the trust in the debts of the defendant (p. 17). There was never any intimation for five years and a half, and not then until the differences between him and his *cestui que trust*, which are set forth in the bill, arose, that the defendant was not acting for the compensation given by the will. The complainant attempted to introduce testimony, which was ruled out as immaterial, that the defendant after entering upon his duties declared that he was satisfied and that he did not intend to demand any fees (pp. 200-3), evidence which it would seem should have been admitted as showing that the renunciation by the executor was an afterthought and that the defendant did not intend, when he assumed the duties of his office or until years afterwards to repudiate the compensation given to him by the will.

A.

Our probate law exacts promptness in all matters including executors' renunciations.

It is true that Section 132 provides no time within which the renunciation should be filed. But the whole act presupposes that the matters directed and permitted by the act should be done with promptness. The inventory is to be filed within three months (Sec. 58). The estate is to be settled within one year (Sec. 144) and if not settled it is the surrogate's duty to cite the executor to make settlement. If an executor neglects to report or account for two years the neglect

is to be reported to the Orphans' Court who may cite executor to account (Sec. 117). Debts are a lien on lands for one year and can then be sold by Orphans' Court proceeding (Sec. 21). The order to prove debts gives only nine months' time and the Orphans' Court is empowered to order executor to take such order (Sec. 67). The statutes also provide that after one year legacies may be sued for and recovered.

The scheme of our probate practice contemplates that within a year it should be determined and reported exactly how the estate stands: What the debts were and whether paid; whether the legacies are paid and what are the charges against the estate for administration expenses. How can these facts be ascertained if the court and the parties interested are left in doubt whether a legacy given in lieu of commissions is to be treated as a legacy; or whether it is not in fact a legacy because it will thereafter be renounced and commissions demanded. As to some estates commissions being superior to legacies the election to take commissions in lieu of the compensatory legacy might cause insolvency of the estate or abatement of other legacies.

The Advisory Master is plainly wrong in holding that because no time is mentioned by the statute in which the executor must file his renunciation of the legacy, that therefore, the executor may renounce at any time. The administration of the estate might be held up for years while the executor decided whether he would accept legacy or commissions.

The executor has full control of the accounts. He may actually pay himself the legacy and then becoming dissatisfied may demand commissions. Who can discover whether this is done?

The only safe rule is to say that the statute contemplates that the election should be made when he assumes his duty by qualifying as executor. But in any event that it should be done in a reasonable time

after the executor has informed himself as to the exact condition of the estate. The three months given in which to file inventory is sufficient for that. At any rate within less than a year he knows what the debts are and what difficulty there is in managing the estate. He can then judge whether the provision of the will gives adequate compensation for commissions and ought to be held to have made his election.

The Surrogate's Court in New York in construing a statute similar to our statute held that the right to renounce was lost by laches. *Arthur vs. Nelson*, 1 Dem. Surr., 337. And so in England, *Freeman vs. Fairlie*, 3 Meriv., 24.

B.

By providing a legacy as compensation for services as executor testatrix tendered to the executor a contract to be made by her estate in respect to commissions. The acceptance of this contract is presumed by the executor accepting his office.

It is true that the executor does not have to accept the contract proposed. He may say I will and do renounce and take my commissions. But can he accept one provision of the will without accepting all?

The testatrix is presumed to have known the law and that her executor might renounce the legacy. The case is similar to where one says to another "I want certain work done—I offer you \$100 to do it. Will you do it for that sum or do you want instead to be paid what it is fairly worth?" The workman then goes to work. Would not the law presume that he contracted to do the work for \$100 and that both parties were bound, without regard to the true value of the work?

That an executor's fees may be waived by contract is declared in *Middleton vs. Carter*, 73 N. J. Equity, 626, *Aff'd*, 74 N. J. Eq., 853.

That the executor ought to file his renunciation of the bequest at the time he accepts the executorship follows because the testamentary provision is a contract of the estate offered to the executor to pay certain moneys for the performance of certain services and if accepted is binding both on the estate and the executor.

That such testamentary provision creates a contract between the parties is the right view of the matter and supported by a line of decisions in Pennsylvania where the subject seems to have received most attention.

The decisions in Pennsylvania are reviewed and approved in the case in the Supreme Court of that state. *In Re Hays' Estate* Nov. 10, 1907, 38 Atl. Rep. 682. The courts of that state had held in *Harper's Appeal* 111 Pa. St. 243, 2 Atl. 861, that where a testatrix bequeathed \$10,000 in trust and \$5,000 to the trustee for administering the trust and the estate was not sufficient to pay both that the trust fund bequeathed must abate and the trustee's legacy be paid in full.

"The reasoning was that the \$5000 was to be paid to A., as compensation for services to be rendered as trustee and the legacy was therefore founded on consideration. An estate may be as effectually bound by contract entered into in pursuance of a will as by a contract made with the testator in her lifetime."

In Re Hays' Estate, the question came up not as to trustees' commissions but as to executors' commissions and the court said:

"We know of no reason why the same principle (stated in *Harper's Appeal*) should not be applicable to an executor who accepts the trust with the compensation fixed by the will—he is under no obligation to accept the trust. If he does not like the terms he is at perfect liberty to decline it.

But if he accepts it and claims his right as executor under the will, certainly he is bound by the terms under which that right is given. If the provision as to his compensation is obligatory upon the estate it certainly should be held obligatory on the executor."

It does not follow that because a testator provides for compensation as to commissions by will, that such compensation is inadequate. The compensation may be and often is grossly excessive. Yet the residuary legatees under the will cannot object to the compensation provided for the executor no matter how large—nor does it abate with other legacies. Why? Because it is a contract fastened on the estate creating a debt and therefore prior to legacies. So in this case the testatrix created a debt of \$500 against her estate in favor of Maddock for performing services, and it remained such for 5 1/2 years when suddenly Maddock transforms it into a debt of \$3000 or more by demanding commissions. We would not be permitted to act thus in regard to any other contract.

When Maddock accepted the executorship, without renunciation, he agreed then to serve for the legacy, and he cannot now rescind his contract and claim commissions.

VI.

NO COMMISSIONS OR COUNSEL FEES SHOULD HAVE BEEN ALLOWED TO THE DEFENDANT.

The decree awarded to the defendant for his compensation commissions at the rate of 3%, amounting in all to \$3200.35, and also allowed his counsel a counsel fee of \$1500 (p. 210).

It is respectfully insisted that, because of his misconduct, the defendant should not be allowed any commissions, and the expenses of this litigation

should not be imposed upon his trust. If he had properly conducted himself in his office no litigation would have arisen.

The following acts by the defendant amounting to misconduct on his part are admitted in the case:

1. That he and his co-executors never filed any inventory of the estate for nearly six years after the testatrix's death.

2. That they never filed any account for nearly six years after the death of the testatrix and then only when asked to do so by the complainant.

3. That the defendant was the general guardian of the complainant and that, on assuming his duties, he filed no inventory, and that he never filed any account for a period of over six years, and then not until requested to do so by the complainant.

4. That he had invested \$21,500 of the funds belonging to his estate in his own obligations, which were secured by three mortgages on factory premises which belonged to him. This act he justified under the authority of the Orphans' Court on an application made by him, which application concealed the fact that but a few months before it was made he had purchased the mortgaged property which secured the debt, and the machinery therein which was not covered by the mortgages, for \$28,500 none of which was paid in cash.

5. That he had failed in his accounts to charge himself with the board and lodging of his wife and himself while he and she together occupied the house and committed a breach of trust for his own advantage.

6. He was the guilty person in the quarrel which caused the separation between him and his ward *cestui que trust*.

In the court below defendant's counsel took the position that by the decisions of the Chancellor, and

of this court which adopted the opinion of the Chancellor as its own, the defendant was commended for each and every of his delinquencies. We take it that neither the Chancellor nor this court intended to express commendation of such acts on the part of a trustee. All the Chancellor and this court intended to declare was that these acts in themselves, and under the circumstances, did not justify his removal from his trust. He and this court never intended to declare that the defendant's conduct was entirely proper and justifiable.

It is the wrong methods which the defendant pursued which has led to all the litigation between the parties and the great expense which has been entailed.

The court can take all these things into consideration in fixing the compensation.

Flick vs. Lake, 9 Dick. 638.

VII.

THE DECREE OF THE COURT OF CHANCERY SHOULD BE REVERSED AND MODIFIED AS ABOVE CONTENDED.

EDW. A. & WM. T. DAY,
Solicitors of Complainant.

CORTLANDT PARKER,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

CARLOTTA HEATH,
Complainant-Appellant,

and

FREDERICK R. MADDOCK, Execu-
tor, &c.,
Defendant-Respondent.

On Bill, &c.

*On Appeal
from Chan-
cery.*

Defendant-Respondent's Brief.

State of the Case.

At the outset, in order that we may avoid confusion of thought and unsatisfactory results which always flow therefrom, it is quite essential that we keep clearly before us the nature of this case.

A bill was filed in Chancery to remove the defendant, as trustee of the estate of Margaret C. Heath, and as an incident to the other relief asked in the bill, the account filed in the Orphans' Court was brought in chancery.

By reason of other decisions in other courts the issue has now been limited to a matter of accounting only, and to incidental questions of commissions.

The account was examined by an expert appointed by the court at the expense of the estate and found to be absolutely correct with the exception of two or three minor details, which were slightly favorable to the accountant.

No exceptions ever were or have been filed to the account nor could they be.

The matter was heard before W. J. Magie, Esquire, as Advisory Master.

He found against the complainant on all her contentions.

From this decree an appeal was taken.

The will of Margaret C. Heath gave Mr. Maddock certain rights in the property No. 300 Roseville Avenue. These are covered by the seventh paragraph of the will, page 25, thirteenth paragraph, page 27, and the first paragraph of the codicil, page 30.

Under these clauses, upon the marriage of Mr. Maddock, who was the executor of and trustee under the will, his right to live in the premises No. 300 Roseville avenue, ceased, and had he thereafter demanded of right to live in the premises he could have been defeated in that claim.

In April, 1909, Mr. Maddock married and the question of his remaining in the house then arose. He desired to have his own home and live elsewhere and this indeed was very strongly the desire of his wife. (See page 152, line 3; page 178, line 35.)

It would have been a clear convenience and was strongly the desire of this couple to have their own home. Carlotta, however, was at the time sixteen or seventeen years of age, practically all of her near relatives were dead, and her condition was rather a pitiable one. According to her testimony she said she had nothing else to do than urge Mr. Maddock not to desert her but to continue to reside in the house and bring there his wife. Mr. Maddock testifies that he then consulted counsel, page 141, and the situation is clearly set forth by his counsel, page 145.

The counsel testifies.

"He told me the situation that developed."

Q "What was that situation?"

A "That he desired to get married and wanted to get married, but that he was embarrassed because of his situation as an executor and trustee of this estate, and that he had talked the mat-

ter over with Carlotta and she desired that he should not leave her. My recollection is that he told me that she cried and was very much aggrieved over the possibility of his contemplated marriage, leading to a severance of their relations in the house, and cried, and naturally enough, as I thought, and seemed to be very much worked up over the situation, because it would leave her absolutely alone in the world, and nobody to look after her, and he asked me what he should do, what he could do, and I told him that it was a most unfortunate situation, but I told him that I didn't think he was called upon to desert this young girl, with nobody else to take care of her in the world; he stated to me all the circumstances, and most of them I knew beforehand."

After his marriage Mr. Maddock and his bride left for a trip and were called back the end of April by the death of Edmund Heath, and they assumed the duties of housekeeping at No. 300 Roseville avenue on the 15th of May, 1909, page 190, and continued to live there until September 30th, 1911.

On the trial, if it could be called a trial, of this question below, for convenience of the court, a tabulation was arranged giving the voucher numbers and amounts covering statistics and recapitulations which represented the expenditures in connection with the property No. 300 Roseville avenue and the running of the place, food, etc., in concise, accurate and convenient tabulated form. This was before the Advisory Master marked Exhibit "A," page 162.

The solicitors for the appellant have both omitted and refused to print it, and as a result, feeling that it should be before the court, we include it herewith.

By a comparison with the voucher numbers in the account it could be readily checked, but its accuracy has been in nowise questioned.

These figures show an interesting situation.

"A" for Identification.

SCHEDULE No. 2.

Food items from April, 1906, to April 22, 1909.

April, 1906, to September 7, 1907.

Voucher No.

753	Borden's Condensed Milk.....	\$	89.07
760	J. R. Rutan, vegetables, etc.....		188.23
761	A. Ward & Son, grocer.....		222.33
765	J. F. Macdonald, grocer.....		33.24
772	Aaron Wills, grocer.....		124.29
774	B. Messler & Co., fruit and vegetables		7.15
775	F. Adams & Co., butcher.....		161.64
776	Crother & Co., fruit and vegetables...		369.42
788	Milk		57.72
790	James Steiner, fish.....		27.55
799	Fruit		12.95
800	Ice		29.25
806	Sundry expenditures		6.65
807	“ “		47.07

September, 7/07, to March, 30/08.

810	Fish		2.44
811	Fruit		4.20
812	Ice		6.05
815	Sundry expenditures		62.24
831	Crothers & Co., fruit, vegetables, butcher		151.47
839	Milk		43.49
840	A. Wills, grocer.....		71.27
841	J. R. Rutan, fruit.....		33.47
842	A. Ward & Son, grocer.....		98.50
853	J. F. Macdonald, grocer and butcher..		5.95
855	Adams & Co., butcher.....		57.60
856	Messler & Co., fruit and vegetables...		77.77

February 6/08, to February 6/09.

17	Milk		16.34
25	A. Ward & Son, grocer.....		34.49

Voucher No.

23	Fish	\$ 2.30
28	Seeds, ice, paper, fruit, bananas, etc..	3.61
35	Crother & Co., fruit and butcher.....	46.09
38	Messler & Co., fruit and vegetables...	18.66
40	A. Wills, grocer.....	10.53
46	F. Adams, butcher.....	22.21
48	Borden's Condensed Milk.....	7.68
50	Fish	2.00
50	Ice	1.00
50	Fruit .....	.60
61	Milk	8.00
64	Crothers & Co., butcher, etc.....	35.51
65	B. M. Messler & Co., fruit, etc.....	37.71
66	A. Ward & Son, grocer.....	38.23
73	Fred Adams, butcher.....	19.60
81	Milk	7.00
84	A. Wills, grocer.....	13.67
85	Crother & Co., fruit and butcher.....	27.63
90	B. Messler & Co., fruit, etc.....	14.00
91	A. Wills, grocer.....	16.58
93	Fred Adams, butcher.....	7.97
94	Milk	6.52
95	A. Ward & Son, grocer.....	7.80
99	Ice	2.60
99	Fish	2.20
100	Fruit .....	.50
100	Ice	4.00
107	Crothers & Co., butcher, etc.....	78.25
111	Ice	3.80
111	Fruit	1.20
111	Fish	1.70
117	Milk	2.64
123	Milk	7.62
126	Ice	2.25
126	Fish .....	.90
128	Milk	2.90
129	F. Adams, butcher.....	8.40

Voucher No.

130	A. Wills, grocer	\$ 41.49
131	J. R. Rutan, vegetables, etc.....	3.55
133	J. F. Macdonald, grocer and butcher..	18.08
142	B. M. Messler, fruit and vegetables...	6.20
152	Crothers & Co., butcher, etc.....	45.32
153	Ice	2.75
	Fish	1.20
	Sundries	2.00
154	Milk	8.84
155	A. Ward & Son, grocer.....	29.45
156	B. Messler & Co., fruit, etc.....	9.98
159	A. J. Wills, grocer.....	12.23
161	Fred Adams, butcher.....	14.50
174	Milk	8.12
183	Crother & Co., butcher, etc.....	14.04
184	J. R. Rutan, fruit, etc.....	5.67
186	Fish	3.41
187	Fred Adams & Son, butcher.....	11.99
188	B. M. Messler, fruit, etc.....	12.85
191	A. Ward & Son, grocer.....	35.50
192	F. Macdonald, grocer and butcher....	7.13
197	Borden's Condensed Milk Co.....	9.04
198	A. J. Wills, grocer.....	11.28
199	Crothers & Co., butcher, etc.....	18.26
205	J. R. Rutan, fruit, etc.....	6.17
206	F. Adams & Son, butcher.....	7.71
207	B. M. Messler, fruit, etc.....	20.07
211	Sundries	1.40

From February 6/09 to April 22/09.

216	A. Ward & Son, grocer.....	34.27
221	Fish	3.89
222	Milk	10.08
231	Crothers & Co., butcher, etc.....	34.93
234	Messler & Co., fruit, etc.....	30.46
235	Fred Adams & Son, grocer.....	10.24
236	A. J. Wills, grocer.....	17.05

Voucher No.

241	Milk	\$ 8.72
251	A. Ward & Son, grocer.....	50.55
252	Milk	9.40
254	Fish	8.00
255	Ice cream, etc.....	3.40
256	Crothers & Co., butcher, etc.....	20.84
257	Day & Bros., caterer.....	21.30
261	Francis Pursell, ice cream, etc.....	5.55
263	F. Adams, butcher.....	7.29
264	B. Messler, fruit, etc.....	14.92
266	A. J. Wills, grocer.....	15.99
	To April 22, 1909.	
260	Sundries	1.98

Total food items.....\$3,192.82

SUMMARY OF SCHEDULE NO. 2.

Total food items.....	\$3,192.82
Number of weeks.....	159
Food cost per week.....	\$20.08

SCHEDULE NO. 3.

Wages from April, 1906 to April 22, 1909.

To September 7, 1907.

Voucher No.

77	Lizzie Carroll, cook	\$ 200.00
779	Miss Hobbs, housekeeper	125.00
780	Miss Coeyman	75.00
784	Robert Cutler, coachman	900.00
786	Mrs. Lessard, housekeeper	123.00
795	Miss Suydam, housekeeper	20.00
801	Annie, housekeeper	7.80
802	Sewing help	9.00
803	Lizzie Carroll, cook	140.00
804	Miss Weir, housekeeper	266.00
805	Miss Hobbs, housekeeper	75.00

Voucher No.

809	Robert Cutler, coachman.....	\$ 298.00
813	Mrs. Lessard and Annie	98.95
824	Miss Coeyman	175.00
825	Lizzie Carroll	160.00

From February 6, 1908.

12	Miss Coeyman	25.00
	Lizzie Carroll	20.00
28	Robert Cutler	60.00
28	Annie, housekeeper	21.80
31	Lizzie Carroll	20.00
	Miss Coeyman	25.00
50	Robert Cutler	48.00
50	Annie Zimmer	22.00
52	Miss Coeyman	25.00
70	Lizzie Carroll	30.00
	Miss Coeyman	25.00
89	Miss Coeyman	25.00
89	Lizzie Carroll	20.00
99	Robert Cutler	48.00
99	Annie	24.40
100	Robert Cutler	60.00
	Annie	15.20
111	Robert Cutler	48.00
111	Annie	21.20
112	Miss Coeyman	25.00
	Lizzie Carroll	20.00
126	Robert Cutler	48.00
	Annie	15.20
127	Miss Coeyman	25.00
	Lizzie Carroll	20.00
148	Miss Coeyman	25.00
	Mary Ward, cook	20.00
153	Robert Cutler	60.00
153	Annie	20.00
171	Miss Coeyman	25.00
171	Mary Ward	20.00

Voucher No.		
189	Annie	\$ 19.20
	Robert Cutler	48.00
193	Robert Cutler	48.00
	Annie	15.20
194	Miss Coeyman	25.00
194	Mary Ward	20.00
211	Robert Cutler	60.00
	Annie	19.00
212	Miss Coeyman	25.00
212	Mary Ward	20.00
228	Miss Coeyman	25.00
	Mary Ward	20.00
239	Robert Cutler	48.00
	Annie	16.00
249	Miss Coeyman	25.00
	Mary Ward	20.00
260	Robert Cutler	84.00
	Annie	30.90
277	Miss Coeyman	25.00
		<hr/>
		\$4,172.85
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SUMMARY OF SCHEDULE No. 3.

Total Wages	\$4,172.85
Number of weeks	159
Wages per week	\$26.25

SCHEDULE No. 4.

Food account from April, 1909 to September 30, 1911, as per Richard W. Stevens, Certified Account, (analyzed).

Items bought before Mrs. Maddock took charge.

Voucher No.

282	B. M. Messler & Co. March and April account	\$ 25.50
283	A. J. Wills, April account	9.22

Voucher No.

284	Crother & Co., April account.....	\$ 41.23
286	Adams and Co., April account	9.83
297	A. Ward & Son, April to May 8.....	25.35
326	J. F. Macdonald, March account	2.81
303	Adams & Co., to May 8th.....	5.55
285	Milk	10.18
311	½ Milk	4.86

Total items bought before Mrs. Maddock
took charge\$134.53

SUMMARY OF SCHEDULE No. 4.

Food items purchased during Mrs. Mad- dock's time	\$409.97
Food items previous to Mrs. Maddock's time	134.53
	<hr/>
	\$544.50

Total for food	544.50
Mr. Stevens' total	547.50

SCHEDULE No. 4.—Continued.

Food account from April, 1909 to September 30,
1911, as per Richard W. Stevens, certified account
(analyzed).

Voucher No.

311	Milk ½	\$4.86
313	Ice	6.00
330	Milk	6.96
354	Milk	12.12
356	Ice	14.00
379	Milk	17.40
384	Fish	3.60
404	Fish	3.15
406	Milk	10.08
407	Ice	7.50
	Fish	10.00

Voucher No.

417	Milk	11.34
434	Ice	2.00
	Fish	6.00
439	Milk	10.32
454	Milk	8.31
456	Fish	4.10
467	Milk	23.10
488	Fish	12.42
516	Milk	20.19
520	Ice	8.25
525	Fish	8.48
532	Milk	9.63
545	Milk	14.96
550	Ice	6.00
574	Fish	11.48
583	Milk	18.62
617	Fish	9.68
618	Milk	10.61
632	Milk	18.80
634	Fish	7.92
659	Fish	10.71
660	Milk	19.50
682	Milk	18.72
696	Fish	4.65
694	Ice	4.95
711	Ice	3.50
292	Steiner, Fish	3.00
603	Ice	4.00
305	Crother and Co.	4.95
329	A. Wills	12.39
321	Messler & Co.	5.72

\$409.97

SUMMARY OF SCHEDULE No. 4.

Food items used during Mr. and Mrs. Maddock's time	\$544.50
Less items bought previous to Mr. and Mrs. Maddock's time	134.53
	<hr/>
	\$409.97
	<hr/>
Total for food	\$409.97
Number of weeks	123
Cost per week	\$3.33

SCHEDULE No. 5.

Food items from October 6, 1911 to July 8, 1912, after which the house was closed for three months, Carlotta being in Europe.

Voucher No.

724 C. M. Decker & Bro.	\$15.68
725 House money	50.00
726 Milk	23.08
728 C. M. Decker & Bro.	2.87
730 Milk	4.99
731 House money	50.00
743 Fish	5.73
745 House money	50.00
749 House money	50.00
762 House money	50.00
782 House money	50.00
785 House money	50.00
802 House money	50.00
810 House money	50.00
821 Pursell .....	.80
831 House money	50.00
836 House money	100.00
846 House money	50.00
852 House money	50.00
853 House money	50.00

Voucher No.

861	House money	\$ 50.00
863	House money	65.00
877	Butter, eggs and ice	11.36
886	C. M. Decker & Bro.	25.75
891	J. F. Macdonald	49.79
895	Milk	13.33
897	Pursell	2.30
	Total	<u>\$1,020.68</u>

SUMMARY OF SCHEDULE No. 5.

Food Items	\$1,020.68
Weeks	39-1/7
Cost per week	26.11

SCHEDULE No. 6.

Wages from October 6, 1911, to July 8, 1912, after which time the house was closed for three months, Carlotta being in Europe.

Voucher No.

725	Lena	\$ 18.90
	Robert Cutler	24.00
731	Lena	18.90
	Robert Cutler	24.00
733	Lena	28.35
	Bridget	9.00
	Robert Cutler	36.00
744	Julia A. Hamilton.....	40.00
745	Lena	18.90
	Robert Cutler	24.00
	New maid	20.00
749	Lena	18.90
	Robert Cutler	24.00
759	Julia A. Hamilton, 5 weeks.....	50.00
762	Lena	18.90
	Robert	24.00

Voucher No.		
782	Lena	\$ 18.90
	Robert	24.00
785	Lena	18.90
	Robert	24.00
802	Lena	18.90
	Robert	24.00
810	Lena	18.90
	Robert	24.00
831	Lena	18.90
	Robert	24.00
846	Lena	18.90
	Robert	24.00
852	Lena	18.90
	Robert	24.00
853	Lena	18.90
	Robert	24.00
861	Lena	18.90
	Robert	24.00
865	Robert	12.00
866	Lena	9.45
869	Margaret Richart	20.00
871	Lena	9.45
872	Robert	12.00
877	Margaret	5.25
878	Lena	9.45
879	Robert	12.00
881	Robert	12.00
882	Lena	9.45
884	Robert	12.00
	Total	<hr/> \$907.00

SUMMARY OF SCHEDULE No. 6.

Total wages	\$907.00
Weeks	39 1/7
Wages per week.....	\$23.16

SCHEDULE No. 7.

Repairs, taxes and estate expenses from April, 1906, to April 22, 1909.

Voucher No.

719	Com. Roofing Co.....	\$ 17.84
720	J. Allen, painter.....	35.00
723	James Shaw, carpenter.....	247.10
724	Alfred Walters, architect.....	10.00
725	Theo. Geiser & Son, plumber.....	41.45
728	R. Gray, Jr.....	3.00
729	Taxes	351.41
730	Wm. Hahn, painter.....	48.00
731	Theo. Geiser & Son.....	6.55
735	J. Vreeland	2.60
739	K. Maclean	18.00
749	J. Allen	17.15
764	Insurance	44.50
768	Fidelity Trust Co.....	75.00
808	K. Maclean	1.35
816	K. Maclean, expenses on Giffey mort- gage	139.26
5	Daniel S. Voorhees, tax.....	34.69
847	Fidelity Trust Co.....	15.00
850	Taxes	332.96
15	Fred P. Merkel.....	10.33
16	Wm. Hahn	21.13
37	J. Vreeland, carpenter.....	46.31
74	Fidelity Trust Co.....	30.00
92	Ira Budd	1.50
143	Standard Paving Co.....	5.70
144	Taxes	341.17
157	F. P. Merkel.....	4.37
153	Standard Paving Co.....	5.70
162	Ira Budd	5.23
166	Fidelity Trust Co.....	15.00
272	Joseph Allen, painter.....	200.00
273	J. Vreeland, carpenter.....	63.30
		<hr/>
		\$2,190.60

SUMMARY OF SCHEDULE No. 7.

Total repairs, taxes and estate expenses.	\$2,190.60
Number of weeks.	159
Cost per week.	\$13.77

SCHEDULE No. 8.

Horses and carriages, expense from April, 1906,
to April 22, 1909.

Voucher No.

736	Wm. Cleveland & Son	\$ 74.88
755	J. Klumb, shoer.	4.50
757	Quinby & Co.	16.0
759	F. J. Hull & Co., hay and feed.	157.08
821	P. J. Nash, shoer.	12.50
828	F. J. Hull & Co.	75.61
854	Rouband, harness	1.25
39	P. J. Nash.	9.75
43	F. J. Hull & Co.	16.32
58	F. J. Hull & Co.	11.27
60	G. W. Stout, for horse.	200.00
75	P. J. Nash.	5.50
77	J. Colyer & Co.	175.00
78	Geo. Rouband	25.65
102	F. J. Hull & Co.	36.82
113	F. J. Hull & Co.	11.35
118	P. J. Nash.	11.25
141	J. Colyer & Co.	25.50
146	F. J. Hull & Co.	20.52
163	P. J. Nash.	12.00
164	F. J. Hull & Co.	10.60
200	P. J. Nash.	5.00
202	John Ingerman	45.50
204	F. J. Hull & Co.	12.31
210	F. J. Hull & Co.	1.75
227	F. J. Hull & Co.	8.74
246	F. J. Hull & Co.	8.96

Voucher No.

256	P. J. Nash	\$	9.00
270	Hull & Co.		12.62
			<hr/>
			\$1,017.23

SUMMARY HORSE AND CARRIAGES
EXPENSE.

Total cost	\$1,017.23
Number of weeks	159
Cost per week	\$6.40

SCHEDULE No. 9.

House expenses from April, 1906 to April 22, 1909.

Voucher No.

718	Henderson & Co. seeds	\$4.85
732	Sprinkling street	12.00
741	Laundry	18.50
745	Laundry	7.00
746	Kimmerle & Minder	7.65
750	Coal	65.45
751	Gas account	133.04
754	Telephone	55.15
762	Water	34.70
763	Laundry	7.50
766	C. Schneider	25.14
770	Dr. Sutphen	75.00
781	Laundry	41.16
787	Laundry	78.60
798	Dyeing	3.50
815	Sundry house expenses	62.24
819	Schneider & Co.	3.71
822	Telephone	30.70
823	Gas	63.20
827	Water	17.81
830	Coal	113.60
837	E. L. Meeker, repairing furniture....	65.50

Voucher No.

848	Dr. Sutphen	\$ 3.00
858	Dr. Baldwin .....	.75
13	Gas	7.30
14	Jancovius & Son	8.03
27	Coal	24.30
33	Schneider & Co.	11.55
36	Gas	7.10
51	Telephone	7.75
53	Gas account	4.60
56	Laundry	3.75
57	Telephone	6.95
63	Water	5.95
71	Gas	8.30
82	Schneider & Co.	4.26
86	Water	5.00
88	Laundry	9.43
96	Kimmerle & Minder	13.75
100	Brooms	1.00
	Pressing	3.00
	Working cotton	1.00
101	Telephone	3.20
103	Gas account	11.40
104	Water	4.06
105	C. Schneider & Co.	3.25
108	Gas	8.30
119	Telephone	3.00
120	Laundry	8.00
121	Lauter & Co.	4.00
122	Water	1.87
126	Suit case	6.00
	Pressing	1.50
	Sundry items	2.65
132	Gas	11.10
135	C. Schneider	1.25
136	Telephone	3.00
137	Dr. C. E. Baldwin, dentist	5.00
145	Coal	102.04

Voucher No.

150	Mrs. Morris, mending.....	\$	1.25
151	Gas account		8.00
168	Telephone		7.70
169	Gas		6.50
170	Water		5.95
175	Sprinkling		14.50
180	Cleaning clothes		6.25
180	Carpet, etc.,		1.10
185	Schneider & Co. ....		.68
193	Aprons		1.75
	Pin cushion		1.25
196	Gas account		6.80
201	Telephone		2.85
208	Laundry		6.00
209	Hahne & Co.		30.37
215	Telephone		3.10
224	Kimmerle & Minder		9.00
225	Laundry		1.16
233	Gas		8.20
237	Water		5.94
239	Pressing clothes		1.76
248	Telephone		6.75
253	Gas		6.03
268	Dempsey Bros.		7.00
			<hr/>
			\$1,392.28

SUMMARY.

Total house expenses	\$1,392.28
Number of weeks	159
Cost per week	\$8.75

SCHEDULE No. 10.

Statistical amount of payments made per week Est.
Margaret C. Heath, from April, 1906 to April, 1909

the time Mr. Maddock (when single) resided at 300 Roseville avenue, 159 weeks in all.

Food Schedule No. 2, per week	\$20.08
House Expenses Schedule No. 9, per week..	8.75
Wages Schedule No. 3, per week	26.25
Horse and carriage Schedule No. 8, per week	6.40
Repairs, taxes and estate expenses Schedule No. 7, per week	13.77
	<hr/>
Total, per week	\$75.25

From May 15, 1909 to September 30, 1911, when Mr. and Mrs. Maddock resided at 300 Roseville avenue, 124 weeks in all.

Food Schedule No. 4, per week	\$3.33
House Expenses (Mr. Stevens a/c.) and Schedule 4, per week	6.30
Wages (Mr. Stevens a/c.) and Schedule No. 4, per week	26.68
Pony and carriage (Mr. Stevens a/c.) and Schedule No. 4, per week	3.48
Repairs, taxes and estate expenses and Sche- dule No. 4, per week	11.98
	<hr/>
	\$51.77
Total cost per week, Mr. Maddock's term..	\$75.25
Total cost per week, Mr. and Mrs. Maddock's term	51.77

Difference per week	\$23.48
Showing the estate benefited by Mr. and Mrs. Maddock's term at house to the amount of	\$2,911.52

From October 6, 1911 to July 8, 1912, when Carlotta Heath had a house keeper for 9 weeks, and then Mrs. Bertha Heath who took no ~~renunciation~~, 39 1/7 *remuneration* weeks.

Food (Schedule No. 5) per week	\$26.11
Wages (Schedule No. 6) per week	23.16
<hr/>	
Mr. Maddock paid for food \$2,180.00 in 123 weeks, making per week	\$17.58
The estate paid (Schedule No. 4) per week..	3.33
<hr/>	
Making in all per week	\$20.91
<hr/>	

So that the \$500 for small items brought home by Mr. Maddock is evidently correct compared with previous cost of food for the house.

The cost per week while Mr. Maddock was there alone was \$75.25, and the cost per week when Mrs. Maddock was there was \$51.77, so that by the remaining of Mrs. Maddock and her husband the estate benefited by \$2,911.52 (page 198).

Argument.

I.

THE DECREE IS CORRECT IN HOLDING THAT THE DEFENDANT SHOULD NOT BE SURCHARGED IN THE MANNER ALLEGED IN THE BILL OF COMPLAINT.

The brief of the appellant in the second paragraph of the argument, purports to cite from the case of *Heath vs. Maddock*, 81 N. J. Eq., 469, affirmed by this court *per curiam*, saying in the guardianship case, 81 N. J. Eq., page 473.

“That if the defendant had benefited because he had failed to pay proper board the remedy lies ‘in the accounting and not in the removal’; and it is this accounting which is now before the court.”

The language of the opinion is as follows:

“The appellant is charged with wasting the decedent’s estate. He made his home with the grandmother of his ward for many years, and by her will the testatrix gave him the privilege of living in the homestead, with his ward, in the same manner, free of charge, until the latter attained her majority, provided he remained single. Two years before this action he married. His ward requested him to continue in, and to bring his wife into, the household. They lived together happily until about the time of the commencement of this litigation. The appellant contributed from \$16 to \$20 per week, about what it would cost outside for board, as he says, and his wife took the place of housekeeper, during the last year. It is urged that the infant’s invitation is nugatory, and therefore its acceptance and enjoyment was a breach of the trust contained in the will. In a codicil to the will the testatrix

gave the sole care and charge of the homestead, the hiring of servants, and the manner of living and of the education of her grandchild to the appellant, all of which was to be at the expense of the infant, and to last until she was twenty-four years of age. The discharge of this trust made it quite necessary that the appellant reside in, and be a part of, the household. Besides, this young girl, alone in the world, needed the protection which the appellant had extended to her for many years. Both parties realized this. The appellant consulted counsel as to his right, and the ward says that she had nothing else to do but to invite her guardian and his wife to live with her, because she was only seventeen years of age, and there was nobody else to direct her. The appellant acted with propriety. If, in the situation, he benefited at the expense of the estate, the remedy lies in an accounting, not in removal. *Pfefferle v. Herr, supra.*"

To repeat, if in the situation he benefited at the *expense of the estate* the remedy lies in an accounting and not in removal.

The question then is, not whether he benefited but whether he benefited at the expense of the estate.

Taking paragraph A of the appellant's brief, let us for the purpose of argument, assume that Mr. Maddock had no right after marriage to occupy the homestead and that his wife had less right, and that under the heading B of the appellant's brief Mr. Maddock had no legal right to bring his wife to reside at the premises, and that he is responsible for all the loss occasioned to the estate thereby. This will permit us to come readily to the questions at issue.

We would mildly protest against the atmosphere thrown around this case by the brief of the appellant, prepared quite evidently by some one who is perhaps not acquainted with the intimate details of the trial.

We wish merely to bring the consideration of this question back to the testimony in this case, for it is upon the basis of that that the decree was advised, and that this hearing must be considered.

Starting at page 133, Mr. Maddock was first sworn for the complainant. The substance of his testimony is that he brought his wife to live with him at the house after his marriage in April, 1909, and remained there until September, 1911. The testimony as to the bills, etc., paid is all included in Exhibit A above referred to, fully itemized. Page 141, he testified that he considered his share of the expense under all the circumstances fair and proper, and that his wife had full charge of the house and of everything that was necessary to keep it in proper order; that there were extra expenses not included in the vouchers, page 141; that after Mrs. Maddock left Miss Hamilton was employed as a housekeeper at the rate of \$40 a month, page 142.

This is followed by the testimony of Mr. Tamblin who testified as to the conference with Mr. Maddock at the time he went to live at the house.

The complainant herself was then called who testified as to the servants in the house, her vacations, length of time she was home, and the complainant then rested, page 151.

Let us recall at this point that the law is settled beyond the possibility of dispute that in an accounting the burden of proof on all matters of discharge is upon the accountant, but as to all matters of surcharge the burden is upon the exceptant.

Kirby vs. Coles, 3 Gr., 15 Law, 441.

Brewster vs. Demarest, 3 Dick., 559, etc.

Kocher's Orphan Court Practice, p. 195, note to section 127.

In this case be it recalled we have no exceptions to try and never had. We have the complainant accepting the results returned by the accountant ap-

pointed by the court. There is accordingly no case for the defendant to meet. Notwithstanding this, in order to show his entire fairness and frankness and honesty, the defendant was advised to go upon the stand and to lay forth all the details of the exact situation.

Mrs. Catherine Glenn Maddock, the defendant's wife, was then sworn and testified at length, pages 152 and 153, as to the duty and work performed by her at the house. Half of all of her time was given to this service. The house was a large, old-fashioned one, with heavy carpets, and such as to necessitate much care and constant attention. She had kept a book in which was put down various expenditures and this was sworn to. The defendant then rested, having offered the book showing the figures, etc.

Mr. Day then raised the question as to further evidence as to the time Miss Carlotta was at home, page 156, line 30.

The Court remarked: "I do not quite see how that will be very material. I should say at present the question is, was it proper to keep the house open and running."

Mr. Day: "That I do not think there is any doubt about."

Mrs. Maddock was then recalled and spoke of company at the house during Miss Heath's vacations.

Miss Heath was then recalled to give any details as to the guests, and the case was closed again, page 158.

Thereafter at the suggestion of the court further testimony was taken.

Mr. Maddock was recalled and gave tabulated figures of the account, and at page 161, the court suggests the various ways in which this matter might be looked at. What would be the value of board and living in a house of this sort? How much the fund of the ward was encroached upon, etc.

The testimony was then continued and it was shown that during the period when Mr. Maddock was single and resided at No. 300 Roseville Avenue the expense to the estate was \$75.25 and while he and his wife resided there together the expense to the estate was \$51.77; that again after Mr. and Mrs. Maddock left the house the expense to the estate for food increased greatly again. The food schedules per week while Mr. Maddock lived at the house when single, shows the expense to the estate was \$20.08; the food schedule shows expense to the estate while Mr. and Mrs. Maddock resided at the homestead of \$3.33 a week, and the food schedule after Mr. and Mrs. Maddock left shows \$26.11 a week.

The plan of the house and photograph were then put in evidence, page 169, all, be it noted, over the objection of the complainant.

The details of the food schedule, etc., were further explained, changes of servants noted, and it was explained that after Miss Hamilton, the housekeeper, left, the widow of Miss Carlotta's brother acted as chaperon and housekeeper without compensation, page 174, and co-operated with the guardian to compel, or rather impel, Miss Carlotta to do some work, deeming it to be a good thing for her, page 175.

This arrangement kept the wage item down after Mr. and Mrs. Maddock left the house.

We then come to the use of the little pony, page 176.

This was of no use whatsoever to the defendant or his wife, page 177.

Page 177 shows a considerable saving on the house expense, that is, repair, up-keep, etc., due to the careful supervision and actual work done by Mrs. Maddock.

The use to Mr. and Mrs. Maddock of the house was confined principally to their own room, page 178.

Page 181 shows that relatives of Mr. Maddock some time visited them but did not stay with the defendant and his wife.

We then come to a very illuminating and significant feature of this case, one of great importance. It transpired that there was a wine cellar in that house, page 181, and after moments of weighty testimony on this wine cellar, Miss Carlotta is recalled, page 192. She covers this farce to page 194, line 18; she admits she knows that Mr. Maddock is a teetotaler, and finally the problem is solved, the matter is sifted to the bottom, and it develops that Mrs. Maddock had taken a glass of port from an already opened bottle for medicinal purposes, twice in two years, page 195, line 20.

The intervening periods cover such significant subjects as the use by Mr. and Mrs. Maddock of the pony and vegetables while Carlotta was not at home.

The question of the cost of the pony again comes up and Mrs. Maddock testifies, page 191:

“I dislike horses very much and am afraid of one, and this particular pony had a habit of jumping at automobiles and motor cycles, and I disliked going out behind it exceedingly, but Miss Heath requested constantly that I make use of this pony for exercise, saying it was bad for it to stand in the stable. I was afraid to use the high cart, but when I did take it, to please her, for exercise, I hitched it to an old buggy that was in the barn and used that, and used it occasionally; that is all.”

Q “And was the horse and pony of any value to you for your own use?”

A “Absolutely not; a nuisance.”

This completes the testimony in this interesting case. With what sum, then, would this appellant have Mr. Maddock charged?

Mr. Maddock, we would repeat, over the objection of counsel for the complainant, who seemed greatly

to desire that the matter should remain chaotic, and who seemed strenuously to oppose any efforts to lay before the court the situation in any clean-cut, specific and definite shape, produced tabulated figures (omitted from the printed record) taken from the account showing the following interesting results:

That from April, 1906, to April, 1909, while Mr. Maddock resided single at No. 300 Roseville avenue, running everything there as of right and without question, the total expense for food, house expense, wages, horse and carriage, repairs, taxes and the estate expenses, amounted to \$75.25 a week, all of which, it is understood, was paid by the estate, and all of which is definitely proved by vouchers labeled and numbered, and which have passed the scrutiny of the court's expert.

Taking, now, the period from May 15, 1909, when Mr. and Mrs. Maddock resided together at No. 300 Roseville avenue and started the management and running of the place, until September 30, 1911, we find that these same items amount to but \$51.77 a week. Returning, now, to the two principal items of food and wages, for we can really under no circumstances be concerned with the other items, except possibly the house expense, linen, etc., we find that the evidence produced proves that the wages from the time Mr. and Mrs. Maddock left until the house was closed, amounted to \$23.16 a week, and that the food during a like period, amounted to \$26.11. The food item, it will be noticed, increased \$6.13 a week more than in the period while Mr. Maddock was living in the house single, and increased nearly \$23 a week over the time when Mr. and Mrs. Maddock were living in the house together and paying their share.

The wage item, we have observed, is slightly less, which is accounted for by the services of Mrs. Bertha Heath. We find, then, no word of evidence to dispute the showing that the presence of Mr. and Mrs. Mad-

dock on the premises gives a direct benefit and gain to the estate of very close to \$3,000. The case presented to this court is not one of theory, conjecture or hypothesis. We produce facts and figures, and they are and can be in nowise disputed.

In the schedule presented below there was an item of \$500 for small items brought home by Mr. Maddock for which no vouchers were or could be produced, and the court seemed under the impression that they could not be given place. This would undoubtedly be the situation if this defendant were showing these items for the purpose of asking allowance, but that is not the situation. They are not included in his accounts and have nothing to do with his accounts. They are sworn to by him for the purpose, sole and alone, of proving that he did not benefit at the expense of the estate, and for this purpose that evidence, being given by a credible witness, must stand with full force and effect, weight and credit, until something, at least, is offered against it. This court cannot be oblivious to the fact that numberless small items must have been brought home by Mr. Maddock which were not included anywhere in the items set out in Mrs. Maddock's book. They are of real weight, evidence and consequence for the purpose for which they were adduced, and by doing a little arithmetic with the figures for the various times made up by the three periods used in evidence we will see that that factor of \$500 is absolutely necessary.

But on our theory of this case we have never yet come to a point where they need be given any consideration, for no effort has been made to give evidence to the court to show that this defendant benefited at the expense of the estate.

Assume, now, for the purpose of argument, that Mr. Maddock was the brute which Mr. Day would have him; assume, on being begged by this young girl to remain at the house where he had so long lived, and

bring there his wife to take charge of the house, and realizing, as is so clearly set out in the opinion, adopted by this court, that the proper performance of his duty really required his presence there, and after talking to conscientious counsel, who advised him on the lines of equity, right and justice, rather than on the lines of technicality, brutality, and inhumanity, he had said, "I prefer to establish my own home" (which both he and his wife swear to be the fact) and had further said to his young ward, "You may shift for yourself. You may have come to take care of you and of the place such companion or housekeeper as we can get." Can this court think for an instant that the place would have been run any more economically than during the period while Mr. Maddock lived there single, or during the period after Mr. and Mrs. Maddock left? We have analyzed with great care^{all} of the evidence taken in these hearings on this phase of the case, and are at an absolute loss to understand the situation in the slightest.

We find, for instance, pages and pages of testimony and cross-examination by complainant's counsel of Mr. and Mrs. Maddock and direct examination of his own client on the matter of the use of wines from the wine cellar, yet Mr. Maddock is proved to be a total abstainer, and Mrs. Maddock swears that in two years she has used wines twice only, and both times for medicinal purposes. If either of them were users of liquor, the defendant's counsel could have proved that very readily, yet no attempt is made so to do. What, we ask, conceivably can be the purpose or object of this testimony? Certainly not to hold the defendant to or for anything, for no effort is made to show whether he either used or wasted a half a bottle or five bottles of wine, and no possible effort is made to give any light as to whether the wine^{was} of the quality costing 25c. a gallon or \$10 a quart, yet a man of the ability and experience of complainant's counsel well knows

that in order to charge one with accounting, the court must be given something to charge him.

Consider, again, the matter of the pony and carriage, pages and pages of testimony of which has been taken by counsel for this young girl, and for what purpose? Certainly the guardian, with his powers under the will and with the duties and obligations cast upon him by virtue of his office, is the one to determine whether or not the pony should be kept or should be sold. Mr. Maddock testifies he never used the pony, and no word is offered to contradict this, and Mrs. Maddock is absolutely uncontradicted in her testimony that she hated the beast, which she feared, and that she drove it only when absolutely necessary for the purpose of giving it exercise, attached to a high buggy. Does Mr. Day desire this court to assume that the pony would be better if unexercised? It is in evidence that the coachman at times exercised the animal. If Mr. Day's argument or theory is sound, then a deduction should be made from his monthly wages on that account, for "he used" the animal.

In the appellant's brief under the heading C. we find an interesting method of figuring, showing various amounts of payment. This position and method of figuring seems to us sufficiently unfair to verge upon the ridiculous. Among other items of account we find \$1,485.10 covering repairs, taxes, etc. From this are we to presume that if Mr. Maddock had remained single or not brought his wife to the house, the municipal authorities would have rebated the taxes and the elements would have not so treated the house as to have made repairs essential? Moreover, if Mr. and Mrs. Maddock had resided in an apartment house around the corner, the pony and carriage would probably not have cost less than \$432.36. It may be answered that Mr. Maddock might have disposed of the pony and carriage but it can never be contended that he was under any obligation so to do.

In a word, the question is this, as was tersely stated by the court below.

“I should say at present that the question is, was it proper to keep the house open and running?”

ANSWERED BY MR. DAY: “That I do not think there is any doubt about.”

And from an examination of the testatrix's will it must be agreed that there can be no question ^{but} ~~about~~ that it was not only ^{the} right but the duty of the guardian to keep the house open, and having bowed to the wish of his ward, and after consulting counsel having brought his wife to the place, instead of as he would so normally desire to do, have started housekeeping in surroundings that would have been more congenial to his bride, he might well have contributed nothing to the support or running of the establishment.

It is respectfully insisted that in the situation which existed at the household the defendant did not benefit at the expense of the estate. The house had to be kept open at any rate and the amount of money which the defendant expended towards the maintenance of the household, together with the services rendered by his wife, was certainly ample contribution for anything that they received. Especially is this so in view of the fact that the defendant's wife had no desire to live there and simply acceded to the request of the complainant in order to better enable her husband to perform his duties towards the complainant, as imposed upon him by the will of the testatrix.

No one interested, with the schedules before him, showing the expense to the ward's estate of running the house during the periods before mentioned, can doubt that the sacrifice made by this man and his wife in not taking up their own married life in their own home, as they desired, but in continuing a faithful stewardship and loyal, unselfish service, has re-

sulted in a great gain to this estate, and no one with these figures before him can doubt that if some one else had been placed in charge, to keep open the premises, as admittedly must have been done, but that the estate would have been under a much heavier burden of expense than resulted from the occupancy of Mr. Maddock and his wife.

No evidence is offered to disprove the sworn testimony of Mr. and Mrs. Maddock as to the care and attention given by them to every detail of the establishment, the repair of the furniture and the fixing of all things possible, and indeed nothing to contradict that testimony could be offered, for the schedules before this court show that the house expense, which during the time of Mr. Maddock's occupancy alone was \$8.75 a week, dropped, during the regime of Mrs. Maddock, to \$6.30 a week. Page 177, line 20, etc. Again note that the items of repair, etc., dropped from \$13.77 a week to \$11.98 a week.

Nevertheless we find pages of testimony in an attack directed to the painting of the woodwork in the room occupied by Mr. and Mrs. Maddock.

There is no word of evidence before this court on the basis of which this defendant could be surcharged to the extent of a dollar, and under the facts clearly proved below and in no wise disputed, it would be as great a wrong, legally, morally and equitably, to surcharge him to the extent of a dollar as to the extent of \$10,000.

A real understanding of this case is best had by noting in the testimony the absurd attack arising out of a partly unused quart bottle of port wine and the exercise of a little pony.

It again emphasizes as was said in another branch of this case, 81 N. J. Eq., 474, "That her conduct was misguided and prompted by others is evident."

II.

THE BEQUEST TO THE DEFENDANT OF \$9,000. IN THE SIXTH CLAUSE OF THE WILL OF MARGARET C. HEATH, DECEASED, WAS NOT GIVEN AS PART OF HIS COMPENSATION FOR SERVICES AS EXECUTOR AND TRUSTEE UNDER SAID WILL.

The sixth paragraph of the will of Margaret C. Heath is as follows (case, p. 24) :

Sixth. "I give and bequeath unto my nephew, Frederick R. Maddock, nine thousand dollars in full settlement of all claims and demands of every kind and nature against my estate, except such as are provided for in this my will."

In addition to this bequest, in and by the seventh paragraph of her will the testatrix provided that Mr. Maddock, who then lived with her, should have the privilege of living in the same manner, free of charge with her husband and her granddaughter, the complainant, in her dwelling house No. 300 Roseville avenue, until said granddaughter should arrive at the age of twenty-one years (case, p. 25). In the will the testatrix appoints Mr. Maddock and Mr. Atkins the executors and trustees, and guardians of the complainant, and provides for the upkeep of her dwelling house, apparently to make a home for the complainant herein.

In fact, by reference to the will and all the codicils thereto annexed, it is very apparent that the object of the testatrix was to give Mr. Maddock the right to live in the dwelling house so that he could the better perform the duties and responsibilities he had cast upon him with respect to the maintenance, comfort and education of the complainant. (*Heath vs. Maddock*, 81 N. J. Eq., 469.)

In and by the eighth paragraph of the will of the testatrix she made the following bequests (case, p. 25).

Eighth. "I give and bequeath to each of my executors herein named the sum of five hundred dollars in lieu of further commissions or allowances."

By the fifteenth paragraph of the will testatrix appointed Mr. Maddock and Mr. Atkins executors and trustees and guardians of the granddaughter, Carlotta (case, p. 28).

In and by the fourth codicil to her last will and testament, the said Margaret C. Heath revoked the appointment of Mr. Atkins as one of the executors and trustees, and guardians, and in his place and stead appointed Charles T. Glen (case, p. 34).

And in the said codicil the said testatrix makes the following provision (case, p. 34) :

"I give and bequeath to each of my executors, Frederick R. Maddock and Charles T. Glen herein named, the sum of five hundred dollars in lieu of further commissions."

It is respectfully insisted that the so-called money legacy of \$9,000, given by the testatrix to the defendant, was in no sense part compensation for services which he was to perform either as executor or trustee, in carrying out the terms of the will.

In the first place, it should be noted that the testatrix states that this legacy is "in full settlement of all claims and demands of every kind and nature against my estate, except such as are provided for in this my will." The testatrix uses the words "claims and demands." These words suggest the relation of debtor and creditor, and can only have reference to legal rights against the estate of the testatrix, as for instance, grounded upon contract or claims sounding in *tort*.

It is interesting to notice that these are the very words used in the 67th section of the Orphans' Court Act in connection with the provision relative to the rule limiting creditors, whereby the Orphans' Court

or Surrogate is empowered to order executors, &c., to give public notice to the creditors of a decedent to bring in their debts, demands and claims against his estate. Evidently, then, the words "claims and demands" against the testatrix's estate could only refer to such claims and demands and rights of action which the legatee might have against the testatrix.

Furthermore, it is respectfully insisted that commissions and allowances made to executors and trustees are in no sense claims and demands against the estate of a decedent. The rights to commissions are fixed and settled by statute, and they are not such matters as can be included within the definition of the words "claims and demands" as used in the will and as commonly used in the Orphans' Court Act and as generally understood in Orphans' Court practice.

At common law an executor, administrator, guardian or trustee was allowed nothing for his care or trouble, but by statute commissions are now allowed. Furthermore, it should be noticed that commissions are not matters of right to which the executor or trustee is entitled. It is entirely within the discretion of the court passing his accounts, as to what commissions shall be allowed, subject to the limitations in the exercise of discretion, as provided by statute.

That commissions cannot be deducted by the executor, administrator, guardian or trustee until they are fixed and allowed by the court, was determined in the case of *Lathrop vs. Smalley*, 8 C. E. Gr., 192. In that case the court held that "the complainant was entitled to have the interest on the sum held in trust for her paid to her yearly, without any deduction for commissions until commissions had been allowed and settled by the proper court."

Furthermore, by section 129 of the Orphans' Court Act, it is provided that on settlement of accounts, etc., commissions shall not exceed certain rates, and furthermore, it is provided in the same section that,

"the commissions of executors, administrators and trustees in any estate where the receipts exceed the sum of \$50,000, shall be determined by the Orphans' Court on the final settlement of their accounts according to the actual services rendered, not exceeding five per centum on all sums which come into their hands."

In other words, commissions are a matter of discretion and not a matter of right. In no sense can commissions and allowances made to legal representatives by the court be considered in the same category with "claims and demands." Evidently, then, the sixth paragraph of the will means that the \$9,000 was in satisfaction of all claims and demands that the legatee had against the estate of the testatrix at the time of her death, excepting such rights as he had against her estate by virtue of the other provisions of her will.

Under the will, in addition to the bequest under consideration, the defendant had the right to live in the homestead until the granddaughter became twenty-one years of age. This right was practically the only other benefit that the defendant received under the will as a legatee.

In his office as executor, trustee and guardian, he was associated, both in the will and in the codicil, with another person. The bequest made by the testatrix to the executors was made to them in their official capacity, so to speak, and the fact that the defendant happened to be one of them, cannot place him in any different relation to the estate from that of the other executors. Furthermore, it is clear from the terms of the will and codicil that the bequests to the executors were for their services in performing the duties of their office under the will. The gift to the executors is in lieu of or in place of "further commissions or allowances." It is very evident from the very use of the words "commissions or allow-

ances" that in the mind of the testatrix they were not "claims and demands" against her estate. It is very clear that by this provision for the executors, the testatrix was usurping the jurisdiction of the courts as established by law in this state. It should also be noticed, as heretofore intimated, that the bequest is to "each of my executors, in lieu of further commissions or allowances." As before stated, neither Mr. Atkins nor Mr. Glen took any benefit under the will whatever, except under the clause in the will and codicil providing for the specific compensation. Evidently, then, this clause cannot be construed in one way in its application to one executor, and another way in its application to the other executor. In other words, it is perfectly clear from a reading of the will and all the codicils that in so far as Mr. Maddock is concerned, and the other executors named in the matter also, that the sum of \$500 mentioned in the eighth paragraph of the will and in the codicil was in the nature of specific compensation, in lieu of commissions and allowances as provided by statute, and that the money bequest to Mr. Maddock and his right to live in the house had no connection whatsoever with the bequest to executors of specific compensation.

In brief on behalf of appellant, great stress is laid on the use of the word "further" but it is very apparent that the word is used in the sense of "other" because, as stated, the other executor in each instance received no benefit of any kind under the will, except the bequest of \$500.

On this subject we cannot do better than to quote from the conclusions of the Advisory Master as found on page 207 of the case:

"This contention so far as relates to the \$9,000 bequest is put upon the ground that the bequest was 'in full of all claims and demands against her estate' and that she must have con-

sidered the claim of the executor or trustee to commissions was a claim or demand upon her estate. If that meaning is given to the language used it still fails to sustain complainant's contention, because the gift is to settle all claims and demands except those otherwise provided for in the will, and she made a provision for commissions."

"Nor do I think the other contention respecting the living of the defendant in the house free of charge is any better supported. The bequest to the two executors of \$500 each, which was to be in full of all commissions is applicable to both executors, and plainly indicates that the testatrix thought she had the right to limit the amount which each should obtain for commissions. It is possible, perhaps probable that the testatrix did ^{not} know the state of the law which provides that an executor may renounce a specific compensation for his services and claim such compensation as the court may award. In my judgment the limitations cannot be enforced as against the renunciation of defendant."

III.

THE DEFENDANT MADE HIS RENUNCIATION IN DUE TIME.

Reference is made to the renunciation filed by the defendant, pursuant to the 132nd section of the Orphans' Court Act. A copy of the renunciation is annexed to the bill of complaint, and the contents thereof clearly indicate its intention and scope (case p. 36). It recites that the testatrix, in and by her will, did appoint Mr. Maddock and Mr. Glenn executors, and in and by her will and codicil did bequeath to each of her executors the sum of \$500 in lieu of further commis-

sions, and further recites that said Mr. Maddock was unwilling to accept said bequest in lieu of commissions as executor and therefore as executor did renounce all claim to such specific compensation, and claimed such commissions as executor under said will as might be allowed by law.

In view of the terms of the so-called renunciation, then, it cannot be contended, as stated in appellant's brief, that the defendant renounced all that appellant contends for in her brief. In fact, the renunciation is clearly, plainly and explicitly limited to the specific compensation of \$500 and the renunciation is drawn clearly and explicitly enough to show that it refers to the specific compensation allowed the executors in the will and codicil. It would certainly require a great stretch of the imagination to make the renunciation as filed cover all that is claimed by the appellant. By reference to the 132nd section of the Orphans' Court Act it is clear that the renunciation is drawn in the manner indicated by the Statute, and it is clear and explicit with reference to the subject matter to which it is directed. It could have no application in respect to the two other subjects mentioned in the appellant's brief, even if those bequests could be considered in any way as "compensatory" for any such services as were rendered by the defendant in a fiduciary capacity.

Furthermore, it might be noticed in passing that both in the will and codicil Mr. Maddock and another person are appointed executors, trustees and guardians. In both the will and the codicil the specific bequests is "to each of my executors." At most all that could be contended is that the bequest is made to the executors, and the bequest could certainly have no relation to the office of trustee and guardian held by each of the persons named; consequently it follows if the \$500 were accepted in lieu of commissions or allowances as executor, it would not bar the parties

from receiving commissions in the office of trustee and guardian to the extent that they might be allowed by the court.

We would add a few words with respect to the construction and operation of Section 132 of the Orphans' Court Act. This section provides as follows:

“Where provision shall be made by a will for specific compensation to an executor, guardian or trustee, the same shall be deemed a full satisfaction for his services, in lieu of the allowance aforesaid, or his share thereof, unless he shall by writing filed with the Surrogate renounce all claim to such specific compensation.”

It needs no argument to show that the eighth paragraph of the will (case p. 25) and the last paragraph of the fourth codicil (case p. 34) provide for specific compensation to each of the executors, and we would add that it is perfectly clear that this is the only provision to this end or character in the said will and codicils thereto. It is perfectly apparent that each executor was placed upon the same footing by the testatrix, in so far as his official position as executor was concerned. In their official capacity the testatrix attempted to compensate them equally.

In view of the will and codicils and the section of the Orphans' Court Act above quoted, it is apparent that each executor had the right to renounce all claim to such specific compensation. Mr. Atkins or Mr. Glen had this right under the Statute, and could have exercised it, and it is very apparent that this defendant stands upon the same footing and has the right to renounce this specific compensation and to apply for and receive such commissions and allowances as may be made to him by the courts.

This section of the Orphans' Court Act has received little, if any, judicial construction, but its intent and meaning are perfectly clear upon the face of the Statute.

Reference is made to this section *in re Taylor*, 12 N. J. L. J. 49, in a well considered opinion relative to the matters of commissions and allowances. In this case the testator directed that the executors should act without fee or emolument for their services rendered in that capacity. The estate exceeded \$50,000 in value. Reference was made to what is now the 132nd Section of the Orphans' Court Act, but it appears that the executors in that case contended that this Statute did not apply to them, and filed no formal written renunciation with the surrogate, and of course there was nothing for the executors to give up in such a case.

In the course of the opinion is the following:

"The testator, then, in this case, knew in contemplation of law, when he executed his will in 1886, that the Statute of New Jersey not only prescribed the form and substance controlling his legal right to dispose of his property by law, but by a law enacted in 1867 also conferred upon the appropriate court the power and duty of fixing the amount of compensation to be allowed to his executors for their services in the absence of his fixing specific compensation for them himself, and with this presumed knowledge, he proceeded to declare by his will that in effect he would neither give his executors any specific compensation himself nor permit the court to allow them any commissions whatever for settling his estate, thereby defying and attempting to annul the law. The question we must now determine is whether the attempt shall be successful."

The court finally determined that the executors were entitled to commissions for their services on behalf of the estate.

Reference should again be made to section 129 of our Orphans' Court Act, which still provides that "the commissions of executors, administrators and trus-

tees in any estate where the receipts exceed the sum of \$50,000 shall be determined by the Orphans' Court on the final settlement of their accounts according to the actual services rendered, not exceeding five per centum on all sums which come into their hands." By reference to the pleadings and the exhibits in this cause (Case, pp. 67-108), it appears that the estate of Margaret C. Heath greatly exceeded the sum mentioned in the statute, and that therefore under the statute, the Orphans' Court had the jurisdiction to determine the commissions within the limits fixed by the statute. In other words, the allowances or commissions to the executors in this estate would be purely a matter of judicial discretion exercised under the statute, and in view of the decision in the Taylor case above mentioned, it would seem to be beyond the power of a testator to absolutely fix and determine the amount of commissions, and that by statute such a right is reserved to the Orphans' Court, as stated therein.

Finally, it is respectfully contended on behalf of the defendant, that having complied with the 132nd section of the Orphans' Court Act in renouncing all claim to the specific compensation made to him as executor in the eighth paragraph of the will and in the fourth codicil he may now receive such allowances and commissions as may be made to him as executor, in the manner provided by law.

The contention with reference to the \$9,000 is quite apparently an afterthought occurring to counsel when dictating his brief. Reference to the item is found in the bill and answer and in the absence of any proof to the contrary the answer will, of course, take care of the situation.

To test the logic of the complainant's position, briefly consider the situation as though Mr. Glen and Mr. Maddock had resigned and an administrator c. t. a. been appointed. Mr. Maddock would then, of

course, have received the \$9,000 and have had his rights to live in the house and the administrator would unquestionably have received full legal fees. The only theory on which we can comprehend the position of complainant is that she holds the view that "from him that hath shall be taken."

The right to make wills is wholly governed by statute and also all matters pertaining to the administration of estates of decedents are governed by statutory legislation. The terms under which and upon which commissions and allowances are granted to legal representatives, are fixed and determined by our Orphans' Court Act. The right of the Legislature to deal with these questions stands unchallenged and definitely fixed and determined.

Hereinabove we set out verbatim section 132 of the Orphans' Court Act dealing with the subject of right of renunciation of specific compensation. By reference to our statutes we find that the original act was passed and approved as early as March 17, 1855. See Public Laws of 1855, page 346, section 10.

The appellant takes the position that the defendant was too late in availing himself of the privileges of the act.

Appellant sets forth the date of the death of the testatrix and the date of the probate of the will. Thereafter this defendant and his co-executor Mr. Glen who was then living, filed a petition in the Orphans' Court praying leave to make certain investments and an order was made permitting them so to do. Thereafter Mr. Glen, the co-executor, died and after his death his legal representative was paid the sum of five hundred dollars.

The defendant herein as sole surviving executor filed an inventory of the estate in 1911 and on or about October 16, 1911, defendant filed his account as executor and trustee, and at the same time or just prior thereto filed this renunciation (case, p. 4).

It is not necessary to repeat here anything with respect to the occasion for the delay in filing the inventory and account. The reason therefor was fully considered in the case of *Heath vs. Maddock* between these parties in the prerogative court and in the Court of Errors and Appeals (81 N. J. Eq., 469).

The fact that the defendant did not file his renunciation until the differences between him and his *cestui que* trust arose can have no bearing whatsoever upon his rights in the premises. The Legislature has seen fit to give a legal representative this right and persons interested under a will cannot impair the right in any way.

The fact that the legal representative of Mr. Glen after his death accepted the \$500 can have no bearing whatever on the defendant's right nor can it in any way indicate his attitude of mind. While it has no bearing whatever on the present controversy it could undoubtedly be shown that Mr. Glen had he lived would have taken the same attitude in the premises as the defendant herein.

According to the determination of the Ordinary and the Court of Errors and Appeals the attitude of the beneficiary in this case has not been such as to merit any special favor from the trustee.

We would particularly consider the cases cited in appellant's brief concerning this general subject. The first case cited is *Freeman vs. Fairlie*, 3 Meriv., 24. In this case it was held that an executor in India, having a legacy for his trouble was not entitled to commissions on receipts and payments or either as executor; nor allowed in passing his accounts after a series of years to renounce his legacy and charge commission on such receipts and payments. It should be noticed that in this case a bill was filed by a legatee in the year 1812 for an account of the personal estate of the testator and for a payment of his legacy. The testator had died in the year 1791, that is 21 years

before the bill was filed. The Master of the Rolls allowed the exceptions holding clearly that the executor having such legacy for care and trouble is not entitled to commissions and that he could not at that distance of time be admitted to renounce the one nor be enabled to charge the other. The case of *Chetham vs. Lord Audley*, 4 Ves., 72, was cited in the foregoing case in which it was decided "that an executor in India passing his accounts in this court is entitled to commission upon receipts or payments according to the practice in India; that practice being represented in evidence to be that it was usual to make such an allowance in every case in which the executor has not a legacy." It is very apparent from the reading of this case that it can have no bearing whatever on the subject matter in controversy here. It apparently deals with a practice existing in India at the time and under the peculiar circumstances stated. It was not based upon any statutory right such as exists in this State. Furthermore it should be noticed that the action was brought by a legatee 21 years after the death of the testator, nor does it appear from the meager report of the case what all the facts and circumstances were. However, the reference to the case of *Chetham vs. Lord Audley* shows that the whole case turned upon the peculiar practice existing in Indian Courts.

Further we have heretofore referred to the fact that in case Mr. Glen and Mr. Maddock had resigned and an administrator with the will annexed been appointed, such an administrator would unquestionably have received full legal fees. Evidently, then, in the view of the Legislature no unjust burden is thrown upon the estate by the exercise of this right by an executor and it is left open to him to determine whether he shall accept a specific compensation or renounce the same and apply to the court for such commissions and allowances as may be granted. It

is not contended in the case under consideration that the estate or any of its beneficiaries are prejudiced in any way and, as before stated, if the executors named in the will should have died either before qualification or after qualification, the substituted representative could not be bound by any attempt of the testatrix to limit the commissions and allowances. Finally, there is no disposition on the part of the courts to limit the rights of legal representatives to renounce specific compensation.

In *Matter of Arkenburgh*, 13 Misc. Rep. (N. Y. Sur. Ct.), 744, it was held that the statement made by the executor before the will was admitted to probate that he was satisfied with the compensation provided for therein, does not estop him afterwards from renouncing the provision.

In *Matter of Weeks*, 5 Dem. (N. Y.), 194, it was held that the right remains unimpaired as long as the executor has not indicated his election between the testamentary provision and the statutory commissions either by taking one or the other or by some other mode.

Finally it is respectfully submitted that the defendant filed his renunciation in ample time. It was placed upon the files of the court just before or simultaneously with his first account as executor and trustee so that the amount of his commissions and allowances should be fixed on the passing of his first account. Certainly it could make no difference to the estate or the beneficiaries thereof whether the defendant filed his renunciation immediately upon the probate of the will and his qualification or whether he filed the same before his first account. The beneficiaries of the estate could not have removed him after his qualification simply because he filed this renunciation and so far as the estate is concerned and the administration thereof it could not be acted upon in any way until an account was presented for settle-

ment in connection with which his commissions could be fixed. Furthermore we have shown that had both of the executors renounced or resigned, the estate would have been obliged to bear the burden of such commissions and allowances as the proper court should make to their successors in office.

For the reasons above set forth it is respectfully submitted that the defendant is entitled to all commissions and allowances allowed by law and in the manner prescribed by the statutes and practice in this State.

In appellant's brief reference is made to the case of *Middleton vs. Carter*, 73 N. J. Eq., 624. Reference to that case, however, shows that it can have no application here. In the *Middleton* case the syllabus is: "When the removed administrator sought his appointment and obtained renunciation from those entitled to administer upon his promise that his services should be gratuitous he will not be entitled to commissions nor have money paid to a lawyer for services which the administrator should have performed." It will thus be perfectly apparent that the doctrine of this case has no application, however, to the subject under consideration.

Reference has also been made by the appellant to cases in the courts of Pennsylvania but the reading of the quotations from these cases makes it perfectly clear that the situation with which they dealt is entirely different and it is very evident that there are no statutory rights reserved to executors to renounce specific compensation as fixed by our statutes. Finally we conclude our argument on this subject by quoting from the conclusions of the Advisory Master as found on page 208 of the printed case.

"It is argued that the renunciation came too late not being filed with the surrogate until after the defendant had managed the estate for several years as executor and as trustee. It is possible

that limitation of time for filing such a renunciation might be properly imposed by the Legislature but it is not within the power of the courts to so impose it and limit the executor's right."

IV.

COMMISSIONS AND COUNSEL FEES WERE PROPERLY ALLOWED TO THE DEFENDANT.

In appellant's brief it is contended that the defendant because of alleged misconduct is not entitled to commissions and counsel fee. In the brief appellant proceeds to set forth certain alleged acts which is intended to manifest misconduct. With respect to all these matters discussed under this section of the appellant's brief it should be observed at the outset that by reference to the conclusions of the Advisory Master (page 204) it will appear that none of the matters mentioned in the fourth section of the appellant's brief were laid before the Advisory Master. Appellant in her brief refers to the case of *Heath vs. Maddock*, 81 N. J. Eq., 470, and the affirmance thereof by this court and proceeds to admit that these decisions dispose of the principal issues involved in this suit and that this suit was retained only for the purpose of having decided the incidental issues thereafter referred to which were apparently two in number and they have been previously discussed in this brief. The acts of alleged misconduct set forth in the fourth section of appellant's brief have heretofore been considered in the litigation between the parties hereto. After thorough consideration of all the matters and complaints alleged against the defendant the attitude of the defendant throughout has the stamp of approval not only of the ordinary but of this court.

Finally we would respectfully insist that it is the wrong methods which the appellant pursued which has lead to all the litigation between the parties and the great expense which has been entailed. In support of this contention we cannot do better than conclude with a portion of the opinion of the Ordinary at page 474.

“From the death of the grandmother in 1906, until two weeks before this suit was begun, the guardian and his ward lived in peace and harmony. Figuratively speaking, from him she received a paternal watchfulness of her temporal affairs, and a material devotion to her spiritual welfare. The ward testifies that he was ever indulgent and generous towards her, and that she lived with him in happiness and comfort. This appears to have been interrupted by her imprudence and insolence. That her conduct was misguided and prompted by others is evident.”

In conclusion it is respectfully submitted that the decree of the Court of Chancery should be affirmed with costs to this respondent.

Respectfully submitted,

LUM, TAMBLYN & COLYER,

*Solicitors for and of Counsel
with Respondent.*

RALPH E. LUM,
EGBERT J. TAMBLYN,
Of Counsel.

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Bill of Complaint.

Filed December 15, 1911.

In Chancery of New Jersey.

To his Honor, Mahlon Pitney, Chancellor of New Jersey: 10

1. Complaining shows unto your honor your oratrix, Carlotta Heath, an infant under the age of twenty-one years, by Alfred L. Dennis, of the City of Newark, in the County of Essex and State of New Jersey, her next friend, that she is the daughter of Charles Heath and Annie, his wife, both of whom departed this life in the year nineteen hundred, and that she was on the twelfth day of June, nineteen hundred and eleven, nineteen years of age. 20

2. And your oratrix further shows that she was the grandchild of one Margaret C. Heath, who was the widow of the grandfather of your oratrix, one Edmund F. Heath, late of said City of Newark, deceased, and that her said grandmother departed this life on or about the eighteenth day of March, in the year nineteen hundred and six, seized and possessed, as your oratrix is informed and believes, of considerable personal property and real estate, leaving a last will and testament bearing date the twentieth day of February, nineteen hundred and four, in and by which she did, among other things, devise to your oratrix the house and premises, known as No. 300 Roseville avenue, in said City of Newark, which was the homestead of the decedent, and also a barn or stable and the lot on which the same was erected, known as No. 306 North Seventh street, in said city, which the decedent had used in connection with and as part of her said homestead, and, after making sundry lega- 30
40

Bill of Complaint.

cies and bequests, she did thereby devise and bequeath unto your oratrix her residuary estate by the words as follows :

10 “Tenth. I give devise and bequeath all the rest residue and remainder of my estate real and personal and mixed unto my grand-daughter Carlotta C. Heath the same to remain in the hands of my executors and to be given or paid to her when she arrives at the age of twenty-five years.”

And your oratrix further shows that in and by said will the said decedent gave to one Frederick R. Maddock, hereinafter mentioned, “the privilege of living,” “free of charge,” with your oratrix in the said dwelling house, No. 300 Roseville avenue, until your oratrix should arrive at the age of twenty-one years, provided he should remain single; that in a codicil to said will, bearing date on or about the fourth day of October, nineteen hundred and four, the said decedent did provide that the said Frederick R. Maddock to whom she had given certain rights and privileges in the lot of land, house and premises, situate at No. 300 Roseville avenue should have the sole care and charge of the said house and home of your oratrix and of the manner of living and of the education of your oratrix without hindrance or interference from any person whatsoever, and of the hiring of proper and necessary assistants for the conduct of said house, restricting his control thereof only by limiting his right to hire, employ, procure or have as assistants, companions, help or in any capacity such persons only as were not in any way related to himself and denying him the right to hire, have, employ or procure any person or persons who were related to him, as assistants, companions or help. And it was also provided that the control given by the said will to the said Maddock over the said house and

Bill of Complaint.

household of your oratrix should be at the expense of your oratrix and should continue until she should arrive at the age of twenty-four years unless she should sooner marry, and if she should marry then it should terminate on her marriage; and that by the said will and a codicil thereto the said Frederick R. Maddock and Charles T. Glen, Esquire, were appointed executors thereof and also trustees of the trust estate thereby given and bequeathed to your oratrix; and that after the death of the said Margaret C. Heath, and on or about the fourth day of April, nineteen hundred and six, the said will and the several codicils thereto were duly admitted to probate by the Surrogate of the County of Essex and letters testamentary thereon were duly issued by the said surrogate to the said Maddock and Glen, and they did duly qualify as the executors and trustees thereof and did thereafter take upon themselves the burden of the administration of the said estate and of the trusts imposed upon them by the said will; a copy of which said will and of the codicils thereto is hereto annexed, and marked Schedule A, which your oratrix prays may be taken as part of this her said bill.

3. And your oratrix further shows that while her said grandmother in her said will describes the said Maddock as her nephew, and her said grandfather in his will hereinafter mentioned likewise describes the said Maddock as the nephew of his wife, the said Maddock was not in fact such nephew, nor was he in any manner related by blood to either the grandmother or grandfather of your oratrix. And your oratrix shows that the said Maddock was the son of a friend of her grandfather, and that he had a few years prior to the making of the said will been taken into the employ of the said Edmund F. Heath as a clerk in his business and at or about the same time was introduced into the household of her grandfather and was there given a home and residence.

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4. And your oratrix further shows that the said Maddock and Glen wholly failed to file any inventory of the estate of the said Margaret C. Heath or any account of their said trust; that the said Glen departed this life on or about the nineteenth day of January, in the year nineteen hundred and eight, leaving the said Maddock as the surviving executor and trustee of the estate, and that thereafter the said Maddock did solely administer the said estate and perform the trusts belonging thereto; that on the twenty-sixth day of September, in the year nineteen hundred and eleven, under compulsion of your oratrix as hereinafter appears, he filed in the said surrogate's office a paper purporting to be an inventory of the said estate made as of the twenty-fourth day of April, nineteen hundred and six; and that on or about the sixteenth day of October, in the year nineteen hundred and eleven, under like compulsion, he also filed in the said surrogate's office a paper purporting to be his account as executor and trustee, which is the first and only account which has been rendered in connection with the said estate; and your orator shows that at or about the time of the filing of the said alleged account the said Maddock filed a certain other paper purporting to be a renunciation of specific compensation to executor in lieu of commissions, a copy of which is hereto annexed, marked Schedule B and made part of this bill of complaint.

5. And your oratrix further shows that prior to and at the time of the death of her said grandmother she resided with her said grandmother at the said homestead, No. 300 Roseville avenue, and that the said Maddock was at the same time an inmate of said house; that after her death and until the present time, she has resided and still continues to reside in said house; that the brother of your oratrix, Edmund F. Heath, Jr., did also reside with your oratrix in said house until his death which occurred in the

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month of April, in the year nineteen hundred and nine; and that the said Maddock did likewise reside in the said house with your oratrix until the month of April, in the year last aforesaid, when he intermarried with one Catherine Y. Glen, whom he immediately brought to reside at said house, and where they both continued to reside until the month of October, in the year nineteen hundred and eleven. And your oratrix shows that the bringing by the said Maddock of his said wife to live at the said house and their residence therein after his said marriage were contrary to the express provisions of the said will of the said Margaret C. Heath, deceased, and that the said Maddock should be and is chargeable with his proportion of the expenses of running and maintaining the said household. 10.

6. And your oratrix further shows that in the filing by the said Maddock of the said alleged account of the estate of Margaret C. Heath, deceased, the same was noticed for settlement and that the time for the settlement and passing thereof has been from time to time continued, upon the motion of the solicitors of your oratrix; and that the said account has not yet been passed upon or settled. 20.

7. And your oratrix further shows that shortly after the marriage of the said Maddock and the bringing of his said wife into the said household it was arranged that your oratrix should go away to boarding school and in the fall of the year 1909, she went away to attend school at Rogers Hall in the City of Lowell, in the State of Massachusetts, and continued to attend said school for a period of nearly two years thereafter; and that during the period of her attendance at said school she was not at her home more than about one month in each year; that in planning for the bringing into the said household of the said wife of the said Maddock and her attendance at the said 30
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school your oratrix did, as she believed, arrange with the said Maddock, in order to keep down the expenses for which she might be chargeable, that one of the two servants which had been employed in the house should be discharged, that a horse belonging to your oratrix should be sold, and the coachman who had previously been employed for the said horse and in and about the care of the property, should be discharged, and that so long as your oratrix was away the said Maddock should pay all bills for food and living expenses, and that she should not at any time, even while she was at home, be chargeable with any part of the living expenses of the said household. And your oratrix shows that none of these plans was carried out by the said Maddock, but that, on the other hand, all the servants and the coachman and the house were retained and all the living expenses, except possibly a part of the bills for meats and groceries, were paid by the said Maddock and charged to your oratrix, and that the said Maddock, if he paid anything at all towards the expenses of the household, did not pay more than the bills for meats and for groceries, which amounted to a very small part of the expenses of maintaining the said household, and were by no means the proportion of the expenses for which he was and is fairly chargeable.

8. And your oratrix further shows that she has no knowledge, or the means of obtaining any knowledge, with regard to the paper purporting to be an inventory of the estate of Margaret C. Heath, deceased, filed in the said surrogate's office, as aforesaid, by the said Maddock, or when, by whom and in what manner the same was made, or of any of the items, matters or things contained in the said alleged inventory; that she has no knowledge of the circumstances under which the said inventory was made, or the data or sources of information upon which it was based; that to determine the truth and accuracy of the said inven-

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tory it will be necessary to examine into the papers and accounts of the said Margaret C. Heath, deceased, kept in her lifetime, all of which are in the possession of the said Maddock, and by means of expert accountants and otherwise to trace the property of the said Margaret C. Heath, of which she died seized and possessed, and to have a discovery of and from the said Maddock with respect to each and every of the items of the said inventory.

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9. And your oratrix further shows that the alleged account of the said Frederick R. Maddock, as the surviving executor and trustee of the estate of Margaret C. Heath, deceased, filed in the said surrogate's office, as aforesaid, is very voluminous, consisting of some twenty-eight closely typewritten pages containing in the neighborhood of fourteen hundred items, many of which are without vouchers; that said account fails to charge the said Maddock with the proportion of the household expenses incurred for his and his wife's benefit while she was a resident of the said house; that said account asks allowance by the said Maddock for sundry expenses made by him after your oratrix went to boarding school, as aforesaid, and which it was agreed should not thereafter be borne by your oratrix; that the receipts of property and moneys admitted by the said account to have been received by the said Maddock cannot be traced except by an examination of his books of account and of the books and papers kept by the said decedent in her lifetime, and by an examination of the securities and assets belonging to the said estate, and possibly by an examination of the private books of account of the said Maddock, and that said examination is not practicable except as conducted by an expert accountant, and that the truth and accuracy of the said account cannot be ascertained except by a discovery from the said Maddock; that in order to determine the accuracy of the said account it is necessary to construe the

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said will and codicils to the said will of the said Margaret C. Heath, deceased, with respect to the right of the said Maddock to bring his wife to reside in said house.

10 10. And your oratrix further shows that it is necessary, in and about said accounting, that that clause of the codicil of the said will bearing date the twelfth day of January, in the year nineteen hundred and five, by which she gives to her said executors, Frederick R. Maddock and Charles T. Glen, five hundred dollars, in lieu of commissions, should be construed by this honorable court; and in this connection your oratrix shows that in and by the sixth clause of her said will the said Margaret C. Heath did give to the said Maddock nine thousand dollars and did declare that the same should be "in full settlement of all
20 claims and demands of every kind and nature against my (her) estate, except such as are provided for in this my (her) will"; and that she did also, in and by the said will and codicils thereto, provide that the said Maddock should have a residence at said 300 Roseville avenue, so long as he remained unmarried, until your oratrix arrived at the age of twenty-four years or until her marriage. And your oratrix further shows that the said Maddock was the recipient of considerable property given him by the grandfather of your oratrix, the said Edmund F. Heath, in and
30 by his said will; and that after the death of her said grandfather, the said Margaret C. Heath, as the executrix of her husband's estate, did, for a very small and inadequate consideration, sell and convey to the said Maddock the business of which the said Edmund F. Heath, deceased, died possessed, and the assets and property connected therewith; so that the said Maddock had been in the lifetime of the said Margaret C. Heath the recipient from her or her said husband of large benefactions and was given by her said will a
40 large bequest and other benefits, all of which the said

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testatrix must have had in mind when she made her said will. And your oratrix further shows that the estate of the said Charles T. Glen received after his death, as appears from the said account received and accepted from the said Maddock, the sum of five hundred dollars which was the compensation allowed to him, the said Glen, in and by said will.

11. And your oratrix further shows that the said Edmund F. Heath, the grandfather of your oratrix, departed this life on or about the eleventh day of August, nineteen hundred and four, leaving a last will and testament in and by which he did, among other things, bequeath to your oratrix a legacy of twenty thousand dollars; that he did in and by said will appoint his said wife executrix thereof and that said will was duly admitted to probate and letters testamentary thereon were duly issued to her and that she took upon herself the burden of the administration of the said estate; that after her death as aforesaid the said Edmund F. Heath, Jr., the brother of your oratrix, was appointed substituted executor of the said estate; and that after the death of the said Edmund F. Heath, Jr., as aforesaid, the said Frederick R. Maddock was appointed the substituted executor and that he has since and is now acting as such.

12. And your oratrix further shows that on the petition of the said Margaret C. Heath, she, the said Margaret C. Heath, when your oratrix was under the age of fourteen years, and on or about the eighteenth day of October, nineteen hundred and six, was appointed by the Orphans' Court of Essex County, guardian of the person and property of your oratrix until your oratrix became of the age of fourteen years and should choose another guardian, and that she duly qualified, and became and continued as such guardian until her death; and that she failed to file any inventory or account of her trust; and that no

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inventory or account was filed until on or about the twenty-eighth day of March, nineteen hundred and eight, when as the executor of the said Margaret C. Heath, deceased, the said Maddock filed a paper purporting to be an account in connection with said guardianship showing a balance of assets then in hand amounting to twenty-one thousand one hundred and eighty-one dollars and eight cents, or some such sum.

13. And your oratrix further shows that after the death of her said grandmother and at the request and instigation of the said Frederick R. Maddock, your oratrix being then of the age of fourteen years and upwards, did, on or about the thirteenth day of December, nineteen hundred and six, file her petition in the said Orphans' Court asking for the appointment of the said Frederick R. Maddock as her guardian in the place and stead of her grandmother who had died, and that the said Frederick R. Maddock was by the said court, on or about the twenty-first day of December, nineteen hundred and six, appointed as such guardian of your oratrix, and that he did duly qualify and enter upon the discharge of his duties, and that he has since been acting as such guardian.

14. And your oratrix further shows that after his appointment as guardian as aforesaid the said Maddock did not file any inventory of the estate that came into his hands and that he did not file any account of his estate (excepting the one filed by him as the executor of Margaret C. Heath, deceased, above mentioned) until on or about the sixteenth day of October, nineteen hundred and eleven, when, under compulsion from your oratrix as hereinafter appears, he filed a paper purporting to be an account of his guardianship and showing an apparent balance in his hands of twenty-three thousand two hundred and twenty-one dollars and forty-seven cents or some such sum.

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15. And your oratrix further shows that within the past two years or more, and especially within the past year, when she was competent and able to understand and appreciate such matters, she applied frequently to the said Frederick R. Maddock for information with regard to the estate in his hands, as well that represented by the legacy of twenty thousand dollars given to her by her grandfather, as that derived from the estate of her grandmother, and how much she was worth, what her income was and for particulars of a similar kind, and that invariably the said Maddock put your oratrix off with indefinite information and that she has never been able to ascertain from him how much estate she had, of what her estate consisted, what her annual income was, how much money she was entitled to expend, and whether her expenditures had exceeded her income. Your oratrix further shows that feeling disturbed at this situation she did, during the summer of nineteen hundred and eleven, advise with some of her friends, men of business experience and wisdom, and they advised your oratrix that the time had certainly come when she was entitled to the information she wished and that she ought to engage counsel and come to an understanding and accounting with the said Frederick R. Maddock.

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16. And you oratrix further shows that, in pursuance of the advice so given to her as aforesaid, she did, on or about the fifth day of September, nineteen hundred and eleven, consult and advise with Edward A. Day, Esquire; and that he shortly thereafter reported to her that he had had an examination of the records of the office of the Surrogate of Essex County made, and that he had ascertained therefrom that the said Frederick R. Maddock and Charles T. Glen had never filed an inventory of the estate of the said Margaret C. Heath, deceased, in the lifetime of the said Charles T. Glen, and that since the death of the said

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10 Glen the said Maddock, as surviving executor, had never filed any inventory, nor had they, or either of them, ever filed any account of their trust; that there was no inventory of the said estate or any account showing anything with reference to the said estate or the execution of the trusts imposed upon the said executors and trustees, and that there was nothing to indicate what had come to their hands in connection with their trust; and that the records also disclosed that on the twenty-seventh day of March, nineteen hundred and eight, the said Frederick R. Maddock had, as the executor of Margaret C. Heath, deceased, filed an account in connection with the said guardianship, but that he himself in his own office of guardian had never filed any inventory or account in connection therewith.

20 17. And your oratrix further shows that on or about the ninth day of September, in the year nineteen hundred and eleven, she informed the said Maddock that she had advised with her said counsel, and that she was impelled to this act because she had been unable to obtain from him information regarding her estate, and she did tell him that he would probably receive a letter from her said counsel; and your oratrix further shows that her said counsel did write a letter to the said Maddock and the said Maddock informed your oratrix he had received, on the eleventh day of September, nineteen hundred and eleven, the said letter, a copy of which is as follows:

September 9, 1911.

F. R. Maddock, Esq.,
225 Warren Street, City.

Dear Sir:—

40 At the suggestion of some friends of hers and of mine your ward, Miss Carlotta Heath, has conferred with me with reference to her affairs.

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I find from an investigation of the records of the surrogate's office that she was residuary legatee and devisee under the will of her grandmother who died on March 18, 1906, naming you and Mr. Charles T. Glen as her executors. So far as I am able to find the executors never filed an inventory of the estate which came into their hands; nor did they in the lifetime of Mr. Glen, nor have you, as the surviving executor since Mr. Glen's death, ever rendered any account of the trust. 10

I also find from the records that you were, in December, 1906, appointed by the surrogate guardian of Miss Carlotta and that you have not filed any account of your trust since March 27, 1908; and that in the account you then filed you are charged only with \$21,181.08, which presumably represents the moneys which were derived from the legacy given to her by her grandfather's will, and that no mention is made of any moneys or property derived from the estate of Mrs. Heath. 20

I believe you must agree with me that your ward is entitled to a full account from you of your several trusts to her. In her behalf I now ask that you will at once file such inventories and accounts as the law requires.

I may add that pending the settlement of these very important matters I would prefer that Miss Carlotta defer her proposed trip to Europe. 30

Very truly yours,

EDWARD A. DAY.

18. And your oratrix further shows that at the time of the sending of the said letter the said Maddock and his said wife were living with your oratrix in entire accord and harmony at her said house, No. 300 Roseville avenue; that for a day or so after the 40

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eleventh day of September, in the year last aforesaid, there was nothing in the conduct of the said Maddock or his said wife to especially indicate his or her disapproval of her said action; but, commencing on or about Tuesday, the twelfth day of said last mentioned month, the said Maddock and his wife did practically ignore your said oratrix and did refuse to speak to her, although living in the same house with her and taking their meals at the same table; that when your oratrix entered the dining room, the said Maddock would nod to her, but not otherwise address her, and that his said wife would not speak to her at all; that this line of conduct on the part of the said Maddock and his wife continued until Saturday, the sixteenth day of the said last mentioned month, when at about seven o'clock in the evening of said day, both the said Maddock and his said wife did take it upon themselves to scold and violently quarrel with your oratrix in her said house; that at said interview the wife of said Maddock did take it upon herself to attach the character of the brother, sister and family of your oratrix; that, in the presence of the said Maddock, she called your oratrix "a damn silly fool," and this was repeated, and that she likewise declared that they "would raise hell about the matter before she was through," or words to that effect; that at said interview the said Maddock did declare that the conduct of your oratrix was "perfectly abominable"; that his said wife did, at the same time, state that your oratrix was "not entitled to any consideration" from them; that at said interview the said Maddock threatened to exercise the power of sale contained in the will of the grandmother of your oratrix, and to sell the house and home in which she was living; and at the same time he threatened to engage a person to act as housekeeper and take charge of your oratrix without consulting at all with your oratrix and without regard to her wishes. And your oratrix further shows

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that because of the misconduct of the said Maddock and his misbehavior she became and is unalterably opposed to his continuance in his office of executor and trustee of her estate under the will of her said grandmother and also in his office of guardian.

19. And your oratrix further shows that the said Maddock did practically ignore the letter of her said counsel, and because of this and by reason of the happening of the events and the quarrel aforesaid, and because it seemed evident that the accounts of the said Maddock, as well those relating to the said guardianship as to the said trusteeship, would have to be carefully scrutinized, and that it was important for that purpose that there should be an independent guardian it became, in the judgment of your oratrix and her counsel, necessary that the said Maddock should forthwith resign or remove from his office as guardian, and your oratrix, through her said counsel, did, on several occasions between the nineteenth day of September and the twenty-seventh day of September, in the year last aforesaid, request the said Maddock to resign from his said office, but that he refused so to do; that the said Maddock so refusing to resign you said oratrix did, on or about the twenty-seventh day of September, in the year last aforesaid, file her petition in the Orphans' Court of Essex County, asking the removal of the said guardian and that such proceedings were had in said cause that, after a hearing and the taking of testimony, and on or about the twenty-ninth day of November, in the year last aforesaid, the said letters of guardianship granted to the said Frederick R. Maddock as guardian as aforesaid, were by the said Orphans' Court revoked, and he was removed from his office as guardian. And your oratrix further shows that on the application of your oratrix the said Orphans' Court did also, on or about the day and year last aforesaid, appoint Alfred L. Dennis, who is her next friend in

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10 this bill, her guardian; and your oratrix shows that immediately upon the entry of the said order removing the said Maddock as guardian as aforesaid the said Maddock did appeal therefrom and give notice of appeal, and that she is advised that under the practice in such case made and provided the said appeal operates as a stay of the said order. And your oratrix shows that the said appeal is still pending and that the said Maddock is still her guardian and that the said Alfred L. Dennis has not yet fully qualified and entered upon the discharge of his duties.

20 20. And your oratrix further shows that prior to his death, either in his own name or under the name of Edmund F. Heath & Son, the grandfather of your oratrix, the said Edmund F. Heath, did conduct and carry on a manufacturing business on the lots of land and premises, situate on Warren, Wilsey and Newark streets in the said City of Newark (being two hundred and two (202) feet more or less in front on Warren street, two hundred and twenty-nine (229) feet more or less in depth on Wilsey street, and two hundred and twenty-five (225) feet more or less in depth on Newark street); that the said lands and premises were then owned by one James Brown; that the said Edmund F. Heath held at the time of his death three mortgages upon said premises, given to him by the said Brown, amounting in all to the sum of twenty-
 30 one thousand five hundred dollars and bearing five per cent. interest, and which in the liquidation of his estate it was necessary should be shortly called in and paid; that shortly after the death of the said Edmund F. Heath the said Maddock did, as hereinbefore appears, purchase from Margaret C. Heath, as the executrix of her said husband, the said business and the property connected therewith, and did thereafter conduct the same and is now conducting the same under the said name of Edmund F. Heath & Son; that on
 40 or about the eleventh day of September, in the year

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nineteen hundred and five, the said Maddock did purchase from the widow and devisee of the said James Brown the said factory premises which had been occupied as aforesaid by the said Edmund F. Heath in his lifetime, and were then occupied by him, the said Maddock, and also the engine and the boilers and other machinery and fixtures belonging to the said factory premises, for the consideration of twenty-eight thousand five hundred dollars, which was paid as follows: By the assumption by the said Maddock of, and his agreement to pay, the said three mortgages upon the said lands then held by the estate of the said Edmund F. Heath, amounting to twenty-one thousand five hundred dollars, and the sum of seven thousand dollars by a fourth mortgage upon the property so purchased by him, payable seven years after date, with interest at five per cent. And your oratrix further shows that on or about the twenty-ninth day of September, in the year nineteen hundred and six, the said Maddock and Glen, as the executors and trustees of the estate of Margaret C. Heath, deceased, filed a petition in the Orphans' Court of Essex County in and by which, among other things, they declared that the personal property belonging to the estate in their hands amounted to more than one hundred thousand dollars, a large amount of it consisting of railroad bonds, light and power, gas and electric bonds, bridge company bonds, water company bonds, Republic of Mexico bonds and other securities paying three and one-half to four per cent., that the estate of Edmund F. Heath, deceased, then held three bonds and mortgages amounting in all to the principal sum of twenty-one thousand five hundred dollars which were a first lien upon the premises and buildings which had been occupied by the said Edmund F. Heath in his lifetime for the manufacture of carriage cloth, and that the premises and buildings thereon had been appraised at forty-five thousand dollars, that the said

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Maddock was the owner of the said premises, and that he desired said mortgages assigned to the estate of Margaret C. Heath; and that in accordance with the prayer of the said petition an order was made by the said court bearing date the day and year last aforesaid authorizing the said Maddock and Glen, as executors of the estate of Margaret C. Heath, deceased, to purchase the said three several mortgages
10 aforesaid, amounting in the aggregate to twenty-one thousand five hundred dollars; and that in accordance with the said order the brother of your oratrix, Edmund F. Heath, Jr., who was then the substituted executor of the estate of the said Edmund F. Heath, deceased, and who was a very young man, inexperienced in business and entirely under the control of the said Maddock, did assign, transfer and set over the said three mortgages to the said Maddock and
20 Glen as executors of the estate of Margaret C. Heath, deceased. And your oratrix shows that the effect of the said order was to make the said Maddock, who was then and who has always since been the owner of the said mortgaged premises, a debtor to himself in his fiduciary capacity as trustee of your oratrix. And your oratrix shows that the said mortgaged premises, which do not include the engine, boilers, machinery and fixtures, so as aforesaid purchased by the said Maddock, are devoted entirely to manufacture, and are a slender and scanty security for the
30 payment of the said mortgages thereon held for the benefit of the trust estate of your oratrix, and that the investment of the said trustees of the said estate in the said mortgages was improper and that the said application to the said Orphans' Court was not made for the benefit of your oratrix or her estate, but for the personal benefit and advantage of the said Maddock.

21. And your oratrix charges and insists that the
40 said Maddock did suppress and conceal from the said

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court the fact that he had a short time previous to his said application purchased the mortgaged premises, and in addition thereto its engine, boilers, machinery and fixtures, for the sum of twenty-eight thousand five hundred dollars and without the payment of any moneys in cash; that the said application on the part of the said Maddock was, in view of his ownership of the said mortgaged lands and his relationship to the trust estate whose moneys were to be used in acquiring the said mortgages, improper and was a breach of his duties as the trustee of your oratrix; and that the said order of said court was unauthorized and was and is void and of no effect. 10

22. And your oratrix further shows that the said mortgages and each and every of them remain wholly unpaid and that they are still outstanding as a debt from the said Maddock in his individual capacity to himself as trustee of your oratrix. 20

23. And your oratrix further shows that when the said Maddock did on the thirteenth day of December, nineteen hundred and six, present or cause to be presented the petition of your oratrix asking for his appointment as the guardian of your oratrix he withheld from your oratrix the information that he was then a debtor to the trust estate of your oratrix, and that he likewise withheld from the said court the same information; and that his appointment as guardian was under the circumstances improper. 30

24. Your oratrix further shows that because the said inventory of the estate of the said Margaret C. Heath, deceased, was not filed until more than five years after her death and it is, therefore, difficult to trace its items, and to ascertain the truth thereof, and that such an inquiry in respect thereto as the circumstances of the case may require cannot be made without the aid and assistance of expert accountants and a sequestration and independent examination of the 40

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books and papers belonging to the said estate, and without a discovery from the said Maddock; that because in order to settle his said account as trustee it is necessary that the will of the said Margaret C. Heath, deceased, in connection with the renunciation by the said Maddock of his compensation given to him thereby for his services thereunder, must be construed in respect to the commissions to which the said Maddock may be entitled, and also that because it must be determined whether the said Maddock under the terms of the said will was entitled to bring his said wife to reside with your oratrix at the said homestead, and if he was not whether he is not chargeable with his proportion of the expenses of maintaining the said house while his said wife was an inmate thereof; and because the said account was so long delayed and the items thereof are so numerous, that the services of an expert accountant must be had to verify the items thereof and for that purpose the books, vouchers and papers of the estate must be sequestered, and discovery from the said Maddock in relation thereto must be had; for these and other grounds growing out of the facts herein set forth, it is necessary that the said inventory and account should be withdrawn from the said Orphans' Court and the same be presented, considered and settled in this honorable court.

25. And your oratrix further shows that the actions and doings of the said Maddock, as well with respect to his management of the estate of Margaret C. Heath, deceased, as with respect to his appointment as guardian of your oratrix and his performance of the duties of that office, constitute an abuse of trust and confidence, and because thereof the said Maddock should be removed as trustee of the said estate.

26. And your oratrix further shows that growing out of the behavior of the said Maddock there has

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arisen on the part of your oratrix a state of ill feeling and antagonism towards him and that she is distrustful of him, and that his continuance in his office of trustee of the estate of your oratrix will be detrimental to the execution of the trust, and that your oratrix can no longer work in harmony with him; and that for these reasons also the said Maddock should be removed as trustee of the said estate.

27. In consideration whereof and forasmuch as your oratrix is without remedy in the premises except in this honorable court;

To the end that the said Frederick R. Maddock may, but without oath, full, true and perfect answer make to all and singular the matters aforesaid and that as fully and particularly as if the same were here repeated and he distinctly interrogated thereto; and that he may especially set forth and discover (1) when the said inventory of the estate of Margaret C. Heath, deceased, was made; (2) if made in the lifetime of Charles T. Glen, deceased, whether he was present at the making thereof; and if he was present why he did not sign the same; (3) where was the same made; (4) who was present; (5) did the appraisers named therein examine each item of property; (6) when and where did the appraiser whose name appears thereto sign the same; (7) where at the time of the death of the said decedent were the various items of property mentioned in said inventory located; and (8) what disposition has been made of them since her death and where they have been located; (9) did the said Margaret C. Heath in her lifetime keep or cause to be kept books of account or any papers or memoranda showing the items of her estate or any part thereof, and if she did where and in whose possession are her books, memoranda and papers; (10) has the said defendant since the death of the decedent kept books of account of his transactions with the said estate, and if so, of what do said books

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consist and where are they now located; (11) has the
 defendant vouchers for all his receipts and expendi-
 tures connected with the said estate and if so, where
 are they located and in whose possession; (12) has
 the defendant in connection with his office as execu-
 tor and trustee kept a bank account; if so, in what
 bank or banks and in whose name or names; has the
 10 account or accounts been kept separate from other
 accounts; has he the pass book or books, the check
 book or books, checks and stubs connected therewith,
 and if so where are they, and if not what has become
 of them; (13) has he at any time had any dealings
 individually with himself as trustee, or has he ad-
 vanced moneys from his personal account to himself
 as trustee, and if so when, in what amount and for
 what purpose; (14) has he at any time or for any pur-
 20 pose used for his own benefit any part of the funds or
 property belonging to the estate, if so when, for what
 amount and for what purpose; (15) what part of the
 living expenses of the household at No. 300 Roseville
 Avenue did he pay; did he pay anything prior to his
 marriage; if after his marriage he paid part, what part
 and when and how much; (16) has the defendant re-
 ceived the legacy given to him by the will of the de-
 cendent; if so when; (17) does he claim that the said
 legacy was given to him for service; if so for what ser-
 vices and when and where were the same rendered.
 30 And that the inventory and account of the said Mad-
 dock belonging to the estate of Margaret C. Heath, de-
 ceased, may be brought into this honorable court and
 here settled and passed; that an expert accountant
 may be appointed to examine into the said inventory
 and account and for that purpose that all the books
 of account, bank books, checks, check stubs, books of
 account, vouchers and other papers and memoranda
 belonging to the said estate may be sequestered; that
 the said will and codicils of the said Margaret C.
 40 Heath, deceased, may be construed in the particulars

Schedule A.

above mentioned or otherwise; that the said Frederick R. Maddock may be removed from his office of executor and trustee of the Estate of Margaret C. Heath, deceased, and that a new trustee may be appointed in his place and stead; that if the said defendant is retained in his said office he be required to give bond with ample surety, for the performance of his trust; that the said defendant may be required to forthwith pay and discharge the said mortgages amounting to twenty-one thousand five hundred dollars; that if need be a receiver of the estate be appointed; and that your oratrix may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience. 10

28. May it please your honor, the premises considered, to grant unto your oratrix the State's writ of subpoena issuing out of and under the seal of this honorable court to be directed to the said Frederick R. Maddock commanding him by a certain day and under a certain penalty to be and appear before your honor in this honorable court then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree herein as to your honor shall seem meet and as shall be agreeable to equity and good conscience. 20

And your oratrix, as in duty bound, will ever pray, etc. 30

EDW. A. & WM. T. DAY,
Solicitors for and of Counsel with Complainant.

EDWARD A. DAY,
Of Counsel.

SCHEDULE A.

IN THE NAME OF GOD, AMEN.

I, Margaret C. Heath of the City of Newark, in the County of Essex and State of New Jersey, being of 40

Schedule A.

sound and disposing mind memory and understanding for which blessing I thank God, do make publish and declare this my last will and testament in manner following that is to say:

First:—I hereby revoke all other and former wills and codicils by me made.

10 Second:—It is my will and I do order that all my just debts and funeral expenses be duly paid and satisfied as soon as conveniently can be after my decease.

20 Third:—I give bequeath and devise unto my husband Edmund F. Heath One hundred dollars in cash, also the use of my dwelling house and premises No. 300 Roseville Avenue Newark New Jersey and the use of my stable property No. 306 North Seventh Street Newark New Jersey and the use of all my household furniture beds bedding linen books pictures cutlery crockery glassware silver plate and plated ware horses carriages harness wagons sleighs robes blankets tools and utensils for and during his natural life or so long as he remains single, subject nevertheless to the rights and privileges hereinafter granted to others in the premises and property aforesaid.

I leave my remembrance to my husband in this manner because he has abundant means of his own and would not wish me to leave him anything more.

30 Fourth:—I give and bequeath to my grandson Edmund F. Heath One hundred dollars with interest from the date of my death until paid.

Fifth:—I give and bequeath to my granddaughter Marjorie Heath One hundred dollars with interest from the date of my death until paid.

40 Sixth:—I give and bequeath unto my nephew Frederick R. Maddock Nine thousand dollars in full settlement of all claims and demands of every kind and nature against my estate except such as are provided for in this my will.

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Seventh:—I also give to my said nephew Frederick R. Maddock who now lives with me, the privilege of living in the same manner free of charge with my husband and my granddaughter Carlotta C. Heath in my dwelling house No. 300 Roseville Avenue Newark, New Jersey, until my said granddaughter Carlotta C. Heath arrives at the age of twenty-one years provided my said nephew remains single. This privilege however is not to interfere in any way with the rights of my said husband or of my said granddaughter in said dwelling house but is to be exercised only in the same manner and to the same extent as it is now exercised by my said nephew, and this privilege shall cease and be void in case my said granddaughter dies before she is twenty-one years' of age or in case my executors shall sell my said dwelling house. If my said granddaughter and nephew should both remain single after my granddaughter arrives at the age of twenty-one years I would be glad to have this privilege continued to my said nephew for such further period as may be agreeable to my said husband, granddaughter and nephew but this shall be left entirely to the discretion of my said husband if living and my said granddaughter and this wish shall not be regarded as binding upon any of the parties or as giving my said nephew any further rights in the premises.

10

20

Eighth:—I give and bequeath to each of my executors herein named the sum of Five hundred dollars in lieu of further commissions or allowances.

30

Ninth:—I give devise and bequeath my dwelling house and premises No. 300 Roseville Avenue Newark, New Jersey, and my stable property No. 306 North Seventh Street Newark New Jersey together with all my household furniture beds bedding linen books pictures jewelry cutlery crockery glassware, silverware plate and plated ware horses carriages

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Schedule A.

wagons sleighs robes harness blankets tools and utensils unto my granddaughter Carlotta C. Heath subject to the use of my husband as aforesaid and subject to the privilege herein before granted to Frederick R. Maddock it being understood that my said granddaughter shall have the right to reside in my said dwelling house No. 300 Roseville Avenue Newark New Jersey, free of charge until she enters into
 10 full possession thereof.

Tenth:—I give devise and bequeath all the rest residue and remainder of my estate real and personal and mixed unto my granddaughter Carlotta C. Heath the same to remain in the hands of my executors and to be given or paid to her when she arrives at the age of twenty-five years.

Eleventh:—I hereby authorize and empower my
 20 executors herein named or the survivor of them to keep up and maintain my dwelling house and premises and my stable property aforesaid and to use the income or so much of the principal of my estate as may be necessary for the maintenance comfort and education of my said granddaughter Carlotta C. Heath in my said dwelling house or elsewhere until she arrives at the age of twenty-five years and to employ and pay out of my estate a competent female to look after and care for her together with such other help as may be necessary. I also authorize my executors
 30 or the survivor of them to pay out of the income or principal of my estate all insurance premiums repairs taxes assessments charges and expenses which are now or may hereafter be levied assessed or imposed upon my real estate.

Twelfth:—I have not given anything more to my grandson Edmund F. Heath or to my granddaughter Marjorie Heath as my husband has assured me that he will make provision for them. If my husband
 40 should not make provision in his will for my grand-

Schedule A.

daughter Marjorie Heath then I give to her the privilege of living free of charge in my dwelling house No. 300 Roseville Avenue Newark New Jersey with my husband, nephew and granddaughter Carlotta until my said granddaughter Carlotta C. Heath arrives at the age of twenty-five years and I direct my executors to provide for said Marjorie's maintenance while she so remains in my said dwelling house this privilege to cease and be void in case my granddaughter Carlotta dies before she is twenty-one years' of age or in case my executors shall sell my said dwelling house, but I order and direct that this twelfth clause shall be of no effect if my husband makes provision for Marjorie in his will. 10

Thirteenth:—If my executors or either of them deem it best they may give my granddaughter Marjorie permission to live in my said dwelling house free of charge for such term as my executors or either of them see fit, if she remains single, but it is my wish that no one other than my husband my two granddaughters Carlotta and Marjorie and my nephew Frederick R. Maddock (together with those paid to serve therein) shall reside or remain in my dwelling house and I especially order and direct that all other relatives of my nephew Frederick R. Maddock and all other relatives of my son's wife shall be excluded therefrom. 20

Fourteenth:—In case my granddaughter Carlotta C. Heath dies without issue before reaching the age of twenty-one years and in case my grandson Edmund F. Heath and my granddaughter Marjorie Heath be then dead without issue, then in such case it is my will that all the estate real personal and mixed hereinbefore given devised and bequeathed to said Carlotta C. Heath shall go to and be equally divided between the Newark Orphan Asylum now located at No. 323 High Street, Newark, New Jersey and The Hospital of St. Barnabas Newark, New Jersey. 30 40

Schedule A.

Fifteenth:—I nominate constitute and appoint Frederick R. Maddock and Charles M. Atkins executors and trustees of my estate and guardian of my granddaughter Carlotta C. Heath during her minority and I desire that the greatest care be given to the moral training and education of my said granddaughter Carlotta C. Heath and that she be brought up and instructed in the doctrines of the Methodist Episcopal Church.

10

Lastly, I give my said executors and the survivor of them full power and authority to sell and dispose of the whole or any part of my real and personal estate at public or private sale to any person or persons for such price or prices and upon such terms and conditions as to them or the survivor of them shall seem meet provided my said husband Edmund F. Heath consents thereto.

20

In Witness Whereof I have hereto set my hand and seal this twentieth day of February, nineteen hundred and four.

MARGARET C. HEATH, (L. S.)

30

Signed, sealed, published and declared by the said Margaret C. Heath as and for her last will and testament in the presence of us who were present at the same time and subscribed our names as witnesses in the presence of and at the request of the testatrix and in the presence of each other:

Louise Pfalzer, No. 300 Roseville Ave., Newark, N. J.
Benjamin Mayer, No. 741 Broad St., Newark, N. J.
Charles T. Glen, 741 Broad St., Newark, N. J.

40

I, Margaret C. Heath of the City of Newark, in the County of Essex and State of New Jersey, being of firm and disposing mind, memory and understanding, do make, publish and declare this to be a Codicil to my last will and testament, which, not now being physically in my possession but being deposited in the safe deposit vaults of the Fidelity Trust Company in

Schedule A.

the Prudential Building on Broad Street in Newark, New Jersey, I am unable to identify by giving its date. And I do hereby confirm and declare said will in all respects, except in so far as the same may be changed or modified hereby to be my last will and testament.

First:—I do hereby give and bequeath to my grandson Edmund Field Heath, in addition to the amount given him in and by my will above referred to the sum of ten thousand dollars to be received by him on his attaining the age of twenty-four years and in case he should die before attaining said age I then desire that the said share shall revert to my estate and be disposed of under the provisions of my said will of which this is a codicil. 10

Second:—I do hereby give and bequeath to my granddaughter Marjorie Heath in addition to the sum given her in and by my will above referred to the sum of ten thousand dollars to be received by her on her attaining the age of twenty-four years, and in case she should die before attaining said age I then desire that the said sum so bequeathed to her shall revert to and become a part of the residue of my estate and be disposed of under the provisions of my said will of which this is a codicil. 20

I hereby revoke and declare void any and all provisions of my said will which give my said granddaughter Marjorie Heath any right or interest in or right to live or have a home in the lot of land house and premises devised in and by my said will to my granddaughter Carlotta Heath 30

MARGARET C. HEATH,

and know as No. 300 Roseville Avenue in Newark, New Jersey.

In Witness Whereof. I have hereunto set my hand this second day of October A. D. nineteen hundred and four.

MARGARET C. HEATH. 40

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Signed, published and declared by the above named testatrix Maragaret C. Heath as and for a codicil to her last will and testament in the presence of us both who were present at the same time and who in the presence of each other and of the testatrix and at her request thereafter signed our names hereto as witnesses.

10

Otis Clapp, Morristown, N. J.

Charlton A. Reed, Morristown, N. J.

SECOND CODICIL TO WILL OF MARGARET C. HEATH.

20

I, Margaret C. Heath of the City of Newark in the County of Essex and State of New Jersey being of sound and disposing mind memory and understanding, do hereby make, publish and declare this to be a second codicil to my last will and testament hereby ratifying and confirming said will in all respects save in so far as any part thereof may be revoked or altered by the codicil to my will made and dated October 2nd, A. D. 1904 or by this present codicil.

30

First:—I do hereby declare it to be my desire that my nephew Frederick R. Maddock, whom I have named in my said will as one of the guardians of my grand-child Carlotta Heath and to whom has been given certain rights and privileges in the lot of land house and premises situate at No. 300 Roseville Avenue in Newark, New Jersey by me devised in and by said will to my said grand-child Carlotta Heath, shall have the sole care and charge of the said house and home of my said grand-child, and of the manner of living and of the education of said grand-child without hindrance or interference from any person whatsoever, and of the hiring of proper and necessary assistants for the conduct of said house, restricting his control thereof only by limiting his right to hire, employ, procure or have as assistants, companions, help or in any capacity such persons only as are not in any way related to himself and denying him the right

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Schedule A.

to hire, have, employ or procure any person or persons who are related to him, as assistants companions or help. It is my desire that the control hereby given him over said house and the household of my said granddaughter shall be at the expense of my said grand-child and shall continue till she shall arrive at the age of twenty-four years unless she shall sooner marry and if she shall sooner marry then that it shall terminate on her marriage. 10

Second:—I do give and bequeath to Otis Clapp or Morristown, New Jersey and to

MARGARET C. HEATH.

the wife of said Otis Clapp, to each the sum of five hundred dollars, on account of their uniform kindness to me in the sickness from which I am suffering at this time.

In Witness Whereof, I have hereunto set my hand this fourth day of October A. D. Nineteen hundred and four. 20

MARGARET C. HEATH.

Signed, published and declared by the testatrix Margaret C. Heath to be a second codicil to her last will and testament in the presence of us both who were present at the same time and who in the presence of each other and of the testatrix and at her request thereafter signed our names hereto as witnesses.

Helen H. Boyle, 940 Broad St., Newark, N. J. 30

Charlton A. Reed, Morristown, N. J.

THIRD CODICIL TO THE LAST WILL AND TESTAMENT OF MARGARET C. HEATH.

I, Margaret C. Heath of the City of Newark, in the County of Essex and State of New Jersey, widow of Edmund F. Heath, deceased, being of sound and disposing mind, memory and understanding do hereby make, publish and declare this to be a third codicil to my last will and testament, which not now being 40

Schedule A.

physically in my possession, but being deposited in the safe deposit vaults of the Fidelity Trust Company in the Prudential Building on Broad Street in Newark, New Jersey, I am unable to identify by giving its date.

10 First, I hereby ratify and confirm my said will and all codicils thereto in all respects save so far as any part thereof shall be revoked or altered by this present codicil.

Second:—I give, devise and bequeath unto Edward O. Schaaf, M. D., of Newark, New Jersey (who attended me during my recent illness and who also attended my husband in his last illness) and my right, title and interest in and to a certain bond and mortgage bearing date the fifth day of May, Eighteen hundred and ninety-seven, made by said Edward O Schaaf

20 Heath
unto Edmund F. Heath and Margaret C. his wife, for Ten thousand two hundred and forty-seven dollars upon land at the north easterly corner of South Orange Avenue and Hunterdon Street, Newark, New Jersey, which said mortgage is recorded in Book H 13 of Mortgages for Essex County, New Jersey, on pages 149 and 150, to have and to hold the same unto the said Edward O. Schaaf his heirs and assigns to the only proper use, benefit and behoof of the said Edward O. Schaaf his heirs and assigns forever.

30

In witness whereof to this present writing which I hereby declare to be the third codicil to my last will and testament, and which I direct to be added thereto and to be taken as a part thereof, I have set my hand and seal this twenty-sixth day of October, in the year of our Lord One thousand nine hundred and four.

MARGARET C. HEATH, (L. S.)

40 Signed, sealed, published and declared by the said Margaret C. Heath as and for the third codicil to

Schedule A.

her last will and testament, and to be taken as part thereof, in the presence of us who were present at the same time and subscribed our names hereto as witnesses at the request of and in the presence of the testatrix and in the presence of each other.

Word "Heath" erased in description of bond and mortgage before execution.

Maria McR. Suydam, 177 Roseville Ave. 10

Helen H. Boyle, 940 Broad St.

FOURTH CODICIL TO THE LAST WILL AND TESTAMENT
OF MARGARET C. HEATH.

I, Margaret C. Heath of the City of Newark, in the County of Essex and State of New Jersey, widow of Edmund F. Heath, deceased, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this to be a fourth codicil to my last will and testament, which will bears date February Twentieth, Nineteen hundred and four. 20

First, I hereby ratify and confirm my said will in all respects save in so far as any part thereof may be revoked or altered by the codicils thereto of October second, Nineteen hundred and four, October fourth, Nineteen hundred and four and October twenty-sixth, Nineteen hundred and four, or by this present codicil, and I hereby declare said codicils of October second, Nineteen hundred and four, October fourth, Nineteen hundred and four and October twenty-sixth, Nineteen hundred and four, to be codicils to my said last will and testament, which will bears date February twentieth, Nineteen hundred and four. 30

Second, Owing to the death of my husband Edmund F. Heath I hereby revoke the third section of my said will and the bequest and devise to him therein contained.

Third. Whereas, by my said will I have appointed Charles M. Atkins to be one of the executors and 40

Schedule A.

trustees of my estate and guardian of my grand-
daughter Carlotta C. Heath during her minority, now
I hereby revoke the appointment of the said Charles
M. Atkins as such executor, trustee and guardian,
and I nominate and appoint my friend Charles T.
Glen, counsellor-at-law of Newark, New Jersey, to
be an executor and trustee of my estate and one of the
guardians of my granddaughter Carlotta C. Heath
10 during her minority in the place and stead of said
Charles M. Atkins, with all the rights, powers, privi-
leges and authority granted to or conferred upon my
executors by my said will and the codicils thereto,
and I declare that my said will and the codicils there-
to shall be construed and take effect as if the name
of the said Charles T. Glen were inserted in my said
will and codicils throughout instead of the name of
the said Charles M. Atkins. It being my will and my
20 order that Frederick R. Maddock and Charles T. Glen
shall be the sole executors and trustees of my estate
and the sole guardians of my granddaughter Carlotta
C. Heath during her minority, and I give to my said
executors and trustees Frederick R. Maddock and
Charles T. Glen, and the survivor of them, full power
and authority to sell and dispose of the whole or any
part of my real and personal estate at public or
private sale, to any person or persons, at such time
or times, for such price or prices and upon such terms
and conditions as to them, or the survivor of them,
30 shall seem meet, and I hereby order and direct that
all the rights, powers, privileges and authority given
to or conferred upon my executors and trustees by my
said will and codicils shall belong to and be exercised
by my present executors and trustees Frederick R.
Maddock and Charles T. Glen.

Lastly, I give and bequeath to each of my executors
Frederick R. Maddock and Charles T. Glen herein
named the sum of Five hundred dollars in lieu of
40 further commissions.

Schedule A.

In Witness Whereof, to this present writing which I hereby declare to be the fourth codicil to my last will and testament and which I direct to be added thereto and to be taken as a part thereof I have set my hand and seal this twelfth day of January in the year of our Lord One thousand nine hundred and five.

MARGARET C. HEATH, (L. S.)

Signed, sealed, published and declared by the said Margaret C. Heath as and for the fourth codicil to her last will and testament and to be taken as part thereof in the presence of us who were present at the same time and subscribed our names hereto as witnesses at the request of and in the presence of the testatrix and in the presence of each other.

Pink McRorie Suydam, 177 Roseville Avenue, Newark, N. J.

Helen H. Boyle, 940 Broad St., Newark, N. J.

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STATE OF NEW JERSEY
ESSEX COUNTY SURROGATE'S OFFICE.

I, Isaac Shoenthal, Surrogate of the County of Essex, and Clerk of the Surrogate's Court of said County, do certify the annexed to be a true copy of the record of the Last Will and Testament of Margaret C. Heath, deceased, as the same appears of record in this office.

30

Witness my hand and seal of office this
(L.S.) twenty-first day of September, in the year
of our Lord One thousand nine hundred
and eleven.

ISAAC SHOENTHAL,
Surrogate and Clerk.

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Schedule B.

SCHEDULE B.

10 WHEREAS, Margaret C. Heath, late of the City of Newark, County of Essex and State of New Jersey, did in and by her last will and testament and codicil thereto appoint me, Frederick R. Maddock, and Charles T. Glen the executors thereof; and whereas the said testatrix in and by said will and by the codicil thereto did give and bequeath to each of her executors the sum of Five hundred dollars in lieu of further commissions; and whereas I, the said Frederick R. Maddock, am unwilling to accept the said bequest in lieu of commissions as executor of said will;

20 NOW THEREFORE, be it known that I, Frederick R. Maddock, executor of the last will and testament of Margaret C. Heath, deceased, do hereby renounce all claim to such specific compensation made to me as executor as aforesaid in and by said last will and testament and do hereby claim such commissions as executor under said last will and testament as may be allowed by law.

IN WITNESS WHEREOF I have hereto set my hand and seal this 14th day of October, A. D., Nineteen hundred and eleven.

FREDERICK R. MADDOCK (L.S.)

Signed and sealed in the
presence of
30 CHARLES C. PILGRIM.

Schedule B.

STATE OF NEW JERSEY }
 COUNTY OF ESSEX } s.s.

Be it remembered that on this fourteenth day of October, Nineteen hundred and eleven, before me the subscriber, a Master of Chancery of New Jersey, personally appeared Frederick R. Maddock, who, I am satisfied is the person named in and who executed the foregoing renunciation, and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed. 10

CHARLES C. PILGRIM,
A Master in Chancery of New Jersey.

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*Answer.***Answer.**

Filed January 25, 1912.

IN CHANCERY OF NEW JERSEY

	<p style="text-align: center;"><i>Between</i></p> <p>10 CARLOTTA HEATH, by next friend, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p> FREDERICK R. MADDOCK, <i>Defendant.</i></p>	} <i>On bill, etc.,</i>
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20 The answer of Frederick R. Maddock, defendant to the bill of complaint of Carlotta Heath, the complainant in the above entitled cause :

 This defendant answering the said bill of complaint saith that he admits that the complainant is an infant under the age of twenty-one years and that she is the daughter of Charles Heath and Annie his wife, both of whom departed this life in the year Nineteen hundred, and that the said complainant was on the twelfth day of June, Nineteen hundred and eleven, nineteen years of age.

30 And this defendant further answering saith that he admits that the complainant is the grandchild of one Margaret C. Heath, who was the widow of the grandfather of the complainant, one Edmund F. Heath, late of the City of Newark, deceased, and that her said grandmother departed this life on or about the eighteenth day of March, Nineteen hundred and six, seized and possessed of considerable personal property and real estate, leaving a last will and testament and codicils thereto in and by which she did devise and bequeath certain property to the complainant as mentioned in the said bill; but this defendant prays that

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Answer.

reference may be had to the record of the said will and codicils now in the office of the Surrogate of the County of Essex as to the exact terms of said will and the rights and interests of the complainant thereunder and as to the rights and duties of this defendant in the premises.

And this defendant further answering saith that he admits that in and by said last will and testament said Margaret C. Heath gave to defendant certain rights and privileges in the said lot of land, house and premises situate and known as No. 300 Roseville Avenue in the City of Newark, but this defendant prays that reference may be had to the record of the said will and codicils of the said decedent as to the exact terms thereof and as to the rights and interests of this defendant in the premises; and this defendant admits that by the said will and codicils thereto this defendant and Charles T. Glen, Esquire, were appointed executors thereof and also trustees of the trust estate thereby given and bequeathed to the complainant, and that after the death of said Margaret C. Heath and on or about the fourth day of April, Nineteen hundred and six, the said will and several codicils thereto were duly admitted to probate by the Surrogate of the County of Essex and letters testamentary were issued to the said Glen and this defendant and that they did duly qualify thereunder.

And this defendant further answering saith that he admits that he was not, in fact, related by blood to either the grandmother or grandfather of the complainant; but this defendant insists that the grandmother and grandfather of the said complainant always manifested a great interest in this defendant and it was their common practice to refer to this defendant as nephew; and this defendant admits that he was a son of a friend of the grandfather of the complainant and that he had not a few, but many years prior to the making of said will, been taken into the employ of

Answer.

the said Edmund F. Heath as a clerk in his business and that about the same time was introduced into the household of her grandfather and was there given a home and residence, and that this defendant was so introduced into the home of the said grandfather in the year Eighteen hundred and eighty-two and so continued therein until after the death of both the grandfather and grandmother of the complainant.

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And this defendant further answering saith that he admits that the said Glen and this defendant failed to file any inventory of the estate of said Margaret C. Heath or any account of their trust during the lifetime of the said Glen; and that the said Glen departed this life on or about the nineteenth day of January, Nineteen hundred and eight leaving this defendant as surviving executor and trustee of the said estate, and that this defendant did solely administer the said estate thereafter and perform the trusts belonging thereto; and this defendant further admits that on or about the twenty-sixth day of September, Nineteen hundred and eleven, but not under any compulsion as alleged in said bill, he filed in the surrogate's office an inventory of said estate made as of the twenty-fourth day of April, Nineteen hundred and six; and this defendant further admits that on or about the sixteenth day of October, Nineteen hundred and eleven, but not under any compulsion, he also filed in said surrogate's office his account as executor and trustee which is the first and only account which has been rendered in connection with said estate; and this defendant further answering admits that on or about the time of filing the said account he filed a certain other paper purporting to be a renunciation of specific compensation to executor in lieu of commissions, a copy of which is annexed to said bill; but this defendant prays that reference may be had to the record thereof as to the exact contents of the same.

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Answer.

And this defendant further answering saith that he admits that prior to and at the time of the death of her grandmother, the complainant resided with her grandmother at No. 300 Roseville Avenue and that this defendant was at the same time an inmate of said house, that after her death and until the present time the complainant has resided and still continues to reside in said house; and that the brother of the complainant did also reside with complainant in said house until his death in April, Nineteen hundred and nine; and this defendant admits that he did likewise reside in said house with the complainant until the month of April, Nineteen hundred and nine when he intermarried with one Catherine Y. Glen whom he brought to reside at said house and where they both continued to reside until the month of October, Nineteen hundred and eleven; and this defendant denies that the bringing by him of his said wife to live in said house and their residence therein after his marriage, were contrary to the express provisions of the will of the said Margaret C. Heath, deceased, and he denies that he should be or is chargeable with anything on account of expenses of running and maintaining of said household for reasons hereinafter stated; and this defendant further answering insists and charges the truth to be that prior to his marriage as aforesaid, he informed the complainant of his intention to marry and of his intention to move from the said premises No. 300 Roseville Avenue in the City of Newark, but the said complainant earnestly requested this defendant not to leave the said premises but to continue to reside therein and to make a home there for the said complainant, and to bring his wife with him to reside therein after their marriage; that this defendant, although having made preparations to live elsewhere, finally yielded to the importunities of the complainant and did continue to live with her at No. 300 Roseville Avenue as aforesaid, until the time aforesaid, and that during said period

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his wife performed the duties heretofore performed by a housekeeper, and this defendant and his wife during all said period paid a large part of the living expenses.

10 And this defendant further answering saith that he admits that the account filed by him was noticed for settlement and that the time for the settlement and passing thereof has been from time to time continued and that the said account has not yet been passed upon or settled.

20 And this defendant further answering saith that he admits that shortly after his marriage it was arranged that the complainant should go to boarding school in the fall of Nineteen hundred and nine, and that complainant did attend school in the City of Lowell, Massachusetts, as in said bill stated and continued to attend said school during its sessions in the course of two years thereafter; but this defendant denies that during the period of the attendance of the complainant at school she was not home more than one month in each year, and insists that the complainant was at home on an average of two or three months in each year; and this defendant denies that the complainant did arrange with this defendant that one of the two servants should be discharged and that a horse belonging to the complainant should be sold and that the coachman employed should be discharged; but this defendant admits that he agreed so long as complainant was away he would pay substantially all bills for food and living expenses and that he would do so even while the complainant was at home; and this defendant says that all the plans made by him were carried into execution; that the servants and coachman and the horse were retained for the reason aforesaid and that the complainant had suggested the sale of the horse for the purpose of purchasing a larger one, although no positive direction 40 as to this was given; and this defendant insists that

Answer.

practically all the living expenses were paid by this defendant and not charged to the complainant, and this defendant insists that the moneys laid out and expended by him in maintaining the household were a fair proportion of the expenses for which he could be fairly chargeable.

This defendant further answering saith that as to the allegations contained in the eighth paragraph of the complainant's said bill that she has no knowledge with regard to the inventory filed by this defendant or the circumstances or date or source of information upon which it is based, this defendant has no knowledge thereof and neither admits nor denies the same, but leaves the complainant to make such proof as she may be advised is necessary; but this defendant denies that to determine the truth and accuracy of the inventory it is necessary to examine into the papers and accounts of the said Margaret C. Heath kept in her lifetime and by means of expert accountants to trace the property of the decedent; but this defendant insists that the said complainant and her counsel and those properly representing her might have and could have an inspection of all papers and accounts of this defendant in the possession of this defendant with respect to the estate of the said Margaret C. Heath, deceased; and that this defendant has exhibited all such papers and records whenever he has been requested so to do.

And this defendant further answering says that he admits that the account filed by him is very voluminous and this defendant admits that the said account fails to charge this defendant with household expenses for the reason that the same have no proper place therein, but this defendant denies that said account asks allowance for expenses which this defendant agreed to bear; and this defendant denies that any examination of his books of account or the books and papers of decedent or the private papers of this de-

Answer.

10 fendant are necessary, as in said bill alleged, and denies that the services of any expert accountant is necessary and the defendant denies that a construction of the will and codicils of the said Margaret C. Heath is necessary; and this defendant insists that the said complainant and those legally representing her might have and could have inspected the assets of the estate of said decedent and all vouchers of this defendant for payments, had they so desired or had they made any such request for the same.

20 And this defendant further answering saith that he denies that it is necessary that the clause of the codicil of said will bearing date the twelfth day of January, nineteen hundred and five, should be construed and insists that the rights of this defendant thereunder are clear and established; and this defendant admits that in and by the sixth clause of her will the said Margaret C. Heath did give to this defendant nine thousand dollars for the purpose as in said will particularly set forth, and admits that she did also give certain rights to this defendant in the residence at No. 300 Roseville avenue, as well appear by her said last will and testament and codicils thereto; and this defendant further answering denies that he was the recipient of considerable property given him by the grandfather of the complainant in and by his will, and this defendant denies that after the death of her grandfather, the said Margaret C. Heath, as executrix, did for a very small inadequate consideration sell to this defendant the business of which the said Edmund F. Heath died possessed and the assets thereof, but this defendant insists that he was a partner in the business mentioned with the said Edmund F. Heath, and upon his decease, he purchased for a valuable consideration the interests of the said deceased in the said business and has paid for the same; and this defendant denies that he was and has been in the lifetime of the said Margaret C. Heath,

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Answer.

the recipient from her or her husband of large benefactions, and this defendant insists that what he received from the said Margaret C. Heath was in payment of services rendered to her in her lifetime and which she often recognized; and this defendant admits that the estate of the said Charles T. Glen received after his death the sum of five hundred dollars.

And this defendant further answering saith that he admits that the said Edmund F. Heath departed this life as stated in said bill, leaving a last will and testament, in and by which he did bequeath the complainant a legacy of twenty thousand dollars and that he appointed his wife executrix thereof, and that said will was duly admitted to probate and letters testamentary issued thereon to her, and that after her death the said Edmund F. Heath, Jr., the brother of the complainant, was appointed substituted administrator of said estate and that after the death of the said Edmund F. Heath, Jr., this defendant was appointed the substituted administrator and that he has since and is now acting as such.

And this defendant further answering saith that he admits that on the petition of said Margaret C. Heath when complainant was under the age of fourteen years and on or about the eighteenth day of October, nineteen hundred and four, said Margaret C. Heath was appointed by the Essex County Orphans' Court guardian of the person and property of complainant until complainant became of the age of fourteen years and should choose another guardian, and that she qualify and continue as such guardian until her death; and this defendant admits that she failed to file any inventory or account of her trust and that no inventory or account was filed until on or about the twenty-eighth day of March, nineteen hundred and eight, when, as executor of said Margaret C. Heath, deceased, this defendant filed an account in connection with said guardianship showing a balance

Answer.

of assets then on hand, as will appear by the said account now on file in the office of the Surrogate of the County of Essex.

10 And this defendant further answering saith that he admits that after the death of her grandmother, but not at the request and instigation of this defendant, as in said bill alleged, the said complainant being then of the age of fourteen years and upwards, did on the thirteenth day of December, nineteen hundred and six, file her petition in the said Orphans' Court asking for the appointment of this defendant as her guardian in the place and stead of her grandmother who had died, and that this defendant was on or about the twenty-first day of December, nineteen hundred and six, appointed such guardian and that he did duly qualify and enter upon the discharge of his duties and that he has since been acting as such guardian.

20 And this defendant further answering saith that he admits that after his appointment he did not file any formal inventory of the estate that came into his hands and he did not file any formal account of his administration until about the sixteenth day of October, nineteen hundred and eleven, but he denies that said account was filed under any compulsion from the complainant; and this defendant insists that the account now on file shows the balance of moneys in his hands as will appear by reference thereto; and this defendant insists that he made an account as executor of Margaret C. Heath, the former guardian, on or about the twenty-eighth day of March, nineteen hundred and eight, in and by which the amount of moneys which had come to his hands as guardian of the said complainant fully appeared, and that no further inventory was necessary to show the property of said guardianship.

40 And this defendant further answering saith that only recently has the complainant made any request

Answer.

of this defendant for information with regard to the estate in his hands represented by the legacy from her grandfather and that derived from the estate of her grandmother; and this defendant denies that he invariably put the complainant off with the indefinite information with respect to the matters mentioned in said bill of complaint; and that as to the allegation in said bill that the complainant advised with her friends and the result thereof, this defendant has no knowledge thereof except from said bill and neither admits nor denies the same, but leaves the complainant to make such proof as she may be advised is necessary; and this defendant further answering saith that during the year nineteen hundred and eleven, this defendant explained to the complainant her interest in her grandmother's estate and the extent thereof and exhibited to the complainant his books containing a full statement and list of securities and the extent of the income therefrom and explained to the complainant the extent of her expenditures and remonstrated with the complainant with respect to certain extravagant expenses and urged her to live more economically.

And this defendant further answering saith that as to the allegation in said bill with respect to her consultation with Edward A. Day, Esquire, and the advice given to her, he has no knowledge thereof except from said bill and similar allegations in the petition filed by the complainant in the Orphans' Court of the County of Essex, and this defendant neither admits nor denies the same but leaves the complainant to make such proof thereof as she may be advised is necessary.

And this defendant further answering saith that he admits that he did receive a letter from Edward A. Day, Esquire, bearing date the ninth day of September, nineteen hundred and eleven, a copy of which is set forth in the said bill of complaint.

Answer.

10 And this defendant further answering saith that he denies that he ignored the complainant and refused to speak to her, as in said bill of complaint alleged, and this defendant denies that at the time mentioned in said bill of complaint this defendant and his wife took it upon themselves to scold and violently quarrel with the complainant and denies that the language mentioned in the petition was used by the wife of this defendant.

And this defendant further answering denies that he threatened to exercise a power of sale in the will of the grandmother of the complainant and to sell the house and home in which she was living, and denies that he threatened to engage a person to act as housekeeper without consulting with the complainant and without regard to her wishes.

20 And this defendant further answering saith that the controversy mentioned in said bill of complaint was precipitated by the complainant herself; that this defendant was explaining to the said complainant his rights and duties under the will of her grandmother with respect to the management of the premises, No. 300 Roseville avenue, as aforesaid, whereupon the said complainant stated to this defendant that what he had said with respect to his rights and duties as determined by the will of her grandmother, was a lie, and that thereupon this defendant and his wife did
30 reprove her for the use of such language and for the attitude which she had assumed; and this defendant denies that any statement was made to the complainant that because of her action she was not entitled to any consideration, or that a housekeeper would be appointed without consulting her; that as a matter of fact this defendant had no desire to select a housekeeper for the complainant who would not be agreeable to her, and the person selected for such duties was agreeable to the complainant as she had stated;
40 that the attitude of the complainant on the occasion

Answer.

aforesaid was rude and impertinent and such as she had never before manifested, and that it was apparent to this defendant that the complainant was moved to such course of action by influence which this defendant has not been able to ascertain; that prior to the action aforesaid the relationship between the complainant and this defendant had always been pleasant and she had been always respectful and deferred to his judgment with respect to practical matters; that subsequently to the controversy mentioned, the relation between the complainant and this defendant again became pleasant and has so continued to this time.

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And this defendant further answering saith that he denies that he ignored the letter of the counsel of the complainant and insists that he did comply with the request therein contained that inventories and accounts be filed and that the same were filed as hereinbefore stated, and this defendant further admits that the counsel of the said complainant did request this defendant to resign from his office as guardian and that this defendant refused so to do; and this defendant further admits that on or about the twenty-seventh day of September, nineteen hundred and eleven, the complainant herein did file her petition in the Orphans' Court of Essex County, praying for the removal of this defendant as said guardian and that such proceedings were had thereon that on or about the twenty-ninth day of November, in the year last aforesaid, an order was made by the said Orphans' Court revoking the letters of guardianship granted to this defendant, as by the records in said court will more fully appear; and this defendant further answering admits that the said Orphans' Court did at the time mentioned in said bill appoint Alfred L. Dennis guardian of the complainant and that immediately upon the entry of said order removing this defendant as guardian as aforesaid, he did appeal

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Answer.

therefrom and give notice of appeal and that under the practice in such case made and provided said appeal operates as a stay of the said order; and that the said appeal is still pending and that the said Alfred L. Dennis has not yet fully qualified and entered upon the discharge of his duties.

10 And this defendant further answering saith that he admits that prior to the death of Edmund F. Heath, the said Edmund F. Heath together with this defendant as partners under the name and style of Edmund F. Heath & Son did conduct and carry on a manufacturing business on the lots of land and premises situate on Warren and Wilsey and Newark streets, in the City of Newark, as in said bill described; and that the said land and premises were then owned by one James Brown and that the said Edmund F. Heath held at the time of his death three
20 mortgages upon said premises given to him by the said Brown, amounting in all to the sum of twenty-one thousand five hundred dollars, bearing interest at the rate of five per cent., but which could not be called in promptly for the reason that the time for payment of the same had been extended; and this defendant admits that shortly after the death of said Edmund F. Heath he did purchase from Margaret C. Heath, as executrix of her husband, the interest of the said Edmund F. Heath in the said partnership
30 so as aforesaid carried on by him in his lifetime and this defendant, and further admits that he did thereafter conduct the same and is now conducting the same under the name of Edmund F. Heath & Son; this defendant admits that on or about the eleventh day of September, nineteen hundred and five, this defendant did purchase from the widow and devisee of the said James Brown the said factory premises which had been occupied as aforesaid by the said Edmund F. Heath in his lifetime and this defendant as
40 partners as aforesaid, and were then occupied by this

Answer.

defendant, and also the engine and boilers and other machinery and fixtures belonging to the said premises, for the consideration of twenty-eight thousand five hundred dollars, payable in the manner set forth in said bill; and this defendant further admits that on or about the twenty-ninth day of September, in the year nineteen hundred and six, the said Glen and this defendant, as executors and trustees of the estate of Margaret C. Heath, filed a petition in the Orphans' Court of Essex County as in said bill alleged, but as to the contents of the said petition this defendant prays that reference may be had to the same now on file as aforesaid; and this defendant admits that an order was made on the said petition which was also filed in the office of the Surrogate of the County of Essex, and this defendant prays that reference may be had thereto as to the exact contents thereof; and this defendant admits that in accordance with the said order the said Edmund F. Heath, Jr., substituted administrator of the estate of Edmund F. Heath, deceased, did assign, transfer and set over said three mortgages to the said Glen and this defendant as executors of the estate of Margaret C. Heath, deceased; this defendant admits that the mortgaged premises are entirely devoted to manufacturing, but denies that they are a slender and scanty security for the payment of the said mortgages then held for the benefit of trust estate of the complainant, and this defendant denies that the investment of said trusts in said mortgages was improper and denies that the application to the said Orphans' Court was for the personal benefit and advantage of this defendant.

And this defendant further answering denies that he did suppress and conceal from the Orphans' Court the amount of the consideration paid by him for the said premises for the reason that the same had no pertinence to the application to the court; that at the time of the purchase of the said premises by this

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Answer.

10 defendant the same were in a dilapidated condition and this defendant had informed the owner of his intention not to further lease the same but to secure a factory plant more conveniently located; that the owner thereof urged this defendant to purchase the same and as a result of negotiations the price above stated and terms were arrived at; that after the purchase of the said premises by this defendant this defendant laid out and expended large sums of money in the repairs of the buildings upon the said premises and in the installation therein of fixtures which would amount in value to nearly the sum of ten thousand dollars; that at the time of the application to the said Orphans' Court the said premises were appraised by two disinterested and expert real estate agents of long standing experience in the City of Newark, and their appraisements were annexed to the petition filed in said Orphans' Court and are now of record therein, by which it appears that the total value of the property was placed in excess of forty-five thousand dollars by each expert; that at all times since said application the premises have been in as good condition as they were at the time the said appraisements were made; that there has been a large increase in the value of land in the vicinity of the said factory premises and that the said premises are now worth more than the amount for which they were appraised at the time of the application to the Orphans' Court.

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And this defendant further answering saith that at the time of the filing of the bill of complaint in this cause the said mortgages remained unpaid for the reason that payment was not then due pursuant to the terms of the extension of payment thereof, but that the same became due pursuant thereto on the nineteenth day of December, nineteen hundred and eleven; that on said last mentioned day the said mortgages were entirely liquidated, one thereof amount-

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Answer.

ing to sixty-five hundred dollars, being paid off and cancelled of record, and two thereof being sold and assigned by this defendant to a purchaser, so that on the said nineteenth day of December, nineteen hundred and eleven, this defendant as executor and trustee of Margaret C. Heath held in lieu of the said mortgages the sum of twenty-one thousand five hundred dollars in cash on deposit in bank.

And this defendant further answering saith that he denies that when the complainant presented her petition for his appointment as guardian, that he withheld from the complainant any information with respect to the above mortgages; that on said occasion no inquiry was made and no occasion arose for the discussion of the same for the reason also that the said complainant at the time was only fourteen years of age; that this defendant was not obligated in any way upon the bonds to secure which the mortgages were given and at the time Charles T. Glen, Esquire, was his co-executor and trustee, and that the proceeding had been sanctioned by the order of the Essex County Orphans' Court previously made, and this defendant denies that his appointment as guardian, under the circumstances, was improper. 10
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And this defendant further answering saith that while he denies the allegations and each and every of them in the twenty-fourth paragraph of complainant's bill in respect to necessity thereof, yet this defendant is agreeable to and consents that the inventory and account filed by him as executor and trustee of the estate of Margaret C. Heath, deceased, in said Orphans' Court, may be presented, considered and settled in this honorable court. 30

And this defendant further answering saith that he denies that the actions and doings of this defendant with respect to his management of the estate of Margaret C. Heath, deceased, and of the complainant constitute an abuse of trust and confidence and de- 40

Answer.

nies that any legal reasons exist justifying his removal as trustee of the said estate.

10 This defendant further answering says that the behavior of this defendant as executor and trustee cannot justify any state of ill feeling or antagonism or distrust which the said complainant may maintain, and he denies that his continuance in his office of trustee will be detrimental to the execution of the trust and he also denies that the complainant can no longer work in harmony with him.

20 And this defendant further answering saith that after the probate of the will of Margaret C. Heath to and until the nineteenth day of January, Nineteen hundred and eight, the said Charles T. Glen, the co-executor with this defendant, acted as counsel for the estate and the executors thereof, and that under his advice and direction no inventory or accounting was made and after the death of the said Charles T. Glen this defendant was advised that there was no necessity therefor in case no demand was made for the same; that this defendant and the said Charles T. Glen in his lifetime also considered it unwise to make any public disclosure of the nature of the estate and the extent of the interests of the complainant therein for the reason that the complainant had informed this defendant that her sister was dissatisfied with the disposition which her grandmother had made of her estate and that the said sister had indicated her dissatisfaction to the complainant, and that she was 30 constantly importuning the complainant to agree to make over to her a portion of her grandmother's estate; that by reason of the relations as aforesaid between the complainant and her sister, this defendant considered it prudent and to her interest to avoid taking any action which might tend to prejudice the complainant during her tender years, and to wait until she was abundantly able to protect herself before disclosing the exact situation of the estate 40

Answer.

and of the complainant's interests therein by filing an inventory and accounting; that this defendant at no..... time refused the complainant information with regard to her interest in her grandmother's estate or otherwise, and at all times endeavored to advise her and treat her as he would have his own child.

And this defendant further answering saith that after the death of the said Maragaret C. Heath and on or about the twenty-fourth day of April, Nineteen hundred and six, an inventory and appraisement was made of the personal property of which she died seized by the said Charles T. Glen, one of the executors named in her last will and testament and by this defendant, the other executor therein named, and also by Thomas Gray and John Gray who acted in the capacity of appraisers; that the said inventory and appraisement was made on the premises known as No. 300 Roseville Avenue in the said City of Newark, at the office of the said Charles T. Glen in the City of Newark and in the office of the Fidelity Trust Company on Broad Street in the City of Newark; that the said executors and appraisers were all present together and that the said appraisers examined each item of property therein set down and appraised; that the said inventory and appraisement made at the time aforesaid was written out in the handwriting of the said Charles T. Glen, now deceased; that the inventory as filed in the office of the Surrogate of the County of Essex is a typewritten copy of said original inventory and appraisement above mentioned, and that the inventory as filed was signed by the said appraisers at their respective places of business in the City of Newark on or about the date of their deposition annexed thereto; that at the time of the death of the said Margaret C. Heath the various items of personal property mentioned in said inventory were located at her late residence No. 300 Roseville Ave-

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Answer.

nue in the City of Newark; in the safe deposit vault of the Fidelity Trust Company in the City of Newark and at No. 306 North Seventh Street in the said City of Newark; that since the death of the said Margaret C. Heath certain of the securities have been sold and others have become due and paid to the trustees or trustee and the proceeds thereof reinvested, and that
10 the said property since the death of the said decedent has been located at No. 300 Roseville Avenue in the City of Newark; in the vault of the Fidelity Trust Company aforesaid; at 306 North Seventh Street in the City of Newark and at No. 325 Warren Street in the City of Newark; that during the lifetime of said Margaret C. Heath certain memoranda were kept by her to show the securities on hand and that such memoranda are now in the possession of this defendant; that since the death of the said Margaret C.
20 Heath this defendant has kept books of account of his transactions with the said estate and they consist of cash book, ledger, check books and bank books now in the possession of this defendant at his office No. 225 Warren Street in the City of Newark aforesaid; that this defendant has vouchers for all his expenditures connected with the said estate and that the same are now partly in the office of the Surrogate of the County of Essex, partly in the possession of his counsel and certain of them in the possession of
30 this defendant; that this defendant in connection with his office as executor and trustee, has kept the bank account in the National Newark Banking Company and in the Security Savings Bank in the name of the estate of Margaret C. Heath; that this defendant has kept a separate bank account since March twenty-fifth, Nineteen hundred and eight, and a partial separate account from April twenty-fourth, Nineteen hundred and six to March twenty-fifth, Nineteen hundred and eight; that the petty account of the
40 estate was kept in the private ledger of this defendant

Answer.

from the twenty-fourth day of April, Nineteen hundred and six to March twenty-fifth, Nineteen hundred and eight; that this defendant has all pass books, check books, checks and stubs connected therewith at his office No. 225 Warren Street in the City of Newark; that the only dealings that this defendant has had with himself as trustee has been since the death of the said Charles T. Glen, since which time he has paid himself as trustee, interest upon the bonds and mortgages above mentioned and has also paid to himself as trustee the principal due upon said mortgages, to wit, the sum of Twenty-one thousand five hundred dollars when the same became due as hereinabove particularly set forth; that this defendant has advanced moneys from his personal account to himself as trustee, the detail of which will more fully appear by a schedule hereunto annexed and marked "Schedule A," which will show the monthly balances at the time therein specified, of the moneys advanced by this defendant to the estate of the said decedent; that during the period of time covered by the said schedule, the income of the estate was not sufficient to meet the expenses thereof and the moneys advanced by this defendant was used in paying legacies, debts, expenses of administration and running expenses in order to avoid the necessity of encroaching upon the principal of the estate and selling the same; that this defendant received nothing by way of interest for the moneys so advanced and has never claimed any interest therefor; that this defendant has not at any time or for any purpose used for his own benefit any part of the funds or property belonging to the estate of the said decedent, but to the contrary has advanced his own private funds for the benefit of the said estate as hereinabove mentioned; that prior to the marriage of this defendant he paid no part of the living expenses of the household at No. 300 Roseville Avenue, and that after his marriage he contributed to

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Answer.

the living expenses in said household the sum of Seventeen dollars per week during the time that he and his wife were members thereof; and this defendant has received the legacy bequeathed to him by the last will and testament of the said Margaret C. Heath in two payments, one in the sum of Eighty-five hundred and fifty dollars on the twenty-first day of November, Nineteen hundred and six, and the second payment
10 in the sum of Four hundred and fifty dollars on the fifteenth day of November, Nineteen hundred and eight; and this defendant claims that the said legacy was given to him for services and that during the period of twenty-four years prior to the death of the said Margaret C. Heath this defendant looked after the financial interests of the said decedent and attended to her financial affairs and advised her generally thereon and during a period of twenty years
20 prior to her death this defendant looked after and cared for the homestead and grounds of the said decedent and her husband both at 205 South Orange Avenue and at No. 300 Roseville Avenue in the City of Newark.

And this defendant further answering saith that if any ill feeling has arisen between the complainant and this defendant it has been due to the action of this complainant herein and this defendant denies there has been any bad behavior on his part at any
30 time; and this defendant insists that any strained relation that ever existed between the complainant and this defendant was provoked by the complainant herself and was due to her unkind and impudent manner and to her insubordination and failure to render to this defendant the respect which his relation and his years entitled him to receive from her.

And this defendant further answering saith that he has at all times faithfully performed the duties of his office and has always pursued a course tending to
40 conserve the best interests of the complainant and pur-

Answer.

suant to the direction of the will of her grandmother, has endeavored to train and educate her as directed and requested in the said will, and in fact, by reason of his close relation with the family of the complainant and by reason of the dying request of the grandmother of the complainant, he has taken an unusual interest in her training and education, and this defendant insists that no just cause or reason whatsoever exists for the removal of this defendant from his office of executor and trustee of the estate of Margaret C. Heath, deceased. 10

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LUM, TAMBLYN, & COLYER,
Solicitors for and of Counsel with Defendant.

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Schedule A.

SCHEDULE A.

Statement of moneys advanced by Frederick R. Maddock, defendant, from his personal account to the estate of Maragaret C. Heath, deceased.

	1906	Mar.	23	Inventory due account Estate.....	\$810.03	
	"	May	1	Balance due Estate.....	763.91	
	"	June	1	" " "	456.83	
10	"	July	1	" " "	357.46	
	"	Aug.	1	" " "	103.76	
	"	Sept.	1	" " F. R. Maddock.....	\$ 677.30	
	"	Oct.	1	" " "	1002.16	
	"	Nov.	1	" " "	1500.14	
	"	Dec.	1	" " "	1795.12	
	1907	Jan.	1	" " "	2000.24	
	"	Feb.	1	" " "	1609.32	
	"	Mar.	1	" " "	1638.84	
	"	Apr.	1	" " "	1527.20	
	"	May	1	" " "	1682.02	
	"	June	1	" " "	1909.09	
	"	July	1	" " "	1793.16	
	"	Aug.	1	" " "	1393.68	
	"	Sept.	1	" " "	204.27	
	"	Oct.	1	" " "	356.06	
20	"	Nov.	1	" " "	973.55	
	"	Dec.	1	" " "	925.72	
	1908	Jan.	1	" " Estate.....	651.82	
	"	Feb.	1	" " "	288.75	
	"	Mar.	1	" " "	2065.66	
	"	Apr.	1	" " F. R. Maddock.....	158.54	
	"	May	2	" " "	271.62	
	May	to June		" " "	503.05	
	1909	July	1	" " "	1303.05	
	"	Nov.	1	" " "	1803.05	
	"	Dec.	1	" " "	703.05	
	1910	Jan.	1	" " "	803.05	
	"	Oct.	1	" " "	868.26	
	"	Nov.	1	" " "	1375.00	
	"	Dec.	1	" " "	601.59	
	1911	Jan.	1	" " "	634.99	
	"	Feb.	1	" " "	487.74	
30	"	June	1	" " "	313.98	
	"	Sept.	1	" " "	313.98	
	"	"	28	Balanced.		

Replication to Answer duly filed.

Order of Reference.

Order of Reference.

Filed February 2, 1912.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> CARLOTTA HEATH, by next friend, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>FREDERICK R. MADDOCK, executor and trustee, &c., <i>Defendant.</i></p>	}	<p><i>On Bill, etc.</i></p>	<p>10</p>
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It is on this first day of February, Nineteen hundred and twelve, on motion of Edward A. & William T. Day, solicitors for the complainant, ordered that the above stated cause be referred to the Honorable John R. Emery, one of the vice chancellors, to hear the same for the chancellor, and to report thereon to him and advise what order or decree should be made therein.

MAHLON PITNEY,
C.

We consent to the entry of the above order.

LUM, TAMBLYN & COLYER,
Solicitors for Frederick R. Maddock.

A true copy

SAMUEL K. ROBBINS,
Clerk.

Order that Accounts be settled.

Order that Accounts be Settled in.

THIS COURT.

Filed June 27, 1912.

IN CHANCERY OF NEW JERSEY.

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Between

CARLOTTA HEATH,

Complainant,

and

FREDERICK R. MADDOCK, executor
and trustee of MARGARET C.
HEATH, deceased.

Defendant.

On Bill, etc.

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It appearing that the Bill of Complaint in this cause is filed, among other things, for the settlement in this court of the accounts of the defendant, Frederick R. Maddock, as surviving executor and trustee of the estate of Margaret C. Heath, deceased; and it appearing by the pleadings in this cause that the said defendant did, on the twenty-sixth day of September, in the year Nineteen hundred and eleven, file an inventory of the estate which came into his hands, in the Surrogate's Office of Essex County, which inventory was made as of the twenty-fourth day of April, Nineteen hundred and six, the date of the death of the said Margaret C. Heath, and that on or about the sixteenth day of October, in the year Nineteen hundred and eleven, he did file in the said surrogate's office a paper purporting to be his account as executor and trustee, as aforesaid; and it further appearing that the said defendant is ready and willing to account in respect to his said trust in this court, and for that purpose to have the said inventory and

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account filed in the said Orphans' Court as aforesaid

Order that Accounts be settled.

brought into this court for settlement, or such action thereon as may be proper :

It is on this twenty-sixth day of June, in the year Nineteen hundred and twelve, on motion of Edward A. and William T. Day, solicitors for the complainant, ordered that it be referred to Oscar Keen, Esquire, one of the special masters of this court, to take and settle the accounts of the said Frederick R. Maddock, as surviving executor and trustee of the estate of Margaret C. Heath, deceased, and for that purpose that the said inventory and account, filed as aforesaid in the Orphans' Court, be and the same are hereby brought into this court to be submitted to the said master for settlement, and for such other action thereon as may be proper, and that the said account shall, for the purposes of this accounting, be deemed and taken as the account of the said trustee for the period of time for which the same purports to cover.

And it is further ordered that the said defendant do produce before the said master, upon oath or affirmation, if required, and leave with him all the books, papers and writings in his custody or power relating to the said inventory and to the said account, or in anywise pertaining to his trust; and said master is also to have power to examine other witnesses in relation to the said inventory and said account.

And it is further ordered that either of the said parties may have leave to apply to the said court with reference to any matter or thing incidental to the said accounting.

E. R. WALKER, C.

Respectfully advised

JOHN R. EMERY,
Vice Chancellor.

We consent to the entry of the foregoing order.

LUM, TAMBLYN & COLYER,
Solicitors of Defendant.

A true copy

SAMUEL K. ROBBINS, *Clerk.*

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Order Appointing Expert Accountant.

Order Appointing Expert Accountant.

Filed October 22, 1912.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> CARLOTTA HEATH, by next friend, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>FREDERICK R. MADDOCK, executor and trustee of MARGARET C. HEATH, deceased.</p> <p style="text-align: right;"><i>Defendant.</i></p>	} <i>On Bill, etc.</i>
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20 This matter coming on to be heard before the court on the report of Oscar Keen, Esquire, the special master heretofore appointed in the cause to take and settle the accounts of the defendant, which report bears date the fourteenth day of October, Nineteen hundred and twelve, in the presence of Edward A. Day, Esquire, of counsel with the complainant, and Egbert J. Tamblyn, Esquire, of counsel with the defendant, for the appointment of an expert accountant, in accordance with the recommendation of the said report; and the matter having been referred back to the said special master to recommend the said expert accountant, and the said master having recommended Richard F. Stevens as said accountant:

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It is, on this twenty-second day of October, Nineteen hundred and twelve, on motion of Edward A. and William T. Day, of counsel with the complainant, ordered that the said Richard F. Stevens be and he hereby is appointed to examine all the books of account, vouchers, papers and memoranda containing the record of the accounts of the defendant per-

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Order Appointing Expert Accountant.

taining to or in anywise relating thereto, and to make up and state an account of all the transactions of the defendant in connection with his trust and the said trust state, and that the said accountant render his report as expeditiously as may be.

Respectfully advised,

E. R. WALKER,

C. 10

FREDERIC W. STEVENS,

Vice Chancellor.

A true copy

SAMUEL K. ROBBINS,

Clerk.

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Second Order of Reference.

Second Order of Reference.

Filed November 20, 1912,

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>CARLOTTA HEATH, by next friend, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>FREDERICK R. MADDOCK, executor and trustee, &c., <i>Defendant.</i></p>	} <i>On Bill, etc.</i>
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20 This matter coming on to be heard in the presence of Edward A. Day, Esquire, of counsel with the complainant, and Ralph E. Lum, Esquire, of counsel with the defendant, on the motion to revoke the appointment of Honorable John R. Emery as vice chancellor to hear this case, he being unable to hear the case by reason of his illness, and to appoint another person in his place:

30 It is on this twentieth day of November, Nineteen hundred and twelve, on motion of Edward A. and William T. Day, solicitors for the complainant, ordered that the order made in this cause on or about the first day of February, Nineteen hundred and twelve, referring this cause to the Honorable John R. Emery, one of the vice chancellors, to hear the same for the chancellor, be and the same is hereby revoked, and that the said cause be referred to the Honorable William J. Magie, one of the advisory masters, to hear the same for the chancellor and to report thereon to him and advise what order or decree should be made therein.

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E. R. WALKER,

C.

*First Account of Trustee.***Summary of Inventory.**

IN THE MATTER OF THE ESTATE

of

MARGARET C. HEATH, deceased.

September 13, 1911, appointment by the executor of
Thomas J. Gray and John Gray as appraisers.

Inventory dated April 24, 1906, the summary showing:

Securities	\$140,487.45
Jewelry	1,648.20
Household goods	1,476.00

Total\$143,611.65

September 13, 1911, verified by Thomas J. Gray.

September 25, 1911, verified by Frederick R. Maddock.

First Account of Trustee.

The account of FREDERICK R. MADDOCK, surviving executor and trustee of the Estate of MARGARET C. HEATH, deceased, City of NEWARK in the County of ESSEX and State of NEW JERSEY as well of and for the Estate which has come to his hands to be administered as for his payments and disbursements out of the same.

First	This accountant charges himself,		
Apr. 24/06	To amount of inventory.....		\$143,611.65
Oct. 29/06	Amount received excess of inventory		
	Nine bonds Lake Shore & Mich. S. Ry.....	\$270.00	
	Five shares Chic. & West Ind.....	237.50	
	Three bonds N. Y. C. Debentures.....	237.50	
	One bond C. C. C. & St. L.....	70.00	
		815.00	
	Less brokers' commission.....	22.50	792.50
Feb. 18/07	Amount received for sale of household goods.....		27.48
	" " from E. O. Schaaf bond and mortgage		
	which was not included in inventory		
	as it was unknown value.....		5,123.50
Oct. 27/08	" " commission allowed accounting of		
	Margaret C. Heath, guardian.....		616.51
May 27/08	" " excess inventory 5 Long Island Rail-		
	road bonds		397.78
	" " excess inventory 3 C. C. C. St. Louis.		82.50
	" " fees in accounting Est. E. F. Heath..		1,825.14
Aug. 3/07	" " excess Mexican Bonds.....		160.62
	" " R. M. Pearce which was not included		
	in inventory		750.00
	Total		\$153,387.68

First Account of Trustee.

ESTATE MARGARET C. HEATH.

Second	This accountant prays allowance, by amounts paid for bills and legacies in accordance with provisions of will.		
Voucher No.	Error in extending amount in inventory of \$2,000 instead of \$1,000 for two (2) Newark City bonds of \$500 each and also in extending amount in inventory of \$4,000 instead of \$800 for four (4) Newark City bonds (1) \$500 and three (3) \$100 each		\$4,200.00
March, 1906			
871	Paid Surrogate		35.15
872	" Smith and Smith undertaker		497.40
873	" Kimmerlie & Minder, florist		19.10
874	" J. L. & W. P. Meeker, monument		60.00
Check No. 3	" Thos. J. Gray		25.00
No. 4	" John Gray		25.00
I & 8	" F. R. Maddock legacy for services		9,000.00
875	" Mount Pleasant Cemetery Co.		2.00
	" Edmund F. Heath, Jr., legacy		10,100.00
II	" Geo. E. Russell, surrogate certificate		1.00
54	" Otis Clapp legacy less income tax \$25		475.00
55	" Emily H. Clapp legacy less income tax \$25		475.00
	" Edmund F. Heath, interest		457.07
	" Marjorie Connolly, interest		19.37
	" " legacy		10,100.00
	" Est. Chas. T. Glen		500.00
	" Edward O. Schaaf legacy		5,123.50
	" Surrogate fees in accounting		157.18
	" Lum, Tamblin & Colyer, legal fees		250.00
	Total		\$41,521.77

SUMMARY.

This account is charged	\$153,387.68
" " praus allowance	41,521.77
Balance	\$111,865.91

INCOME ACCOUNT.

1906	This accountant charges himself,		
May 3	R. G. Schaaf int. to May 4, on E. O. Schaaf bond and mtge.		\$204.94
" 5	G. Dingeler		50.00
" 25	Mrs. McKinney		15.00
June 1	M. T. Wilbur, treas. Am. Tel. & Cable Co., 1¼%		100.00
" 15	Ill. Central		125.00
" 15	R. M. Pearce		44.20
July 2	Mrs. McKinney		15.00
" 2	Samuel Gaiser 6 mo. int.		50.00
" 23	M. J. Wissmer		45.00
Aug. 2	Mrs. Fredericks		60.00
" 13	R. J. Franz 6 mo. int.		87.50
" 22	Mrs. McKinney		15.00
Sept. 1	Am. Tel. & C. Co.		100.00
" 14	C. L. & St. L. & Co., 2/10	\$20.00	
	C. M. & St. Paul, 3/25	75.00	
	Colo. Spgs., 2/25	50.00	
	Chic. & W. Ind., 5/20	100.00	
	Clevel. C. C. St. L., 6/20	120.00	
	C. Chic. & St. L.	20.00	
	Hackensack Water, 11/20	220.00	
	Kans. C. F. S. & M., 2/20	40.00	

First Account of Trustee.

	Lockport Gas & E., 4/25.....	100.00	
	Lake S. & M. S., 8/20.....	160.00	
	Long Island, 100/20.....	200.00	
	Lake S. & M. S., 10/20.....	200.00	
	Louisville & J. B., 14/20.....	280.00	
	Mich. C. R. R., 2/20.....	40.00	
	City of Newark, 2/20.....	40.00	
	“ “ “ 3/10.....	30.00	
	“ “ “ 3-2.....	6.00	
	N. Y. Central, 20/17½.....	350.00	
	“ “ “ 3/20.....	60.00	
	“ “ “ 5/17½.....	87.50	
	Paterson Gas, 10/25.....	250.00	
	Ill. Central.....	20.00	
	St. L. & San. F., 5/20.....	100.00	
	“ “ “.....	25.00	
	U. N. J. & C. Co.....	40.00	
	Elmira Water, 4/12½.....	50.00	
	Mex. Republic, 4/12-12½.....	169.75	
			2,878.25
Sept. 24	Mr. Sayre.....		30.00
Oct. 8	Edward Wagner.....		75.00
“ 20	Mr. Hochstuhl.....		65.00
“ 22	Mrs. McKinney.....		30.00
“ 31	G. Dingeler.....		50.00
Dec. 1	Am. Tel. & C. Co. stock 1¼%.....		100.00
“ 12	R. M. Pearce.....		40.42
“ 15	Ill. Central R. R. 5%.....		125.00
“ 15	E. Wagner 6 mo. int. to Dec. 8/06.....		75.00
“ 26	Mrs. McKinney.....		30.00
“ 31	S. Gaiser.....		50.00
1907			
Jan. 15	Kans. City F. S. & M. R. R.....	\$40.00	
			\$4,460.31
1907			
Jan. 15	Colo. Spgs., 2/25.....	\$50.00	
	Cin. Ind. & St. L., 1/10.....	10.00	
	Ill. Cent. R. R., 1/20.....	20.00	
	St. L. & San. F., 5/20.....	100.00	
	“ “ “ 1/25.....	25.00	
	Chic. Mil. & St. P., 3/25.....	75.00	
	Mich. Cent. R. R., 2/20.....	40.00	
	Hackensack Water, 11/20.....	220.00	
	Elmira Lt. & P. Co., 1/25.....	25.00	
	“ “ “ “ “ 4/12½.....	50.00	
	Mexican Con. 7/12-12½.....	169.75	
			824.75
Jan. 22	M. J. Wissmer.....		45.00
Feb. 1	Cin. Ind. St. L. & C., 1/10.....	\$10.00	
	City of Newark 3/2-3/10-2/20.....	76.00	
	New York Cent. & H., 5/17½.....	87.50	
	“ “ “ 10/17½.....	175.00	
	Lockport Gas E. Co., 4/25.....	100.00	
			448.50
Feb. 18	E. O. Schaaf, int.....		161.11
March 1	Am. Tel. & C. Co.....		100.00
“ 1	John Griffey to May 1/06.....		12.50
	“ “ “ Nov. 5/06.....		12.50
	Chas. Yeates to Feb. 1/07.....		40.00
“ 27	E. A. Sayre.....		30.00

First Account of Trustee.

Apr.	4	Mrs. Fredericks	55.00
"	20	Mr. Hochstuhl	65.00
"	29	Mrs. McKinney	30.00
"	30	G. Dingeler, int. 6 mo.	50.00
May	1	R. J. Franz	87.50
"	17	R. M. Pearce	100.00
June	1	Am. Telegraph C. Co.	100.00
"	25	Mrs. McKinney	30.00
"	27	Ill. Cent. R. R.	125.00
July	1	Samuel Gaiser	50.00
"	1	Elmira W. L. & R. Bonds, 4/12½	\$50.00
		" " " " " 1/25	25.00
		St. L. & San. F., 1/25	25.00
		" " " " " 5/20	100.00
		Mex. Com., 7/12	84.87
		Hackensack Water, 11/20	220.00
		Mich. Cent., 2/20	40.00
		Chic. Mil. & St. P., 3/25	75.00
			<hr/>
			619.87
"	22	M. J. Wissmer	45.00
"	26	Rebate on ticket	4.35
Aug.	26	Mrs. McKinney	30.00
"	1	Lockport Gas. Co., 4/25	\$100.00
		N. Y. Central, 10/17½	175.00
		" " " " " 5/17½	87.50
		City of Newark, 2/20	40.00
		" " " " " 3/10	30.00
		" " " " " 3/2	6.00
		Cin. Ind. St. L. 1/10	10.00
			<hr/>
			448.50
"	20	6 mo. int. R. J. Franz	87.50
Sept.	3	W. A. T. Co., 1¼%	100.00
"	21	E. E. Sayre	30.00
"	23	J. Fredericks	50.00
Oct.	21	Mr. Hochstuhl	65.00
"	24	Mrs. McKinney	30.00
Nov.	2	C. C. C. & St. L., 3/20	\$60.00
		Long Island R. R., 5/20	100.00
		Louisville & J. B., 7/20	140.00
		Cin. Ind. St. L.	10.00
		Kans. C'ty, Ft. S., 2/20	40.00
		Ill. Cent.	20.00
		Colo. Spgs., 2/25	50.00
		Mex. Cons. 6/20-12½	72.75
		U. N. J. & C. Co.	20.00
			<hr/>
			512.75
"	6	E. Wagner 1 yr. to Dec. 8/07	150.00
			<hr/>
			\$4,539.83
1907			
Nov.	8	Mrs. McKinney	350.00
"	8	" "	13.00
"	14	R. M. Pearce	75.00
Dec.	2	Div. 1¼% stock Am. Tel. & C. Co. No. 805	100.00
"	16	Ill. Central	125.00
"	31	S. Gaiser	50.00
1908			
Jan.	2	St. L. & San F.	\$25.00
		" " " " " 5/20	100.00
		Hackensack Water 11/20	220.00

First Account of Trustee.

		Elmira W. B. 4/12½	30.00	
		“ “ 1/25	25.00	
		Chic. M. & St. P. 3/25	75.00	
		Mich. Cent. 2/20	40.00	
		Mex. Con. 6/12-12½	72.75	
“	22	M. J. Wissmer		45.00
“	28	Int. F. R. Maddock		1,075.00
Feb.	1	N. Y. Cent. & H. 17½	\$175.00	
		“ “ “ 17½	87.50	
		City of Newark 3/2	6.00	
		“ “ 3/10	30.00	
		“ “ 2/20	40.00	
		Cin. Ind. St. L.	10.00	
		Lockport Gas	100.00	
				1,056.25
“	10	J. Griffey		25.00
“	10	Chas. Yeates		35.00
March	2	Am. Tel. Co.		100.00
“	2	Old Buggy and Shoes		10.00
“	25	E. E. Sayre		30.00
Apr.	5	E. Hochstuhl		65.00
May	6	E. Wagner		75.00
“	7	J. Fredericks		50.00
“	18	Louisville & J. B. 7/20	\$140.00	
		U. N. J. & C. Co.	20.00	
		Ill. Cent. R. R.	20.00	
		Col. Spgs. 2/25	50.00	
		Cin. Ind. St. L.	10.00	
		Clev. Cin. Chic. St. L. 3/20	60.00	
		Kan. City Ft. S. M. 2/20	40.00	
		Long Island R. R. Co. 5/20	100.00	
		Mex. Cond. 6/12-12½	72.75	
				512.75
June	4	R. M. Pearce int.		75.00
“	1	American Tel. & C. Co.		100.00
“	14	3 C. M. & St. P.	\$75.00	
		5 St. L. & S. F.	100.00	
		1 “ “	25.00	
		4 Elmira Water	50.00	
“	15	Ill. Central		125.00
July	14	Mex. Cond.	72.75	
“	14	Elmira Water	25.00	
		Mich. Cent.	40.00	
		Hackensack Water	220.00	
				607.75
“	1	Gaiser		50.00
“	22	M. J. Wissmer		45.00
“	22	McLean Griffey mtge. int.		18.00
Sept.	2	Am. Tel. & C. Co. 1¼%		100.00
		10 N. Y. C. H. R. R. 17½	\$175.00	
		Lockport Gas 4/25	100.00	
		N. Y. C. & H. R. R. 5 & 17½	87.50	
		City of Newark 3—2	6.00	
		“ “ 3x10	30.00	
		“ “ 2x20	40.00	
		Cin. Ind. St. L. 1x10	10.00	
				\$4,912.75

First Account of Trustee.

1908				
Sept.	10	Louisville & J. B. 7/20	\$140.00	
		L. Island R. R. 5/20	100.00	
		Cleve. Cin. & Chic. 3x20	60.00	
		U. N. J. & C. Co. 1x20	20.00	
				768.50
"	12	J. J. Murphy		75.00
"	24	E. E. Sayre		30.00
"	27	Fred G. Merkel		2.63
Oct.	17	R. M. Pearce		50.00
"	21	Chas. Hochstuhl		65.00
Nov.	4	Int. F. R. Maddock		1,075.00
"	5	R. J. Franz		175.00
"	11	E. E. Wagner		75.00
Dec.	1	Am. Tel. C. Co. 1¼%		100.00
"	15	Ill. Cent.		125.00
Jan.	3/09	S. Gaiser		50.00
1909				
		Mex. Cond. 6/12-12½	\$72.75	
		" " 6/12-12½	72.75	
		Elmira Water	25.00	
		" " 4/12½	50.00	
		St. L. & S. F. 5/20	100.00	
		" " " 1/25	25.00	
		Ill. Cent.	20.00	
		Kans. City Ft. S. 2/20	40.00	
		Hackensack Water 11/20	220.00	
		Chic. M. & St. P. 3/25	75.00	
		Mich. Cent. 2/20	40.00	
		Colo. Spgs. 2/25	50.00	
		Cin. Ind. St. L. & C.	10.00	
				800.50
Feb.	1	J. H. Fredericks		100.00
"	1	M. J. Wissmer		45.00
"	17	Chas. Yeates		33.10
"	1	City of Newark 3/2 3/10 1/20	\$56.00	
		" " 1/20	20.00	
		Cin. Ind. St. L. & C.	10.00	
		Lockport Gas 4/25	100.00	
		N. Y. C. & H. R. 10/17½	175.00	
		" " 4/17½-17½	87.50	
March	1	Am. Tel. & C. Co.		100.00
		Long Island 5/20	100.00	
		U. N. J. & C. Co.	20.00	
		Louis & Jeff Brt. 7/20	140.00	
		Cleve. Cin. Chic. 3/20	60.00	
				768.50
Apr.	1	Color. Spgs. 2/25	\$50.00	
		Ill. Cent. 1/20	20.00	
		Kan. City Ft. S. M. 2/20	40.00	
		Mex. Con. 6/12-12½	72.75	
				182.75
"	10	E. E. Sayre		30.00
"	21	Chas. Hochstuhl		65.00
May	12	Edward Wagner		75.00
"	22	E. M. Pearce		50.00
June	9	Int. on sale 3 C. C. bonds		32.67
		Am. Tel. and Cable Co.		100.00
"	23	J. J. Murphy		150.00
"	15	Ill. Cent. R. R.		125.00
July	1	Mex. Cond. 6/12-12½	\$72.75	
		Elmira Water 1/25	25.00	
		" " 4/12½	50.00	

First Account of Trustee.

		Hackensack Water 11/20.....	220.00	
		St. Louis & San. F. 5/20.....	100.00	
May	8	R. J. Franz	100.00	
		R. J. Franz		132.25
				<hr/>
				\$5,380.90
1909				
July	1	St. Louis and S. F., 1/25.....	\$25.00	
		Mich. Cent. R. R. 2/20.....	40.00	
		Cin. Ind. St. L. & C. 1/10.....	10.00	
		Mich. & St. L. 3/25.....	75.00	
		S. Gaiser 6 mo. int.	50.00	
Aug.	1	Cin. Ind. St. L. & C.	10.00	
		City of Newark 2, 2, 2, 10, 20, 20, 10, 10.....	76.00	
		Gas & E. L. Co. 4/25.....	100.00	
		N. Y. C. & H. R. R. 10-17½.....	175.00	
		" " " 5/17½.....	87.50	
		M. J. Wissmer	50.00	
				<hr/>
				1,866.25
Sept.	1	Am. Tel. & C. Co.....		100.00
"	29	E. E. Sayre		30.00
Oct.	21	Mr. Hochstuhl		65.00
"	28	Mr. Pearce		50.00
Nov.	6	Louis & Jeff. Bridge 7/20.....	\$140.00	
		Cin. Ind. & St. L. 1/10.....	10.00	
		Colo. Spgs. 2/25.....	50.00	
		Ill. Cent. 1/20.....	20.00	
		Kans. C. F. S. & M. 2/20.....	40.00	
		Mex. Cons. 6/12-12½.....	72.75	
		U. N. J. & R. C. C. 1/20.....	20.00	
				<hr/>
				352.75
"	7	Int. F. R. Maddock.....		1,075.00
"	27	E. Wagner		75.00
Dec.	1	Western Union Tel. Co.		100.00
"	1	Bertha B. Heath, dry goods chgd. Est. M. C. H.....		2.49
"	15	Ill. Cent. R. R.		125.00
"	28	S. Gaiser		50.00
1910				
Jan.	4	J. H. Fredericks		100.00
"	5	C. M. & St. P. 3/25.....	\$75.00	
		Mex. Cond. 6/12-12½.....	72.75	
		Hackensack Water 11/20.....	220.00	
		Mich. Cent. R. R. 3/20.....	40.00	
		Elmira Water	25.00	
		" " 4/12½.....	50.00	
		St. L. & San. F. 5/20.....	100.00	
		" " " 1/25.....	25.00	
				<hr/>
				607.75
Feb.	1	M. J. Wissmer		50.00
		N. Y. C. & H. R. R. 5/17½.....	\$87.50	
		" " " 10/17½.....	175.00	
		Lockport Gas 4/25.....	100.00	
		City of Newark 3, 2, 2, 20, 3/10.....	76.00	
		Cin. Ind. St. L. & C.....	10.00	
				<hr/>
				448.50
"	11	Best & Co.		2.70
March	12	Chas. Yeates, int.		33.25
"	1	Am. Tel. & C. Co.....		100.00

First Account of Trustee.

April	1	Louis & Jeff. B. C. 7/20	\$140.00	
		Kans. City Ft. W. & M. 2/20	40.00	
		Ill. Cent.	20.00	
		Mex. Cond. 6/12-12½.....	72.75	
		Col. Spgs. 2/23	50.00	
		U. N. J. & C. C.	20.00	
				<hr/>
				342.75
"	22	C. Hochstuhl to Apr. 2/10.....		65.00
"	23	E. E. Sayre		30.00
May	19	R. M. Pearce int.		50.00
June	1	Am. Tel. & C. Co.		100.00
"	8	J. B. Iffland, Jr.		75.00
"	8	Eliza P. Underhill		10.59
"	15	Chic. St. Louis & New O.....		125.00
"	20	J. H. Fredericks		10.00
				<hr/>
				\$5,342.03
1910				
July	1	S. Gaiser		50.00
"	8	J. J. Murphy		150.00
"	26	M. J. Wissmer		50.00
"	1	St. Louis & S. F. 5/20	\$100.00	
		Chic. Mil. & St. P. 3/25.....	75.00	
		Elmira Water 1/25.....	25.00	
		" " 4/12½.....	50.00	
		Hackensack Water 11/20.....	220.00	
		Mich. Cent. 2/20	40.00	
		St. L. & S. F. 1/25	25.00	
		Mexican Con. 6/12-12½	72.75	
Aug.	1	N. Y. Centl. 10/17½	175.00	
		City of Newark 3/10, 3/2, 2/10	76.00	
		Cin. Ind. St. L. 2/10	20.00	
		N. Y. C. & H. R. R. 5/17½.....	87.50	
		Lockport Gas 4/25	100.00	
		Mrs. Fredericks	50.00	
				<hr/>
				1,116.25
Sept.	1	Am. Tel. & C. Co.		100.00
Oct.	5	E. E. Sayre		30.00
"	7	Int. F. R. Maddock on bond and mtge.		1,075.00
"	26	Chas. Hochstuhl		65.00
Nov.	1	Carlotta Heath		9.31
"	1	U. N. J. & C. V. 1/20	\$20.00	
		Louisville & J. B. 7/20	140.00	
		Colo. S. L. & P. Co. 2/25.....	50.00	
		Mex. Cond. 6/12-12½.....	72.75	
		Ill. Cent. R. R. 1/20.....	20.00	
		Kans. C. & Ft. S. & M. 2/20.....	40.00	
		Cin. Ind. & S. L. & C. 1/10.....	10.00	
		Hudson Co. Gas.....	25.00	
				<hr/>
				377.75
Dec.	3	Am. Tel. & C. Co.		100.00
"	16	J. Iffland, Jr.		75.00
		Ill. Cent. R. R.		125.00
				<hr/>
				377.75
1911				
Jan.	1	S. Gaiser		50.00
"	1	St. L. & S. F. 5/20.....	\$100.00	
		" " " 1/25	25.00	
		Mich. Cent. 2/20	40.00	
		Elmira Water 1/25 4/12½.....	75.00	

First Account of Trustee.

	Mex. Cons.	24.25	
	Chic. M. & St. P. 3/25.....	75.00	
	Hackensack Water 11/20.....	220.00	
			<hr/>
			559.25
March 1	Am. Tel. & C. Co.....		100.00
" 22	E. E. Sayre		30.00
Apr. 14	Mrs. Fredericks		50.00
" 22	Mr. Hochstuhl		65.00
" 28	Louis & J. B. Co. 7/20.....	\$140.00	
	Ill. Central	20.00	
	Kans. City Ft. S. & M. 2/20.....	40.00	
	Mex. Con. 2/12-12½.....	24.25	
	U. N. J. & C. Co. 1/20.....	20.00	
	Col. S. L. & P. Co. 2/25.....	50.00	
	Gas El. Co. 3/25.....	75.00	
	" " " 1/25.....	25.00	
	Cin. Ind. St. L.	10.00	
	Hudson Co. Gas	25.00	
			<hr/>
			429.25
May 17	Int. R. M. Pearce		50.00
June 1	Am. Tel. C. Co.		100.00
" 2	Chas. Yeates		33.25
" 7	Lyda B. Iffland		75.00
" 15	Ill. Cent. R. R. (Chic. St. L. & N. O.).....		125.00
July 1	Elmira Water 1/25 4/12 12½.....		75.00
	St. L. & S. F. 5/20 1/25		125.00
			<hr/>
			\$5,190.06
1911			
July 1	Mich. Cent. 2/20		40.00
	Chic. Mil. & St. L. 3/25.....		75.00
	Mex. Cond. 2/12-12½.....		24.25
	Hackensack Water 11/20	220.00	
	Samuel Gaiser	50.00	
" 22	M. J. Wissmer, 6 mo. int.		50.00
" 31	Bertha B. Heath to pay bill of Mrs. V. M. Best of McH. 20/11		19.65
Feb. 1	Cin. Ind. St. L. & C.	\$10.00	
	City of Newark	76.00	
	Lockport Gas	100.00	
	N. Y. Cent. & H. R. R. R.....	245.00	
	" " "	17.50	
	M. J. Wissmer	50.00	
			<hr/>
			498.50
May 1	F. R. Maddock 6 mo. int.		537.50
Aug. 1	Cin. Ind. St. L. & C. 1/10.....	\$10.00	
	City of Newark 3/2 3/10 2/20.....	76.00	
	Lockport Gas 4/25	100.00	
	N. Y. Central 10/17½.....	175.00	
	" " 5/17½	87.50	
	U. N. J. & C. Co.	20.00	
	Louis. & J. H. Co. 7/20.....	140.00	
			<hr/>
			808.50
Sept. 1	Am. Tel. & C. Co.....		100.00
OMITTED ON PAGE 2.			
June 1-7th.			
1906	Mex. Debr. 7/12½	\$84.87	
	Ill. Cent. R. R.	20.00	
	U. N. J. & C. Co.	20.00	
	Cin. St. L. & C.	10.00	

First Account of Trustee.

Cleve. C. & Co.	60.00	
Kans. City Ft. S. & M.	40.00	
Long Island R. R.	100.00	
Louis. & Jeff. B. Co.	140.00	
Colo. Spgs. St. P. Co.	50.00	
		524.87
Security Savings Bank Interest.....		170.90
		695.77
Total		\$2,919.17

TOTAL INCOME.

Page 1.....	\$ 4,460.31
" 2.....	4,539.83
" 3.....	4,912.75
" 4.....	5,380.90
" 5.....	5,342.03
" 6.....	5,190.06
" 7.....	2,919.17
	32,745.05
Total.....	\$32,745.05

First Account of Trustee.

From
 March, 1906,
 to
 Sept., 1907.

This accountant prays
 allowance for bills as
 follows:

Voucher No.			
717	Paid	Centenary Coll. Ins.	\$2.60
718	"	Henderson and Co. seeds.	4.85
719	"	Com. Roofing Co. walk.	17.84
720	"	Joseph Allen, painter.	35.00
721	"	Dr. Whitnack	5.00
722	"	Ocean Hotel, board.	93.00
723	"	James S. Shaw, carpenter.	247.10
724	"	Alfred Walters, architect.	10.00
725	"	T. Geiser & Son, plumber.	41.45
726	"	Dr. E. Baldwin, dentist.	4.50
727	"	Gaven Spence, jeweler.	61.50
728	"	R. Gray, Jr., hardware.	3.00
729	"	R. Rose, receiver of taxes.	351.41
730	"	William Hehn, painter.	48.00
731	"	T. Geiser & Son, plumber.	6.55
732	"	J. A. Slicken, sprinkling.	12.00
733	"	Sweater	4.00
734	"	Dr. E. Baldwin, dentist. ....	.75
735	"	J. Vreeland, carpenter.	2.60
736	"	Wm. H. Cleveland & Son, wagon- makers	74.88
737	"	De Groot M. E. Church.	50.00
738	"	Gorham and Co., silver.	18.00
739	"	Kenneth Maclean for commission	3.55
740	"	Dr. Sutphen, physician.	10.00
741	"	Canfield & Titus, laundry.	18.50
742	"	J. Wanamaker, dry goods.	21.00
743	"	Carlotta Heath	79.16
744	"	M. L. Werbrick.	23.95
745	"	Canfield and Titus, laundry.	7.00

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First Account of Trustee.

Voucher No.			
	746	Paid	Kimmerlie and Minder, florist.. 7.65
	747	"	J. Allen, painter..... 17.15
	748*	"	Matthias Plum, stationery..... 1.75
	749	"	Campbell and Luck, dressmaker 215.34
	750	"	Coal—\$58.95, \$6.50 65.45
	751	"	Public Service Gas Corp..... 133.04
10	752	"	A. P. Townsend, private school.. 219.15
	753	"	Bordens' Cond. Milk Co..... 89.07
	754	"	N. Y. & N. J. Telephone Co.... 55.15
	755	"	J. Klumb, horse-shoer 4.50
	756	"	P. J. Nash, horse-shoer..... 16.00
	757	"	Quinby & Co., carriage..... 2.50
	758	"	Foster and Co., drugs..... 23.07
	759	"	F. J. Hull & Co., hay and feed... 157.08
	760	"	J. R. Rutan, fruits and vegetables 188.23
	761	"	Ward and Son, grocer..... 222.33
20	762	"	Dept. of Water..... 34.70
	763	"	Hasbrouck Laundry 7.50
	764	"	F. R. Thomason, insurance..... 44.50
	765	"	J. F. Macdonald, grocer..... 33.24
	766	"	C. Schneider, Jr., hardware..... 25.14
	767	"	L. S. Plaut and Co., dry goods... 91.29
	768	"	Fidelity Trust Co., boxes..... 75.00
	769	"	W. V. Snyder and Co., dry goods 171.03
	770	"	Dr. Sutphen, physician..... 75.00
	771	"	L. S. Plaut and Co., dry goods... 73.97
30	772	"	A. Wills, grocer 124.29
	773	"	Hahne and Company, dry goods. 94.76
	774	"	B. Messler and Co., green grocer 7.15
	775	"	F. Adams and Co., butcher..... 161.64
			\$3,693.86

Voucher No.

	776	Paid	Crother & Co., butcher..... 369.42
	777	"	Lizzie Carroll, cook..... 200.00
	778	"	Best and Co., milliner..... 101.10
40	779	"	Miss Hobbs, housekeeper..... 125.00

First Account of Trustee.

Voucher No.

780	Paid	Miss Coeyman, housekeeper....	75.00	
781	"	Laundry	41.16	
782	"	J. J. Lowenstein, milliner.....	7.50	
783	"	Saks & Co., dry goods.....	43.90	
784	"	Robert Cutler, \$12 per wk.....	900.00	
785	"	Mexican C. Coupon not honored	12.13	
786	"	Mrs. Lessard (house help).....	123.00	10
787	"	Laundry	78.60	
788	"	Milk	57.72	
789	"	Carlotta Heath	129.46	
790	"	James Steiner (fish)	27.55	
791	"	Dress from Arcade for Carlotta Heath	15.00	
792	"	Parasol for Carlotta Heath....	2.00	
793	"	Pressing suit for Carlotta Heath	2.50	
794	"	Carfare for Carlotta Heath....	2.38	
795	"	Miss Suydam, housekeeper....	20.00	20
796	"	Best & Co., dress.....	33.00	
797	"	Hat	1.75	
798	"	Dyeing	3.50	
799	"	Fruit	12.95	
800	"	Ice	29.25	
801	"	Annie, help	7.80	
802	"	Sewing	9.00	
803	"	Lizzie Carroll, cook.....	140.00	
804	"	Miss A. Weir, housekeeper....	266.00	
805	"	Miss Hobbs, housekeeper.....	75.00	30
806	"	Sundry expenditures small items	6.63	
807	"	" " " "	47.07	
808	"	Kenneth Maclean Com., etc.,....	1.35	
809	"	Robert Cutler, coachman.....	298.00	
810	"	Fish	2.44	
811	"	Fruit	4.20	
812	"	Ice	6.05	
813	"	Mrs. Lessard and Annie, help...	98.95	
814	"	Carlotta Heath	149.08	
815	"	Sundry house expenses.....	62.24	40

First Account of Trustee.

Voucher No.			
	816	Paid Kenneth Maclean, Canadian expense on Griffey mortgage.....	139.26
	817	" Ida Connolly, boarding	90.00
	818	" L. S. Plaut & Co., dry goods.....	93.81
	819	" Schneider and Co., hardware...	3.71
	820	" W. V. Snyder and Co., dry goods	57.53
	821	" P. J. Nash, horse-shoer.....	12.50
10	822	" N. Y. & N. J. Tele. Co.....	30.70
	823	" Public Service Corp.....	63.20
	824	" Miss Coeyman, housekeeper....	175.00
	825	" Lizzie Carroll, cook.....	160.00
	826	" Carlotta Heath	57.50
	827	" Dept. of Water.....	17.81
	828	" F. J. Hull and Co., grain.....	75.61
	829	" Wanamaker & Co., dry goods....	30.55
	830	" E. Doctors, tailor	113.60
	831	" Crothers and Co., butcher.....	151.47
20	832	" M. B. Buckey.....	4.00
	833	" Ella Baker	6.00
	834	" R. F. Anderson.....	15.00
	835	" Lowenstein, J. J., milliner.....	18.95
	836	" Campbell and Luck.....	53.85
	836 $\frac{1}{2}$	" E. Doctors	30.00
	Check		
	No. 5	" Daniel Voorhees, income tax....	34.69
			<hr/>
			5,022.42

30 Voucher No.			
	837	Paid E. L. Meeker, furniture.....	65.50
	838	" Laiblin and Co., cleaner.....	12.00
	839	" Bordens' C. M. Co.....	43.49
	840	" Aaron Wills, grocer.....	71.27
	841	" J. R. Rutan, saddlery.....	33.47
	842	" Aaron Ward & Sons, grocer....	98.50
	843	" J. B. Foster, druggist.....	15.91
	844	" Saks and Co., dry goods.....	39.25
40	845	" Kimmerlie and Minder, florist..	6.00

First Account of Trustee.

Voucher No.

846	Paid	J. D. Preister, records.....	4.21	
847	"	Fidelity Trust Co., boxes.....	15.00	
848	"	Dr. Sutphen, physician.....	3.00	
849	"	W. R. Neff, pastor.....	2.50	
850	"	Taxes	332.96	
851	"	Best & Co.	19.86	
852	"	Miss Townsend, private school..	171.32	
853	"	J. Macdonald, physician.....	5.95	10
854	"	Roubaud	1.25	
855	"	Adams & Co., butcher.....	57.60	
856	"	Messler and Co., green grocer...	77.77	
857	"	C. C. Fields.....	5.40	
858	"	Dr. Baldwin, dentist.....	.75	
859	"	Candfield & Titus, laundry.....	2.49	
860	"	J. Slecker, sprinkling.....	14.00	
861	"	Hahne and Co., dry goods.....	59.39	
862	"	Gaven Spence, jeweler.....	48.00	20

From Feb. 6/08.

Check No.

12	Paid	Miss Coeyman, housekeeper....	25.00	
12	"	Lizzie Carroll, cook.....	20.00	
13	"	Public Service Corp.....	7.30	
14	"	Jancouvious & Son, carpet cleaner	8.03	
15	"	Fred P. Merkel, plumber.....	10.33	
16	"	William Hahn, decorator.....	21.15	
17	"	Bordens' Cond. Milk.....	16.34	30
18	"	W. V. Snyder & Co., dry goods...	12.49	
19	"	Hahne & Co., dry goods.....	7.07	
20	"	Saks & Co., dry goods.....	21.50	
21	"	Saks & Co., dry goods.....	4.90	
23	"	Saks & Co., (cash paid by F. R. M.)	5.00	
24	"	Knox the Hatter (hat for Car- lotta)	5.00	
25	"	Aaron Ward & Sons, grocer.....	34.49	
27	"	J. E. Fleming Coal Co.....	24.30	40

First Account of Trustee.

Check No.			
	28	Paid Robert Cutler, coachman.....	60.00
	28	" Carlotta Heath	25.00
	28	" Carlotta Heath.....	4.25
	28	" Fish	2.30
	28	" Annie, help	21.80
	28	" Seeds, ice, paper, fruit, bananas, etc.	3.61
10	29	" Frances Leavitt	12.25
	30	" Laiblin & Co., cleaners.....	2.00
	31	" Lizzie Carroll, cook.....	20.00
	31	" Miss Coeyman, housekeeper....	25.00
	33	" C. Schneider, Jr., hardware.....	11.55
	34	" M. Plum, Carlotta Heath	4.50
	35	" Crothers & Co., butcher.....	46.09
	36	" Public Service Corp.....	7.10
	37	" J. Vreeland, carpenter	46.31
20	38	" B. M. Messler Co., green grocer..	18.66
	39	" P. J. Nash, horse-shoer	9.75
			1,749.91

Check No.			
	40	Paid Aaron J. Wills, grocer.....	10.53
	43	" F. J. Hull & Co., grain.....	16.32
	44	" Wanamaker, dry goods.....	3.00
	45	" Miss A. P. Townsend.....	2.00
	46	" Fred Adam & Son, butcher.....	22.21
30	47	" L. S. Plaut & Co., dry goods.....	24.94
	48	" Bordens' C. M. Co.....	7.68
	50	" Robert Cutler, coachman.....	48.00
	50	" Carlotta Heath	32.00
	50	" Fish	2.00
	50	" Ice	1.00
	50	" Annie Zimmer, help	22.00
	50	" Dress bill	13.00
	50	" Tickets	3.50
	50	" Fruit .....	.60
40	51	" N. Y. & N. J. Tel Co.....	7.75

First Account of Trustee.

Check No.

52	Paid	Miss Coeyman, housekeeper....	25.00	
53	"	Public Service Corp.	4.60	
56	"	V. A. Canfield & Co., laundry...	3.75	
57	"	N. Y. N. J. Tel. Co.....	6.95	
58	"	F. J. Hull and Co., grain.....	11.27	
59	"	E. Doctors for linen suit.....	28.00	
60	"	G. W. Stout for horse.....	200.00	10
61	"	Bordens' C. M. Co.....	8.00	
62	"	M. Luck, dress.....	39.30	
63	"	Dept. Water	5.95	
64	"	Crothers and Co., butcher.....	35.51	
65	"	B. M. Messler & Co., green grocer	37.71	
66	"	Aaron Ward and Sons, grocer..	38.23	
67	"	J. B. Foster, druggist.....	4.66	
68	"	J. J. Lowenstein, milliner.....	14.00	
69	"	Wanamaker, dry goods.....	17.75	
70	"	Lizzie Carroll, cook	30.00	20
70	"	Miss Coeyman, housekeeper....	25.00	
71	"	Public Service Corp.....	8.30	
72	"	M. Plum, stationery.....	1.50	
73	"	Fred Adams & Son, butcher....	19.60	
74	"	Fidelity Trust Co., boxes.....	30.00	
75	"	P. J. Nash, horse-shoer.....	5.50	
76	"	G. W. Stout, livery.....	8.00	
77	"	J. Colyer & Co., carriage maker..	175.00	
78	"	Geo. Rouband	25.65	
79	"	Marshall & Ball, clothier.....	25.00	30
80	"	L. S. Plaut & Co., dry goods.....	18.92	
81	"	Bordens' C. M. Co.....	7.00	
82	"	Schneider, Jr., hardware.....	4.26	
84	"	Aaron J. Wills, grocer.....	13.67	
85	"	Crothers and Co., butchers.....	27.63	
86	"	Board Street and Water Comm..	5.00	
87	"	A. A. Valentine & Co.....	95.00	
88	"	Hasbrouck Laundry	9.43	
89	"	Miss Coeyman, housekeeper....	25.00	
89	"	Lizzie Carroll, cook	20.00	40

First Account of Trustee.

Check No.			
	90	Paid B. M. Messler & Co., green grocer	14.00
	91	" Aaron J. Wills, grocer.....	16.58
	92	" Ira Budd, plumber	1.50
	93	" Fred Adams, butcher.....	7.97
	94	" Bordens' Cond. M. Co.....	6.52
	95	" Aaron Ward and Son, grocer...	7.80
10	96	" Kimmerlie & Minder, florist....	13.75
	97	" The Gorham Co., Carlotta Heath	21.66
			1,366.45

Check No.			
	98	Paid Bonwit-Teller & Company, dry goods	20.75
	99	" Robert Cutler, coachman	48.00
	99	" Carlotta Heath	39.45
	99	" Annie, help	24.40
20	99	" Ice	2.60
	99	" Fish	2.20
	99	" Shirtwaist for Carlotta Heath...	9.75
	100	" Robert Cutler, coachman.....	60.00
		" Carlotta Heath	42.78
		" Annie, help	15.20
		" Fruit .....	.50
		" Ice	4.00
		" Brooms	1.00
		" Pressing & repairing Robt's coat	3.00
30		" Working cotton, etc.	1.00
	101	" N. Y. & N. J. Tel. Co.....	3.20
	102	" F. J. Hull & Co., grain.....	36.82
	103	" Public Service Corp.....	11.40
	104	" Dept. of Water	4.06
	105	" C. Schneider & Co., hardware...	3.25
	106	" Mary Connolly	14.00
	107	" Crothers and Co., butcher.....	78.25
	108	" Public Service Corp.....	8.30
	109	" W. V. Snyder and Co., dry goods	12.41
40	111	" Robert Cutler, coachman.....	48.00

First Account of Trustee.

Check No.

	Paid	Carlotta Heath	22.50	
	"	Annie, help	21.20	
	"	Ice	3.80	
	"	Fruit	1.20	
	"	Fish	1.70	
112	"	Miss Coeyman, housekeeper.....	25.00	
	"	Lizzie Carroll, cook	20.00	10
113	"	F. J. Hull & Co., grain.....	11.35	
114	"	Wanamaker, dry goods.....	7.33	
115	"	L. S. Plaut & Co., dry goods.....	38.94	
116	"	Hahne and Co., dry goods.....	1.18	
117	"	Alderney Dairy Co.....	2.64	
118	"	P. J. Nash, horse-shoer	11.25	
119	"	N. Y. & N. J. Tel. Co.....	3.00	
120	"	Hasbrouck Laundry	8.00	
121	"	Lauter & Co., tuning	4.00	
122	"	Dept. of Water.....	1.87	20
123	"	Fairfield Dairy Co.....	7.62	
124	"	Best & Co., Carlotta Heath.....	11.00	
125	"	Fred P. Merkel and Co., plumber	3.38	
126	"	Robert, coachman	48.00	
	"	Carlotta Heath	12.30	
	"	Annie, help	15.20	
	"	Ice	2.25	
	"	Fish .....	.90	
	"	Expenses Carlotta Heath to		
	"	Cleveland	49.40	30
	"	Suitcase	6.00	
	"	Pressing cloth	1.50	
	"	Sundry items	2.65	
	"	Shoes	7.70	
127	"	Miss Coeyman, housekeeper.....	25.00	
	"	Lizzie Carroll, cook.....	20.00	
128	"	Fairfield Dairy Co.....	2.90	
129	"	Fred Adam and Co., butcher....	8.40	
130	"	Aaron J. Wills, grocer.....	41.49	
			<hr/>	
			944.97	40

First Account of Trustee.

Check No.			
	131	Paid James R. Rutan, produce.....	3.55
	132	" Public Service Corp.....	11.10
	133	" Jas. F. McDonnell.....	18.08
	134	" M. Luck, dressmaker.....	1.85
	135	" C. Schneider, hardware.....	1.25
	136	" N. Y. & N. J. Tel. Co.....	3.00
10	137	" Chas. E. Baldwin, dentist.....	5.00
	138	" Bonwit-Teller & Co., dry goods..	46.00
	139	" Miss A. P. Townsend, private school	80.00
	140	" Miss Tench	10.00
	141	" J. Colyer & Co., carriage maker.	25.50
	142	" B. M. Messler, green grocer.....	6.20
	143	" Standard Paving Co.....	5.70
	144	" Robert L. Ross, recr. House.....	282.40
		Barn	38.73
20		Dog .....	.99
		Personal	
		barn	16.14
		Trees	2.91
	145	" J. S. Clark and Co., coal.....	102.04
	146	" F. J. Hull and Co., grain.....	20.52
	147	" E. Doctors, tailor.....	3.00
	148	" Miss Coeyman, housekeeper	25.00
		" May Ward, cook	20.00
	149	" J. B. Foster, druggist.....	6.66
30	150	" Mrs. Morris, helper.....	1.25
	151	" Public Service Corp.....	8.00
	152	" Crothers and Co., butchers.....	45.32
	153	" Carlotta Heath	41.00
		" Ice	2.75
		" Robert, coachman	60.00
		" Fish	1.20
		" Annie, help	20.00
		" Mary Connolly	5.00
		" Sund's	2.00
40		" Shoes	8.00

First Account of Trustee.

Check No.

154	Paid	Bordens' C. M. Co.....	8.84	
155	"	Aaron Ward & Sons, grocer.....	29.45	
156	"	B. M. Messler Co., green grocer..	9.98	
157	"	Fred P. Merkel, plumber.....	4.37	
158	"	Standard Paving Co.....	5.70	
159	"	Aaron J. Wills, grocer.....	12.23	
160	"	John B. Foster, druggist.....	3.69	
161	"	Fred Adam & Son, butcher.....	14.50	10
162	"	Ira Budd, plumber	5.23	
163	"	R. J. Nash, horse-shoer	12.00	
164	"	F. J. Hull and Co., grain.....	10.60	
165	"	E. Doctors, tailor	50.00	
166	"	Fidelity Trust Co., boxes.....	15.00	
167	"	Leopold Haas, furrier.....	52.00	
168	"	N. Y. N. J. Tel. Co.....	7.70	
169	"	Public Service.....	6.50	
170	"	Dept. of Water.....	5.94	20
171	"	Miss Coeyman, housekeeper....	25.00	
	"	May Ward, cook	20.00	
172	"	Bonwit-Teller & Co., dry goods..	8.85	
173	"	Miss Townsend, private school..	3.75	
174	"	Borden's C. M. Co.....	8.12	
175	"	J. H. Slicker, sprinkling.....	14.50	
176	"	W. V. Snyder & Co., dry goods...	24.08	
177	"	Hahne & Co., dry goods.....	13.16	
178	"	Gaven Spence, jeweler	15.60	
179	"	L. S. Plaut and Co., dry goods..	12.39	30
180	"	Carlotta Heath	45.05	
	"	Cleaning clothes	6.25	

 1,380.62

Check No.

180	Paid	Annie, help	19.20	
	"	Robert, etc.	1.10	
	"	Carpets, etc	48.00	
181	"	E. J. Hull and Co.	7.50	
182	"	Drummond and Latham Co., hardware	2.50	40

First Account of Trustee.

Check No.			
	183	Paid	Crothers and Co., butcher..... 14.04
	184	"	James R. Rutan, decorator..... 5.67
	185	"	C. Schneider, hardware ..... .68
	186	"	James F. Steiner, fish 8.41
	187	"	Fred Adam and Son, butcher... 11.99
	188	"	B. M. Messler & Co., green grocer 12.85
10	190	"	Leopold Haas, furrier..... 160.00
	191	"	Aaron Ward and Sons, grocer.. 35.53
			1909—Jan. 5th.
	192	"	F. Macdonnell 7.13
	193	"	Carlotta Heath 45.00
		"	Hat, Carlotta Heath 9.00
		"	Apron, May 1.75
		"	Pin cushion 1.25
		"	Robert, coachman 48.00
		"	Annie, help 15.20
20	194	"	Miss Coeyman, housekeeper 25.00
		"	May Ward, cook 20.00
	195	"	M. Plum, stationery 3.70
	196	"	Public Service Corp..... 6.80
	197	"	Borden's C. M. Co..... 9.04
	198	"	Aaron J. Wills, grocer..... 11.28
	199	"	Crother and Co., butcher..... 13.26
	200	"	R. J. Nash, horse-shoer..... 5.00
	201	"	N. Y. N. J. Tel. Co..... 2.85
	202	"	John Ingerman 45.50
30	203	"	G. M. Whitfield, Sec'y Subs..... 9.75
	204	"	F. J. Hull and Co., grain..... 12.31
	205	"	James R. Rutan 6.17
	206	"	Fred Adam and Son, butcher... 7.71
	207	"	B. M. Messler, green grocer..... 20.07
	208	"	Laiblin and Co., cleaners..... 6.00
	209	"	Hahne Co., dry goods..... 30.37
	210	"	F. J. Hull and Co., grain..... 1.75
	211	"	Carlotta Heath 34.20
		"	Robert, coachman 60.00
40		"	Annie, help 19.00

First Account of Trustee.

Check No.

	Paid	To Phil. M. & C.....	8.00	
	"	M. & C. to Lowell.....	37.38	
	"	Sundries	1.40	
212	"	Miss Coeyman, housekeeper....	25.00	
	"	Mary Ward, cook.....	20.00	
213	"	Rogers Hall School.....	30.00	
214	"	W. H. Lewis, puzzle.....	7.15	10
215	"	N. Y. N. J. Tel. Co.....	3.10	
216	"	Public Service Corp.....	8.50	
217	"	G. W. Stout, livery.....	4.50	
218	"	Aaron Ward and Sons, grocer..	34.27	
220	"	Miss Townsend, private school..	81.85	
221	"	James Steiner, fish	3.89	
222	"	Borden's C. M. Co.....	10.08	
223	"	J. B. Foster, druggist.....	5.32	
224	"	Kimmerlie and Minder, florist....	9.00	
			<hr/>	
			1,094.00	20

Check No.

225	Paid	Hasbrouck Laundry	1.16	
227	"	F. J. Hull and Co., grain.....	8.74	
228	"	Miss Coeyman, housekeeper....	25.00	
	"	May Ward, cook	20.00	
229	"	Graven Spence, jeweler.....	47.55	
230	"	L. S. Plaut and Co., dry goods..	28.58	
231	"	Crouthers & Co., butcher.....	34.93	
232	"	W. V. Snyder & Co., dry goods..	4.89	30
233	"	Public Service Corp.....	8.20	
234	"	B. M. Messler Co., green grocer..	30.46	
235	"	Fred Adam & Son, butcher.....	10.24	
236	"	Aaron J. Wills, grocer.....	17.05	
237	"	Dept. of Water.....	5.94	
239	"	Carlotta Heath	15.00	
	"	Robert, coachman	48.00	
	"	Annie, help	16.00	
	"	Pressing clothes	1.75	

40

First Account of Trustee.

Check No.			
	240	Paid	The Gorham Co. for Carlotta Heath 23.00
	241	"	Borden's C. M. Co. 8.72
	242	"	Hahne & Co., dry goods 23.36
	245	"	Dr. Geo. M. Whitfield, church subs 23.25
10	246	"	F. J. Hull and Co., grain 8.96
	247	"	Wanamaker, dry goods 6.00
	248	"	N. Y. & N. J. Tel. Co. 6.75
	249	"	Miss Coeyman, housekeeper 25.00
		"	May Ward, cook 20.00
	250	"	Effie M. Tench, Carlotta a/c 32.00
	251	"	Aaron Ward & Sons, grocer 50.55
	252	"	Bordens C. M. Co. 9.40
	253	"	Public Service Corp. 6.05
	254	"	James F. Steiner, fish 8.00
20	255	"	Francis Pursell, caterer 3.40
	256	"	Crothers and Co., butcher 20.84
	257	"	W. F. Day and Bro., caterers 21.30
	258	"	P. J. Nash, horse-shoer 9.00
	260	"	Carlotta Heath 82.75
		"	Robert, coachman 84.00
		"	Annie, help 30.90
		"	Sundries 1.98
	261	"	Francis Pursell, caterer 5.55
	262	"	Miss E. M. Tench, Carlotta a/c 12.00
30	263	"	Fred Adams and Co., butcher 7.29
	264	"	B. M. Messler Co., green grocer 14.92
	265	"	Fred P. Merkel, plumber 6.50
	266	"	Aaron J. Wills, grocer 15.99
	267	"	M. Luck, dressmaker 17.00
	268	"	Dempsey Bros., crockery 7.00
	269	"	Edgar L. Meeker Co., furniture 31.25
	270	"	F. J. Hull & Co., grain 12.62
	271	"	Mrs. E. Baker 4.00
	272	"	Joseph Allen, painter 200.00
40	273	"	J. Vreeland, carpenter 63.30

First Account of Trustee.

Check No.

275	Paid	J. S. Clark & Co., coal.....	41.20	
276	"	Hasbrouck Laundry	3.43	
277	"	Miss Coeyman, housekeeper.....	25.00	
278	"	Public Service Corp.....	5.50	
280	"	Hahne & Co., dry goods.....	21.33	
281	"	W. R. Neff, pastor.....	8.00	
282	"	B. M. Messler & Co., green grocer	25.50	
283	"	Aaron J. Wills, grocer.....	9.22	10
284	"	Crothers and Co., butcher.....	41.23	
285	"	Borden's C. Milk Co.....	10.18	

 1,416.71

Check No.

286	Paid	Fred Adam and Co., butcher....	9.83	
287	"	Miss Townsend, private school..	1.40	
288	"	Peters Harness and S. Co.....	1.95	
289	"	Gaven Spence, jeweler.....	51.00	20
290	"	M. Plum, stationery	3.75	
291	"	L. S. Plaut and Co., dry goods..	20.10	
292	"	James F. Steiner, fish.....	3.00	
293	"	C. Schneider, Jr., hardware....	17.41	
294	"	May Dever, help	20.00	
297	"	Aaron Ward and Son, grocer...	25.35	
298	"	N. Y. N. J. Tel. Co.....	7.15	
299	"	F. J. Hull and Co., grain.....	6.88	
300	"	Carlotta Heath	33.00	
301	"	Public Service Corp.....	5.70	30
302	"	Miss Coeyman, housekeeper....	25.00	
303	"	Fred Adams and Son, butcher..	5.55	
304	"	J. Allen, painter.....	109.33	
305	"	Crothers and Co., butcher.....	4.95	
306	"	May Dever, help	20.00	
309	"	F. B. Thomason, insurance.....	22.50	
310	"	Carlotta Heath	53.50	
311	"	Borden's C. M. Co.....	9.72	
312	"	Dept. Water	10.95	

40

First Account of Trustee.

Check No.			
	313	Paid Carlotta Heath	53.50
		“ Robert, coachman	120.00
		“ Carlotta Heath	16.41
		“ Sundries, pressing	7.65
		“ Paid Marjorie, due from Carlotta Heath	10.00
10		“ Best and Co.....	.29
		“ Ice	6.00
		“ Annie, help	40.70
	314	“ Public Service Corp.....	4.30
	315	“ N. Y. N. J. Tel. Co.....	4.00
	316	“ Miss Coeyman, housekeeper....	25.00
		“ May Dever, help	20.00
	317	“ Isabelle A. Reimer	33.75
	318	“ J. S. Clark and Co., coal.....	7.70
	319	“ Bonwit-Teller and Co., dry goods	126.60
20	320	“ M. Luck, dressmaker	147.65
	321	“ B. M. Messler Co., green grocer..	5.72
	322	“ C. Schneider, Jr., hardware....	3.46
	323	“ Hahne and Co., dry goods.....	56.94
	324	“ L. S. Plaut and Co., dry goods..	64.31
	325	“ Carlotta Heath	35.00
	326	“ J. F. Macdonnell	2.81
	327	“ Unger Bros., jeweler	20.00
	328	“ Miss Coeyman, housekeeper....	25.00
	329	“ Aaron J. Wills, grocer.....	12.39
30	330	“ Borden's C. M. Co.....	6.96
	331	“ Mrs. E. Baker	9.00
	332	“ Hasbrouck Laundry	6.12
	333	“ Public Service Corp.....	6.70
	334	“ May Dever, help	20.00
	335	“ Carlotta Heath	25.00
	337	“ Marjorie Connolly	41.66
	338	“ Lum, Tamblyn and Colyer.....	10.70
	339	“ J. B. Foster, druggist.....	27.90
	340	“ Gaven Spence, jeweler	25.50
40			1,495.74

First Account of Trustee.

Check No.

341	Paid	N. Y. & N. J. Tel. Co.....	8.90	
342	"	Dept. Water	5.93	
343	"	F. J. Hull and Co., grain.....	22.52	
344	"	Miss Coeyman, housekeeper....	25.00	
	"	May Dever, help	20.00	
345	"	Bertha Heath	30.00	
346	"	John Wanamaker, dry goods....	1.50	
347	"	P. J. Nash, horse-shoer	30.00	10
348	"	Geo. Rouband	5.25	
349	"	Francis Pursell, caterer.....	6.90	
350	"	Dempsey Bros., crockery.....	10.75	
351	"	Carl Sutphen, physician.....	10.00	
352	"	F. B. Thomason, insurance....	12.00	
353	"	Fidelity Trust Co., boxes.....	30.00	
354	"	Borden's C. M. Co.....	12.12	
355	"	Public Service Corp.....	7.90	
356	"	Carlotta Heath.....	66.09	20
	"	Robert, coachman	144.00	
	"	Annie, help	46.60	
	"	Ice	14.00	
	"	Sundries	1.70	
357	"	Mrs. J. S. Chadwick.....	10.00	
358	"	E. Doctors, tailor.....	47.50	
359	"	Laiblin Co., cleaners.....	14.75	
360	"	Mrs. Underhill for Carlotta School	480.00	
361	"	Mrs. Underhill for deposit Car- lotta's money	50.00	30
362	"	F. R. Maddock for Carlotta ex- penses to Lowell	39.55	
363	"	F. J. Hull and Co., grain	10.17	
364	"	Public Service Corp.....	10.60	
365	"	Miss Coeyman, housekeeper....	25.00	
	"	May Dever, help	20.00	
366	"	Chas. Decker & Bro., grocer....	4.27	
367	"	Bonwit-Teller, dry goods.....	21.00	
368	"	Jas. McCreery & Co., dry goods..	7.75	40

First Account of Trustee.

Check No.			
	369	Paid John Gray	2.00
	370	" Carlotta Heath	25.00
	371	" F. J. Hull & Co., grain.....	11.65
	372	" N. Y. N. J. Tel. Co.....	9.60
	373	" Robert L. Ross, receiver	395.21
	374	" Bonwit-Teller & Co., dry goods.	12.75
10	375	" Public Service Corp.....	6.80
	376	" M. J. Brown	3.00
	377	" May Dever	20.00
		Miss Coeyman, housekeeper ...	25.00
	378	" William Cairns	32.50
	379	" Borden's C. M. Co.....	17.40
	380	" Kimmerlie & Hinder, florist....	44.18
	381	" J. S. Clark & Co., coal.....	102.00
	382	" J. P. Foster, druggist	13.08
	383	" Francis Pursell, caterer.....	1.30
20	384	" James F. Steiner, fish.....	3.60
	385	" Hasbrouck Laundry	2.96
	386	" Miss E. M. Tench	6.00
	387	" Jancouvius & Son, carpet cleaners	4.23
	388	" F. J. Hull & Co., grain	9.82
	389	" Bonwit-Teller & Co., dry goods.	92.50
	390	" Carlotta Heath	25.00
	392	" Miss Coeyman, housekeeper....	25.00
	393	" Mary Dever, help	20.00
30		Hahne & Co., dry goods	55.97
	394	" Laiblin Co., cleaners	15.55
	395	" Fidelity Trust Co.,	15.00
	396	" M. Plum, stationery.....	8.40
			\$2,257.25

Check No.			
	397	Paid W. V. Snyder & Co., dry goods..	.81
	398	" J. S. Shaw, carpenter.....	78.04
	399	" Public Service Corp.	7.40
40	400	" Carl Sutphen, physician	5.00

First Account of Trustee.

Check No.

401	Paid	Carlotta Heath	40.00	
402	"	Dept. of Water	8.44	
403	"	N. Y. Tel Co.,	6.70	
404	"	W. E. Wells, fish	3.15	
405	"	Jos. Allen, painter	31.61	
406	"	Borden's C. M. Co.,	18.08	
407	"	Carlotta Heath	40.22	10
	"	Robert, coachman	120.00	
	"	Annie, help	41.60	
	"	Ice	7.50	
	"	Fish	10.00	
	"	Sundry items	7.79	
January 6, 1910.				
408	"	Miss Coeyman, housekeeper....	25.00	
	"	Miss Deven, help	20.00	
409	"	A. Cyphers & Co., grain.....	21.39	
411	"	P. J. Nash, horseshoer	15.00	20
412	"	Carlotta Heath, ticket to Lowell	7.17	
		Ticket N. Y. 30c., Archie		
		40c., ticket .....	.70	
		Two trunks to Lowell.....	2.00	
	"	Carlotta Heath	15.00	
	"	Carlotta Heath, cash.....	10.00	
	"	Miss Dawson, cash	2.00	
413	"	Public Service Corp.,	8.90	
414	"	N. Y. N. J. Tel. Co.,	6.94	
415	"	Carlotta Heath	25.00	30
416	"	E. A. & F. L. Bogue, dentist ...	34.00	
417	"	Borden's C. M. Co.,	11.34	
418	"	Frederick Keers & Sons	9.75	
419	"	Francis J. Pursell, caterer	2.50	
420	"	Dempsey Bros., crockery	10.00	
421	"	J. B. Foster, druggist	1.15	
422	"	Gaven Spence, jeweler	68.25	
423	"	J. G. Slicken, sprinkling.....	17.50	
424	"	Wanamaker, dry goods	15.95	
425	"	Carlotta Heath	25.00	40

First Account of Trustee.

Check No.			
	427	Paid M. Luck, dressmaker	57.27
	428	" L. S. Plaut & Co., dry goods....	24.31
	429	" Miss Coeyman and May Dever, help	45.00
	430	" Public Service Corp.,	10.00
	431	" Wanamaker, dry goods.....	3.00
	432	" Bonwit-Teller & Co., dry goods.	24.00
10	433	" Best & Co.,	2.70
	434	" Carlotta Heath	50.69
		" Annie, help	47.60
		" Robert, coachman	144.00
		" Ice	2.00
		" Fish	6.00
		" Express	1.30
		" Pressing	3.00
	435	" Carlotta Heath.....	20.00
20	436	" Carlotta Heath	25.00
	437	" Hahne & Co., dry goods.....	54.96
	438	" Fred P. Herkel, plumber	9.35
	439	" Borden's C. M. Co.,.....	10.32
	440	" E. A. Bogue, M. D., dentist....	38.00
			\$1,351.59

Check No.			
	441	Paid Dept. of Water	7.18
	442	" J. B. Foster, druggist	1.24
30	443	" Gaven Spence, jeweler	2.25
	444	" Hahne & Co., dry goods	3.37
	445	" J. S. Clark & Co., coal	40.50
	446	" Public Service Corp.,	8.20
	447	" Miss Coeyman, housekeeper....	20.00
		" May Dever, help.....	20.00
	448	" Carlotta Heath	25.00
	449	" Mr. Gatfeld	7.52
	450	" N. Y. N. J. Tel. Co.,	8.15
	451	" Carlotta Heath	15.00
40	452	" Stephen Tevian, carpet repairer	16.50

First Account of Trustee.

Check No.

453	Paid	Suit of clothes.....	\$51.00	
454	"	Borden's C. M. Co.....	8.31	
455	"	Francis Pursell, caterer	1.20	
456	"	E. Eugene Wells, fish.....	4.10	
457	"	Jancovius & Son, carpet cleaners	5.40	
458	"	Laiblin & Co., cleaners	11.60	
459	"	Carlotta Heath	48.05	
460	"	F. R. Maddock, paid by him		10
		for wages, etc.	131.84	
461	"	Miss Coeyman, housekeeper....	25.00	
	"	May Dever, help	20.00	
462	"	Public Service Corp.,	7.10	
463	"	Carlotta Heath	45.17	
464	"	Emma B. Gould, Lowell, Mass.	7.50	
465	"	F. J. Hull & Co., grain	14.70	
466	"	M. Plum, stationery	11.05	
467	"	Bordens C. M. Co.	23.10	20
468	"	Carlotta Heath	25.00	
469	"	C. Schneider, Jr., hardware	12.45	
470	"	Miss Coeyman, housekeeper....	25.00	
	"	May Dever, help	20.00	
471	"	Public Service Corp.,	6.20	
472	"	N. Y. N. J. Tel. Co.....	6.60	
473	"	Chas. M. Meeker, furniture....	10.75	
474	"	A. G. Spalding & Bro., sport-		
		ing goods	8.00	
475	"	Carlotta Heath	35.00	30
476	"	Carlotta Heath	12.00	
477	"	Lathrop & Cunningham, photos	15.50	
478	"	Bonwit-Teller & Co., dry goods.	39.00	
479	"	Wanamaker, dry goods	34.45	
480	"	F. J. Hull & Co., grain	13.75	
481	"	M. Luck, dressmaker	67.03	
482	"	Miss Coeyman, housekeeper....	25.00	
	"	Carlotta, expenses	2.52	
483	"	Julia, help	20.00	
	"	Carlotta Heath	5.00	40

First Account of Trustee.

Check No.

	484	Paid	F. R. Maddock for Carlotta and wages	\$103.25
	485	"	Public Service Corp.,	5.10
	486	"	E. B. Gould, Lowell, Mass.....	44.20
	487	"	J. B. Foster, druggist	11.52
	488	"	W. Wells, fish	12.42
10	489	"	Hahne & Co., dry goods	41.34
	490	"	Fidelity Trust Co., boxes	30.00
	491	"	Laiblin & Co., cleaners	4.50
	492	"	Francis Pursell, caterer	1.20
	493	"	L. S. Plaut & Co., dry goods....	5.05
	494	"	Dept of Water	7.20
	495	"	Violet Russell, Lowell, Mass...	19.50
	496	"	F. J. Hull & Co., grain	7.19
	497	"	Carlotta Heath	25.00
	498	"	Edward Glatfeld	26.00
20				<hr/> \$1,316.75

Check No.

	499	Paid	Bridget, servant	\$20.00
	500	"	Miss Tench, milliner	47.50
	501	"	P. J. Nash, horseshoer	19.00
	502	"	Joseph Allen, painter	13.71
	503	"	H. Klein, physician	8.50
	504	"	F. J. Hull & Co., grain	12.05
	505	"	A. & P. L. Bogue, dentist	58.00
30	506	"	Carlotta Heath	57.09
	507	"	Dept. of Water	5.00
	508	"	Public Service Corp.....	5.00
	509	"	Emma Bell	15.00
	510	"	N. Y. N. J. Tel. Co.....	7.20
	511	"	J. Ingerman, harness	2.60
	512	"	G. W. Stout, livery	3.00
	513	"	Dempsey Bros, crockery	3.50
	514	"	S. Schneider, Jr., hardware	3.83
	515	"	Bridget, servant	20.00
40	516	"	Bordens C. M. Co.....	20.19

First Account of Trustee.

Check No.

517	Paid	C. W. Couch	\$16.00	
518	"	Carlotta Heath	15.00	
519	"	J. S. Ripple, broker.....	12.50	
520	"	F. R. Maddock, Carlotta Heath.	13.75	
		Annie	28.70	
		Robert	132.00	
		Ice	8.25	
521	"	F. R. M. for Annie	34.50	10
522	"	Hahne & Co., dry goods	74.41	
523	"	Bonwit-Teller & Co., dry goods.	61.00	
524	"	Wanamaker, dry goods	36.85	
525	"	W. E. Wells, fish	8.48	
526	"	Laiblin & Co., cleaners	13.00	
527	"	Public Service Corp.,	7.90	
528	"	C. W. Couch	21.88	
529	"	Carlotta Heath	30.00	
530	"	F. R. Maddock for Bridget	20.00	20
531	"	C. W. Couch	19.70	
532	"	Bordens C. M. Co.....	9.63	
533	"	Gaven Spence, jeweler	7.95	
534	"	M. Plum, stationery	8.00	
535	"	W. F. Day & Bro., caterers	50.00	
536	"	F. Pursell, caterers	2.40	
537	"	F. P. Merkel, plumber	26.99	
538	"	J. B. Foster, druggist	8.35	
539	"	Dept. of Water	7.18	
540	"	Public Service Corp.,	4.60	30
541	"	L. S. Plaut & Co., dry goods ...	48.64	
542	"	N. Y. Tel. Co.....	14.25	
543	"	F. J. Hull & Co., grain	25.76	
544	"	Kimmerlie & Minder, florist....	18.05	
545	"	Borden's C. Milk Co.....	14.96	
546	"	L. Shemberg	4.00	
547	"	H. Klein	10.25	
548	"	C. W. Couch	2.00	
549	"	F. R. M. for Carlotta	100.44	
550	"	Annie	11.00	40

First Account of Trustee.

Check No.

	Paid	Lena, help	\$13.75
	"	Robert, coachman	96.00
	"	Ice	6.00
	551	" Annie and Bridget, help	45.00
	552	" Carlotta Heath	36.00
	553	" E. F. Heath for account	
		Laundry	3.05
10		Schneider,	3.21
		Cleveland	21.95
		Stedenfeld	40.05
	555	" Carlotta Heath	68.26
			25.00
			<hr/>
			\$1,539.55

Check No.

	556	Paid Gas Co.	10.20
	557	" Bridget, servant	20.00
20	558	" L. Ross, Recr.	399.34
	561	" E. A. & G. L. Bogue, dentist ..	68.00
	562	" Carlotta Heath	25.00
	563	" M. Luck, dressmaker	159.23
	564	" Public Service Corp.,	5.50
	565	" Annie Zimmer, help	25.00
	566	" P. J. Nash, horseshoer	25.00
	567	" Wanamaker, dry goods	72.92
	568	" Bonwit-Teller & Co., dry goods.	11.80
	569	" Gaven Spence, jeweler	17.95
30	570	" A. A. Eisele & Son, shoes.	17.00
	571	" J. B. Foster, druggist	8.80
	572	" Best & Co., milliner .....	.48
	573	" M. Plum, stationery	6.50
	574	" E. Wells, fish	11.48
	575	" Jas. G. McGill	4.50
	577	" N. Y. N. J. Tel., Co.,	10.25
	578	" Hahne & Co., dry goods	66.31
	579	" Carlotta Heath	10.00
	580	" Bridget Waldron, servant	32.00
40	581	" Annie, help	25.00

First Account of Trustee.

Check No.

582	Paid	Carlotta Heath	\$25.00	
583	"	Bordens C. M. Co.,	18.62	
584	"	Fidelity Trust Co., boxes	15.00	
585	"	Public Service Corp.,	6.40	
586	"	Tiffany & Co., jeweler	4.45	
587	"	Leo Haas, furrier	86.50	
588	"	J. H. Sliker, sprinkling	17.50	
589	"	Dept. of Water	4.06	10
590	"	J. P. Merkel, plumber	3.16	
592	"	Bridget, servant	20.00	
593	"	J. H. Clark & Co., coal	84.90	
		January 2, 1911.		
594	"	Dept. of Water	3.13	
595	"	J. Allen, painter	4.85	
596	"	Lothrop & Cunningham, photos	3.00	
597	"	Laiblin & Co., cleaners	7.00	
598	"	Public Service Corp.,	7.80	20
599	"	Carlotta Heath	25.00	
600	"	N. Y. Tel. Co.,	6.85	
601	"	Carlotta Heath	83.90	
602	"	Carlotta Heath	39.30	
603	"	F. R. Maddock, Robert	180.00	
		Lena	37.50	
		Ice	4.00	
604	"	Annie Zimmer, help	25.00	
606	"	F. J. Hull & Co., grain	28.39	
607	"	Miss Coeyman, housekeeper.....	5.00	30
608	"	J. S. Ripple, broker	35.83	
609	"	Bridget Waldron, servant	20.00	
610	"	L. S. Plaut & Co., dry goods..	40.86	
611	"	Gaven Spence, jeweler	35.25	
612	"	L. Jacobson	3.00	
613	"	M. Luck, dressmaker.....	72.45	
614	"	G. W. Stout, livery	3.00	
615	"	Wanamaker, dry goods	34.75	
616	"	J. J. Lowenstein, milliner	3.38	

First Account of Trustee.

Check No.

617	Paid	E. Wells, fish.....	\$9.68
618	"	Bordens C. M. Co.,	10.61

 \$2,047.38

Check No.

		619	Paid	Carlotta Heath	25.00
10		620	"	Violet Russell, Lowell Mass. ..	6.00
		621	"	Annie, help	25.00
		622	"	Public Service Corp.,	7.20
		623	"	Hahne & Co., dry goods	69.17
		624	"	Laiblin & Co., cleaners	5.40
		625	"	A. A. Eisele & Son, shoes	16.00
		626	"	Gaven Spence, jeweler	5.00
		627	"	Tiffany & Co., jeweler.....	2.30
		628	"	L. S. Plaut & Co., dry goods ...	15.00
		629	"	Public Service Corp.,	6.70
20		630	"	Carlotta Heath	25.00
		631	"	N. Y. Tel. Co.,	6.80
		632	"	Bordens C. M. Co.,	18.80
		633	"	M. Plum, stationery	5.52
		634	"	E. Wells, fish	7.92
		635	"	E. B. Gould, Lowell, Mass.	8.20
		636	"	Morse & Beals, Lowell, Mass...	8.50
		637	"	J. S. Ripple, broker	18.89
		638	"	Dr. Geo. W. Whitfield	13.00
		639	"	Chas. M. Decker, grocer	11.51
30		640	"	Dept. of Water	7.18
		641	"	Annie and Bridget, help	45.00
		642	"	Carlotta Heath	16.00
		643	"	Annie and Bridget, help.....	45.00
		644	"	L. Sheinberg	42.00
		645	"	R. A. Osborne, insurance	4.00
		646	"	Public Service Corp.,	5.90
		647	"	Carlotta Heath	25.00
		648	"	Bertha B. Heath	26.90
		649	"	Miss Parsons, Rogers Hall	
40				School	50.00

First Account of Trustee.

Check No.

650	Paid	Carlotta Heath, various items..	\$38.74	
651	"	Carlotta Heath, various items..	39.71	
652	"	Carlotta Heath, various items..	218.40	
653	"	Annie and Bridget, help	45.00	
654	"	Carlotta Heath	25.00	
655	"	Public Service Corp.,	5.60	
656	"	N. Y. N. J. Tel. Co.....	7.50	10
657	"	Fred P. Merkel, plumber	1.70	
658	"	C. Schneider, hardware	8.11	
659	"	W. Wells, fish	10.71	
660	"	Bordens C. M. Co.,	19.50	
661	"	Bonwit-Teller & Co., dry goods.	35.65	
662	"	Mrs. V. M. Best, milliner	56.65	
663	"	E. O. Padelford, drugs	3.65	
664	"	Carlotta Heath	50.00	
665	"	Wanamaker, dry goods	42.50	
666	"	J. B. Foster, drugs	5.83	20
667	"	Hahne & Co., dry goods	23.06	
668	"	Laiblin & Co., cleaners	22.80	
669	"	L. S. Plaut & Co., dry goods....	29.87	
670	"	G. W. Walters, photos	28.20	
671	"	R. Gray, Jr., hardware	31.05	
672	"	J. E. Clark & Co., coal.....	52.66	
674	"	Carlotta Heath	50.00	
675	"	Public Service Corp.,	5.40	
676	"	Dept. of Water	12.20	
677	"	Bridget and Annie, help	57.00	30
678	"	J. Vreeland, carpenter	1.71	
679	"	Carlotta Heath	20.00	
680	"	Rogers Hall School, balance due	19.77	
			\$1,541.86	

Check No.

681	Paid	Annie and Bridget, help	45.00	
682	"	Bordens C. M. Co.....	18.72	
683	"	N. Y. Tel. Co.,	5.25	40

First Account of Trustee.

Check No.			
	684	Paid Public Service Corp.,	\$6.60
	685	" S. Schneider, Jr., hardware	3.35
	686	" Public Service Corp.,	1.80
	687	" M. Luck, dressmaker	209.23
	688	" Bertha B. Heath	40.00
	689	" F. J. Hull & Co., grain	26.92
10	690	" Carlotta Heath	15.00
	691	" Carlotta Heath	19.65
	693	" Public Service Corp.,	7.00
	695	" Carlotta Heath	
		" Carlotta Heath	60.14
	696	" E. Wells, fish	4.65
	697	" C. E. Sutphen, physician	4.00
	698	" L. S. Plaut & Co., dry goods	3.60
	699	" Hahne & Co., dry goods	6.89
	700	" P. J. Nash, horseshoer	27.00
20	701	" Fidelity Trust Co., boxes	30.00
	702	" Kimmerlie & Minder, florist	12.35
	703	" Gaven Spence, jeweler	35.50
	704	" Annie and Bridget, help	51.00
	705	" N. Y. Tel. Co.,	2.70
	706	" Carlotta Heath for Twilight Inn	32.00
	707	" Carlotta Heath for Twilight Inn	32.00
	708	" Carlotta Heath for Twilight Inn	32.00
	709	" Annie and Bridget, help	45.00
	710	" Philip Smith, watching house	
30		17—50c.,	8.50
	694	" Robert Sutler, 14 weeks, \$12.	168.00
		" Lena, April 29 to Aug 5. 14	
		\$2.70	37.80
		" Lena, extra	4.05
		" Ice	4.95
		" Sundries	4.87
		" Piano tuning	3.00
		" Carlotta Heath	16.75
		" Lawn seed	4.43
40		" Robert, 5 weeks, \$12.	60.00

First Account of Trustee.

Check No.

	Paid	Annie Zimmer, help	.....	\$20.20	
	"	Carlotta Heath, cash	.....	32.23	
	"	Sundries	.....	.65	
711	"	Robert Cutler, 7 weeks	\$12....	84.00	
	"	Lena	.....	28.35	
	"	Carlotta Heath	.....	17.00	
	"	Ice, 3.50; stockings, 18.	.....	3.68	
712	"	C. Schneider, Jr.,	.....	4.34	10
713	"	Wm. H. Cleveland, wagon maker		33.40	
714	"	Kimmerlie & Minder, florist	....	1.50	
715	"	F. J. Hull & Co., grain	.....	24.74	
				<hr/>	
				\$1,339.79	
Total allowance				.....	\$29,558.85

ESTATE OF MARGARET C. HEATH.

Statement of assets in hands of executor at time
of this accounting. 20

	FACE VALUE.	PRESENT VALUE.	
E. A. Crawford, bond and mortgage	.....	\$700.00	
J. Fredericks, " " "	.....	2,000.00	
S. Gaiser, " " "	.....	2,000.00	
Chas. Hochstuhl, " " "	.....	2,600.00	
E. E. Sayre, " " "	.....	1,200.00	
E. Wagner, " " "	.....	3,000.00	
M. J. Wissmer, " " "	.....	2,000.00	
F. R. Maddock, " " "	.....	21,500.00	
J. J. Murphy, " " "	.....	2,500.00	
R. M. Pearce, " " "	.....	500.00	
Stock Am. Tel. & C. Co., 80 shares	.....\$8,000.00	6,800.00	
Bonds Chic. St. L. & N. O., 5/1000	..... 5,000.00	6,000.00	30
" Cin. Ind. St. L. & Chic. 1/1000	..... 1,000.00	940.00	
" Chic. Mil. & St. Paul, 3	..... 3,000.00	3,150.00	
" Colo. Spgs. L. & P. Co., 2	..... 2,000.00	1,800.00	
" Hackensack Water, 11	..... 11,000.00	9,350.00	
" Ill. Cent. R. R., 1	..... 1,000.00	950.00	
" Kans. City Ft. S. & M., 2	..... 2,000.00	1,500.00	
" Lockport Gas & E. L. Co., 4	..... 4,000.00	3,600.00	
" Louisville & Jeff. B. Co., 7	..... 7,000.00	6,090.00	
" Mich. Cent. R. R., 2	..... 2,000.00	1,900.00	
" Newark City Water, 2/500	..... 1,000.00	1,000.00	
" " " 2/1,000	..... 2,000.00	2,000.00	
" " " 1/500 3/100	..... 800.00	800.00	
" 10 N. Y. C. L. Shore Coll.	..... 10,000.00	8,200.00	
" 5 " " " Mich. Cont. Co. L.	..... 5,000.00	4,000.00	
" 5 St. L. & S. Fran. R. Co.	..... 5,000.00	4,250.00	
" 1 U. N. J. & C. Co.	..... 1,000.00	950.00	40

First Account of Trustee.

Bonds	1	St. L. & S. Francisco.....	1,000.00	950.00
"	1	Elmira Water	1,000.00	900.00
"	1	" " 500.....	2,000.00	1,800.00
"	2	Republic of Mex., 2/970.....	1,940.00	1,900.00
"	1	Hudson Gas Co.....	1,000.00	1,022.50
"	3	Gas & Electric of Bergen Co., 1,000..	3,000.00	2,880.00
"	1	" " " " " " 1,000..	1,000.00	970.00
Total				\$111,702.50
Household goods				\$1,476.00
Less sale of one horse.....				75.00
				\$1,401.00
10	Jewelry			1,648.20
				\$114,751.70
Balance on hand, \$45.00; and in bank, \$255.41.....				300.41
Total				\$115,052.11

ESTATE OF MARGARET C. HEATH.

RECAPITULATION

20	Amount chargeable to account- ant as to corpus (see p. 1) ..	\$153,387.68
	Amount for which allowance is prayed as to corpus (see p. 2)	41,521.77
	Balance of corpus on hand....	\$111,865.91
	Amount chargeable to account- ant as to income (see p. 9) ..	\$32,745.05
30	Amount for which allowance is prayed as to income (see p. ...)	29,558.85
	Balance of income on hand....	\$3,186.20
	Balance of corpus and income on hand (see p. ...)	\$115,052.11

First Account of Trustee.

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

Frederick R. Maddock, the above named executor and trustee, being duly sworn upon his oath deposes and says that the foregoing account is in all things just and true, both as to the charge and discharge thereof, according to the best of his knowledge and belief.

10

Sworn and subscribed to before me
 this , day of October, 1911.

20

30

40

Report of Expert Accountant.

Newark, N. J., November 7, 1912.

Mr. Oscar Keen,
Special Master,

Between Carlotta Heath, complainant, and
Frederick R. Maddock, Executor and Trustee
of Margaret C. Heath, deceased, defendant.

10

Dear Sir:

In pursuance of the order of the Court of Chancery appointing me as expert accountant to examine all the books of account, vouchers, papers and memoranda containing the record of the accounts of Frederick R. Maddock, executor and trustee of Margaret C. Heath, deceased, pertaining to or in any wise relating thereto, and to make up and state an account of all the transactions of the defendant in connection with his trust and the said trust estate. I would respectfully report.

20

CORPUS.

First, that I verified the stocks, bonds and mortgages as stated in the inventory, with a small book kept by Mr. Maddock several years before the death of Mrs. Margaret C. Heath and found them to be accurately stated. I also compared the other items that the defendant charged himself with in the *corpus* with check book and vouchers and found it correct, save the entry of \$27.48, amount received for sale of household goods which should not appear here, the correct amount being \$153,360.20.

30

The payments on account of *corpus* consisting of legacies, funeral expenses, &c. I verified either by receipted voucher or check, the amount charged as paid out in legacies agreeing with the amounts stated in the will of Mrs. Heath, the total being \$41,521.77, leaving the amount remaining in the *corpus* \$111,838.43.

40

I understand that Mr. Maddock testified that at times he advanced money for the benefit of Carlotta

Report of Expert Accountant.

Heath; these advances were on account of payments of legacies and expenses connected with the *corpus*, not having at times sold sufficient securities to meet them. I found that at all times the receipts from the income were greater than the payments made on that account. The only means I had of ascertaining the correct amounts credited on sale of securities or like purchases for the *corpus* was by comparing them with the entries in the check book; this I did. 10

INCOME.

The receipts from this source were mostly from interest on railroad bonds, bonds and mortgages and dividends. These I took up individually and verified that every interest and dividend had been properly credited.

There are a few small credits. Rebate on ticket \$4.35; old buggy \$10.00; some small cross entries and an interest from the Security Savings Bank, which I verified from the Bank pass book. The total income amounting to \$32,745.05, the addition of the various items being gone over and found correct. 20

PAYMENTS ON ACCOUNT OF INCOME.

The payments on account of income from March, 1906, to February 6, 1908, were kept in the books of Edmund F. Heath and Son; these I verified by receipted bills, endorsed checks and by entries upon the ledger of the above firm where no bill or check was produced and where cash was paid for them. The wages of the servants I verified separately, seeing that no duplicate payments were made. 30

From February 6, 1908, to September 30, 1911, the end of the accounting Mr. Maddock made all payments from the account in bank he kept as trustee. The principal part of the amount disbursed was shown by receipted vouchers; where they were missing I examined the endorsement of the checks for the amounts 40

Report of Expert Accountant.

charged, and where cash payments were charged and no voucher or check produced I was obliged to check them off from the stub of the check book kept by Mr. Maddock as trustee. Most of those items I have noted on my copy of the accounting.

10 In April, 1909, Mr. Maddock was married, and from that date I have made a careful statistical account of all expenses under the heads of (1) Cash paid Carlotta, (2) Personal items paid for her, (3) Food, (4) House Expenses, (5) Wages, (6) Pony and Carriage, (7) Fares, Board and Schooling, (8) Repairs, Taxes and all Estate expenses. See schedule annexed. The total amount of all payments in this accounting were \$29,558.85, which should be reduced by two overcharges of Kimmerle and Minden, amounting to \$14.15; these would reduce the proper amount to \$29,544.70 and would leave the net amount of income over payments of \$3,200.35 or the total amount remaining to the credit
20 of the trust a/c. \$115,038.78.

I have gone over all additions and proved them, and have gone to the two trust and safe deposit companies and verified the securities by actual examination of their number and amounts now standing to the credit of the estate as stated in the inventory of September 30, 1911.

I found since that date that the following securities had been sold, viz:

30	S. Gaiser mortgage	\$ 2,000.00
	F. R. Maddock mortgage.....	21,500.00
	R. M. Pearce mortgage.....	500.00
		<hr/>
		\$24,000.00

and the following mortgages purchased:

	John P. Streib mortgage.....	\$ 5,000.00
	Joseph Mohtor do	4,000.00
	George Jochim do	1,500.00
	David Harper do	3,000.00
		<hr/>
40		\$13,500.00

Report of Expert Accountant.

The difference between these two amounts I verified by the bank pass book as being deposited in the bank, the credit there being over \$12,000.00.

The October 1st, 1911, interests do not appear in this accounting and there is also an interest of seventy-five dollars due from R. M. Pearce as of the date of November 1, 1906.

These amounts should be credited in the next accounting. 10

Very respectfully submitted,

RICHARD F. STEVENS,
*Certified Public Accountant of New
Jersey and New York.*

SCHEDULE NO. 1.

STATISTICAL AMOUNT OF ALL PAYMENTS MADE FROM
APRIL, 1909, TO SEPTEMBER 30, 1911. 20

	1909	1910	1911	Total.
Cash	\$ 452.72	\$ 704.44	\$ 574.14	\$ 1,731.30
Personal Items	961.40	1,820.82	1,052.82	3,835.04
Food	256.26	176.95	114.29	547.50
House Expenses	254.32	365.81	161.27	781.40
Wages	847.90	1,226.05	1,234.95	3,308.90
Pony and Carriage.....	101.24	202.59	128.53	432.36
Fares, Board and Schooling	614.70	73.97	165.77	854.44
Repairs, Taxes and Estate				
Expenses	768.92	536.77	179.41	1,485.10
	\$4,257.46	\$5,107.40	\$3,611.18	\$12,976.04

Charges on page 17.....\$	86.13	30
18.....	1,495.74	
19.....	2,257.25	
20.....	1,351.59	
21.....	1,316.75	
22.....	1,539.55	
23.....	2,047.38	
24.....	1,541.86	
25.....	1,339.79	

\$12,976.04

40

*Second Account of Trustee.***Second Account of Trustee.**

The second account of Frederick R. Maddock, Executor and Trustee of the Estate of Margaret C. Heath, deceased, City of Newark, in the County of Essex and State of New Jersey, as well of and for the Estate which has come to his hands to be administered as for his payments and disbursements out of the same.

First. This accountant charges himself	
To amount of assets on hand as to	
Corpus at time of first accounting...	\$111,865.91
Less error as found by certified accountant	27.48
	<hr/>
Balance of Corpus.....	\$111,838.43
Balance of Income on hand at last accounting	3,186.20
	<hr/>
Total Corpus and Income.....	\$115,024.63

Error in First Accounting of Kimmerle and Minder item corrected in the following income account page 4.....	\$14.15
Also item of R. H. Pearce on same page....	\$75.00

INCOME ACCOUNT.

This accountant charges himself amounts received as follows:

1911			
Oct.	21—	Interest from Mr. Hochstuhl	\$ 65.00
"	21—	" " Mr. E. E. Sayre.....	30.00
Nov.	2—	" " Mr. F. R. Maddock.....	537.50
"	2—	" " Ill. Cent. R. R.	20.00
"	2—	" " Kansas City, Fort S. & M. 2/20.....	40.00
"	2—	" " Republic of Mexico	24.25
"	2—	" " Colo. Spgs. L. & P. Co. 2/25.....	50.00
"	2—	" " Cin. Ind. St. L. & C.....	10.00
"	2—	" " Hudson Gas Co.	25.00
"	2—	" " Gas & Elec. of Bergen Co.....	100.00
Dec.	7—	" " Lydia B. Iffland	75.00
"	1—	" " Am. Tel. & Cable Co.....	100.00
Nov.	18—	" " Edward L. Eska, ice box.....	5.00

Second Account of Trustee.

Dec.	5—	Interest from R. M. Pearce.....	\$25.00
"	5—	" " Jacob H. Fredericks	50.00
"	15—	" " Chic. St. L. and Mo.....	125.00
"	18—	" " F. R. Maddock in full.....	144.31
1912	—	" " Deposit Interest	19.45
Jan.	10—	" " James J. Murphy	100.00
"	23—	" " Samuel Gaiser	50.00
"	1—	" " Elmira Water L. & R. 1/25 4/12½.....	75.00
		" " Mex. Cond. 2/12 12½	24.25
		" " St. L. & San F. 1/25 5/20	125.00
		" " Mich. Cent. R. R. 2/20	40.00
		" " Chic. Mil. & St. P. 3/25	75.00
		" " Hackensack Water 11/20	220.00
"	24—	" " Mary Wissmer	50.00
Feb.	21—	" " Joseph Molitor	100.00
Mch.	1—	" " Am. Tel. & Cable Co.....	100.00
"		" " Kenneth McLean Yeates	33.25
"	22—	" " E. E. Sayre	30.00
Apl.	2—	" " Mrs. Fredericks	50.00
"	22—	" " Mr. Hochstuhl	65.00
Feb.	1—	" " Merchants National Bank	15.66
Mch.	1—	" " " " "	27.94
Apl.	1—	" " " " "	21.22
"	30—	" " " " "	18.86
Feb.	1—	" " N. Y. C. & H. R. R. 10/17½.....	175.00
"	1—	" " " " 5/17½.....	87.50
"	1—	" " City of Newark 3/10 3/2 2/20.....	76.00
"	1—	" " Cin. Ind. St. L. & C. 2/10.....	20.90
"	1—	" " Lockport Gas 4/25	100.00
Mch.	1—	" " Louisville & Jeff. B. Co. 7/20.....	140.00
"	1—	" " U. N. J. & C. Co.....	20.00
Apl.	1—	" " Kan. City Ft. S. M. 2/20.....	40.00
		" " Colo. Spgs. L. P. Co. 2/25.....	50.00
		" " Ill. Central R. R.	20.00
		" " Mex. Cond. 2/12 12½	24.25
May	1—	" " Gas & Elec. of Bergen Co. 4/25.....	100.00
"		" " Hudson Co. Gas	25.00
"	20—	" " James J. Murphy	75.00
"	21—	" " John B. Streib	125.00
June	1—	" " Am. Tel. & Cable Co.....	100.00
"	8—	" " Lydia B. Iffland	75.00
"	15—	" " Ill. Cent. R. R. Co.....	125.00
July	1—	" " Samuel Gaiser	50.00
Dec.	1—	" " Gaven Spence	1.00
			\$4,095.44
			\$4,095.44
1912—			\$
July	1—	Interest from Elmira W. L. & R. Co. 1/25.....	25.00
		" " " " 4/12	50.00
		" " St. L. and San F. R. R. 5/20.....	100.00
		" " " " 1/25.....	25.00
		" " Mich. Cent. R. R. 2/20.....	40.00
		" " Chic. M. & St. P. 3/25.....	75.00
		" " Mex. Cond. 2/12 12½	24.25
		" " Hack. Water Co. 11/20.....	220.00
"	25—	" " Mary Wissmer	50.00
"	13—	" " Barbara Joachim & Geo. J.....	37.50
Sept.	1—	" " Joseph Molitor	100.00
"	3—	" " Am. Tel. & Cable Co.....	100.00
"	23—	" " E. E. Sayre	30.00

Second Account of Trustee.

Aug.	1—	Interest from N. Y. C. & H. R. R. R.	5/17.50.....	\$87.50
		“ “ “	10/17.50.....	175.00
		Lockport G. & E.	4/25.....	100.00
		Cin. Ind. St. L. & C.	.....	10.00
		City of Newark	3/2.....	6.00
		“ “	3/10.....	30.00
		“ “	2/20.....	40.00
Sept.	1—	“ “	U. N. J. & Canal Co. 1/20.....	20.00
Oct.	1—	“ “	Colo. S. L. & P. Co. 2/25.....	50.00
		Ill. Cent. R. R.	.....	20.00
		Rep. of Mexico	2/12 12½.....	24.25
		Kansas City, Fort S. & M.	.....	40.00
Sept.	1—	“ “	Louis. and Jeff. B. Co. 7/20.....	140.00
Oct.	14—	“ “	Samuel Gaiser.....	28.89
Nov.	11—	“ “	David Harper.....	90.00
“	11—	“ “	Jacob H. Fredericks.....	50.00
“	14—	“ “	Carlotta Heath for Hahne & Co.....	2.69
“	18—	“ “	John J. Woods.....	37.50
“	18—	“ “	Charles Hochstuhl.....	65.00
“	22—	“ “	John Streib.....	125.00
Dec.	3—	“ “	Cin. Ind. St. L. & C.....	10.00
		Hudson Co. Gas Co.	.....	25.00
		Gas & Elec. of Bergen Co.	4/25.....	100.00
		Am. Tel. & Cable Co.	.....	100.00
“	16—	“ “	John B. Iffland, Jr.....	75.00
		Ill. Cent. R. R.	.....	125.00
Jan.	1—	“ *	Merchants National Bank.....	22.78
Nov.	1—	“ “	“ “ “.....	19.59
Oct.	1—	“ “	“ “ “.....	17.03
Sept.	1—	“ “	“ “ “.....	16.72
Aug.	1—	“ “	“ “ “.....	15.33
July	1—	“ “	“ “ “.....	16.23
June	1—	“ “	“ “ “.....	19.09
May	1—	“ “	“ “ “.....	23.68
1913—				
Jan.	15—	“ “	Elmira Water 1/25 4/12 12½.....	75.00
		St. L. and San Francisco	5/20.....	100.00
		“ “	1/25.....	25.00
		Mich. Cent. R. R.	2/20.....	40.00
		Chic. M. & St. P.	3/25.....	75.00
		Hackensack Water Co.	11/20.....	220.00
		Mexican Cons.	2/12 12½.....	24.25
“	16—	“ “	Joseph Molitor.....	100.00
“	25—	“ “	Mary Wissmer.....	50.00
Feb.	1—	“ “	Barbara & Geo. Joachim.....	37.50
“	1—	“ “	James J. Murphy.....	50.00
Mch.	1—	“ “	Kenneth Maclean, Chas. Yates.....	33.25
				\$7,529.47
1913—				
Mch.	1—	Interest from American Tel. and Cable Co.	.....	\$7,529.47
“	19—	“ “	Louis. & Jeff. B. Co. 7/20.....	140.00
“	1—	“ “	U. N. J. & Canal Co.....	20.00
		N. Y. C. & H. R. R. Co.	5/17.50.....	87.50
		“ “	10/17.50.....	175.00
		Lockport Gas & Elec.	4/25.....	100.00
		Newark City	2/20 3/10 3/2.....	76.00
		Cin. Ind. St. L. & C.	.....	10.00
“	31—	“ “	E. E. Sayre.....	30.00
Apl.	21—	“ “	Chas. F. Hochstuhl.....	65.00
May	17—	“ “	Jacob H. Fredericks.....	50.00
“	21—	“ “	John Streib.....	125.00

Second Account of Trustee.

May	26—	Interest from	John J. Woods	\$37.50
June	2—	"	Am. Tel. and Cable Co.....	100.00
			Sale of Phaeton	15.00
			Ill. Central R. R.	20.00
			Kans. Cty. F. S. & M. 2/20.....	40.00
			Mex. Cond. 2/12 12½	24.25
			Colo. Spgs. L. & P. Co. 2/25.....	50.00
			Cin. Ind. St. L. & C.....	10.00
			Hudson Co. Gas	25.00
			Gas & Elec. of Bergen Co. 4/25.....	100.00
June	7—	"	Lydia B. Iffland	75.00
"	16—	"	Ill. Cent. R. R. Chic. St. L. & R.....	125.00
July	1—	"	Elmira Water 4/12.50 1/25.....	75.00
			St. L. & San F. 1/25 5/20.....	125.00
			Mich. Cent. R. R. 2/20.....	40.00
			Chic. Mil. St. Paul 3/25.....	75.00
			Hackensack Water 11/20	220.00
			Mexican Cond. 2/12 12½.....	24.25
Aug.	29—	"	Louis V. Hill	5.00
Sept.	2—	"	Am. Tel. and Cable Co.....	100.00
"	15—	"	E. E. Sayre	30.00
July	31—	"	Frank E. Wissmer	50.00
Aug.	29—	"	Joseph Mollitor	100.00
			Merchants National Bank.....	191.78
Oct.	9—	"	Essex County	60.00
			Cin. Ind. St. L. & C.....	10.00
			City of Newark 3/2 3/10 2/20.....	76.00
			Lockport Gas	100.00
			N. Y. C. & H. R. R.....	175.00
			"	87.50
			U. N. J. & C. Co.....	20.00
			Colo. Spgs.	50.00
			Mexican Cond.	24.25
			Louis. and J. B. Co.....	140.00
			Kans. City F. S. & M.....	40.00
			Ill. Central	20.00
"	22—	"	Jacob Fredericks	62.50
"	21—	"	Chas. F. Hochstuhl	65.00
Nov.	25—	"	John J. Woods	37.50
"	21—	"	John Streib	125.00
Dec.	1—	"	Am. Tel. and Cable Co.....	100.00
Nov.	20—	"	James J. Murphy	100.00
Oct.	23—	"	Public Service Co. overpayment.....	.20
Nov.	23—	"	Merchants National Bank.....	21.37
			Kimmerle & Minder, omitted on last accounting	14.15
			Int. R. M. Pearce omitted in last accounting.....	75.00

 \$11,569.22

This accountant prays allowance for bills as follows:—

1911—Voucher No.				
Oct.	6—	717	Public Service Gas.....	\$15.00
"	12—	720	Dept. of Water.....	7.18
"	12—	721	N. Y. Telephone Co.....	6.35
"	18—	722	C. Schneider, Jr., hardware.....	35
		723	John B. Foster, druggist.....	2.78
		724	Chas. M. Decker & Bro., grocer.....	15.68
		725	Julia A. Hamilton, housekeeper.....	92.90
"	20—	726	Bordens Cond. Milk Co.....	23.08
"	26—	727	L. Shrinberg, millinery.....	48.00
"	27—	728	Chas. M. Decker & Bro., grocer.....	2.37
"	31—	729	Carlotta Heath	15.00

Second Account of Trustee.

Oct. 28—	730	Bordens Cond. Milk Co.....	\$4.99
Nov. 2—	731	Julia A. Hamilton, housekeeper.....	92.90
" 2—	732	Carlotta Heath	31.70
" 2—	733	F. R. Maddock.....	79.46
" 4—	734	Public Service Gas.....	5.60
" 4—	735	Dr. Ernest Buckley.....	1.50
" 4—	736	C. Colyer & Co., carriage.....	8.95
" 4—	737	F. Keers and Co., pictures.....	2.60
" 4—	738	Bonwit-Teller & Co., dry goods.....	86.35
" 4—	739	John Wanamaker, dry goods.....	15.65
" 4—	740	Hahne and Co., dry goods.....	32.37
" 4—	741	L. S. Plaut and Co., dry goods.....	18.14
" 4—	742	M. Plum, printer.....	4.50
" 4—	743	W. Eugene Wells, fish.....	5.73
" 7—	744	Julia A. Hamilton, housekeeper.....	40.00
" 17—	745	" " " ".....	112.00
" 17—	746	" " " ".....	10.00
" 17—	747	F. C. Riley and Son, mason.....	28.40
" 20—	748	R. A. Osborne, insurance.....	40.00
" 30—	749	Julia A. Hamilton, housekeeper.....	92.00
" 30—	750	Gaven Spence, jeweler.....	29.25
" 30—	751	Laiblin & Co., cleaners.....	7.85
" 30—	752	Fidelity Trust Co.....	15.00
" 30—	753	N. Y. Telephone Co.....	5.90
" 30—	754	J. S. Clark & Co., coal.....	12.50
Dec. 3—	755	Public Service Gas.....	8.50
" 5—	756	Tyler Parmly, Comptroller, taxes.....	42.00
" 9—	757	F. J. Hull and Co., grain.....	40.59
" 11—	758	Department of Water.....	7.18
" 13—	759	Julia A. Hamilton, housekeeper.....	50.00
" 14—	760	L. Shrinberg, millinery.....	55.00
" 14—	761	Carlotta Heath	10.00
" 14—	762	Bertha B. Heath, for house.....	92.90
" 18—	763	Robert L. Ross, rec. taxes.....	411.73
" 20—	765	" " " ".....	197.00
" 23—	766	Gaven Spence, jeweler.....	26.00
" 23—	767	Dr. Carl E. Sutphen, physician.....	5.00
" 23—	768	A. A. Eisele & Son, shoes.....	18.00
" 23—	769	N. Y. Telephone Co.....	3.25
" 23—	770	C. Schneider, Jr., hardware.....	6.75
" 23—	772	J. S. Clark & Co., coal.....	40.50
" 23—	773	John B. Foster, druggist.....	8.15
" 23—	774	John Wanamaker, dry goods.....	45.75
" 23—	775	Lipstein Bros., papers.....	3.86
" 23—	776	L. S. Plaut and Co., dry goods.....	45.96

 \$2,133.75

1911—Voucher No.

Dec. 23—	777	Hahne and Co., dry goods.....	30.50
" 23—	778	Laiblin and Co., cleaners.....	2.80
" 27—	781	Catharine F. Glen.....	77.76
" 28—	782	Bertha B. Heath, house.....	92.90
1912—			
Jan. 5—	783	Public Service Gas.....	8.50
" 11—	785	Bertha B. Heath.....	92.90
" 18—	786	J. H. Slicker, watering.....	18.00
" 23—	801	P. J. Nash, shoer.....	19.00
	802	Bertha B. Heath, house.....	92.90
	803	Carlotta Heath	50.00
	804	Lum, Tambllyn and Colyer.....	150.00
	805	Bertha B. Heath.....	12.00

Second Account of Trustee.

Feb. 8—	807	J. E. Fleming, coal.....	\$94.00
	808	F. J. Hull and Co., grain.....	21.94
	809	Public Service Gas.....	15.30
	810	Bertha B. Heath, house.....	92.90
	811	Carlotta Heath.....	20.00
	812	F. J. Hull and Co., grain.....	11.37
	813	Kimmerle and Minder, florist.....	5.65
	814	G. W. Stout, livery.....	1.50
	815-816	Laiblin & Co., dyers.....	12.00
	817	G. H. Walters, photos.....	7.50
	818	Geo. P. Priester, sport. goods.....	1.50
	819	M. Plum, printer.....	3.65
	821	Francis J. Pursell, caterer.....	.80
	822	N. Y. Telephone Co.....	9.00
	823	Leopold Haas, furrier.....	30.00
	824	Frederick Keers & Son, pictures.....	5.00
	825	R. A. Osborne, insurance.....	40.00
	826	John Wanamaker, dry goods.....	43.32
	827	Bertha B. Heath.....	5.00
	828	L. S. Plaut and Co., dry goods.....	5.49
	829	John B. Foster, druggist.....	4.55
	830	Hahne and Co., dry goods.....	9.90
	831	Bertha B. Heath, house.....	92.90
	832	Carlotta Heath.....	25.00
	833	Frederic B. Thomason, insurance.....	12.00
	835	Public Service Gas.....	14.50
	836	Bertha B. Heath, house.....	100.00
Mar. 13—	837	Thos. J. Gray, appraisement.....	5.00
	838	F. J. Hull and Co., grain.....	20.81
“ 21—	839	Fairlie & Wilson, coal.....	77.00
“ 21—	840	Hahne and Co., dry goods.....	16.64
“ 21—	841	Gaven Spence, jeweler.....	12.38
	842	Ira Budd, plumber.....	4.18
	843	C. O. Padelford, druggist.....	2.45
	844	G. W. Stout, livery.....	5.50
	845	Dept. of Water.....	7.18
“ 22—	846	Bertha B. Heath, house.....	92.90
“ 30—	847	Geo. M. Whitfield, treasurer.....	16.25
Apl. 4—	848	Fred P. Merkel, plumber.....	12.16
“ 5—	849	N. Y. Telephone Co.....	5.25
“ 8—	850	Public Service Gas.....	12.10
“ 9—	851	Carlotta Heath.....	8.75
“ 9—	852	Bertha B. Heath, house.....	92.90
“ 19—	853	“ “ “ “.....	92.90
“ 20—	854	F. J. Hull and Co., grain.....	13.26
“ 24—	855	Carlotta Heath.....	15.50
“ 28—	856	John Wanamaker, dry goods.....	6.50

1,851.64

1912—Voucher No.

Apl. 29—	857	New York Telephone Co.....	5.50
	858	Ira Budd, plumber.....	19.97
	859	Fairlie and Wilson, coal.....	27.50
	860	C. Schneider, Jr., hardware.....	4.08
May 3—	861	Bertha B. Heath, house.....	92.90
	862	Carlotta Heath.....	25.00
“ 6—	863	Bertha B. Heath, house.....	65.00
“ 8—	864	Public Service Gas.....	7.70
“ 17—	865	Robert Cutler, coachman.....	12.00
“ 17—	866	Iena (cook).....	9.45
“ 17—	867	Frederic B. Thomason, insurance....	22.50
“ 18—	868	Jeanette McMillan, chaperone.....	2500.00

Second Account of Trustee.

May 20—	869	Margaret Reichart, help.....	\$20.00
“ 22—	870	Jeanette McMillan	220.00
“ 25—	871	Carlotta Heath	9.45
	872	Robert Cutler, coachman.....	12.00
	873	New York Telephone Co.....	8.80
“ 25—	874	Fairlie and Wilson, coal.....	5.50
	875	Fidelity Trust Co.....	30.00
“ 28—	877	Carlotta Heath	16.61
“ 31—	878	“	9.45
“ 31—	879	Robert Cutler, coachman.....	12.00
June 4—	880	Carlotta Heath	110.00
“ 8—	881	Robert Cutler, coachman.....	12.00
“ 8—	882	Lena Stadelhoffer, help.....	9.45
“ 14—	883	Public Service Gas.....	14.50
“ 15—	884	Robert Cutler, coachman.....	12.00
“ 27—	885	Carlotta Heath	52.70
July 8—	886	Chas. M. Decker & Bro., grocer.....	25.75
	887	New York Telephone Co.....	18.88
	888	Dept. of Water.....	7.20
	889	Dr. John L. Courrier, dentist.....	40.00
	890	Tiffany and Co., jewellers.....	4.49
	891	Jas. F. McDonnell, grocer.....	49.79
	892	M. Plum, printer.....	7.75
	893	John J. Cattanaach, veterinary.....	4.00
	894	P. J. Nash, horse shoer.....	12.00
	895	Bordens Cond. Milk Co.....	13.33
	896	Fairlie and Wilson, coal.....	5.50
	897	Francis J. Pursell, caterer.....	2.30
	898	C. D. Padelford, druggist.....	2.93
	899	John B. Foster, druggist.....	5.90
Aug. 7—	900	F. J. Hull and Co., grain.....	10.58
Sept. 5—	901	James F. McDonnell, grocer.....	9.76
	902	C. Schneider, Jr., hardware.....	2.95
	903	Department of Water.....	4.06
	904	Frederic B. Thomason, insurance.....	12.00
“ 16—	905	Robert Cutler, coachman.....	10.00
“ 18—	906	N. Y. Telephone Co.	6.75
Oct. 3—	907	F. W. V. Engelberger Co., plumber...	7.60
“ 3—	908	N. Y. Telephone Co.....	2.50
“ 5—	909	Robert Cutler, coachman.....	8.00
“ 8—	910	Carlotta Heath	25.00
“ 17—	911	“	20.00
“ 20—	912	“	25.00
“ 23—	913	Merchants National Bank, boxes.....	3.20
		“	20.00
“ 28—	914	Carlotta Heath	25.00
“ 30—	915	Richard J. Franz, recr. taxes.....	401.90
Nov. 1—	916	F. C. Riley & Son, mason.....	9.10
“ 2—	917	Carlotta Heath	16.45
“ 4—	918	Algernon T. Sweeney, harness for pony	20.00

1,935.73

1912—Voucher No.

Nov. 4—	919	Carlotta Heath	50.00
“ 11—	920	“	25.00
	921	Public Service Gas Co.....	13.10
“ 13—	922	Carlotta Heath	16.45
“ 14—	923	“	18.00
“ 16—	924	“	14.45
“ 15—	925	Hahne and Co., dry goods.....	31.80
“ 16—	926	Carlotta Heath	25.00
“ 22—	927	“	25.00

Second Account of Trustee.

	928	Carlotta Heath	\$14.45
Nov. 30—	929	“ “	14.45
Dec. 2—	930	“ “	25.00
“ 5—	931	Fidelity Trust Co.....	15.00
	932	Department of Water.....	4.06
	933	Public Service Gas Co.....	10.30
	934	Fairlie and Wilson, coal.....	13.75
“ 7—	935	Carlotta Heath	20.95
“ 13—	936	“ “	25.00
	937	“ “	14.45
“ 14—	938	“ “	25.00
	939	“ “	14.45
“ 16—	940	Richard J. Franz, recr. taxes.....	204.00
“ 19—	941	Carlotta Heath	20.00
	942	“ “	33.73
“ 20—	943	J. Vreeland, carpenter.....	23.95
	944	Carlotta Heath	25.00
	945	“ “	14.45
	947	G. W. Stout, livery.....	6.50
	948	Kimmerle and Minder, florist.....	3.50
“ 27—	950	Carlotta Heath	14.45
“ 27—	949	“ “	25.00
1913—			
Jan. 3—	951	“ “	14.45
	952	“ “	25.00
“ 10—	953	“ “	25.00
	954	“ “	14.45
	955	Public Service Gas Co.....	9.40
“ 15—	956	Newark Glass Company.....	1.27
	957	John S. Cruser, hardware.....	2.21
“ 17—	958	Carlotta Heath	20.00
	959	“ “	25.00
	960	“ “	14.45
“ 21—	961	Clark and Co., lumber.....	3.35
“ 22—	962	Merchants National Bank.....	6.80
“ 25—	963	Carlotta Heath	25.00
	964	“ “	14.45
“ 29—	965	“ “	20.00
	966	“ “	10.85
	967	Julia A. Hamilton, housekeeper.....	35.00
	968	Carlotta Heath	40.00
	969	“ “	25.00
	970	L. Jackbson, table.....	15.00
	971	N. Y. Telephone Co.....	24.33
“ 30—	972	Carlotta Heath	5.00
Feb. 3—	974	“ “	35.00
“ 7—	975	“ “	140.00
	976	“ “	10.00

 1,347.25

1913—Voucher No.

Feb. 8—	977	Public Service Gas Co.....	10.80
“ 10—	978	Clark and Co., lumber.....	7.71
“ 17—	979	Aaron Ward and Co., grocer.....	5.00
	980	Fairlie and Wilson, coal.....	78.75
“ 18—	982	Lipstein Bros., papers.....	2.91
	983	C. Schneider, Jr., hardware.....	2.26
	984	John B. Foster, druggist.....	3.80
	985	Kimmerle and Minder, florist.....	3.25
	986	Francis J. Pursell, caterer.....	4.20
	987	Bonwit-Teller and Co., dry goods.....	34.75
	988	M. Plum, printer.....	5.35

Second Account of Trustee.

		989	John S. Cruser, hardware.....	\$4.70
		990	Hahne and Co., dry goods.....	57.23
Feb.	21—	991	Carlotta Heath	30.00
"	28—	992	Jerimiah Vreeland, carpenter.....	34.11
"	28—	993	Department of Water.....	4.06
		994	Carlotta Heath	30.00
Mch.	10—	995	"	50.00
"	19—	996	Chas. M. Decker & Bro., grocer.....	64.21
		997	G. W. Stout, livery.....	5.25
		998	N. Y. Telephone Co.....	5.60
		999	James F. Macdonnell, grocer.....	37.50
		1000	Carl E. Sutphen, physician.....	22.00
		1001	H. S. Tolen, rent for barn.....	15.00
"	26—	1002	Carlotta Heath	30.00
Apl.	8—	1003	"	27.00
"	19—	1004	"	30.00
"	19—	1005	"	25.00
May	6—	1007	"	25.00
"	14—	1008	"	40.00
"	19—	1009	Robert Cutler, coachman.....	6.00
		1010	Richard F. Stevens, auditor.....	230.00
"	27—	1011	Carlotta Heath	23.85
		1012	"	20.00
		1013	John Wanamaker, dry goods.....	22.05
		1014	Frederic B. Thomason, insurance.....	26.25
		1015	Department of Water.....	4.07
		1016	Saks and Co., dry goods.....	6.50
		1017	Laiblin and Co., dyer.....	7.75
		1018	Fidelity Trust Co.....	30.00
		1019	M. Plum, printer.....	2.20
		1020	Chas. M. Decker & Bro., grocer.....	6.86
June	19—	1021	Mrs. V. M. Best, millinery.....	25.00
		1022	Public Service Gas Co.....	4.05
"	25—	1023	Lena Stadelhoffer, help.....	16.40
"	30—	1024	Robert Cutler, coachman.....	5.00
		1025	Carlotta Heath	12.95
		1026	"	25.00
		1027	"	25.00
July	8—	1028	"	39.29
		1029	"	25.00
"	11—	1030	"	500.00
		1031	"	12.95
		1032	C. Schneider, Jr., hardware.....	10.95
		1033	Chas. M. Decker & Bro., grocer.....	27.20
		1034	Public Service Gas Co.....	3.33
		1035	Milton F. Reynolds, crating table.....	3.65
"	17—	1036	Carlotta Heath	90.00

1,906.74

1913—Voucher No.

Aug.	7—	1037	Carlotta Heath	50.00
		1038	Francis J. Pursell, caterer.....	2.10
		1039	Bonwit-Teller & Co., dry goods.....	1.25
		1040	C. Schneider, Jr., hardware.....	3.54
		1041	Bordens Cond. Milk Co.....	12.68
		1042	John B. Foster, druggist.....	10.15
		1043	James F. McDonnell, grocer.....	16.05
		1044	Fidelity Trust Co.....	14.00
		1045	James Crump, ice.....	8.20
		1046	Kimmerle and Minder, florist.....	3.75
		1047	Lipstein Bros., paper.....	1.34
		1048	Levy's Meat Market.....	7.58

Second Account of Trustee.

Aug. 12—	1049	Lena Stadelhoffer, help.....	\$3.00
“ 20—	1050	J. S. Rippel, interest.....	60.55
“ 27—	1051	Fred P. Merkel, plumber.....	14.51
	1052	Chas. M. Decker & Bro., grocer.....	7.26
	1053	M. Plum, printer.....	7.20
	1054	Levy's Meat Market.....	7.95
	1055	A. A. Eisele & Son, shoes.....	45.75
	1056	Frederick Keers & Sons, pictures.....	19.20
	1057	N. Y. Telephone.....	8.99
Sep. 19—	1059	Carlotta Heath.....	75.00
“ 19—	1060	Department of Water.....	4.06
	1061	Merchants National Bank, box.....	25.10
Oct. 3—	1062	Wm. Stadelhoffer, cutting grass.....	7.00
“ 7—	1063	L. S. Plaut and Co., dry goods.....	59.81
“ 16—	1064	Carlotta Heath.....	50.00
“ 23—	1065	“.....	100.00
“ 24—	1066	N. Y. Telephone Co.....	6.00
Nov. 5—	1067	Public Service Gas Co.....	10.08
“ 5—	1068	Dr. Bogue, dentist.....	32.00
“ 12—	1069	Richard Franz, recr. taxes.....	629.11
“ 14—	1070	Fairlie & Wilson, coal.....	144.50
	1071	Fidelity Trust Co.....	15.00
	1072	Carlotta Heath.....	140.00
	1073	John Wanamaker, dry goods.....	36.00
	1074	Bonwitt-Teller, dry goods.....	216.75
Dec. 1—	1075	Carlotta Heath.....	105.00
“ 9—	1076	N. Y. Telephone Co.....	12.11
	1077	Public Service Gas.....	10.35
“ 9—	1079	Est. E. F. Heath, for taxes.....	90.88
	1080	Western Union 1.14—Ingerman .35....	1.49
	1081	Robert Cutler.....	5.00
		Western Union, Apl., May, June, 1913.	9.00

2,089.29

Totals—Page	5.....	\$2,133.75
“ “	6.....	1,851.64
“ “	7.....	1,935.73
“ “	8.....	1,347.25
“ “	9.....	1,906.74
“ “	10.....	2,089.29

\$11,264.40

ESTATE OF MARGARET C. HEATH,
RECAPITULATION.

Amount chargeable to accountant as to Corpus (see page 1)...	\$111,838.43
Amount chargeable to accountant as to balance of income on hand first accounting (see page 1).....	3,186.20
Amount chargeable to accountant as to Income (see page 4).....	\$11,569.22
Amount for which allowance is prayed as to income (see page 10).....	11,264.40 304.82
Balance of Corpus and Income on hand (see page 12).....	\$115,329.45

Second Account of Trustee.

ESTATE OF MARGARET C. HEATH

Statement of Assets in hands of Executor and Trustee at time of this accounting.

	FACE VALUE.	INVENTORY VALUE.
E. A. Crawford, bond and mortgage.....		\$700.00
J. Fredericks, " " ".....		2,000.00
J. Fredericks, " " ".....		500.00
Charles Hochstuhel, " " ".....		2,600.00
E. E. Sayre, " " ".....		1,200.00
E. Wagner, " " ".....		3,000.00
Mary Wissmer, " " ".....		2,000.00
J. J. Murphy, " " ".....		2,500.00
John P. Streib, " " ".....		5,000.00
Joseph Molletor, " " ".....		4,000.00
George Joachim, " " ".....		1,500.00
David Harper, " " ".....		3,000.00
John J. Woods, " " ".....		1,500.00
John J. Woods, " " ".....		500.00
Stock Am. T. & Cable Co., 80 shares.....	\$8,000.00	6,800.00
Bonds Chic. St. Louis & Mo., 5/1000.....	5,000.00	6,000.00
" Cin. Ind. St. L. & Chic. 1/1000.....	1,000.00	940.00
" Chic. Mil. & St. Paul 3/1000.....	3,000.00	3,150.00
" Colo. Spgs. L. & P. Co. 2—.....	2,000.00	1,800.00
" Hackensack Water, 11—.....	11,000.00	9,350.00
" Ill. Cent. R. R. 1—.....	1,000.00	950.00
" Kans. Cty. Ft. S. & M., 2—.....	2,000.00	1,500.00
" Lockport Gas & Elec., 4—.....	4,000.00	3,600.00
" Louisville & Jeff B. Co., 7—.....	7,000.00	6,090.00
" Mich. Cent. R.R., 2—.....	2,000.00	1,900.00
" Newark City Water, 2/500.....	1,000.00	1,000.00
" " " " 2/1000.....	2,000.00	2,000.00
" " " " 1/500 3/100.....	800.00	800.00
" N. Y. Central L. S. Coll. 10/1000.....	10,000.00	8,200.00
" " " Mich. Cent. Coll. 5/100.....	5,000.00	4,000.00
" St. Louis & San F. R. Co., 5/1000.....	5,000.00	4,250.00
" " " " " 1/1000.....	1,000.00	950.00
" U. N. J. & Canal Co.....	1,000.00	950.00
" Elmira Water.....	1,000.00	900.00
" " " 4/500.....	2,000.00	1,800.00
" Rep. of Mexico, 2/970.....	1,940.00	1,900.00
" Hudson Gas.....	1,000.00	1,022.50
" Gas & Elec. of Bergen Co. 3—.....	3,000.00	2,880.00
" " " " ".....	1,000.00	970.00
" Essex Co. Court House 3—.....	3,000.00	2,910.00
" " " Bonds 2—.....	2,000.00	1,940.00
Total.....		\$108,552.50
Household goods less \$27.48.....		1,373.52
Jewelry.....		1,648.20
		\$111,574.22
Balance on hand.....		3,755.23
Total.....		\$115,329.45

Second Account of Trustee.

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

Frederick R. Maddock, the above named executor and trustee, being duly sworn upon his oath deposes and says that the foregoing account is in all things just and true, both as to the charge and discharge thereof, according to the best of his knowledge and belief.

10

Sworn and subscribed to before me
this 22nd day of December, 1913.

20

30

40

*Exhibit D. 1.***Exhibit D. 1.**

Amounts paid for Supplies for No. 300 Roseville Av., by F. R. Maddock, commencing May 15, 1909.

	June	1	Crother & Co.	\$16.24
	"	1	F. Adams & Co.	6.85
	"	1	A. Ward & Son	10.68
10	"	4	F. Adams & Co.	4.53
	"	4	Crothers & Co.	5.01
	"	4	Ward & Son ....	.25
	"	4	Oranges, 35c.; carrots, 14c.; chicken, \$1.10	1.59
	"	25	House supplies	1.49
			Cracker crumbs ....	.10
	July	10	Aaron Ward	35.88
	"	10	F. Adam	13.70
	"	10	Messler & Co.	23.92
20	"	10	Crothers and Co.	26.83
	"	24	Aaron Ward	11.33
	"	24	Messler and Co.	5.29
	"	24	F. Adam and Co.	5.21
	"	29	Clams ....	.20
	Aug.	4	Crothers and Co.	15.28
	"	4	Jas. F. MacDonnell, groceries, etc.	5.40
	"	4	Aaron J. Wills, groceries, etc.	12.14
	"	7	Jas. F. DeDonnell	3.61
	"	7	F. Adam and Son	2.13
30	"	7	Aaron Ward & Son,	5.07
	"	7	Messler & Co.	2.33
	"	7	Crothers & Co.	1.11
	"	7	" " " (mistake July 14 in our favor)	1.00
	Aug.	14	Aaron Ward and Son	4.91
	"	14	Crothers and Co ....	.58
	"	14	Jas. F. McDonnell	1.45
	"	14	Aaron J. Wills	1.10
	"	14	Fred Adams and Son	3.21
40	"	14	Mesler & Co.	1.53

Exhibit D. 1.

Aug.	20	Clams .....	\$	.20	
"	21	Horse radish .10; peaches .25 .....		.35	
"	21	Aaron Ward and Sons		4.77	
"	21	Crothers and Co.		2.10	
"	21	Jas F. McDonnell .....		.70	
"	21	F. Adam and Son.		4.37	
"	21	Messler and Co.		1.15	
"	28	" " "		1.75	
"	28	Aaron Ward (2 weeks)	14.19		10
"	28	Aaron Wills		1.15	
"	28	Crothers and Co.		4.16	
"	28	F. Adam and Son		3.20	
Sept.	2	Catsup (2 bottles) .....		.50	
"	3	Mellons .15; cucumbers .5; pine-apple .10 .....		.30	
"	5	Grape juice (2 bottles) .....		.50	
"	6	Ice cream .....		.90	
"	4	F. Adams & Son.		2.33	
"	4	Jas. F. McDonnell		5.45	20
"	10	Groceries		1.00	
Oct.	2	Crothers and Co. ....		.50	
"	2	Pierson .30; chops; mellons .48 ..		.78	
"	8	Chas. M. Decker and Bro.		5.08	
				\$285.36	
Oct.	8	Jas. F. McDonnell	24.74		
"	8	Messler and Co	7.56		
"	8	Aaron Ward and Sons	42.18		30
"	8	English (ice cream)	1.05		
"	8	Bon Bons for table .....	.25		
"	8	Pepper .....	.05		
"	9	Grape juice .....	.50		
"	17	" " .....	.50		
"	18	Milk .....	.08		
"	23	F. Adam & Son.....	14.56		
"	23	Grape juice .....	.50		
"	23	Messler and Co	4.82		
"	29	Chas. M. Decker and Sons	2.17		40

Exhibit D. 1.

	Oct.	29	Aaron Ward and Sons	\$12.48
	"	30	Fish & Lenox (tub butter, bbl. potatoes)	24.11
	"	29	Jas. F. McDonnell	22.52
	Nov.	12	Grape Juice .....	.50
	"	12	Bread .....	.20
	"	12	Maraschinos Cherries .....	.28
	"	12	Chas. M. Decker and Sons.....	1.06
10	"	12	Aaron Ward and Son.....	10.31
	"	12	James F. McDonnell.....	8.85
	"	20	Chas. M. Decker and Son.....	.75
	"	20	Aaron Ward and Sons.....	3.63
	"	20	F. Adam and Son.....	7.50
	"	20	Messler and Co.....	6.89
	"	20	Jas. F. McDonnell	4.28
	Dec.	11	Groceries .....	.25
	"	31	Chas. M. Decker & Sons.....	4.57
	"	31	Jas. F. McDonnell	12.69
20	"	31	Aaron Ward & Sons.....	48.51
	1910			
	Jan.	4	Bread .....	.10
	"	5	Sausage .....	.19
	"	5	Bread .....	.10
	"	13	Messler & Co.....	30.56
	"	13	F. Adam & Son.....	27.84
	"	22	Ginger Ale .....	.75
	"	22	Ice Cream .....	.75
30	"	22	Aaron Ward & Sons.....	15.27
	Feb.	14	Grape Juice .....	.25
	"	18	Grape Fruit .....	.50
	"	26	Groceries .....	.30
	"	26	Aaron Ward & Sons	28.40
	"	26	Jas. F. McDonnell.....	17.19
	"	26	Messler & Co.....	8.00
	"	26	F. Adam & Son.....	9.31
	"	26	C. M. Decker & Son.....	4.56
	Mar.	5	F. Adam & Son.....	8.54
40	"	5	Groceries	2.14

Exhibit D. 1.

Mar.	8	Groceries	\$ 1.17	
"	10	Groceries .....	.55	
"	16	Groceries .....	.39	
"	19	Aaron Ward & Sons.....	7.42	
"	19	Chas. M. Decker & Son.....	3.68	
"	19	Messler & Co.....	8.86	
"	21	Two Cauliflowers .....	.30	
"	23	Macarroons .....	.25	
Apr.	8	Aaron Ward	11.64	10
"	8	Messler & Co	10.53	
			<hr/>	
			467.88	
"	8	F. Adam and Son.....	5.60	
"	8	Decker and Bros	2.75	
"	19	Eggs .....	.30	
"	19	Milk .....	.10	
"	23	Cake .....	.80	
"	26	1 Doz. Eggs .....	.30	20
"	26	(Larkin) Groceries	2.20	
"	27	Eggs .....	.20	
May	4	Groceries	1.32	
"	5	Cucumbers .....	.20	
"	6	2 Doz. Eggs .....	.70	
"	9	1 Doz. Eggs .....	.35	
"	10	2 Cucumbers .....	.15	
"	13	Cake .....	.66	
"	16	Aaron Ward & Sons.....	14.87	
"	16	Jas. F. McDonnell	24.64	30
"	16	C. M. Decker & Bro.....	7.49	
"	16	Eggs .....	.35	
"	16	Cake .....	.25	
"	19	Groceries	1.63	
"	24	Groceries .....	.35	
"	28	Groceries .....	.45	
"	28	Eggs, 1½ dozen .....	.60	
"	28	Messler & Co	11.65	
"	28	F. Adam & Son.....	9.57	
"	28	Aaron Ward & Son.....	17.39	40

Exhibit D. 1.

	June	16	Aaron Ward & Son.....	\$14.96
	"	16	Groceries, 28; fruit, 45; eggs, \$1.40	2.13
	"	21	½ doz. lemons .....	.12
	"	21	1½ dozen eggs .....	.60
	July	2	Eggs,, fruit, vegetables.....	2.87
	"	7	Fruit, vegetables	1.14
	"	11	Ice Cream .....	.50
10	"	11	Fruit, vegetables .....	.70
	"	20	Fruit, vegetables .....	.81
	"	22	Fruit, vegetables .....	.98
	"	22	2 grape juice .....	.50
	"	22	3 doz. eggs	1.35
	"	2	C. M. Decker & Bros.....	.885
	"	9	B. F. Messler	18.83
	"	9	F. McDonnell	26.35
	"	9	F. Adam & Son	16.98
	"	11	Aaron Ward & Sons.....	19.12
20	Sept.	3	Aaron Ward & Sons.....	26.45
	"	5	2 doz. eggs .....	.95
	"	5	Fruit, vegetables .....	.28
	"	6	Fruit, vegetables .....	.60
	"	8	1 doz. eggs .....	.50
	"	9	Ice Cream, and Cake (English)....	1.43
	"	9	1 doz. eggs .....	.40
	"	13	1 doz. eggs .....	.41
	"	15	1 doz. eggs .....	.41
	"	17	2 doz. eggs .....	.84
30	"	20	Vegetables .....	.30
	"	22	Eggs .....	.42
	"	23	Ice Cream (English) .....	.75
	"	26	1 doz. eggs .....	.35
	"	26	1 lb. hamburg steak .....	.22
	"	27	1 doz. eggs .....	.43
	"	30	1 doz. eggs .....	.45
	Oct.	4	1 doz. eggs .....	.48
	"	6	1 doz. eggs .....	.48
	"	8	Meat .....	.30
40	"	10	1 doz. eggs .....	.48

Exhibit D. 1.

Oct.	13	1 doz. eggs.....	\$.48	
"	15	1 doz. eggs .....	.48	
			<hr/>	
			259.55	
"	17	C. M. Decker and Bros.....	2.39	
"	17	C. M. Decker and Bros.....	.30	
"	17	J. F. McDonnell	28.23	
"	17	Aaron Ward & Son.....	25.05	
"	19	Cream .....	.14	10
"	21	1 doz. eggs .....	.49	
"	23	1 doz. eggs .....	.49	
"	22	F. Adam & Son.....	20.25	
"	25	1 doz. eggs .....	.49	
"	28	2 doz. eggs .....	.98	
Nov.	1	1 doz. eggs .....	.49	
"	5	1 doz. eggs .....	.50	
"	5	F. Adam & Son.....	9.99	
"	5	Messler & Co	27.98	20
"	7	Decker and Bro	1.41	
"	7	J. F. McDonnell.....	9.76	
"	7	Aaron Ward	8.81	
"	7	Messler and Co	5.87	
"	9	1 doz. eggs .....	.50	
"	11	1 doz. eggs .....	.51	
"	14	1 doz. eggs .....	.51	
"	17	1 doz. eggs .....	.51	
"	19	1 doz. eggs .....	.54	
"	21	1 doz. eggs .....	.60	
"	29	1 doz. eggs .....	.60	30
Dec.	2	1 doz. eggs .....	.60	
"	19	Fish & Lenox (tub butter).....	22.72	
"	6	1 doz. eggs .....	.60	
"	12	1 doz. eggs .....	.60	
"	16	1 doz. eggs .....	.60	
"	21	1 doz. eggs .....	.60	
"	21	1/2 doz. ginger ale .....	.70	
"	31	Soup bones .....	.15	

Exhibit D. 1.

		1911		
	Jan	11	Aaron Ward & Sons.....	\$25.05
	"	11	C. M. Decker & Bro.....	26.66
	"	14	B. M. Messler Co.....	38.86
	"	14	F. Adam & Son.....	25.55
	"	19	1/2 doz. eggs .....	.25
	"	30	1/2 doz. eggs .....	.23
10	Feb.	11	Groceries	3.80
	"	24	Groceries	2.07
	"	24	Milk .....	.10
	Mar.	1	Groceries, etc. ....	.55
	"	16	Chas. M. Decker and Son.....	9.19
	"	16	J. M. McDonnell.....	31.11
	"	17	Aaron Ward & Sons.....	17.69
	Apr.	20	Lettuce .....	.20
	"	26	Eggs .....	.30
	"	26	1/2 doz. ginger ale .....	.70
20	May	2	C. M. Decker and Bro.....	8.73
	"	4	Steak .....	.38
	"	5	Eggs .....	.50
	"	16	Eggs .....	.75
	"	12	Aaron Ward & Sons.....	19.95
	"	29	1/2 doz. ginger ale .....	.70
	June	1	Eggs .....	.13
	"	8	Eggs .....	.25
	"	13	Eggs .....	.25
	"	14	Berries .....	.14
30	"	15	4 pork chops and lettuce.....	.30
				388.35
	"	20	Eggs .....	.25
	"	19	Aaron Ward and Son.....	14.34
	"	19	C. M. Decker & Bro.....	10.58
	"	21	F. Adam & Son.....	23.84
	"	21	Jas. F. McDonnell.....	22.99
	"	21	B. M. Messler	23.54
	"	24	Eggs .....	.25
40	"	29	Eggs .....	.25

Exhibit D. 1.

June	22	Eggs	\$.50	
"	22	Groceries and fruit.....	.75	
"	24	Groceries and fruit.....	.70	
"	27	Eggs .....	.25	
"	27	Lemons .....	.25	
July	1	Groceries .....	.75	
"	7	Eggs .....	.25	
"	11	Eggs .....	.50	
"	11	Lemons .....	.25	10
"	15	L. Lehman .....	.70	
"	24	Meat and groceries.....	2.20	
"	24	Eggs .....	.50	
"	28	Eggs .....	.25	
Aug.	1	Melons .....	.50	
"	3	L. Lehman .....	.25	
"	3	Groceries	1.00	
"	5	Eggs .....	.50	
"	8	Groceries .....	.76	
"	9	Eggs .....	.25	20
"	9	Eggs .....	.21	
Sept.	1	Eggs .....	.50	
"	1	Mellons .....	.50	
"	7	Eggs .....	.50	
"	15	Eggs .....	.50	
Oct.	18	C. M. Decker & Bro.....	10.75	
"	18	J. F. McDonnell	26.82	
"	18	F. Adam & Son.....	26.95	
"	18	B. M. Messler	28.15	
"	18	Aaron Ward & Son.....	56.53	30
"	18	F. Adam	2.28	
"	18	J. F. McDonnell.....	8.06	
Apl.	1/11	Adams and Son	27.68	
Oct.	/09	A. Wills .....	.20	
Mch.	3/11	Messler	27.43	
June	1/09	A. Ward & Son.....	5.10	
Sept.	4/09	A. Wills	7.83	
			<hr/>	
			337.14	
				40

Exhibit D. 1.

	Expenses twice to Lowell, Mass. to school with Carlotta because she wished it upon entering and graduating	50.00
	Allowance to Mrs. Maddock for superintending household, 31 months at \$20.....	620.00
10	Extras brought to house by F. R. Maddock, viz., ice cream, soft drinks, cake, fruit, candy, flowers for table necessitated in entertainment of Miss Heath's company when she was home, ammonia and whiting (from factory), toilet soap and sundries (from drug store) .	500.00
		<hr/>
		\$1,170.00
	Totals page 1.....	\$285.36
	“ “ 2.....	467.88
	“ “ 3.....	259.55
20	“ “ 4.....	388.35
	“ “ 5.....	337.14
	“ “ 6.....	1,170.00
		<hr/>
		\$2,908.28

124 weeks \$23.40 per week.

30

40

Frederick R. Maddock, direct.

IN CHANCERY OF NEW JERSEY.

Between

CARLOTTA HEATH, by next
friend,

Complainant,

On Bill, &c.

and

FREDERICK R. MADDOCK,

Defendant.

10

Transcript of shorthand notes of testimony taken in the above entitled cause before Hon. William J. Magie, Advisory Master, at the Chancery Chambers, Newark, New Jersey, on Monday, December 22nd, 1913, at 10.30 A. M.

Appearances:

20

Mr. Edward Day for complainant.

Messrs. Lum, Tamblyn & Colyer for defendant.

Mr. Day. I am willing to have the account filed in the Orphans' Court approved; that is the only account ever filed.

There are only two matters left here for determination. We are to have another account; that account has been delivered to me this morning. We have not had any account since October, 1911—over two years ago; I haven't had any chance to examine it and I have not had the vouchers, and do not pass on it now. There are two matters still left in difference.

30

FREDERICK R. MADDOCK, defendant, called on behalf of complainant, being duly sworn according to law, on his oath says:

Direct examination by Mr. Day.

Q You are the defendant in this cause?

A Yes.

40

Frederick R. Maddock, direct.

Q You were married in April, 1909?

A Yes.

Q At that time you were living at 300 Roseville avenue, under the terms of this will, were you not?

A Yes, sir.

Q And after your marriage you brought your wife there to the house?

A Yes.

10 Q And you and she lived there until October, 1911? Do you remember just what date that was?

A Mrs. Maddock lived there until September 12th or 13th. I lived there for a week or two later, I think so, but I am not sure.

Q You didn't leave until after October, did you?

A I don't think I was there October first.

Q You surely were, because you said so. You can get these exact dates later, when you went out?

A Yes.

20 Q What is the exact day Mrs. Maddock came to live there?

A I don't know, Mr. Day, exactly, because we went away for a week, you know, after we were married, and I am not so sure of the exact date we came there.

Q Some time in April, wasn't it?

A Yes, sir, we virtually started in there—

30 Q You paid the grocery bills and the meat bills while you were there?

A Yes, sir.

Q And no other?

A Yes, sir.

Q Those are all the bills you paid?

A No, sir.

Q What other bills did you pay?

A We paid a lot of bills, Mr. Day, which you will find in the statement which you have.

40 Q You have testified in the proceedings in the Orphans' Court for your removal as guardian, didn't you?

Frederick R. Maddock, direct.

A Yes, sir.

Q Mr. Maddock, you were asked on cross examination these questions:

“Q You didn’t complain about the household expenses, did you?

A No, sir; because I was economical.

Q She was paying practically all the household expenses? 10

A No, sir.

Q She was paying all of the servants?

A Yes, sir.

Q She owned the house, didn’t she?

A As an infant.

Q Paid for all the repairs?

A Yes, sir.

Q All the charges connected with the maintenance of the property, wasn’t she?

A Yes, sir. 20

Q Paying for the coachman?

A Yes, sir.

Q Her horse?

A Yes, sir.

Q Feed of the horse?

A Sure.

Q Paying every expense except the food, wasn’t she?

A Yes, sir.

Q And she paid most of that, didn’t she? 30

A No, sir.

Q After you were married, didn’t she pay most of the time for the food?

A No, sir.

Q She paid for part of it, didn’t she?

A A little of it.

Q Do you want us to understand that she didn’t pay for all of it after you were married?

A Sure, sir, yes.

Frederick R. Maddock, direct.

Q Didn't pay for any of it after that time, after you were married, is that it?

A She paid for some of it.

Q Did you make any distinction of what it was that she didn't pay?

A There were one or two bills, the milk bill and the— (interrupted).

10 Q She was away at school for nearly two years?

A Not always.

Q Wasn't she nearly always away for the last two years?

A No, sir, not always.

Q Let me ask you this: She went to school in 1909?

A I think so.

Q Was she home very often after that?

20 A Quite often.

Q How long did she stay?

A Her vacations were very long.

Q She wasn't home except at vacations, was she?

A No, sir.

Q Now, during vacations didn't she usually visit, go visiting? I mean, in the summer of 1909 and the summer of 1910 and the summer of 1911, didn't she go away?

30 A She did in the summer time, but there were other vacations.

Q Those were practically the only vacations to speak of, weren't they?

A Yes, sir. * * *

Q What part of the expenses did you pay up there after you were married?

A We paid sixteen to twenty dollars a week.

40 Q What bills did you pay? Did you pay with reference to the bills themselves or with reference to the actual amount?

Frederick R. Maddock, direct.

A We eliminated just one or two items, possibly a fish bill, and as I recollect, a milk bill.

Q The grocery bill, who paid that?

A I paid that absolutely.

Q And the butcher?

A Yes, sir.

Q Did you after the time you were married do that?

A Yes, sir. 10

Q Now, any other bills?

A They were paid.

Q What?

A Everything except what I mentioned.

Q I am asking you what you did pay, you yourself, personally. You paid the grocery bill and the butcher bill. Now, what else?

A That would include all, Mr. Day."

Do you remember that examination?

20

A Yes, sir.

Q And that was your examination, wasn't it?

A Yes, sir.

Q Have you got your grocery bills and your butcher bills here?

A Yes, sir, I have them.

Q Will you produce them for all that time?

Mr. Lum. A statement has been prepared, if you desire it. (Producing statement.)

Q Have you bills for everything you had in that connection? 30

A For grocers and butchers, but not for other things.

Mr. Day. Then I don't want this statement. I want the grocers and butchers bills.

Q Have you a statement of what the grocers and butchers bills amounted to?

A No, sir.

Q These are all of them?

40

Frederick R. Maddock, direct.

A Yes, but they are by items.

Mr. Day. I will offer them in evidence. The statement has other items, which I don't want.

Witness. It all depends on what you call grocer and butcher. Would you call clams grocers and butchers?

Mr. Day. I haven't been accustomed to call those grocers and butchers.

10

By the Court.

Q These are all the bills he claims to be grocers and butchers' bills?

A They could be included in either grocer or butcher.

Q I am asking what you do include?

A For instance, these people are grocers, and then there are the butchers bills there, the large bills, but there are little items which were bought and paid for
20 by cash—one little item here, "house supplies, \$1.49."

Q Are there vouchers for them?

A Not for all of them, just for some.

Q Is there a voucher for that?

A Not one particular one, no, sir.

Q What are these vouchers?

A These vouchers are grocers and butchers.

Q Do your butchers sell fish? If they do, then the butcher's bill would include what he sold, or might include what he sold?

30 A Some of them do; there are one or two butchers here, but I am not sure about that.

By Mr. Day.

Q While you have testified under oath that all that you spent for that house was your grocers and your butchers bills during the years 1909, 1910 and 1911, while Mrs. Maddock lived at that house, I am willing that you should, if you have them, bring in any other items for which you have vouchers; are there any
40 other vouchers that you have?

Frederick R. Maddock, direct.

A Yes, there are other items. Mr. Day, I cannot exactly answer that question, unless you let me look over this a little bit.

Mr. Day. Certainly.

A (Continuing.) For instance, if you will permit me, there is a bill here from John English for ice cream; is that grocer or butcher?

Mr. Day. No, that isn't a grocery bill, but I am willing to allow you to bring in that. 10

I produce two bills for ice cream, from John English, one dated September 3, 1910, and the next bill is September 23, 1910.

Q Miss Carlotta wasn't there at that time, was she?

A When, September, 1909?

Q Yes.

A She may have been there in September, about the time her school opened.

Q Have you anything else you have vouchers for? 20

A All these things; there are some that I haven't vouchers for.

Q I only want those you have vouchers for, and the only ones you are allowed for?

A We had to pay out in cash and it would be impossible to get vouchers, but I have an original book where the accounts were kept from day to day—small items that were paid out at different times, we couldn't get vouchers for them; a man delivers goods at the house and you pay him cash, and we are willing to swear to it. 30

Mr. Day. I cannot allow anything except what you have vouchers for, as far as I am concerned.

I offer these vouchers in evidence; two bills of English; there are a large number of bills from Aaron Ward & Sons, Charles M. Decker & Bros., James F. McDonald, Frederick Adam & Son, Messler & Co., Crowthers, Fish & Lenox, Aaron J. Wills and others. 40

Frederick R. Maddock, cross.

By the Court.

Q Do you know when Miss Heath became of age?

A June 12th last, 1913.

Q When did she go to school, away from the house to a boarding school?

A When she first went?

Q Yes.

10 A About September, 1909, or October.

Q And continued at school—

A Continued at school until about April, 1911.

Cross examination by Mr. Lum.

Q This book of cash items to which you referred, what does it cover?

A It covers really all the items that we furnished for the table—nearly all the items we furnished for the table at the house 300 Roseville avenue.

20 Q Are there items in there for which you have no voucher in this package of vouchers produced?

A Yes.

Q When were the entries made in that book?

A At the time we paid the money out.

Q Were these items which are entered in that book made at the time the payments were made—actually paid by you?

A Paid by Mrs. Maddock largely.

Q By money furnished by you?

30 A Yes, sir.

Q You have prepared, I believe, a statement which you have before you, of your disbursements incident to your share of the housekeeping?

A Yes, sir.

Q Were all of those items mentioned here, with the exception of the last page, actually paid out by you or with your funds?

A Yes, sir.

40 *Court.* Does your book contain the items for which you have vouchers?

Frederick R. Maddock, cross.

Witness. Yes, sir.

Court. It contains all you have vouchers for and others that you have not vouchers for?

Witness. Yes, sir; this is the total expenditure day by day.

Q Did you continue to reside in this house 300 Roseville avenue after your marriage at your own desire or by the request of Miss Carlotta? 10

A By the request of Carlotta.

Q And you consulted counsel before staying?

A Yes, sir.

Q And did this share of the expense which you met seem to you fair and proper?

A Yes, sir.

Q And did your wife do anything at the house that was of service or value?

A Yes, sir.

Q What? 20

A She had the full charge of the house and did everything that was necessary to keep the house in proper order.

Q Did you have any extra expense such as cake, and fruit, and candy and flowers, and perfumery and toilet soap &c., at the house, which were not included in the vouchers or in that book?

A Yes, sir.

Q Can you give us any estimate as to what they amounted to? 30

A They amounted to about \$500 as near as we could estimate.

Q After you left that house did you continue to be familiar with the expenses of running the house by virtue of your office as trustee?

A Yes, sir.

Q What change in the servants of the house was made after you left?

A There was a housekeeper, Miss Hamilton, employed. 40

Frederick R. Maddock, cross.

Q How much was she paid a month?

A Forty dollars a month.

Q Do you know whether the expense of running the house increased or decreased after you left?

Mr. Day. I object to that.

Court. I will take the evidence.

A It increased.

10 Q Can you give us an idea to what extent?

A I sent the housekeeper \$25 a week just for provisions alone for the house and the help increased about \$5.70 per week at first.

Q What in your judgment would be a fair allowance to Mrs. Maddock for her services in superintending the house during the months that she did?

Mr. Day. I object.

Court. It requires expert evidence, does it not? He can testify to market rate.

20 Q What would have been a fair charge for similar services performed by someone else; what would you have expected to pay someone else?

Mr. Day. Objected to.

Q Have you ever hired the services of a housekeeper?

A Yes, sir.

Q Have you had experience in what is ordinarily paid to housekeepers?

A Yes, sir.

30 Q (*By Mr. Day.*) What experience have you had; any experience outside of this house?

A No, sir.

Mr. Day. I think that disqualifies him.

Court. It seems to me that the evidence will be of very little value, if any; I think it is hardly competent at all; it does appear he did pay Miss Hamilton, and that is all the experience he has had, he says, and he cannot speak of the market rate generally.

Frederick R. Maddock, re-direct.

Q Have you ever employed any other housekeeper beside Miss Hamilton?

A Yes, sir.

Q Who else?

A Miss Coeyman.

Q Any other?

A No, sir, not in this case.

Q (*By the Court.*) Any case?

A No, sir, I think not.

10

Q Have you ever employed servants?

A Yes, sir.

Q How many?

Mr. Day. I object.

Court. Unless Mrs. Maddock took the place of a servant, I do not see this application—I do not see what I would apply it to. I do not understand Mr. Day disputes this as competent evidence, if the person who gives it has knowledge of what such servants in general are paid. He knows two or three instances; surely you can easily find experts who do know just that sort of thing.

20

Q Did you have any expense with reference to trips of yours to Lowell, Massachusetts, in connection with Carlotta's graduation?

A Yes, sir.

Q Were they at her request?

A Yes, sir.

30

Q What did they amount to?

A About \$50.

Re-direct by Mr. Day.

Q Have you a voucher for those expenses to Lowell?

A No, sir, because the railroads don't give receipts.

Q Have you got any accounts of them?

A No, sir.

40

Frederick R. Maddock, re-cross.

Q Then it is a guess, is it? You don't know how much you paid for your traveling expenses, do you?

A That is very near.

Q How much did it cost exactly from Newark to Lowell for your traveling expenses?

A About \$25 for one trip.

Q It cost \$25 from Newark to Lowell, Massachusetts?

10 A Yes, sir.

Q For one trip?

A Yes, sir.

Q How much does it cost from here to New York?

A Twenty-five and thirty-five cents.

Q How much from New York to Boston?

A About \$4.

Q How much does it cost from Boston to Lowell?

A About the same—no, about sixty cents.

20 Q You haven't any voucher or any memorandum at all of that \$50 that you have here as expenses to Lowell, have you?

A No, sir.

Q These extras which you say you brought to the house, for which you charge \$500, have you any voucher for them?

A No.

Q Any memorandum?

A No, sir.

30 Q You say you consulted counsel about your right to go there with Mrs. Maddock, your wife?

A Yes, sir.

Q What counsel was that?

A Mr. Tamblyn.

Re-cross by Mr. Lum.

Q Mr. Maddock, does the house stay open whether Carlotta is there or not now?

A Part of the time it does; when she is away now I believe it is closed, when she goes away.

40

Egbert J. Tambllyn, direct.

Q Taking the summer time, was Carlotta away all of her vacations or part of her vacations?

A When do you mean?

Q When you and your wife were living there?

A She was away part of the vacations.

Q And at that time had the house always been kept open whether she was visiting or home?

A No, sir.

Q So the same course was pursued that had formerly been pursued? 10

A Yes, sir.

EGBERT J. TAMBLYN, called for complainant, being duly sworn according to law, on his oath says:

Direct examination by Mr. Day.

Q Did you ever advise Mr. Maddock that he had a right to bring his wife there to that house No. 300 Roseville avenue, under the will of Mrs. Heath? 20

Mr. Lum. I object, the matter being *res adjudicata*, I having read from the opinion of what is now the Court of Errors and Appeals of this state, that this was on the advice of counsel, and consequently I object to it as a matter of no consequence and *res adjudicata*; it has been passed upon.

Court. I haven't read the original bill or answer or the other proceedings that have taken place. Counsel is undoubtedly right in saying that every issue there raised that has been settled by a decree adjudication, must stand as settled, but this wasn't in issue, this was no part of the issue; it was simply collateral to determine whether having gone there, he had a right to continue there, making a fair contribution to the maintenance of the house. 30

Mr. Lum. Then I object on the further ground that it is irrelevant, incompetent and immaterial. 40

Egbert J. Tamblyn, direct.

10 What the question has to do with it, I don't know. The question under the Court of Errors decision is, whether he benefitted at the expense of the estate, and whether he was advised to go there, or went without advice. If they were seeking to remove him again, I can conceive that it is important, but on the question as to whether he benefitted at the expense of the estate, whether you advised him or I advised him, is hopelessly immaterial and hopelessly irrelevant.

Court. I can see one way in which it may be of importance, and only one, and I will admit it, giving it no weight except in the direction it now seems to me it is possible it may be relevant.

The proper question first is, did he apply to him.

20 Q Did Mr. Maddock ever consult you with reference to the right of his wife, under the will of Mrs. Heath—to bring his wife to 300 Roseville avenue?

A He did.

Q Did you advise him that he had the right to do so?

A I can tell you, what I did say to him, I think, was this: he told me the situation that developed—

Q (*By Mr. Lum.*) What was that situation?

30 A That he desired to get married and wanted to get married, but that he was embarrassed because of his situation as an executor and trustee of this estate, and that he had talked the matter over with Carlotta and she desired that he should not leave her. My recollection is that he told me that she cried and was very much aggrieved over the possibility of his contemplated marriage, leading to a severance of their relations in the house, and cried, and naturally enough, as I thought, and seemed to be very much worked up over the situation, because it would leave her absolutely alone in the world, and nobody to look after her, and he asked me what he should do, what he

40

Egbert J. Tamblin, cross—re-direct.

could do, and I told him that it was a most unfortunate situation, but I told him I didn't think he was called upon to desert this young girl, with nobody else to take care of her in the world; he stated to me all the circumstances, and most of them I knew beforehand.

Q And you advised him that he had a right to go to that house?

A I advised him just as I have stated.

Q Did you advise him that he had a right, under that will, to go to that house? 10

A My recollection is, at that time I didn't see the will.

Cross examination by Mr. Lum.

Q If you had known all about the will, would you have hesitated under the conditions that developed there, to advise him exactly as you did?

Mr. Day. Objected to.

Court. Answer it. 20

A I see no reason to regret the advice I gave.

Q (Last question repeated.)

A I would not.

Re-direct by Mr. Day.

Q Knowing that this will prohibited Mr. Maddock from living at that house after he was married, or ever bringing any relation to that house, would you have advised that under that will he had a right to do so? 30

A The will and codicil are very different, and it uses the word "relation," and it was a question in my mind whether that was not used in the sense of blood relatives, in the way that those words had been used throughout the will, and Mrs. Maddock would not have been a blood relative.

Q You do not think that that will was altered, providing he should only stay there while he was single? 40

Carlotta Heath, direct.

10 A There was a difference as to his right to be there and to his claim of benefits under the will, of living there, and his duty which had been cast upon him by Mrs. Heath, that he should look after the care and maintenance and education of this young lady and bring her up under the doctrines of the Methodist Episcopal Church; in view of all those facts, it seemed to me that he had a duty as a guardian which he ought to have observed, and anything of this nature could be rectified afterwards.

CARLOTTA HEATH, complainant, being duly sworn according to law, on her oath says:

Direct examination by Mr. Day.

Q You are the complainant in this case?

A Yes, sir.

20 Q Since this suit was brought and on June 12th you became of age?

A Yes, sir.

Q Do you remember the time when Mr. Maddock was married?

A I do.

Q At that time what people were in that house? What servants?

A There was a housekeeper and one maid and a coachman.

30 Q You kept a horse?

A Yes.

Q You were going to school shortly after that?

A Yes.

Q When did you go to school?

A The following September after he was married, 1909.

Q To Lowell, Massachusetts?

A Yes, sir.

40 Q While you were at school how often did you come home?

Carlotta Heath, direct.

A I came home over my Christmas vacation and my Easter vacation, and I was away nearly all summer on my summer vacations.

Q After you went there in September, 1909, you came home for your winter vacation, and about how long was that?

A The Christmas vacations were never quite three weeks.

Q Then you came home after that in the Easter vacation? 10

A Yes.

Q How long was that?

A Ten days.

Q Then during the summers of 1910 and 1911, those two summers, were you at home during those two summers?

A I may have been home for a few weeks, to get some clothes.

Q Two weeks? 20

A Perhaps two, but I was away nearly all summer long.

Q Both summers?

A Yes.

Q Did you have any conversation with Mr. Maddock about your household expenses before you went to school?

A Yes.

Q What was said?

A I told Mr. Maddock that grandmother had managed the house with one maid and a washwoman, and I said I would be perfectly willing to pay the expenses of one maid and of a washwoman, and he could discharge our present coachman and hire a man to take care of the furnace, which was very much less expensive, and that I would be willing to pay for those, and he could sell my horse and rent the stable. 30

Q What did he say to that?

A He told me he would do it.

Carlotta Heath, cross.

Q Did he do it?

A No.

Q After Mrs. Maddock came there did the household remain the same?

A For one year, she continued to have a house-keeper and a washwoman and a cook and she kept the coachman and the horse and stable.

10 Q (*By the Court.*) What year was that?

A The first year I was in boarding school.

Q What change occurred in the second year?

A In the second year she substituted for the house-keeper a second maid.

Q That is the only change that was made?

A Yes, sir.

Cross examination by Mr. Lum.

Q Mr. Maddock had an automobile at that time, did he not?

20 A Yes, and my coachman took care of it. It was kept on my property.

Q And you recall the summer vacation in 1910; will you think again and tell us how many weeks you were there during that vacation?

A I don't think it could have been more than two weeks; however, I could look at my diary and find out.

30 Q I wish you would do so and refresh your recollection, and also as to the next summer; you haven't your diary with you?

A No.

Q Do you recall the maid, Bridget?

A Yes.

Q Was she hired at your request?

A No, she was not.

Q You did not desire her?

A No, I did not. They hired her when I was away from home. When I got back, I found her there.

40 Q Where were you in the summer of 1910?

A Is that the year before he left?

Mrs. Catherine Glenn Maddock, direct.

Court. He left in September or October, 1911. You are asked about the summer of the year before.

Witness. I think I was in the Catskills part of that summer; I don't remember exactly where I was that summer.

Q 1909, where were you?

A That was the summer before they were there; I don't remember. 10

Q The first summer they were there?

A I don't remember exactly where I went those summers; I know one summer I was out in Michigan visiting my sister-in-law for over a month.

Q And during the rest of the time where were you?

A I don't remember.

Q Your summer vacation was over three months long? 20

A Yes.

Q (*By Mr. Day.*) You say you have a memorandum book that would enable you to refresh your memory?

A Yes, I think I have; I will look it up.

Mr. Day. We rest.

MRS. CATHERINE GLENN MADDOCK, called for defendant, being duly sworn according to law, on her oath says: 30

Direct examination by Mr. Lum.

Q You are the wife of Mr. Frederick R. Maddock?

A Yes.

Q You were the daughter of Mr. Charles T. Glenn, his co-executor?

A Yes.

Q He was a counsellor at law of this state?

A Yes, sir. 40

Mrs. Catherine Glenn Maddock, direct.

Q After your marriage where did you go with your husband to live?

A 300 Roseville avenue.

Q Was that at your desire?

A No, sir, decidedly against it.

Q During your time of living there did you perform any duties?

A Yes, sir.

10 Q Will you state briefly the nature of them, what they were?

A I occupied my time for about half of every day in doing for the house, in generally doing for the house; I can itemize more, if you request it.

Q Please do so.

20 A I did all the buying for the table; I arranged all the meals, made out the schedule for the maid and put it in the kitchen every day; I made about half the desserts that were made and many of the other dishes; I took care of my own bedroom for a whole year while Miss Coeyman was there; I did not do it the second year; I did it the first year, because Miss Coeyman had all she could do; the year that the housekeeper was not there, I had the entire oversight of the house and went through it every day to see that the work was properly done; I laid out in both years all the work that was done in the house, and I packed all of Miss Heath's trunks when she went to school; sometimes there were three large

30 trunks; I unpacked them for her when she came home; I took almost entire charge of seeing that her clothes were mended and repaired; I hired a seamstress—that is, of course, the estate paid her, but I attended to those matters; I sent her clothes to the cleaners and did those things for her, and at different times, when the time was short and we couldn't get the mending done before she went to college, I assisted the seamstress personally, and I did many

40 other things that I cannot at this moment recall, but

Mrs. Catherine Glenn Maddock, direct.

at least half of my day was always employed, the morning, in doing for the house; that I can truthfully say.

Q Will you briefly tell the court whether this was a small house or large house?

A A large house with large rooms, and all of the rooms were carpeted with heavy old-fashioned carpet, and the sweeping alone, the cleaning of the house alone, if always done every week, would have required, I should say, the services of one person, because it was heavy cleaning work. 10

Q Could, in your judgment, one maid have properly done the work in that house?

A No, sir, not at all.

Q Have you ever hired housekeepers or servants to do work?

A I have not hired housekeepers.

Q Does this book show items of payments made by you? 20

A Can I tell you exactly about this book?

Q If you will?

A When this book was kept, we had no idea that it ever would be called into question before the court; the relations were not such to bring any thought of that; this was merely my little individual housekeeping book, and every day and every time that I paid one of those bills, I put it immediately down in the book; I am very methodical about those things. The items that Mr. Maddock brought home were never thought of being entered in this book; he brought home at night, as gentlemen always do, fruit and all those different things that we have itemized, but there was no thought of putting them down or getting vouchers for all these little items. You go down and pay twenty-five cents or a dollar or a dollar and a half for a thing, the tradesman does not give you a receipt for those things unless you ask for it, and there was no thought of its ever being needed. We kept all the big bills, and those we have. 30
40

Mrs. Catherine Glenn Maddock, direct.

Q Were all these little expenditures which are marked in here by you—was the entry made at the time?

A Exactly at once always.

Q And were all of those items shown in there actually disbursed by you?

10 A Yes, unless there were one or two things possibly that Mr. Maddock paid that I happened to think about and put down, but I should say in the main every item in here was paid by me and immediately entered in the book, just my own housekeeping.

Q You say that there were many things that Mr. Maddock brought home that you never thought of entering?

20 A Yes, and when I came to think this up, to put down what actually was there, we thought about those things and put down what we thought was about, for the two years and a half duration, a fair estimate for what he brought.

Q And what in your judgment was a fair estimate for those things which Mr. Maddock brought home during that time?

Mr. Day. I object.

Court. I will take it.

A For the two years and a half, about \$500.

Q Have you thought it over carefully and recalled all of them as carefully as you can?

30 A Yes, but we never had any thought of calling them into question until now.

Q (*By the Court.*) What two years and a half do you refer to?

A We begin our accounts from May 15, 1909, as it is written in this book. Counting up to the time Mr. Maddock left in October, 1911, makes two years and a half.

Q Didn't you advertise for a housekeeper?

A When we found we were going away, we did.

Mrs. Catherine Glenn Maddock, cross.

Q For this place and for Carlotta?

A Yes.

Q Did you receive many replies?

A A great many; we had about forty or fifty.

Q In that way did you become acquainted with the charge usually made by housekeepers?

A I think the usual price they asked was about what we paid Miss Hamilton, \$40 a month.

Q How many of them did you see? 10

A They all came in two days and I saw most of them; it was very peculiar so many did come, but they did, and they sat all over the house almost.

Q Were there two or more?

A There were over fifty; we kept an account.

Q You think you can qualify as an expert as to what is usually asked by housekeepers?

A As to what I can remember, I could say that \$40 was about what the majority of them would ask—those we would consider competent. 20

Mr. Lum. I offer the book in evidence.

Court. The book is produced as a memorandum book made at the time by this witness, who testifies that it correctly shows what she expended; the book therefore will be marked as an exhibit.

(Marked Exhibit D. 1.)

Cross examination by Mr. Day.

Q Nearly all the items in this book are represented by these bills? 30

A No, sir, there are many items.

Q I said nearly all.

A I cannot tell you at this moment just what proportion.

Q I say nearly every item that I can see?

A That list is an exact copy of what is in the book, but the vouchers are only for the large bills that were paid to the grocers and the butchers, the differ- 40

Mrs. Catherine Glenn Maddock, cross.

ent ones; the small items have no vouchers; they were paid in the course of ordinary marketing by cash, and all large bills were paid by me in cash, but I have the receipts for them.

10 Q Take for instance, these items here from May 15, 1909, to October, 1911, representing 124 weeks, when was that entry made? A Lately, when we come to sum the whole matter up.

Q And all on that page is made lately, isn't it?
A That was merely the addition of each page of my housekeeping account; you see that it tallied with my own figures.

Court. What page?

Mr. Lum. The last page, simply the tally.

20 *Mr. Day.* I am willing to admit that these items in this book that are in ink are proper items of account of expenses, if there are any in there that are not already in the vouchers.

Court. Mr. Day, the 124 weeks is not on the last page; that is a calculation of the time you were there (referring to the witness), with a view of finding the average charge per week?

Witness. Yes.

Mr. Lum. We rest.

30 *Mr. Day.* Nothing further. I don't know how material it is in the examination of the guardianship case. Both parties agree in their testimony that during the summers Miss Carlotta was not there practically at all; she came home and went away both times, and I am surprised that she was there during some weeks; I would like to have her diary produced.

40 *Court.* I do not quite see how that will be very material. I should say at present the question is, was it proper to keep the house open and running.

Carlotta Heath, direct—cross.

Mr. Day. That I do not think there is any doubt about.

MRS. CATHERINE GLENN MADDOCK, re-called.

Direct examination by Mr. Lum.

Q Will you tell us whether during the vacations Miss Heath ever brought home any company?

A Yes, sir. 10

Q Give some details briefly.

A She always had company almost when she was at home; there was a good deal of company and that was one reason why, if the house were run at all, it was necessary to have exactly the help that we had, because of those times and of the company that was there.

CARLOTTA HEATH, re-called.

Direct examination by Mr. Day. 20

Q You have heard the testimony of Mrs. Maddock just now?

A Yes.

Q She says that every vacation you brought home someone; how many times did you bring home anyone?

A Twice I had guests come home with me during Easter vacation, ten days; each of them stayed ten days. 30

Q Who were they?

A Miss Cully Cook and Miss Florence Harrison.

Q Did you have any others?

A Those are the only guests that I have ever had stay at the house.

Cross examination by Mr. Lum.

Q Did you frequently have company in at home?

A Very seldom, maybe once or twice to stay over night, and perhaps a few times to the evening meal. 40

Carlotta Heath, cross.

Q Is it not a fact that almost invariably there was someone at the house with you?

A No.

Court. If you send me the testimony and copies of the pleadings and the things that are in evidence, and give me a view of the questions that I have got to decide, so I can advise a decree, I will take the matters up at once and dispose of it.

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Frederick R. Maddock, direct.

IN CHANCERY OF NEW JERSEY.

Between

CARLOTTA HEATH, by next friend,
Complainant,

and

FREDERICK R. MADDOCK,
Defendant.

10

Continuation of testimony in the above entitled cause before Hon. William J. Magie, Advisory Master, at the Chancery Chambers, Newark, New Jersey, on Friday, January 23rd, 1914, at 10 A. M., in the presence of Mr. Edward A. Day, for complainant and Mr. Ralph Lum for defendant.

Mr. Lum. As a result of the meeting between counsel in this case and your honor, I desire to make application at this time to have the case opened to permit further testimony to be taken, to which there is no objection, I understand. 20

Mr. Day. No, sir, I understand your honor suggested it.

FREDERICK R. MADDOCK, re-called for

Direct examination by Mr. Lum.

30

Q Were vouchers kept in such a way that it is possible to determine the expense of running the house at 300 Roseville avenue, between the time of the death of Mrs. Heath and the time of your marriage?

Mr. Day. I object.

Court. It is only for the purpose of making comparisons?

Mr. Lum. That is all.

40

Frederick R. Maddock, direct.

Q Have you tabulated those figures in convenient form?

A Yes, sir.

Q From what source is that tabulation made?

A It is taken from the account.

Q The accounting which is now on file in this court before the Chancellor?

10 A Yes, sir.

Q I show you what purports to be a tabulation; is that the one to which you refer?

A Yes, sir, that is it.

Q Does this contain any item other than those shown in your accounting filed in this case?

A No, sir.

Q And you have checked these over yourself to verify the correctness of it?

A Yes, sir, and put the voucher numbers on.

20 *Mr. Day.* I object to this.

Mr. Lum. The court spoke of comparative purposes.

Court. This is all in now?

Mr. Lum. All in before you.

Court. Everything now offered is in. It is only tabulated so as to be convenient for me. The application that is sought is another question. I don't decide that.

30 Q Have you prepared a similar tabulation, covering the time from which you and your wife came to live at the house until you left?

A Yes.

Q From what source is that tabulation made?

A That is made from the accounting also.

Q And is there any item shown in this tabulation which is not included in your accounting?

A No.

40 Q And in this case you have given the voucher number?

Frederick R. Maddock, direct.

A Yes, sir.

Q And have you checked them over yourself to verify the correctness of them?

A Yes, sir.

Mr. Day. Why are we going into this testimony; we are not charging him with anything that is found in the account; it is what is not in the accounting that we are charging him with. 10
I do not understand the nature of this testimony.

Mr. Lum. It is for comparative purposes.

Court. It may do me some good, Mr. Day. You have shown that during a portion of this time this trustee lived in the property of his ward, and his account shows that during that time when he had no right to live there, free, certain items were paid out of the ward's funds. That raises a presumption that he must account for what he benefited out of that, as I understand. 20
What did he benefit? As I mentioned the other day, there are various ways of looking at that, and probably all would be admissible as evidence. One would be what the value of boarding and living in a house of that sort would be in the market regularly, ordinarily. Another is, how much was the fund of the ward encroached upon, for which he ought to pay, and whether or not what he did contribute towards the maintenance of his family there was what a trustee ought to have paid back into the funds of the ward. 30
I believe that is all I can say as to my view of the admissibility of this evidence. It is all in. As I understand, everything is in, and this is only the tabulation, so that if I can conceive that is a way of getting at what the trustee ought to have accounted for, I can do so.

Q After you and Mrs. Maddock left—which was about what time?

40

Frederick R. Maddock, direct.

A About September 23rd, when I left, and Mrs. Maddock about September 15th, 1911.

Q When you left did the house remain open?

A Yes, sir.

Q And have you vouchers which will show the food items, &c., of running the house after that time?

A Yes, sir.

10 Q Have you prepared any tabulation of them?

A Yes, sir.

Q Have you it?

A Yes, sir.

Court. That is not included in the account?

Q Is any of that included in any account filed as yet?

A Yes, sir, that is included in the second accounting.

Court. What is the second accounting?

20 *Mr. Lum.* The second accounting is the account that ran from 1911 up to the first of this last January, 1914.

Court. I have not seen it.

Mr. Lum. That is because there is nothing in it for you to pass on.

Q From this tabulation to which you have now referred, are you able to determine the food expense, &c., of running the house after you left?

A Yes, sir.

30 Q And have you that tabulation before you?

A Yes, sir.

Mr. Lum. I will ask to have the schedule covering the food items from April, 1906, to April, 1909, being paper marked Schedule No. 2, marked A for identification.

Mr. Day. I object to its going in evidence.

Court. Let it be marked.

Mr. Lum. That comprises three pages.

40 (Marked Exhibit A for identification.)

Frederick R. Maddock, direct.

Mr. Lum. I will ask to have the paper labeled "Amounts paid for supplies for 300 Roseville avenue by F. R. Maddock," commencing May 15, 1909, comprising six sheets, marked B for identification.

(Marked Exhibit B for identification.)

Mr. Lum. Exhibit A comprises fourteen sheets.

10

Q Where is the tabulation running from the time you left the house in October, 1911?

A It is included in Schedule "A."

Mr. Day. I would like to know the object of putting these papers in the case?

Mr. Lum. It will be of value to your honor when you come to decide this case, to have before you in tabulated form the items which are shown in the accounts on file, covering the food items &c., from the period when the testatrix died up until Mr. Maddock was married, and a separate tabulation covering like items from the time Mr. Maddock was married and came to live at the house with his wife, until he left; and a like tabulation covering the same situation from the time when Mr. Maddock left until Carlotta went abroad. It is bound to be of value, and it is nothing except taking the items which are scattered through many pages of accounts and arranging them for your honor in such a way that they can be got in a class. Every item is in with the voucher number and may be checked. If there is any error in it, we will be glad to correct it.

20

30

Court. I have admitted this tabulation so far as it deals with the items in the account before me.

Mr. Lum. There is nothing else.

Court. What account is before me after September, 1911?

40

Frederick R. Maddock, direct.

Mr. Lum. By agreement of counsel, the accounts are brought up to date and a further supplemental account has been filed. The only reason your honor hasn't had it, is because there is nothing in it on which your honor is required to rule. I think Mr. Day will corroborate me in that.

10 *Mr. Day.* That is not so now, as I understand it. I haven't been over this account at all; I didn't know it was filed in the cause.

Mr. Lum. That is filed.

Witness. It is not filed in court. Mr. Day had the account when we came here the last time.

Mr. Day. I have asked for the vouchers and I haven't been able to get them up to this time.

20 *Court.* It makes some difference. The ground of my admission of the other was that it was already in. This I haven't seen myself; I haven't seen the vouchers; I haven't seen the vouchers of the other, but I have assumed they were all right because there has been no exception to them.

30 *Mr. Lum.* Then suppose we put it on another ground, as to the third item of which we are speaking, the items running from the time Mr. Maddock left in 1911, until the time Carlotta went abroad. I offer them as evidence given by this guardian of his own knowledge of his own accounts subject to rebuttal by the other side, after due opportunity. If any wrong or injustice has been done to this estate, then Mr. Maddock, as well as I, both want it righted, but if there hasn't, we do not under any circumstances want this man smirched.

40 *Court.* You offer now to prove that after he left he paid certain sums up to a certain time, which hasn't been named yet, except by saying when the ward went abroad. That may be legitimate evidence, but can he swear to it in a lump, no vouchers or anything?

Frederick R. Maddock, direct.

Mr. Lum. I can swear to it by vouchers for every item, if that is preferred. It will take perhaps two or three days. This is the preferable way to have it sworn to, with the understanding that if there is any item questioned by Mr. Day, after the fullest opportunity, that it may then be changed. We put an item of \$4.60; if it is later found the item was \$4.80, he has made a mistake in copying the voucher; we will be glad to have it changed, and we will bring the individual vouchers here, if anybody prefers it. Using this in compact form rather than the bulk of vouchers seems to me the intelligent way to proceed.

10

Court. I desire to proceed in a way that will save me the most trouble, and that will be a proper way, provided you put in the evidence of these payments.

Mr. Lum. Then I offer in evidence in bulk all of the vouchers of payments made by Mr. Maddock from the time he left the house until Carlotta went abroad, and I will state to the court that we have arranged these vouchers in an itemized and classified form for convenience of the court, and I will ask to have the tabulation used instead of the original vouchers, subject to change or correction after examination by Mr. Day, the original vouchers being now offered in evidence.

20

Court. Is this account from the time that Mr. Maddock left the house to be brought before me in any way?

30

Mr. Lum. Mr. Day will correct me if I am wrong—it is the understanding that when your honor decides this case, the account is to be stated up to January 1, 1914. Mr. Day has not yet seen the vouchers, the reason for that is undoubtedly that Mr. Tamblyn who promised to give them to him this week, has been home ill. Mr. Day is entitled to them.

40

Frederick R. Maddock, direct.

10 *Court.* I do not get an answer to my question. The order referring this to me, refers the whole case, but there is nothing in the case directed under the evidence to a decree except the accounting; that is the accounting that was in the Orphans' Court and which has been transferred here. I haven't any other, and I do not know of any other that will come under that order, unless it is regularly stipulated by counsel that that comes in. That would be another thing.

Mr. Lum. Let me have Mr. Day explain to the court, if he will, whether it is his understanding that the account is to be continued down to January, 1914, subject to his examination of the vouchers, or whether it is not.

20 *Mr. Day.* I would like very much, if the court please, in the interest of saving time, that everything should be continued down to date. I will be very glad to have it. I haven't yet had a chance to go over this account.

Court. That is not the question. Do you expect the account to be settled up to January, 1914?

Mr. Day. I should think it must be of necessity settled up to that time and settled by you.

Court. I doubt it, under the order.

30 *Mr. Day.* Then we will enter into such a stipulation that will be necessary. Of course someone must have jurisdiction. I will go over all this account with the aid of vouchers, and possibly with the aid of the expert accountant who has been employed in this case, for I am not an accountant, and as soon as I can get these papers, and it will be necessary to have also the vouchers connected with the former account which is here.

40 *Court.* This keeps shifting the question before me. I understood that that account in the Orphans' Court, so far as the expenditure was con-

Frederick R. Maddock, direct.

cerned, wasn't contested; no exceptions put in to any item, and therefore it was brought before me in such a way that I thought I had a right to say that I must rely upon that.

Mr. Day. I think so. If you take the account and compare it with the items they put in here for 300 Roseville avenue, it is impossible, without the production of the vouchers, to know what they mean, and I have got to make a comparison, and that is what compels me to ask for the vouchers, which I have never seen, and I cannot ascertain what that tabulation means commencing May, 1909, unless I have the vouchers. 10

Court. That tabulation is simply from the account as filed, to which you made no exception, and which I have supposed was conceded so far as expenditure was concerned, was correct and unattacked, and therefore this does not need any explanation from vouchers. The account may need explanation from vouchers, but that you have not asked for, because you haven't excepted to any item. 20

Mr. Day. I cannot because the expert accountant has proved it right, except in two or three items, but it does seem to me that I am entitled to the vouchers in order to ascertain whether this tabulation is a true tabulation, which I cannot in any other way.

Court. You can by looking at the account. 30

Mr. Day. This does not correspond with the account.

Court. The account before me has the items with numbers.

Mr. Day. It has and this hasn't, unfortunately.

Mr. Lum. It has the items and has the numbers.

Mr. Day. I think I have a right to see these vouchers in order to make a comparison with a paper put in evidence. 40

Frederick R. Maddock, direct.

Court. The vouchers of the account to which you made no exception,, and which has been passed on by the expert accountant appointed, I don't know how—

Mr. Lum. By the court.

Court. —and he declares they are all right.

10 *Mr. Day.* You think that ends the vouchers. I tried to make the comparison with these figures.

Court. When did you try?

Mr. Day. Since the hearing before you.

Court. You haven't had these tabulations until now.

Mr. Day. This tabulation was put in before you at the last hearing, which shows the amount paid for supplies for 300 Roseville avenue by F. R. Maddock.

20 *Mr. Lum.* He refers to the tabulation made up from Mrs. Maddock's books.

Court. That is not in question now.

Mr. Lum. Where we make from vouchers, we refer to vouchers.

Court. You have a right to examine to see if they are duplicated.

Mr. Day. I ask that the vouchers belonging to the account shall be produced here in court for me to examine.

30 *Court.* In court?

Mr. Day. I would like to have them in my office. I will return them in a very short time.

Mr. Lum. I would like to interrupt the examination and call a witness.

Frederick R. Maddock, direct.

ALFRED WALTERS, sworn for defendant,

Direct examination by Mr. Lum:

Q Did you prepare a plan of the house 300 Roseville avenue?

A Yes, sir.

Q Is this it?

A Yes, sir.

Q Does this show the lay-out of the rooms and house, &c.? 10

A Yes, sir.

Mr. Lum. I offer it in evidence—it speaks for itself—to show what manner of house this is.

Mr. Day. I object to this. It seems a most unnecessary piece of evidence, as immaterial and irrelevant.

Court. It will be admitted and marked.

(Marked Exhibit 1, 1/23/14.)

20

Cross examination by Mr. Day:

Q How many stories are there to that building?

A Two main stories and an attic.

Q There is a basement too?

A A cellar.

Q The kitchen is on the first floor?

A The first floor on the rear.

FREDERICK R. MADDOCK, re-called for further

Direct examination by Mr. Lum:

30

Q Do you recognize this as a picture of 300 Roseville avenue?

A Yes, sir.

Mr. Day. I object to it as immaterial evidence.

Mr. Lum. I offer it in evidence.

Court. Let it be marked.

(Marked Exhibit 2, 1/23/14.)

40

Frederick R. Maddock, direct.

Q You have referred to certain vouchers in reference to your second account coming down to January, 1914; are those the vouchers in the second account? (Witness shown package of vouchers.)

A Yes.

Mr. Lum. Do you want them offered separately or in one lump?

10 *Mr. Day.* Offer the package, and I would like to have them left for me to see them. I do not suppose there is anything wrong about them.

Mr. Lum. If there is, we want to know it.

Mr. Day. I do not think there is. I suggest you offer the package as one exhibit.

Court. Is that second account in such shape that it can be put in before me?

20 *Mr. Lum.* Yes, but the reason it was not before you is the idea of Mr. Day and ourselves, that we hoped to eliminate any possible question on that, so it will come before you as an account stated and agreed on, and if we find that we are mistaken about it, and we can satisfy him on it, it will have to come before you, but our idea is it will simply come before your honor as a matter for the purpose of fixing a decree; although it was not our wish, we consent to it.

Court. You do not want to examine these now?

30 *Mr. Day.* Not at this moment; I would like to take them down to my office.

Mr. Lum. There is no objection to that. The vouchers for what was paid out by Mrs. Maddock and that little book, I think you have, Mr. Day.

Court. I have the little book.

Mr. Lum. Any vouchers the court has may be delivered to Mr. Day.

40 *Court.* Perhaps Mr. Day's suspicion would be either established or dissipated by an examina-

Frederick R. Maddock, direct.

tion of that paper which was made up from Mrs. Maddock's book, and comparing it with the account.

Mr. Day. I think so.

Court. So you would not need to look at these vouchers, unless you find something there that makes your suspicion justified. They are open to you in my office at any time.

Mr. Day. I will come down to see them or send someone down. 10

Mr. Lum. The matter having taken the turn it has, I desire to offer in a bunch the vouchers of the first accounting which were before Colonel Stevens, checked over by him, which is already marked Exhibit 2, and I will ask to have it marked.

(Marked Exhibit 3, 1/23/14.)

Q On these vouchers which are in evidence, marked vouchers for second account—from those you have prepared a tabulation of the expenses of food &c. of the house after you and Mrs. Maddock left until Carlotta went abroad? 20

A Yes, sir.

Q And you have that?

A Yes.

Q It is in these tabulations already marked?

A Yes.

Q Will you refer to the item of the expense of food, as shown by these tabulations, from the time that Mrs. Maddock left and you came in, that is, from the time that you took charge of the house until your marriage—how much does it amount to a week? 30

Mr. Day. Does not the tabulation show?

Mr. Lum. Yes, but I think I would like to have it in the record also.

Court. If it is proper evidence you have; it is a question whether he should make the multiplication or division or I should. 40

Frederick R. Maddock, direct.

Mr. Day. It is shown in the tabulation.

Mr. Lum. It will make the record more convenient for handling.

Court. I will admit it; it is a duplication of evidence. Put on the record what you desire.

A \$20.08 per week.

10 Q What was the expense for food to which the estate was put during the time that you and Mrs. Maddock resided at the house?

A \$3.33.

Q What was the expense to which the estate was put for food during the time from which you and Mrs. Maddock left until Carlotta went abroad and the house was closed?

A \$26.11.

Q At the time of the death of Mrs. Heath was there a man on the place?

20 A Yes, sir.

Q Did you make changes and innovations in running the place under your power under the will, or did you follow along the plan as laid out by her?

A Exactly the same plan, with one exception. I engaged a housekeeper, a working housekeeper.

Q The man who was there during all the time until Carlotta went abroad, was he the same man who was there during Mrs. Heath's lifetime?

A Yes, sir.

30 Q And was his wage continued the same?

A Yes, sir.

Q At the time of Mrs. Heath's death, what servants were employed at the place?

A There was a cook and a man and then an extra woman that used to come in once or twice a week.

Q Did that continue the same way until your marriage?

40 A Yes, sir, with the exception of this working housekeeper.

Frederick R. Maddock, direct.

Q When did the working housekeeper come in?

A She came in right after Mrs. Heath's death.

Q And that continued until your marriage?

A Yes, sir.

Q On your marriage and Mrs. Maddock's coming there what change was made in the service of the house?

A We did not make a particle of change. 10

Court. Am I mistaken in thinking you said before the housekeeper was discharged while Mrs. Maddock was there living with you?

Witness. Yes, sir, after about seventy weeks out of the 124, about the last year we were there.

Q Was a waitress employed?

A After the housekeeper was discharged; yes, sir.

Q What had the housekeeper been paid a month while she was there? 20

Mr. Day. That is all in the testimony.

A \$25 a month.

Q What was the waitress paid when she came to take the housekeeper's place?

A She was paid \$20 and an extra allowance for part of the time of about two dollars, about \$22 on the average.

Q And after Mrs. Maddock and you left what change was made in the service?

Mr. Day. I object to that as immaterial. 30

The Court. I will admit that, because that account is to come in and is to be presented before me, and the account and the vouchers will show this. I think it is admissible.

A The man was left there and there was a change of cook.

Q Did that change in cook occasion any additional expense?

A She was paid about \$35 or \$36 a month. 40

Frederick R. Maddock, direct.

Q What had been paid to the cook during the time that you and Mrs. Maddock were there?

A She was paid \$20 part of the time, and part of the time \$25. Another cook was paid \$25.

Q After Mrs. Maddock left was there a house-keeper and chaperone installed there?

A Yes, sir.

10 Q How much was she paid a month?

A \$40.

Q That was Miss Hamilton?

A Yes.

Q That was the selection of Carlotta?

A Yes.

Q How long did Miss Hamilton stay there?

A About nine weeks.

Mr. Day. Is it necessary to go into all this?

20 *Court.* The additional account coming down to January, 1914, is before us.

Mr. Day. I do not expect to except to that.

Court. I think they are entitled to put in the evidence.

Q After Miss Hamilton left who took her place?

A Mrs. Bertha Heath.

Q She was the widow of Carlotta's brother?

A Yes, sir.

Q Whose place did she take?

30 A The place of Miss Hamilton.

Q Did she accept any wages for her services?

A No, sir.

Q After she came was there any change made in the service of the house?

A Yes, sir, they did without an upstairs girl.

Q Did she discuss that with you?

A Yes, sir.

Q Did Carlotta's welfare have anything to do with that decision?

40 A Yes, sir.

Frederick R. Maddock, direct.

Q What?

A Mrs. Heath came down to see me and told me that she had talked with Carlotta, and she thought that they ought to manage the house without any extra help, that it would save the estate and it would do Carlotta good to do a little work.

Q And was that done?

A Yes, sir, that was done.

Q And about when did Carlotta go abroad? 10

A I think it was about June; I could tell you exactly, if you will allow me to refer to—she went previous to July 8th; it seems to me it was the middle of June, 1912.

Mr. Day. She went on June 9th.

Q Have you prepared tabulations as to these expenses of service during the period from the death of Mrs. Heath until your marriage?

A Yes, sir. 20

Q How much is that item?

Mr. Day. Same objection.

A \$26.25 a week.

Q How much was it during the time that you and Mrs. Maddock were there?

A \$26.68 a week.

Q How much was it during the time after you and Mrs. Maddock left?

A \$23.16 a week.

Q Part of that time Mrs. Bertha Heath was there without wage? 30

A Yes, sir.

Q I find in Mr. Day's brief a tabulation prepared, although no evidence came in on the matter before, with reference to various expenses to which he seemed to think the court should charge you because of your occupancy of the house; among these items which he set out were repairs and taxes \$1485.10—

Mr. Day. This was taken from the report of the expert accountant. 40

Frederick R. Maddock, direct.

Q Before you and Mrs. Maddock went to live in this house, was this property assessed for taxes?

A Yes, sir.

Q While you lived there I presume it was also assessed?

A Yes, sir.

Q And it was after you left?

A Yes, sir.

10 Q I notice another item referred to in this brief, a portion of which should be charged against you, under the head of "pony and carriage;" will you describe to the court that outfit?

A That was a very small horse, small pony, and the carriage was a small carriage, which was intended for a young boy or young girl.

Q Was that used by you and Mrs. Maddock, or of value to you?

20 A Not a particle of value.

Q What use did you make of it and what value was it to you?

A We didn't use it at all. We simply sent Robert to exercise it around the block, which was necessary.

Q Was that necessary for the welfare of the beast, in your judgment?

A Yes.

Q Was it of any practical use to you?

A Absolutely no use to us.

30 Q Aside from the use which was made of this pony for the purpose of exercise, was it of any other value to you?

A No, sir.

Q Did this expense of pony and carriage go on before you and Mrs. Maddock were there?

A Yes, sir.

Q And would that expense been just the same, in your judgment, if someone else had occupied the place instead of you?

40 A Just the same.

Frederick R. Maddock, direct.

Q There is an item of house expense \$781.40 included in that list set out in Mr. Day's brief; what was included in that house expense?

A The house expense included the gas, the telephone and water, repairs to furniture and replacing of kitchen utensils or linen for the house and so on.

Q Was there such an item in the accounts as shown by the vouchers of this estate before you and Mrs. Maddock went to live there? 10

A Yes, sir.

Q And was there such an item after you left?

A I presume so, I don't know. I will answer it again; yes, sir, there was such an item.

Q Have you in tabulated form that item of house expense during the period before you went to live there, before Mrs. Maddock came to live there with you?

A Yes.

Q How much was that? 20

A \$8.75 a week.

Q How much did it amount to during the period that you and Mrs. Maddock were there?

A \$6.30 a week.

Q I note that the item of house expense was less while you and Mrs. Maddock lived there than before Mrs. Maddock came; do you know why that is so?

A By Mrs. Maddock's careful supervision and actual work, by herself.

Q In what part of this house did you and Mrs. Maddock live for the major part of your time? 30

A We lived in the second floor in the room on the southwest corner.

Q Will you mark that room with some identifying mark?

A Yes, sir, the room marked "bedroom" with a pencil.

Q Was some of your own furniture in there?

A Yes, sir. 40

Frederick R. Maddock, cross.

Q And when you left did you and Mrs. Maddock take that away with you?

A Yes, sir.

Q Was your use of the house confined principally to that, or did you use the whole house mostly?

A We lived principally in our own room.

10 Q In this item of food, taking it as it is shown in Mr. Day's brief, \$547.50, that is taken, he says, from Colonel Stevens' account, and so it appears; are any items of food there shown by vouchers to have been used before you and Mrs. Maddock came to the house?

A Yes, sir.

Q What date does the food vouchers start with on that item?

A According to the items I have shown, it starts about May 8th, but we commenced May 15th.

Q Why?

20 A Because we were married in April and went upon our wedding trip to Washington, expecting to stay away, and then Carlotta's brother Edmund died, and we were called back again. The house, of course, was filled with company, and we didn't want to start until the company left, so we were there just simply at the convenience of the family on that occasion.

Q Was it a convenience and advantage to you to stay at the house with Mrs. Maddock after your marriage, or was it your desire to have your own home?

30 *Mr. Day.* I object as irrelevant. Mrs. Maddock already testified she preferred to go to house-keeping elsewhere.

Court. I will take the evidence.

A It wasn't a convenience and it was our desire to have our own home.

Cross examination by Mr. Day.

Q When did you go to the house to live with your wife?

40 A May 15th.

Frederick R. Maddock, cross.

Q That was the first time you lived there after your marriage? A I was there previous to my marriage, I was there all the time.

Q With your wife?

A Yes.

Q Your wife was not there before May 15th?

A Yes, she was there.

Q Tell us when?

A She was there about May first. 10

Q She went there and lived May first, didn't she.

A Yes, sir, we lived there, certainly.

Q Why did you answer my question by saying you didn't go there until May 15th?

A We didn't commence housekeeping there until May 15th.

Q But you were living there from May first?

A Yes, sir.

Q When you were living there the housekeeper was there, and was there any other servant? 20

A The cook was there and the man.

Q Did you have a laundress?

A Part of the time.

Q When Mrs. Heath was there and before she died, you used to have a cook and a man and an extra woman to come in occasionally?

A Yes, sir. Mr. Day, will you allow me to answer that fully?

Mr. Day. No. 30

Q After the housekeeper went away that you had engaged, you employed a waitress?

A Yes, sir.

Q And paid her how much?

A \$20 to \$22 a month.

Q Then you had a cook and waitress and a man about the place?

A Yes, sir.

Q And a laundress?

A Part of the time, yes, sir. 40

Frederick R. Maddock, cross.

Q The laundress was there every week, wasn't she?

A What period do you refer to?

Q The period after you and Mrs. Maddock came on the scene and entered the house?

A I don't think she was, as I think we sent the laundry out for part of the time.

Q That was a very small time, wasn't it?

A I wouldn't be sure.

10 Q You have charged Miss Carlotta, or the estate, with a laundress every week, haven't you?

A I cannot tell you, because that is in Colonel Stevens' report and I haven't the detailed items.

Q When you didn't have a laundress and the laundry was sent out, that was charged against the trust estate, as expense of laundry?

A No, sir.

Q Never at any time?

20 A Some of it was; my personal items were not; they were charged to me.

Q But all the laundry connected with the house, outside of your personal expenses, that was always charged to the estate, wasn't it?

A No, sir.

Q The linen of the house and the house supply, wasn't that always charged to the estate?

A Yes, sir.

30 Q You were using those things that were washed outside of the house and charged to the estate?

A No, sir, we were not using them personally.

Q Who was?

A The servants.

Q When Miss Carlotta was away, you were using them, were you not?

A Not myself—not ourselves, the house was using them.

40 Q You and Mrs. Maddock were there in the house entirely by yourselves except when Miss Carlotta was there with her friends; am I right?

Frederick R. Maddock, cross.

A Yes, sir.

Q You never had any company?

A Very seldom.

Q You didn't have your brothers come and stay with you?

A No, sir.

Q Or did you have your sister there?

A Mr. Day, I think we did have a sister for a week. 10

Q And her husband?

A A few days, yes, sir.

Q And your father and your mother?

A I think I had my father for about two days.

Q And your mother?

A A couple of days.

Q And your sister and her husband; didn't you have any of your brothers there?

A My brother used to come occasionally.

Q Wasn't he there nearly every Sunday nearly? 20

A Yes, my brother Frank was there every Sunday nearly.

Q Why did you say when I asked you that question, that your family hadn't stayed with you?

A They visited, but they didn't stay with us.

Q There was a wine cellar in that house, wasn't there?

A We didn't call it a wine cellar.

Q Was there a wine cellar in that house? 30

A No, sir.

Q Was there a place where wines were kept?

A There was a place where ginger ale was kept and a little wine.

Q Wines?

A A little wine.

Q Wasn't Mr. Edmund F. Heath, the grandfather, quite a connoisseur on the subject of wines?

A I cannot tell you.

Q Didn't he have most expensive wines in his cellar, don't you know that? 40

Frederick R. Maddock, cross.

A No, sir.

Q Don't you know that he had some rare port there?

A Yes, sir.

Q You do know that?

A Yes, sir.

Q Who used it?

A He used some himself.

10 Q After he died who used it?

A There was very little there after he died.

Q After you and Mrs. Maddock came into the house who used the wine?

A Nobody.

Q You never had any?

A There may have been a bottle, to sick people.

Q You and Mrs. Maddock, did you use any of it?

A No, sir.

Q She never did?

20 A No, sir.

Q Not once?

A Mr. Day, maybe once, I cannot tell you that.

Q But not more than once?

A Not that I know of.

Q Mrs. Maddock never more than once used any of that port that was there?

A No, sir, not that I know of.

Q That you are sure of?

A I wouldn't swear to it, but I don't think so.

30 Q That was the only wine that was used, was the port wine, by you and Mrs. Maddock?

A Yes, sir; we didn't use any liquor.

Q You may have given one bottle away, is that all?

A Possibly; I cannot remember, but it seems to me we gave a bottle or two to sick people.

Q What right had you to give it away?

40 A I cannot tell you, Mr. Day, I have always had charge of that cellar.

Frederick R. Maddock, cross.

Q You had charge of that wine?

A I had charge of everything belonging to the estate.

Q Let us go back to the question of the man; that man kept the garden, too, didn't he?

A Yes.

Q There was quite a good garden there?

A No, sir.

Q Didn't you raise vegetables? 10

A Very few.

Q Who got the benefit of them?

A The man got some of them and we got the rest—the house.

Q You got the vegetables that were raised on that place generally; they were delivered to the house and used in the house?

A The estate, yes.

Q You and Mrs. Maddock got the benefit of them while you were living there? 20

A Not very much.

Q Miss Carlotta was away a good part of the time when those vegetables were used?

A No, sir, she was there during the vegetable time.

Q You testified that she was not there during the summer; do you appreciate that?

A I said part of the time.

Q She was away nearly all the summers while she was at boarding school? 30

A No, sir.

Q Don't you remember testifying that she was away during the summers generally?

A I testified she was away part of the time.

Q These vegetables were never used that came from that place except when Miss Carlotta was there, am I right?

A No, sir, you are not right.

Q Isn't that what you said?

A Will you ask me the question again? 40

Frederick R. Maddock, cross.

Q The vegetables raised on that place were never used except when Miss Carlotta was there; do you mean to say that?

A No, sir.

Q Then they were used even when she was not there?

A Certainly.

Q Who took care of your automobile?

10 A The man washed it in the morning.

Q And he cleaned it up, too?

A Yes, fairly.

Q You testified that you arranged with Miss Carlotta that the man should be discharged and the horse and wagon sold; if you didn't use this horse and wagon, why did you keep it?

A I don't think I testified that way. Will you quote it, please?

20 *Court.* Before me?

Mr. Day. No, it is in the printed record.

Q Do you mean to have us understand that Mrs. Maddock never used that pony?

Mr. Lum. He did not so testify.

Q You testified that you and Mrs. Maddock never used the horse and carriage; do you mean to say that?

A I mean to say this—

Q Do you mean to have us understand that you or Mrs. Maddock never used that horse and wagon?

30 A We did use it.

Q Mrs. Maddock used that horse and carriage, didn't she?

A At the request of Carlotta, for exercise.

Mr. Day. I ask to have that stricken out.

Q Mrs. Maddock used that horse and carriage, didn't she?

A Yes.

Q And when Miss Carlotta was away, she used it?

40 A Yes, sir.

Frederick R. Maddock, cross.

Q Did you build a garage on the stable lot?

A Yes, sir.

Q For your use?

A Yes, sir.

Q You have been renting that garage?

A Yes, sir.

Q You never paid the estate any rent for that lot?

A No, sir.

Q When did you build that garage? 10

A About 1908, I think, 1907 possibly.

Mr. Day. Some of these things that I am examining Mr. Maddock about I never knew about until this week.

Mr. Lum. I don't know what difference that makes.

Mr. Day. I have not excepted to his account, and I may have to have it opened for that purpose. 20

Q You used that garage regularly for yourself and never paid any rent to the estate for the use of that garage?

A No, sir, because I paid for the building.

Q You left this place in September or October, 1911; you have been renting the garage since, haven't you?

A No, sir.

Q How long have you been renting the garage? 30

A Since last September or October.

Q Did you use it for yourself?

A No, sir.

Q It was vacant all during those two years?

A Yes, sir.

Q Have you accounted for any rent to the estate?

A Yes.

Q The estate received this rent?

A Yes.

Q It is in your accounts? 40

Frederick R. Maddock, cross.

A Yes, sir.

Q Have you tried to rent the stable?

A No, sir.

Q Why not?

A Because it is there at the convenience of who was my ward, Miss Carlotta, and there are carriages in the stable.

10 Q You sold her horse?

A Yes, sir.

Q How long ago?

A Four or five years ago. The pony, you mean?

Q And the horse she had, too?

A Yes.

Q She hasn't had a horse for more than two years?

A Yes.

Q And have you collected the money for the sale of that horse?

20 A Yes, sir.

Q You sold the horse to Mr. Sweeney?

A No.

Q You have sold a horse to him?

A No.

Q What did you do with that horse?

A I sold him a pony.

Q Hasn't he got a horse or a pony that he hasn't paid for?

A He has a pony.

30 Q Did you sell that to him?

A Yes.

Q Have you collected the money?

A No, sir.

Q How much did you sell it for?

A \$120.

Q Did you collect any of it?

A No, sir.

Q Why not?

40 A Because it hasn't been convenient for Mr. Sweeney to pay me; I am responsible for it.

Frederick R. Maddock, cross.

Q Have you charged yourself with it?

A Yes, sir.

Q Where, on the accounting?

A No, sir.

Q Where?

A I have charged myself in my items that I owe the estate; I am responsible for that.

Q Where have you charged yourself?

A In my own private accounts.

10

Q It is not entered in the estate accounts at all?

A No, sir.

Q Have you got any other items like that in your private accounts?

A No, sir.

Q How much rent do you get for this garage?

A \$5 a month.

Q That you pay regularly to the estate, do you?

A When it is paid; it hasn't been paid regularly.

20

Q Miss Carlotta has asked you many times to rent that stable, hasn't she?

A No, sir.

Q She has asked you?

A No, sir, I cannot remember when she spoke about it at all.

Q If she isn't using that stable, and she hasn't evidently been using it for two years, don't you think it ought to have been rented?

A The will says that I have to take charge for her benefit; I am now keeping it for her benefit.

30

Q She does not use it?

A She may use it.

Q But she has got to have a horse in order to make that of any value?

A Yes, sir.

Q And she hasn't had a horse for two years?

A No, sir.

Q And hasn't asked for one?

A No, sir.

40

Frederick R. Maddock, re-direct.

Q Don't you think that that property should have been rented?

Mr. Lum. I object. I want first an exception filed and then raise it in the form of a question of law.

Court. I don't think I will exclude this evidence.

10 Q That room that you occupied for your bedroom in that house, and when your friends were there they didn't all occupy that room, they occupied the house, didn't they? You said you occupied only one room; your friends didn't occupy that room, they were occupying other parts of the house, were they not?

A Yes, sir.

Q That room of yours was decorated after you came there, wasn't it?

A Yes, sir.

20 Q Who paid for that?

A I think I paid for it, I am not sure.

Mr. Lum. If the estate paid for it, will the account show it?

Witness. Yes, sir.

Q It comes in under repairs?

A Yes, sir.

Q That room that you had was the best room in the house, wasn't it?

30 A I don't know, sir.

Q What do you think?

A I cannot tell you.

Q The largest room in the house?

A No, sir.

Q The largest bedroom, wasn't it?

A Possibly there may be a few feet difference.

Mr. Lum. I object; the plan speaks for itself.

Redirect by Mr. Lum:

40 Q When you were living there alone what room did you occupy?

Frederick R. Maddock, re-cross.

A I occupied another room.

Q Did you prefer the room you occupied before?

A Yes, sir.

Q Your giving it up and taking this other room, was it at all at Carlotta's request?

A Yes, sir, because Carlotta wished that room.

Q What was the condition of this room which you had decorated; had it ever been decorated before?

A Never, sir. 10

Q Were the walls clean or not?

A No, sir, they were all cracked; it had never been cleaned up since it was finished.

Q If you had not gone in that room, but someone else had, would it have been necessary to have had it decorated?

A Yes, sir.

Q Then did your occupying it cast any additional burden on the estate?

A No, sir. 20

Recross by Mr. Day:

Q You say the room was in need of repair; so the other rooms in the house needed repairs the same way, didn't they?

A Yes, sir.

Q They were not decorated, were they?

A Wherever I thought it was necessary.

Q There wasn't any decoration on the other rooms? 30

A If I thought it was necessary.

Q There wasn't any such decoration on the other rooms as you put on that room?

A I cannot tell you.

Q Don't you know there wasn't?

A No, sir.

Q Were the other rooms decorated in the same way that your room was?

A No, sir. 40

Mrs. Catherine Glenn Maddock, direct.

MRS. CATHERINE G. MADDOCK, re-called for

Further direct examination by Mr. Lum:

Q Do you recall that you were called back from your wedding trip by the death of Edmund Heath?

A Yes, sir.

Q And you and your husband went to the house when you got back?

10 A Yes, sir.

Q Why did you go there then and what did you do?

A We went there because we were called back by the duty of death, to do what we could to assist. Our plan was to take charge of the house on May 15th, but we were obliged to give up our wedding trip for the sake of the convenience of the family.

Q Did you take charge of the house before May 15th?

20 A No, sir.

Q During the time before, what was there, the usual incidents connected with a funeral at a house, guests visiting the family?

A Yes.

Q Will you tell us whether or not this room which you and Mr. Maddock occupied needed decorating?

A Unusually badly.

Q Was it done in an extravagant way?

30 A No, sir, just painted, the walls painted merely, not the wood-work, just the walls.

Q Something has been said with reference to the sale of the pony; do you know whether or not your husband sent down to the Bull's Head Stable?

40 A Yes, in the beginning when Miss Heath requested the pony to be sold, Mr. Maddock made an attempt to sell the pony, and I went down with him to the Bull's Head Stable. Miss Heath, however, immediately thereafter ceased asking that the pony be sold, and every letter from school, toward the time

Mrs. Catherine Glenn Maddock, direct.

when her vacation was due, had a request that the pony be—

Mr. Day. I object.

Q Have you those letters?

A No, sir, but the pony was to be made ready for her.

Mr. Lum. Strike it out.

Q Will you tell me whether you have kept the letters? 10

A No, sir.

Q Are they destroyed?

A Yes, sir.

Q Do you recall the contents of them?

A I recall that fact distinctly, because we had to send Robert with the pony to have it clipped and shod every time before she came home.

Q Did she make any such request about having the pony clipped and shod? 20

A Yes, sir, that was her request in each letter before vacation time.

Q Was it at her request that the pony was kept after she had once expressed a desire that it should be sold?

A She didn't, as I remember, say positively "keep it," but she ceased asking that it be sold, and if she did say anything about its being sold, she said she would like to have it exchanged for a cob, a little larger horse, but she used it constantly. 30

Q We have here something about that you should be charged because of your use of this horse; won't you tell us what you used this horse for, how you used it and when?

A I dislike horses very much and am afraid of one, and this particular pony had a habit of jumping at automobiles and motor cycles, and I disliked going out behind it exceedingly, but Miss Heath requested constantly that I make use of this pony for exercise, 40

Carlotta Heath, direct.

saying it was bad for it to stand in the stable. I was afraid to use the high cart, but when I did take it, to please her, for exercise, I hitched it to an old buggy that was in the barn and used that, and used it occasionally; that is all.

Q And was the horse and pony of any value to you for your own use?

10 A Absolutely not; a nuisance.

Cross examination by Mr. Day.

Q What was the date of Mr. Heath's funeral?

A As I remember, we were married on April 24th, I think we came home on the evening of April 28th; I believe that was the day.

Q He was dead when you came home?

A Yes, sir.

Q And he was buried a few days after that?

20 A Yes, sir.

Mr. Lum. We rest.

CARLOTTA HEATH, recalled for further

Direct examination by Mr. Day.

Q Did your grandfather ever keep a wine closet?

A Yes, sir.

Q Where was it?

A Down in the cellar.

30 Q What did you call it, was it a closet or wine cellar or what?

A Wine closet.

Q Were there many wines in that closet?

A There have been at least twenty cases of wine down there and still are twenty cases of wine down there. They have been there from the time that grandfather was alive.

Q There are still there now?

A Yes, they are.

40 Q Was there anything besides the cases of wine that you have referred to, any port wine?

Carlotta Heath, direct.

A Yes, there was port and very old Rudesheimer and several different kinds of wine and old rum.

Q Are they there now?

A Some of them.

Q Can you tell us whether Mr. and Mrs. Maddock used any of this wine?

A I know that when I was home from boarding school Mrs. Maddock gave my room mate some and told her not to tell me because she didn't want me to form the habit. 10

Mr. Lum. Were you present when Mrs. Maddock stated that?

Witness. No.

Mr. Lum. I ask to have that stricken out.

Court. Yes.

Q Do you know anything about the use of wines; were there any wines taken out of the wine closet? 20

A There were.

Q While Mr. and Mrs. Maddock were living there?

A Yes.

Q You know that there was?

A Yes.

Q When you took possession of that wine closet after they left, were any of the wines gone?

A Yes, there were; I found three bottles in their closet, empty bottles.

Q About the horse—did you ever ask Mr. or Mrs. Maddock after you went to boarding school, to keep the pony? 30

A No.

Q Did you or did you not ask them to sell it?

A I asked them to sell the horse—the pony.

Q More than once?

A Yes, I am quite sure I asked them more than once.

Q In this room that was occupied by Mrs. and Mrs. Maddock—was it a pleasant room or otherwise? 40

Mrs. Catherine Glenn Maddock, direct.

A I considered it the pleasantest bedroom in the house.

Q Did you ask Mr. Maddock to take that room?

Mr. Lum. There is no evidence that she did. She asked Mr. Maddock to give her his room before they came.

Q Did you ask Mr. Maddock to give up the room he had occupied so you could have it?

A Not that I remember of.

Cross examination by Mr. Lum.

Q You did occupy the room that he formerly occupied?

A Yes.

Q You know, Miss Heath, that Mr. Maddock is practically a teetotaler, do you not?

A Yes.

20 MRS. CATHERINE G. MADDOCK, recalled for
Further direct examination by Mr. Lum.

Q Were there wine bottles or other bottles left in your closet when you moved?

A No, sir, absolutely not.

Q If they were found there after you moved, were they put there by someone else?

A Certainly.

30 Q Do you remember of ever using liquor other than for medicinal purposes?

A No, sir.

Q Will you tell us the sole use of liquor from the wine cellar or closet of that house while you were there?

40 A There was a bottle of old port that had no label, an open bottle that had been used for medicinal purposes, and some time before we went there, Mr. Maddock brought down a little when my father was very ill, and in such cases as that he felt perfectly at liberty

Frederick R. Maddock, cross.

to take a little of that bottle for anyone who was sick.

Q Was there any other use of liquor in the house?

A No, sir.

Cross examination by Mr. Day.

Q Do you wish to have it understood that you never drank any of the wine in that closet?

A Certainly.

Q Never once? 10

A Yes, except for medicinal purposes.

Q And never had any on your table?

A No.

Q And never drank any except for medicinal purposes?

A No.

Q How often did you take it for medicinal purposes?

A Perhaps twice in two years.

Q Nothing more than that? 20

A No, sir.

FREDERICK R. MADDOCK, recalled for further

Cross examination by Mr. Day.

Q Do you remember being examined up in the Orphans' Court?

A Yes, sir.

Q Didn't you testify that you paid the expenses of that house of about from sixteen to twenty dollars a week? 30

A Yes, sir.

Q You remember in the examination before the Orphans' Court that Miss Carlotta testified that when she went to school she had a conversation with you, in which she requested you to discharge the man and to sell the horse and carriage; you remember her testifying that way?

A No, sir.

Q You don't remember that? 40

Frederick R. Maddock, cross.

A No, sir.

Q You don't remember yourself being examined on that subject, do you?

A No, sir.

Q Did you testify: "During the vacations didn't she usually visit, go visiting, I mean, in the summer of 1909, the summer of 1910, and summer of 1911, didn't she go away?"

10

A She did in the summer time, but there were other vacations." Do you remember testifying in that respect?

A Yes, I said she would go away in the summer; I didn't say all the summer.

Q Didn't you testify just as I have quoted you?

A Undoubtedly it is correct.

20

Q Didn't you testify also on that examination, that all you paid was for the butcher's and grocer's bill for the maintenance of the house while you and Mrs. Maddock were there?

A Yes, sir.

Q Again, page 48, where Mr. Lum is examining you—your own counsel—

"Q Now, Miss Heath has testified regarding the arrangement under which you should live there, the payment of expenses. Was that ever agreed to by you? A No, sir.

30

Q What was the arrangement under which you continued there?

By the Court.

Q What did she say and what did you say, if it arose out of a conversation? A What was stated in her evidence was virtually correct, but I did not agree to it; I did not tell her I didn't agree to it.

Q Did you say whether you did or didn't agree to it? A I didn't say either.

Q You didn't say either way? A No, sir.

40

Frederick R. Maddock, re-direct.

By Mr. Lum.

Q You continued to run the house as you thought best? A Yes, sir."

Q Do you remember that Miss Carlotta testified that before she went to school she asked you to sell the horse?

A No, sir.

Q And that that testimony had reference to the arrangement she made there with you; you don't remember that? 10

A No, sir.

Q Then I will refresh your memory on that. Don't you remember Miss Carlotta testified on page 30 as follows:

"So then I asked Mr. Maddock to come and live in my house and bring his wife there. I said that I would pay for one maid which my grandmother had always gotten along with; I said I would pay for a woman to do their washing; I said he could sell my horse and he could rent my stable and, therefore, the rent from the stable would at least pay for the taxes and there would be a little left over, and that he could dispense with the coachman we now have and have a man come in and attend to the furnace and cut the grass. That is what I agreed to do." 20

Q Do you remember your examination about that, and you said that she had stated it about right? 30

A According to the record, yes.

Re-direct by Mr. Lum.

Q You tabulated the different items which were set up in Mr. Day's brief—the food, house expenses, wages, taxes, &c., which we have given separately, lumping them, covering a period while you were living there alone before your wife came and after your wife came?

A Yes.

Q Will you give them to us? 40

Frederick R. Maddock, cross.

A The cost per week when I was there alone was \$75.25 and the cost per week when Mrs. Maddock was there with me was \$51.77.

Q The expense to the estate as shown by the vouchers?

A Yes, sir.

Q Covering all these items?

10 A Yes, and we show the estate benefited by \$2911.52.

Q Comparing that with the vouchers and the book of Mrs. Maddock covering the items which she has sworn to as having already been paid, does it make up such a large amount?

A No, sir, it makes up just about the same as it cost me to run the house when I was there alone.

20 Q There is an item in your statement, put in last time, estimated things that you cannot give vouchers for, of \$500; would this figure seem to show that that must have been expended?

A Yes.

Q Explain a little more fully and in detail.

A That \$500 referred to in our charge would make about \$14 a week, and then the amount that was paid out of the estate was \$3.33 per week; that would be \$17.33 per week; we couldn't run the house on \$17.33 per week and feed all the servants, so that that \$500 that I paid out in small items was evidently correct.

30 *Cross examination by Mr. Day.*

Q You haven't any vouchers for them?

A No.

Mr. Lum. We rest.

Mr. Day. I have nothing further to put in.

Court. You desire before closing that part of the case to examine those vouchers?

Mr. Day. Yes.

40 *Court.* What arrangement will you make; will you examine them now or will you arrange

to be together and have them examined when I am not present?

Mr. Lum. Let Mr. Day go over them and if he finds anything that needs explaining, we will explain it.

Mr. Day. I suggest that we have the testimony written out and that Mr. Lum give us the opening brief on the question of what this testimony shows with reference to Mr. Maddock's charges in connection with the time that he lived in the house. I, on the other hand, will serve him with a brief at the same time with regard to the construction of the will, and he can answer it, and then at the same time I wish he would serve us with a brief on the right to commissions, and as to the amount of the commissions, and I will answer that. 10

Court. If Mr. Day wishes to take any further testimony, counsel and Mr. Bindseil can fix a time for further hearing, but it is not likely to be the case. 20

30

40

Discussion.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	
	CARLOTTA HEATH,	<i>Complainant,</i>
	<i>and</i>	
10	FREDERICK R. MADDOCK, Surviv-	
	ing Executor, etc.,	<i>Defendant.</i>

Transcript of shorthand notes of proceedings in the above entitled cause before Hon. William J. Magie, Vice-Chancellor, at the Chancery Chamber, Prudential Building, Newark, N. J., on Wednesday, the 22nd day of April, 1914, at 11 o'clock in the forenoon.

20 Appearances:

For the complainant, Edward A. Day, Esq., and for the defendant, Messrs. Lum & Tamblyn.

Mr. Day. Since your honor's memorandum was filed and within comparatively few days—

The Court. I haven't filed it, because the law says the Advisory Master is not to deliver an opinion, but I sent it to counsel.

30 *Mr. Day.* I learned that Mrs. Connolly, sister of Miss Heath, had had a conversation at one time with Mr. Maddock with regard to the fees as executor of Mrs. Margaret Heath's estate. He was also substituted administrator of Edmund M. Heath's estate and substituted administrator of Charles Heath's estate.

The Court. Edmund, the father of Charles, and Charles, his son, the grandfather and father of Miss Heath. And it seemed to me my duty to produce her this morning and to ask her about that conversation. I take it, of course, that her testimony will be subject
40 to any objection as to its materiality.

Discussion.

Mr. Lum. I should say first, that it was clearly not newly discovered evidence within the rule. This is not a witness, a stranger to us, the sister of Mr. Day's client.

Mr. Day. She does not live here—she lives in New York State and is very rarely here.

Mr. Lum. I judged that because I have seen her here in court quite frequently. 10

Mr. Day. She has never been here in court except once, then in her own cause.

Mr. Lum. As I say, she is a sister of Miss Heath. There should be no reason in the world why evidence should not have been produced. However, I understand the statement is something that was said by Mr. Maddock in reference to whether he would take fees or not. Of course, that could have no relevancy and no competency, and the case having been heard in every branch and the fullest opportunity having been given, it would seem to me quite improper that we should be put to further loss of time and annoyance in the matter, and I don't think the court should grant further courtesy in this respect, having had the matter in mind as you have, and having suggested in talks with counsel your ideas and kept us so in touch from time to time that we have all had the fullest opportunity for everything, and I think the decree, as drawn this morning, should be signed and the case closed. 20 30

Mr. Day. I think perhaps the answer is (I don't know whether your honor would want affidavits. Mr. Lum said he would waive affidavits). The facts are these: Mrs. Connolly does not live in this State; she resides in New York State; she has been here very little; there was a foreclosure brought by Mr. Maddock against Mrs. Connolly a short time ago and she appeared here once. That's all. Mrs. Connolly had nothing to do with this litigation we are now engaged with. It seems to me, under those circum- 40

Discussion.

stances, that testimony, if it is material, should be produced.

The Court. Is it material?

10 *Mr. Day.* I should say it is. I wanted to raise that issue when I asked her the questions. Of course, if Mr. Maddock entered upon the discharge of his duties and accepted that \$500 as commission, in lieu of all further allowance, as the will required, he could not thereafter renounce. I think that is so. Now, if Mr. Maddock declared to anyone, to Mrs. Connolly, or to anyone else, that he was satisfied and was not going to demand any fees, I think that would place him in a position where he should not be allowed, five and a half years afterward, to renounce, and I am prepared to offer that kind of testimony this morning.

20 *Mr. Lum.* I should say that it has no possible materiality. Your honor's memorandum covers the situation, as I think the cases hold very clearly, there could be no possible materiality.

The Court. That was about the time he assumed his duties, I suppose. Was it before or after he assumed his duties?

30 *Mr. Lum.* After. If this is newly discovered evidence, then they have no case that can be closed, because it is so slight we could get as much as that in any case on the two grounds, that it is not sufficiently shown that evidence which was in existence could not have been produced, and also it has not been shown as having any possible relevancy. If he had made the statement before he started on his duties they might raise the point, but after he had entered on his duties, any statement made by him could not—

Mr. Day. I don't think this motion ought to be denied, because it is not newly discovered evidence.

40 *The Court.* I don't see what, in the case so far as I observed, would have put Mr. Day on the track of any such statement as this. I don't think that he would have that by inquiring, so I really think this is

Discussion.

newly discovered evidence, and if relevant, in my opinion it ought to come in, but I think it entirely irrelevant. I don't think he could bind himself by a mere statement of that sort without any consideration or without being made to anybody having power by it. I don't think it can possibly be of any consequence in the case, so that I will proceed to consider the decree that you have.

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Conclusions of Chancellor Magie.

it and reported thereon. By his report the defendant had charged himself correctly except an overcharge of \$27.48; the correct amount of charges being \$153,360.20. The payments claimed by defendant in his discharge were reported as exceeding the correct amount by \$14.15, reducing the discharges to \$29,544.70, and the total amount stated by the Expert was \$115,038.78, of which \$111,838.43 was corpus and the remainder was income. This report has not been criticized in the case and must stand as the basis of settlement of the account, unless Complainant's claim to sur-charge Defendant has been made good. 10

The Complainant's claim is that Defendant wasted her estate under the following circumstances:

By her Last Will, Testatrix provided that Defendant should continue to live in the house, left with its contents to the complainant, her granddaughter, with the husband of Testatrix and the granddaughter until the granddaughter arrived at the age of twenty-one years, and free of charge, provided Defendant remained single. After the death of Testatrix, Defendant continued to live, free of charge, in the house with the Complainant until he married in the spring of nineteen hundred and ten. At that time Mr. Glen had died, and Defendant proposed to send Complainant to a boarding school. It then became a question whether the house should be closed, or should remain occupied as a home to which Complainant might return in her vacations. Looking at the financial condition of this school girl and the friendly relations between the parties, Defendant exercised his discretion to keep open the house as a home for Complainant. I think the discretion was reasonably exercised. While the Defendant had lost, by his marriage, any right to live free in the house, there was nothing in the Will forbidding him to occupy the house or to take his wife there. By the First clause of the Second Codicil, Testatrix committed to Defendant the sole 20
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Conclusions of Chancellor Magie.

charge of the house and the manner of living and of the education of Complainant. This duty he could better perform by continuing to reside in the house.

Under the advice of Counsel, on the fifteenth day of May, nineteen hundred and nine, he took up with his wife his abode in this house, to the apparent satisfaction of Complainant, and continued there until the thirtieth of September, nineteen hundred and eleven.

10 He recognized that he was not entitled to live there free of charge, at the expense of Complainant, and he concluded that he would contribute a share of the expenses of the establishment by purchasing, with his own funds, the principal part of the food for the household. Whether or not this was an arrangement entirely judicious for a Trustee to make may be doubtful. He obtained lodgings and board in a comfortable house, with the use of many improvements. But when

20 it is considered that under his deliberate judgment it was wise to keep the house open for his ward's benefit, I have reached the conclusion (contrary to my first impression) that the question is not what he ought to be required to pay to the estate for the advantages he had, for if he had not occupied the house it is obvious that, under the circumstances he could not have utilized the house to Complainant's benefit, but whether the amount he contributed was sufficiently large to prevent any encroachment upon the expenditure of the Complainant for the preservation of the house as

30 a home.

Without going into details, I state the conclusion I have arrived at to be, that the contributions of the Defendant were, in fact, sufficient and that his account ought not to be sur-charged with anything on this matter.

The other matter submitted to me relates to the Commissions of the Defendant.

By the will of Mrs. Heath there was a bequest to

40 Defendant of Nine thousand dollars "in full settle-

Conclusions of Chancellor Magie.

ment of all claims and demands of every kind and nature against my estate, except such as are provided for in this my will." There was the further provision, as before stated, giving to the Defendant the privilege of living in the house free of charge until Complainant became twenty-one years of age. There was a further provision giving each of her Executors Five hundred dollars "in lieu of further commissions or allowances." By the Fourth Codicil to her will Testatrix gave each of her Executors, viz., Defendant and Charles T. Glen, the sum of Five hundred dollars "in lieu of further commissions." 10

About the time Defendant filed his account, he filed with the Surrogate a writing renouncing all claim to the specific compensation given by the Will and Codicil.

It is now contended that this renunciation requires that Defendant should pay back to the estate of his Ward the Nine thousand dollars (which he received as a legacy) with interest, and also compensation for the period of time he lived in the house free of charge, on the ground that both these provisions were for commissions and allowances to him as Executor or Trustee. This contention, so far as relates to the Nine thousand dollar bequest, is put upon the ground that the bequest was "in full of claims and demands against her estate" and that she must have considered the claim of an Executor or Trustee to commissions was a claim or demand upon her estate. If that meaning is given to the language used it still fails to sustain Complainant's contention, because the gift is to settle all claims and demands except those otherwise provided for in the Will, and she made a provision for commissions. 20 30

Nor do I think the other contention respecting the living of the Defendant in the house free of charge is any better supported. The bequest of the two Executors of Five hundred dollars each, which was to be in 40

Conclusions of Chancellor Magie.

full of all commissions is applicable to both Executors, and plainly indicates that Testatrix thought she had the right to limit the amount which each should obtain for commissions. It is possible, perhaps probable, that Testatrix did not know the state of the law which provides that an Executor may renounce a specific compensation for his services, and claim such compensation as the Court may award. In my judgment the limitations cannot be enforced as against the renunciation of Defendant.

It is argued that the renunciation came too late, not being filed with the Surrogate until after the Defendant had managed the estate for several years as Executor and as Trustee. It is possible that limitation of time for filing such a renunciation might be properly imposed by the Legislature, but it is not within the power of Courts to so impose it and limit the Executor's right.

The result is that I think that Defendant should be allowed commissions beyond the amount fixed by Testatrix as the estate exceeds fifty thousand dollars, the amount allowed must be fixed by a consideration of actual services. During the period covered by this account Defendant has managed the estate both as Executor and Trustee. The account must be considered as the final Account of the Executor. For his services in both capacities I think a commission of 3 per cent. on the sum which has come to his hands should be allowed.

I will advise a Decree allowing the Account with the corrections reported by the Expert, with commissions as above stated.

*Final Decree.***Final Decree.**

Filed April 29, 1914.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="text-align: center;">CARLOTTA HEATH, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">FREDERICK R. MADDOCK, Executor and Trustee, <i>Defendant.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p>
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This cause coming on to be heard before the Court in the presence of Edward A. Day of counsel with the Complainant, and Ralph E. Lum and Egbert J. Tamblin of counsel with the Defendant, 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 proofs, pleadings and arguments, and it appearing to the Court that the Defendant as surviving Executor of and Trustee under the Last Will and Testament of Margaret C. Heath, deceased, did on or about the sixteenth day of October, nineteen hundred and eleven, file his account as such Executor and Trustee in the Essex County Surrogate's office, and that the said account has by Order heretofore entered in this cause been brought into this Court for settlement, and the said account having been examined by a certified public accountant, appointed by Order in this cause, and it appearing from his report that the accountant has overcharged himself to the extent of Twenty-seven dollars and forty-eight cents (\$27.48) in so far as the corpus of the estate coming into his hands is con-

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Final Decree.

cerned, and that there should be deducted from the charges against the income of said estate the sum of Fourteen dollars and fifteen cents (\$14.15), and that the said account is, in all other respects, found to be correct; and it further appearing that no exceptions have been filed to the said Expert's Report, and that the said Defendant should not be surcharged in the manner alleged in the Bill of Complaint, and that the said Defendant is entitled to commissions as hereinafter directed:

It is thereupon on this twenty-ninth day of April, A. D. Nineteen hundred and fourteen, 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 doth hereby Order, Adjudge and Decree that the said account of the said Defendant, as surviving Executor of and Trustee under the Last Will and Testament of Margaret C. Heath, deceased, be and the same hereby is in all things allowed, as stated, and that there is a balance remaining in the hands of the said accountant, amounting to the sum of One hundred and eleven thousand, eight hundred and thirty-eight dollars and forty-three cents (\$111,838.43), constituting the corpus of the said estate of the said decedent, and a balance remaining in his hands of income amounting to the sum of Three thousand two hundred dollars and thirty-five cents (\$3,200.35) to be disposed of according to law and the Last Will and Testament of the said deceased.

And it is further Ordered, Adjudged and Decreed that the said accountant be allowed three per centum on all sums that have come into his hands, both of principal and income, as and for his commissions.

And it is further Ordered, Adjudged and Decreed that the said Defendant recover his costs of this action to be taxed and that there be allowed to the coun-

Final Decree.

sel for the defendant a counsel fee of fifteen hundred dollars, said costs and counsel fee to be paid by the said accountant out of the said estate, and that there be allowed to the Counsel of Complainant a counsel fee of seven hundred and fifty dollars, to be paid by accountant out of the said estate.

E. R. WALKER, C.

Respectfully advised,
W. J. MAGIE,
Advisory Master.

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Notice of Appeal.

Notice of Appeal.

Filed May 12, 1914.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">CARLOTTA HEATH,</p> <p style="text-align: right;"><i>Complt.,</i></p> <p style="text-align: center;">and</p> <p>FREDERICK R. MADDOCK, Executor and Trustee of Margaret C. Heath, Deceased,</p> <p style="text-align: right;"><i>Deft.</i></p>	} <i>On Bill, &c.</i>
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20 The complainant (now being of age) hereby ap-
peals from so much of the decree made in this Court
on the twenty-ninth day of April, nineteen hundred
and fourteen, in the above stated cause, as adjudges
that the account of the Defendant, as surviving Exec-
utor and Trustee under the Last Will and Testament
of Margaret C. Heath, deceased, should be allowed as
stated, and that there is a balance remaining in the
hands of the said accountant amounting to the sum
of one hundred and eleven thousand eight hundred
30 and thirty-eight dollars and forty-three cents (\$111,-
838.43) constituting the corpus of the estate of Mar-
garet C. Heath, deceased, and a balance remaining in
his hands of income amounting to the sum of three
thousand two hundred dollars and thirty-five cents
(\$3,200.35) to be disposed of according to law and
the Last Will and Testament of the deceased; and also
as orders that the said accountant be allowed three
per centum on all sums that have come into his hands,
both of principal and income, as and for his commis-

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Petition of Appeal.

sions; and as orders that the said defendant recover his costs of this action to be taxed and that there be allowed to the counsel for the Defendant a counsel fee of fifteen hundred dollars, said costs and counsel fee to be paid by the said accountant out of the said estate; to the Court of Errors and Appeals in the last resort in all cases.

Dated May 11, 1914.

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EDW. A. & WM. T. DAY,
Solicitors of Complainant.

EDWARD A. DAY,
Of counsel.

I conceive there is good cause for appeal in the above stated cause.

EDWARD A. DAY,
Of Counsel.

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Petition of Appeal.

Filed May 22, 1914.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The humble petition of Carlotta Heath (now of age), the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-ninth day of April, nineteen hundred and fourteen, wherein your petitioner by her next friend was complainant and Frederick R. Maddock, as surviving executor and trustee of the Last Will and Testament of Margaret C.

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Petition of Appeal.

Heath, deceased, was defendant, in this respect, to wit, that the said decree adjudges that the account of the defendant, as surviving executor and trustee under the Last Will and Testament of Margaret C. Heath, deceased, should be allowed as stated, and that there is a balance remaining in the hands of the said accountant amounting to the sum of one hundred and eleven thousand eight hundred and thirty-eight dollars and forty-three cents (\$111,838.43) constituting the corpus of the estate of Margaret C. Heath, deceased, and a balance remaining in his hands of income amounting to the sum of three thousand two hundred dollars and thirty-five cents (\$3,200.35), to be disposed of according to law and the Last Will and Testament of the deceased; and also as orders that the said accountant be allowed three per centum on all sums that have come into his hands, both of principal and income, as and for his commissions; and as orders that the said defendant recover his costs of this action to be taxed and that there be allowed to the counsel for the defendant a counsel fee of fifteen hundred dollars, said costs and counsel fee to be paid by the said accountant out of the said estate.

And your petitioner humbly appeals from those parts of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree fails to surcharge the said defendant with his proportion of the expenses connected with the maintenance of the homestead of the decedent, No. 300 Roseville avenue, during the time he and his wife resided there, and with an adequate amount represented by their board and lodging, and in that it appears that the legacy of nine thousand dollars given to the said defendant in and by the Sixth Clause of the Will of the decedent, and that the provisions for his benefit contained in the Seventh Clause of said Will were and each of them was made by the said testatrix with reference to his commissions and were

Petition of Appeal.

part of his compensation for his services as executor and trustee under the said Will, and that the sum of five hundred dollars given to him by the Eighth Clause of the said Will in lieu of further commissions or allowances was made with reference to the previous provisions for his benefit in said Will, and in that it appeared that the defendant renounced all claim to specific compensation given to him in and by said Will, and by virtue of his said renunciation he is not entitled to the commissions allowed him by statute, and also because the said renunciation was not made within the time allowed by law and was not properly made, and that the litigation in this cause was due to the neglect and fault of the defendant, and that, therefore, he is not entitled to any commissions and his counsel are not entitled to a counsel fee or costs of suit.

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Your petitioner, therefore, prays that said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

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EDWARD A. & WM. T. DAY,
Solicitors of Appellant.

EDWARD A. DAY,
Of Counsel with Appellant.

To this petition the Common Answer to Petition of Appeal was filed May 26, 1914.

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The first part of the document
 discusses the general principles
 of the system and its
 application in various
 cases. It is followed by
 a detailed description of
 the methods used in the
 experiments and the results
 obtained. The second part
 of the document is devoted
 to a discussion of the
 theoretical aspects of the
 problem and the comparison
 of the experimental results
 with the theoretical predictions.
 The third part of the document
 contains a list of references
 and a summary of the work.
 The author wishes to express
 his appreciation to the
 staff of the laboratory for
 their assistance during the
 course of the work.

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