N. J. Court of Errors & Appeals

In the Matter of the Last Will and Testament of Louisa M. Wadskier, Deceased.

APPEAL FROM PREROGATIVE COURT.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter of the Estate of Louisa M. Wadskier, Deceased.	On Petition, Etc. Appellant's Brief.

STATEMENT OF FACTS.

Louisa M. Wadskier died August 13th, 1913, in the City of Camden. She left a last will and testament duly proved and recorded in the Surrogate's Office of Camden county.

The will disposed of certain personal effects and then provided as follows: "Paragraph 4.—All the rest, residue and remainder of my estate, real, personal or mixed, I give, devise and bequeath unto John F. Harned, his heirs and successors in office, in trust nevertheless, for the following uses and purposes, that is to say—to invest and keep invested the principal of my estate and to collect the income therefrom and to hold, mortgage and control and collect the rents from the real estate of which I may die seized and possessed, and to sell said real estate at public or private sale at such time as in the judgment of the said executor the same may be most practical." Then follow numerous sub-divisions. Sub-

division F, Section 4: "To my niece Elizabeth S. White, I give the sum of ten thousand dollars for her own personal use, not to be given away to missions, but invested for her benefit." By a final grant she provided that the balance shall be equally divided among seven children therein named.

The executor has filed his account in the Orphans' Court of Camden county, and the same has been duly allowed, whereby it appears that there is a balance after providing for ail of the legacies, including the legacy in question.

Elizabeth S. White filed a petition in the Camden County Orphans' Court on January 11th, 1915, asking for an interpretation of the will and directions to pay the legacy to her. On the 12th day of February, 1915, the said Elizabeth S. White died, leaving a last will and testament duly proved, whereby she appointed Joshua R. Morgan executor, and that the said Joshua R. Morgan, on the 24th day of March, 1915, filed a supplemental petition in said cause praying that said legacy be paid to him as the executor of Elizabeth S. White, deceased. The case was duly heard by the Orphans' Court of Camden county, and on the 26th day of May, 1915, an order was made directing John F. Harned, trustee mentioned in said will, to pay said legacy to Joshua R. Morgan, the executor of Elizabeth S. White, deceased. An appeal was taken from that decree to the Prerogative Court, and on the 10th day of December, 1915, an order was entered confirming the decree of the Orphans' Court.

The only question to be determined by the Court is, was the said legacy an absolute gift.

ARGUMENT.

The contention of the appellant is that the circumstances and words of qualification found in the words of the legacy so qualified it as to make it a life estate.

The will provides as follows:

1. Devise of the estate in question to a trustee to invest, keep invested and collect the income.
2. Devise to Elizabeth S. White of part of the trust estate.
3. Limited, not to be given away to missions.
4. Limited, to invest for her benefit.
5. Remainder of the estate to residuary legatees.

It is insisted that the devise of the estate to a trustee fixed and determined the estate as such, and could only be changed by a clear and definitely expressed determination to take it out of the trust, and the qualification "invested for her benefit," taken in connection with the trust itself, shows a clear intention on the part of the testator that the trustee should continue to invest the trust fund for the benefit of the said legatee, and for her own personal use, and disclosed a limitation upon the trust estate that it was for her use and not for her heirs. That it was clearly the intention of the testatrix to carve out a certain portion of the trust which was to be held for the personal use of said Elizabeth S. White, and if so, then her own personal use could not extend beyond the period of her life, and the qualification is that of life estate.

The will directs that the money is not to be given away to missions. Being in the hands of a trustee, there is a

clear duty on the part of the trustee to see to the execution of that portion of the will. That the legacy is so restrained in his hands that it cannot be given away to missions. That the said legatee took a qualified estate; she did not have the full and absolute control of it, and if so, it terminated at her death.

It is well settled in this State that a will should be so construed as to give effect to every word and every part, without change or rejection, and effect given to all, taken as a whole.

Pennington vs Van Houten, 8th N. J. Eq., 272.

The intention of the testatrix is the law of the will.

Provost vs. Provost, 27 N. J. Eq., 296.

The Court cannot consider this legacy to be an unqualified gift without violating and ignoring the words of the will. The fundamental and cardinal rule in the interpretation of wills is the intention of the testator. It is the duty of the Court to ascertain such intention and to give force and effect to the scheme which he has in mind for the disposition of his estate.

Stokes vs. Kelly, 9th N. J. Eq., 130.

The gift of the legacy is to a trustee, in the first instance, with directions to invest and keep invested, and as to the particular legacy, to invest for the benefit of the legatee. The testatrix has seen fit to annex to the legacy two qualifications; first, that it was not to be given away to missions. She evidently had a fixed purpose in her mind when she inserted this clause. It was her privilege to give without a limitation, or to have fixed the limitation to the gift. It was her privilege to guard

against the money being spent in that way. The language used is positive and emphatic, *it is not to be given away.* She does not say that the legatee is not to give it away, but on the other hand she leaves it to a trustee so that it cannot be given away.

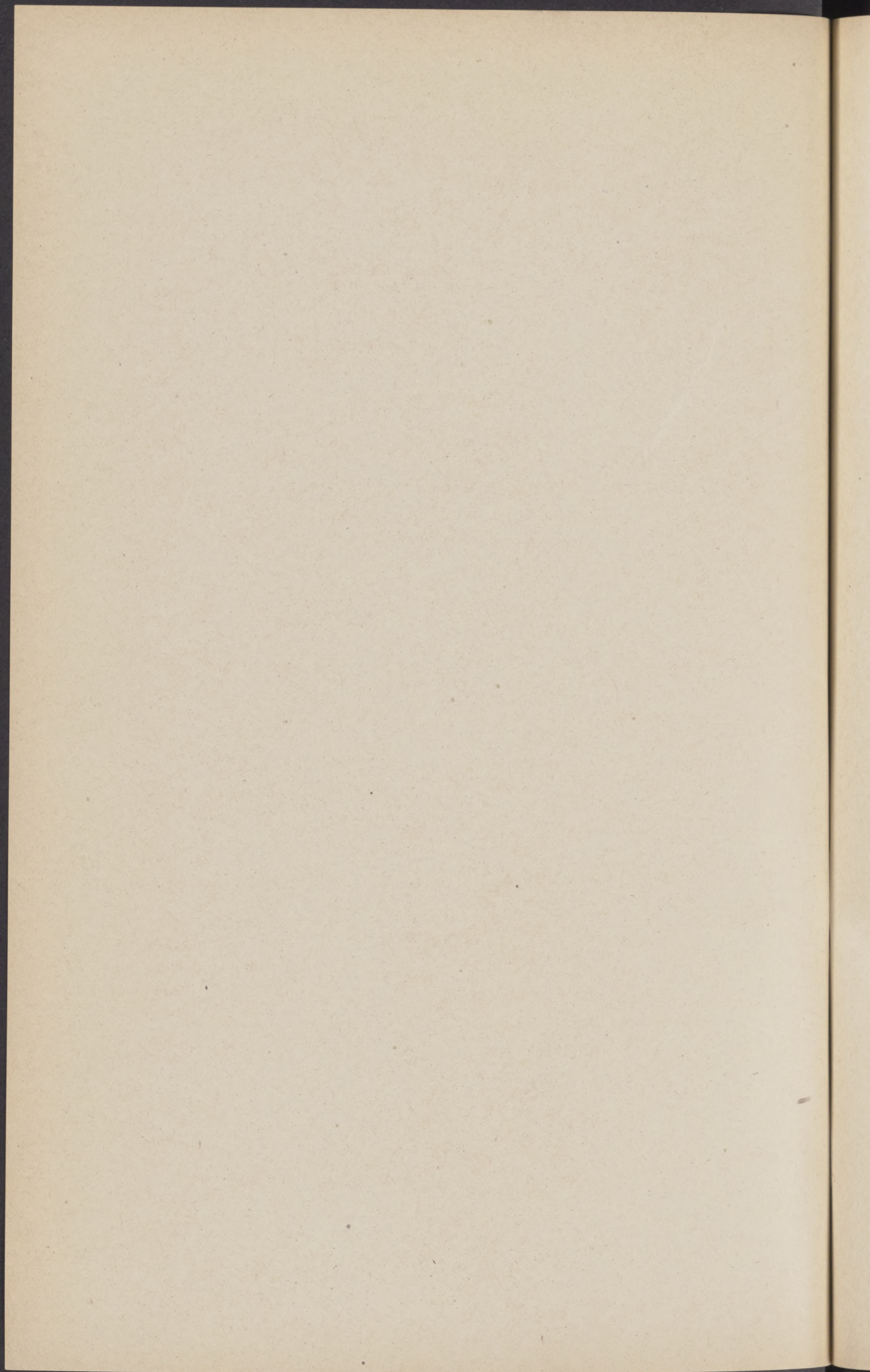
The Court is not at liberty to disregard this positive direction. The will should be so construed as to give full force and effect to that intention.

The money is so left that the legatee is to have it for her own personal use, not the principal, because that is to be invested for her benefit, so that what she is to have for her own personal use is the income from the money already invested by the trustee. This seems to be the clear intention of the testatrix, and it is the only method by which effect can be given to all the words and limitations in the legacy, which must be the guiding star of this Court.

But notwithstanding, as a general rule, the gift of interest and dividends standing by itself is the gift of the corpus, yet if, from the nature of the subject or the contex of the will, it appear that the product or interest of the fund only was intended for the legatee, the gift of the interest will not pass the principal.

House vs. Ewen, 10 C. E. Green, 368.
2 Rop. on Leg., 1476.

Respectfully submitted,
JOHN F. HARNED,
Solicitor of and Counsel
with Appellant.



NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter of the Estate of Louisa M. Wadskier, Deceased.	On Petition, Etc. Respondent's Brief.

The statement of facts contained in the appellant's brief is correct with the exception of that part wherein he states that by a final grant she provided that the balance shall be equally divided among several children therein named. This, the respondent disputes as a question of law.

The contention of the respondent is that the money was left in trust to the executor, simply and solely, to reduce the property of the decedent to cash, and to distribute the same in accordance with the sub-divisions of paragraph 4 of the will. If any other construction were placed upon this part of the will, then nearly all the other bequests named in the sub-divisions would be held in trust. There may be two or three sub-divisions which are in trust, but certainly not all of them. The respondent respectfully insists that the money left to Elizabeth S. White was given to her absolutely. No better argument could be adduced in support of this contention than the opinion of Judge Boyle, of the Orphans' Court, sus-

tained as it was by the authorities cited in the opinion of the Vice-Chancellor. Our courts have uniformly held that a bequest of the interest of personal estate, without any limitation, is a gift of the corpus. *Baldwin vs. Tucker, 16th Dick., 413-414; aff. 19th Dick., 333.*

The general principle has been long and well settled that when the interest or produce of a fund is bequeathed to a legatee or in trust for him, without any limitation as to continuance, the principal will be regarded as bequeathed also. *Craft vs. Snook, 2 Beasley, 122.* The language in that case was "I give and bequeath unto my sister Elizabeth Craft the interest upon the sum of one thousand dollars, to be paid to her annually during her life, and after her decease, the interest to be equally divided between Enoch Craft and Mahlon Craft.

In *Gulick vs. Gulick, 10 C. E. Gr., pages 324-326*, the language of the bequest was "I give and bequeath to my daughter Abby Maria the sum of ten thousand dollars to be placed out at interest on bond and mortgage, so soon as my estate can be collected without sacrifice; the bonds and mortgages to be taken in the names of my executors or the survivor of them, in trust for my said daughter, Abby Maria, and the interest to be paid annually to her by my said executors, or the survivor of them, for her sole and separate use, and in no wise liable for the debts or subject to the control of any man she may marry. Should she marry and have a child or children, then after her death, I give the said ten thousand dollars to said child or children."

Abby Maria did not marry, but died leaving a will by which she gave all her property to the children of her sister Elizabeth.

It was claimed by the executor of Abby Maria that she took the gift of ten thousand dollars absolutely; on the other hand, it was insisted that she took only the interest of it for life. It was held by the Court, vide page 328, that "in its terms, the bequest is absolute. Besides the produce of the fund is given to her without limit as to time. That in this case passes the fund itself." Vide authorities, page 328. This case was affirmed upon appeal in 12th C. E. Gr., page 498, and the Court, in its affirmance, held that the rule is well established that a bequest of the income of personalty, without limit as to time, is equivalent to a gift of the principal, and that the rule applies whether given directly or through the intervention of trustees.

In *Huston vs. Reed, 5 Stew., page 591,* the Court held the rule to be "that when the interest or produce of a legacy is given to, or in trust for, a legatee, or for the separate use of such legatee, without limitation as to continuance, the principal will be considered as bequeathed. (Page 596.)

In *Post vs. Rivers, 13th Stew., page 21,* the gift was of the residue of the estate, real and personal, to my sister "to have and hold the same in trust for my two children, the interest to be paid to them at least once a year, they to share and share alike, but it is my special desire not to have the principal used if it can be saved for my two children." The Court held that the children were entitled to the corpus of the estate as tenants in common.

In *Bishop vs. McClelland, 17th Stew., page 450,* the Court held that a gift of the interest, income or produce

of a fund, without limitation as to continuance, or without limitation as to time, will, according to a settled rule of construction, be held to pass the fund itself, and this will be the effect given to a gift made in this form, whether the gift be made directly to the legatee, or through the intervention of a trustee. (Vide, bottom of page 453.)

In *Lippincott vs. Pancoast, 2 Dick, pages 21-26*, it was held that it is a well established rule of construction, in this State, that the gift of the interest or produce of a fund, either directly or through the intervention of a trustee, without limitation as to continuance, is a gift of the fund itself.

In *Casper vs. Walker, 6 Stew., page 35*, the will provided as follows: "I give and devise unto my beloved wife, Clarissa O. Peterson, the sum of $4,000, the same to be put at interest in some safe investment, and secured to her during her natural life," page 36, and on page 38, the Court held that this gift is absolute in its terms, stating that it is not given over in any event, either expressly or by implication. The will, indeed, provides that it shall be invested and secured to her during her life, but that is merely a provision as to manner of its enjoyment by her during her life. The gift of the fund, nevertheless, is absolute, subject to the qualifying trust.

See also *Hartson vs. Eldon, 50 N. J. Eq., 522-524.*

These authorities are sufficient to establish that it is the uniform rule in New Jersey that where a gift of the interest or income of a fund is made to a person, with-

out any limitation as to time or person, it is an absolute gift of the fund itself. Applying this rule to the case in hand, we respectfully insist that Elizabeth S. White was entitled to the sum of ten thousand dollars absolutely, and that dying, it was subject to the terms of her will and went to her executor. The language of the will is:

"F. To my niece Elizabeth S. White, I give the sum of ten thousand dollars for her personal use, not to be given away to missions, but invested for her benefit." If we were to argue this case with the words "not to be given away to missions" eliminated, there could be no question that the money would go to Elizabeth S. White, absolutely. She is given the fund for her personal use. How could she use it for her personal use unless she should have control of it? If it should be decided that the trustee would have a right to invest it and pay the interest for her benefit during her life, then at her death, the fund being absolute in her, she could bequeath it as she saw fit. If she did, it certainly would go to her executor to distribute it according to law. It is thus vested in her executor, she being dead and leaving a will.

Now is there any magic in the words "not to be given away to missions" by which the fund becomes a part of Mrs. Wadskier's residuary estate, and is to be distributed among those named in the last clause of paragraph 4. If the Court should place this construction upon these words, it would be giving them a meaning different from ordinary language; "not to be given away to missions," we respectfully submit, cannot be construed to mean an estate for life only.

If the gift of the fund for her personal use to be invested for her benefit is not a gift through the inter-

vention of trustees, then the case of *Casper vs. Walker, 6 Stew., page 36*, controls.

If it should be construed that the gift to her was through the intervention of trustees, and that she was to receive the interest during her life only, then the case of *Gulick vs. Gulick, 10 C. E. Gr., page 324, and 12th C. E. Gr., page 500*, controls.

In either event the fund would go to her executor.

The last clause of paragraph 4 cannot control, for there is no mention therein of any residue. It says that after the legacies have all been paid, my home sold with the contents thereof and the balance of the money added thereto, it shall be equally divided between the children named in the following list, namely, Harry S. Harned, et als. It will be observed that this clause distinctly states that after the legacies, namely, those which precede it, have been paid; after her home has been sold, with the contents thereof, the balance, namely, that which remains after everything theretofore bequeathed has been paid, shall go to these legatees. We respectfully submit that the words "not to be given away to missions" are words of advice; are a request that Elizabeth S. White shall not give this money away to missions. Being dead, it is impossible for her to do so, and the money named in the bequest should go to her executor to be distributed according to the terms of her will.

The words "not to be given away to missions" certainly cannot be construed as a limitation as to time, for no time is mentioned, nor can they be construed as a limitation as to persons, for no person is mentioned.

Counsel for the appellant relies particularly upon what he conceives to be the intention of the testatrix. While we do not think that there is anything in the will which exhibits an intention on the part of the testatrix to give only a life interest in the money bequeathed to Elizabeth S. White, we respectfully insist that the case must be governed by the well established rules of law as enunciated in the authorities hereinbefore cited.

In the case of *Tuerk vs. Schueler, 42nd Vr., page 331*, Mr. Justice Pitney says as follows: "Applying the rule to the language of the will before us, there can be no doubt that Mrs. Wey took an estate in fee simple. It is strenuously argued that this defeats the expressed intent of the testator that Anna Schueler should take the property at Mrs. Wey's death if she did not dispose of it in her lifetime. But while full force should be given to the intent of the testator, yet that intent must be gathered by the application of known rules of construction and interpretation, established by oft-repeated and long-standing adjudications." This, we think, should be the course adopted by this Court.

The words "not to be given away to missions" cannot be assumed to vest any estate in the trustee, as no one except the donee could possibly give the estate away to missions, since surely such an injunction would not be given a trustee, as otherwise it would be within his power to dispose of the estate to any charity, religious purpose or other object that he might see fit which came within the meaning of those words. This view was very clearly stated by Judge Boyle in his opinion.

The testatrix meant by the expression "not to be given away to missions but invested for her benefit" that the donee should not give the fund away, but should invest it for her own benefit.

Respectfully submitted,
C. V. D. Joline,
Joshua R. Morgan, (of the Philadelphia Bar),
For the Respondent.

WILL OF LOUISA M. WADSKIER.

I, Louisa M. Wadskier, widow, of the City and County of Camden and State of New Jersey, being of sound mind, memory and understanding, do make and publish this, my last will and testament, as follows, hereby revoking all wills heretofore made by me.

First: I order and direct all my just debts and funeral expenses to be paid as soon as conveniently can be done 10
after my deceased.

Second: I give and bequeath all my clothing, jewelry and other articles of personal wear of which I die possessed to my four nieces, viz: Elizabeth White, Caroline F. Wright, Dora Keating and Anna Amelia Wentz, to be equally divided among them as they may agree among themselves.

Third: I direct my executor hereinafter named to appropriate and set apart from my general estate, and to pay to the Laurel Hill Cemetery Company, of the City 20
of Philadelphia, Pa., two hundred dollars, and also to set apart from my general estate, and to pay to the Lafayette Cemetery Company, of the City of Philadelphia, Pa., one hundred dollars, as funds to provide for the permanent keeping in good order of my burial lot, and the family burial lot in said respective cemeteries.

Fourth: All the rest, residue and remainder of my estate, real, personal and mixed, I give, devise and bequeath to John F. Harned, of Camden, New Jersey, his heirs 30
and successors in office, in trust nevertheless for the following uses and purposes, that is to say,—to invest and keep invested the principal of my personal estate and to collect the income therefrom, and to hold, manage, control and collect the rents from the real estate of which I may died seized and possessed, and to sell said real estate, at public or private sale, at such time and as in the

judgement of the said Executor the same may be most practicable.

A: I give, devise and bequeath, and I direct my trustee to pay to Henry P. Harned, of Chicago, Illinois, the sum of seven thousand dollars ($7,000.00) in the event that he shall be living at the date of distribution of my estate; and should he be dead at that time, then this money shall be held in trust for his son, Henry Schell Harned, with interest, until he arrives at the age of twenty-one years, when the principal and accrued interest shall be paid to
10 him, but in the event of his death prior to he reaching the age of twenty-one years then this portion shall lapse and become part of my general estate, and be divided proportionately among those taking as hereinafter provided.

B: To Thomas B. Harned, of Germantown, Pennsylvania, I give the sum of twenty-five hundred dollars.

C: To Frank P. Harned, of Merchantville, New Jersey, I give the sum of twenty-five hundred dollars.

20 D: To John F. Harned, of Camden, New Jersey, I give the sum of ten thousand dollars, this legacy and bequest is to be in lieu of his commissions and charges as Executor and Trustee under this my will, he to make no such charges against my estate.

E: To William E. Aumont, a cousin of my husband, deceased, I give, bequeath five hundred dollars, this bequest in grateful remembrance of the uniform kindness of all the family to me.

F: To my niece Elizabeth S. White I give the sum of
30 ten thousand dollars for her own personal use, not to be given away to missions but invested for her benefit.

G: To my niece Caroline F. Wright, of New York City, I give the sum of ten thousand dollars to be invested for her benefit and the interest thereon to be paid to her promptly every six months.

H: To my niece Emelie B. Williams, of Blackwood, New Jersey, I give the sum of ten thousand dollars to be

invested for her benefit and the interest thereon to be paid only to her.

I: To my niece Dora L. Keating, I give the sum of ten thousand dollars to be invested for her benefit, and in the event of her death to her daughter Edna Keating.

J: To my niece Anna Amelia Wentz, of Greenwich, New Jersey, I give the sum of ten thousand dollars, to be invested for her benefit, and the interest thereon to be paid to her personally, but in the event of her death the same shall go to her daughter Gladys Wentz.

K: To my nephew George P. White, I give the sum of twenty-five hundred dollars and in the event of his death it shall be equally divided between his children. 10

L: To my nephew Frank P. White, I give the sum of twenty-five hundred dollars and in the event of his death it shall be equally divided among his children.

M: To Mrs. Mary G. Barcelo, a niece of my deceased husband, I give five hundred dollars, she at present resides at 103 East Eighty-ninth Street, New York City.

N: To Miss Teresa Wadskier, a niece of my deceased husband, I give five hundred dollars, she at present resides at 108 Calle DeBoyaca Valencia, Venezuela, South America. 20

To St. James Church of Atlantic City, New Jersey, corner of North Carolina and Pacific Avenues, through its faithful Rector, W. W. Blatchford, I give two hundred dollars.

To my friend Mrs. Sarah Trimmer, of 297 Winthrop Avenue, Sheridan Park, Chicago, Illinois, I give one hundred dollars. 30

To my friend Miss Mary Hendry, of Camden, New Jersey, I give one hundred dollars.

To the Womans Homeopathic Hospital of Philadelphia, I give one hundred dollars.

To the West Jersey Homeopathic Hospital of Camden, New Jersey, I give one hundred dollars.

To the Chancel Guild of St. Paul's Episcopal Church of Camden, New Jersey, I give one hundred dollars, and to the choir of said church I give one hundred dollars.

To the Home of Crippled Children, of Camden, New Jersey, I give one hundred dollars.

To the Salvation Army, I give one hundred dollars.

To the Reese Mission I give one hundred dollars.

After the legacies have all been paid, my home sold with the contents thereof, and the balance of money added 10 thereto, it shall be equally divided between the children named in the following list, viz: Harry S. Harned, Frederick B. Harned, Edna Keating, Gladys Wentz, Majorie Harned, Helen Harned and Frank M. Harned.

Lastly: I hereby nominate and appoint my nephew, John F. Harned, of Camden, New Jersey, executor of this, my last will and testament, and in case of his disability to act as such executor through death or any other cause whatever, then I nominate and appoint my friend Frank J. Burr, of Camden, New Jersey, as my executor 20 in his place.

In witness whereof I have hereunto set my hand and seal this twenty-second day of November, in the year of our Lord, one thousand nine hundred and six.

LOUISA M. WADSKIER.

Witnesses:

OSCAR B. REDROW.
PHILIP S. SCOVEL.

30 The foregoing will of Louisa M. Wadskier was signed, sealed, published and declared by her, to be her last will and testament in the presence of us, who were present at the same time and subscribed our names as witnesses thereto in the presence of the testatrix and at her request and in the presence of each other.

OSCAR B. REDROW. PHILIP S. SCOVEL.

It is agreed by and between counsel that the final account of the executor of this estate has been settled.

That there is sufficient money in the hands of the executor to pay all the legatees.

That the said Elizabeth S. White died on the twelfth day of February, nineteen hundred and fifteen, leaving a last will and testament in which she appointed Joshua R. Morgan the executor thereof.

That the said last will and testament was admitted to probate by the register of the probate of wills and granting letters of administration in and for the City and County of Philadelphia and Commonwealth of Pennsylvania, on the sixteenth day of February, nineteen hundred and fifteen.

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That a copy of the executor's letter has been filed in the office of the Perogrative Court of this State.

That the said Elizabeth S. White is the person named in the will of Louisa M. Wadskier, under subdivision "F" in paragraph four.

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CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF LOUISA M. WADSKIER, WIDOW.	ON PETITION. ORDER.

This matter being opened to the Court by Charles V. D. Joline, proctor of the petitioner, in the presence of
10 John F. Harned, proctor of Harry S. Harned, Frederick P. Harned, Edna Keating, Gladys Wentz, Majorie Harned, Helen Harned and Frank M. Harned, and the Court having read the petition and the amended petition and having heard the arguments of counsel, and being of the opinion that the bequest in the will of the said Louisa M. Wadskier to Elizabeth S. White, mentioned in sub-division F, paragraph four, was absolute and that by reason of her death, her legal representative, the peti-
20 tioner, is entitled to receive the sum of ten thousand dollars so bequeathed to Elizabeth S. White from the trustee, and no cause appearing to the contrary,

IT IS, on this twenty-sixth day of May, nineteen hundred and fifteen, on motion of said proctor of the petitioner, ordered that John F. Harned, trustee mentioned in said will, do pay the said sum of ten thousand dollars to Joshua R. Morgan, the executor of said Elizabeth S. White, with accrued interest, less any collateral inheritance tax assessed or to be assessed.

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CAMDEN COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE OF LOUISA M. WADSKIER, DECEASED.	PETITION FOR INTERPRETATION OF WILL. CONCLUSIONS.

This is a proceeding for the construction of subdivsion F, paragraph four, of the will of Louisa M. Wadskier, deceased, in the following language:—"To my niece, Elizabeth S. White, I give the sum of ten thousand dollars for her personal use, not to be given away to missions, but invested for her benefit." The said Elizabeth White died on the 12th day of February, 1915, leaving a last will naming as executor the petitioner. There was an agreed state of facts presenting for decision the single question as to whether the above request was absolute or qualified. The trustee contends that the provision in question in connection with other sections of the will made him a trustee for the said $10,000, to pay the interest thereof to Elizabeth White during her life, and after her death to divide this sum among the persons named as beneficiaries of the general estate. One of the premises upon which this construction is based is without support so far as I can ascertain by the most careful scrutiny of the will. The trustee, however, has insisted with such confidence that a division of this fund among the general legatees was contemplated by the will, that I shall refer with some detail to the provisions indicating the apparent scheme of distribution testatrix had in mind.

The first, second, third and last paragraphs of the will deal with matters unconnected with the trustee and the distribution through him of the estate. The fourth paragraph may be termed the disposal part of the will and to it alone we turn to ascertain the intention of the testatrix respecting the division of her estate. In the first part of this paragraph, the estate, real and personal,

is given to a trustee with no mention of any duties toward any person to share in this trust. The preliminary instructions and grant of authority had reference only to the investment, control and disposition of the estate in possession of the trustee. The duties of the trustee touching this fund are set forth in twenty-four succeeding subdivisions of this paragraph. The relation of the trustee to each of these provisions is separate and distinct.

In sub-division A his duty is plainly indicated by adding to the words of gift, the phrase "and I direct my
10 trustee to pay." The provision for a lapse of the legacy herein bequeathed and the evident identification of "this money," "this portion" clearly prove the separate and distinct relationship of the trustee to this bequest. In subdivisons B, C, D and E the duty of the trustee consists of one act, the payment of the sums specified to the persons named. The words "and I direct my trustee to pay," while not expressed, are plainly implied in each of these subdivisions. Is not sub-division F also elliptical and properly construed should it not read, to my niece
20 Elizabeth White, I give and I direct my trustee to pay the sum of $10,000 for her personal use, etc.

In this manner the language of each bequest may be examined and it will be observed that whether the bequest is absolute or qualified the trustee was either to pay over at once or separate it from the general estate and perform the duties set forth in each sub-division. The general estate as defined in the last sub-division of paragraph four is that sum, "after the legacies have all been paid, my house sold with the contents thereof and
30 the balance of money added thereto." "Legacies" are here used and plainly refer to the twenty-three preceding bequests, since none of them were to form a part of this general estate. There was a possibility of one of these bequests lapsing into the fund and for this contingency there was an express provision, Subdivision A. It seems demonstrated that the subdivison in controversy is to be viewed as a distinct and separate provision. It follows,

therefore, that it lacks not only a provision for a gift over, but language consistent with a trust. The words of gift in the first part clearly eliminate any connection with the trustee. It is hardly conceivable that the reference to missions was intended for the trustee for it would be too awkward a use of language by one having a knowledge of a trust, as did the draftsman, so clearly indicated in several parts of the will. Why should a trustee be enjoined not to spend any portion of the principal fund? The direction as to the mission refers to the legatee, otherwise it is unintelligible. It is hardly probable that a trustee was cautioned not to give away the fund to missions. The mere notion of a trust is sufficient to dispel such a thought. A trustee could not expend the principal for any purpose. Therefore, if he were trustee of this fund, the instruction not to be given away to missions would be clearly superfluous. The direction "invested for her benefit" does not necessarily import a continuance of the trust. There is one subject throughout this sub-division, the fund of $10,000 of which it is first predicated that it shall be given to the legatee for her personal use. It can only reach her through the trustee, who holds the estate. Therefore, the trustee is to give her this sum and when he does so his connection with this legacy is at an end. This is further evident from the improbable situation already mentioned of coupling the trustee with the second predicate, "not to be given away."

If, therefore, a consideration of the preceding clauses indicates an elimination of the trustee, it is not a consistent construction that seeks again to read the trustee herein merely because an investment of the funds is contemplated, for there is no mention of income or its payment, or period during which the fund shall be invested. On the other hand, the absence of an expression as to income or the period during which the fund was to be invested, is in entire accord with the extinction of any connection of the trustee since he had already been directed

to pay the sum to the legatee for her personal use. At all events the expression as to the investment does not import a limitation of the gift. In *Casper vs. Walker, 6 Stewart, 35, 38,* there was in dispute a paragraph of a will in the following language: "I give and bequeath unto my beloved wife, Clarissa C. Peterson, the sum of $4,000. The same to be put at interest in some safe investment and secure to her during her natural life." Chancellor Runyon, citing *Gulick vs. Gulick, 12 C. E. Green, 498,* and other authorities said: "The gift of $4,000 to the testator's wife is absolute in its terms. It is not given over in any event, either expressly or by implication. The will indeed provides that it shall be invested for and during her life, but that is merely a provision as to the manner of its enjoyment by her during her life; the gift of the fund is nevertheless absolute, subject to the qualifying trust."

The trustee of course concedes the principle enunciated in *Gulick vs. Gulick, supra,* that the gift of income of personalty, without limit as to time, is equivalent to a gift of the principal but alleges "in the case at bar there is a clear limitation and the rule does not apply." As I have already shown in an analysis of the provisions of the will, the claim of the trustee as to a limitation is unsupported.

I am convinced that the testatrix had no intention to limit the bequest to her niece. Her thought would have been legally expressed by the use of the words "I give." Upon this point she was apparently over-anxious to be certain and this may explain the added words "for her personal use."

However, there is no warrant for a construction of the will that is out of harmony with the text and a repudiation of the common and ordinary meaning of the language used. It is my opinion that the bequest to Elizabeth White, mentioned in sub-division F, paragraph four, was absolute, and that by reason of her death, her legal representative, the petitioner, is entitled to receive this sum from the trustee.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Last Will and Testament of Louisa M. Wadskier, Deceased.	On Appeal from Orphans' Court of Camden County. Decree.

This matter coming on to be heard before the Court in the presence of John F. Harned, Esquire, proctor of the appellant, and of Charles V. D. Joline, Esquire, proctor of the respondent, and the Court having heard the arguments of counsel, and the Court being of the opinion that the decree of the Orphans' Court should be affirmed; 10

It is, on this tenth day of December, nineteen hundred and fifteen, on motion of Charles V. D. Joline, Esquire, proctor of the respondent, by the Honorable Edwin Robert Walker, Ordinary, ordered, adjudged and decreed that the decree of the Orphans' Court be affirmed and that the appeal of the appellant be dismissed. 20

Edwin R. Walker,
O.

Respectfully advised.
E. B. Leaming,
V. O.

30

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF LOUISA M. WADSKIER, DECEASED.	ON APPEAL FROM ORPHANS' COURT OF CAMDEN COUNTY. CONCLUSIONS.

10

JOHN F. HARNED, ESQ., for Appellant.

HON. C. V. D. JOLINE, and J. R. MORGAN, ESQ., (the latter of the Phila. bar) for the Executor of ELIZABETH S. WHITE, deceased.

LEAMING, Vice Ordinary:

I fully concur in the views expressed in the opinion filed in the Orphans' Court.

20 The gift of the corpus is absolute; it is in no way limited as an absolute gift by the words of the bequest touching missions and investment.

The intention is also clear that the legatee shall enjoy the income without limitation as to time; that intent also carries with it the corpus. *Hartson vs. Elden, 50 N. J. Eq. 522, 524* and cases there cited. Also *Baldwin vs. Tucker, 61 N. J. Eq. 412, 414.*

I will advise a decree dismissing the appeal.

30 Submitted, November 8, 1915.

Determined, December 8, 1915.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF LOUISA M. WADSKIER, DECEASED.	ON APPEAL FROM THE PREROGATIVE COURT.

10

John F. Harned, executor of Louisa M. Wodskier, deceased, hereby appeals from the final decree made in the above stated cause on the 10th day of December, 1915, to the Court of Errors and Appeals in the last resort in all cases.

JOHN F. HARNED,
Proctor of Appellant,
Of Counsel with Appellant.

20

I conceive there is good cause for appeal in the above stated case.

JOHN F. HARNED,
Of Counsel with Appellant.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF LOUISA M. WADSKIER, DECEASED.

10 *To the Honorable Court of Errors and Appeals in the last resort in all causes:*

The petition of Jahn F. Harned, executor of Louisa M. Wadskier, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by the final decree made in the Prerogative Court by his Honor Edwin R. Walker, Ordinary of New Jersey, bearing date the 10th day of December, 1915, wherein the said John F. Harned, executor of Louisa M. Wadskier, deceased, is the appellant and Joshua R. Mor-
20 gan, executor of Elizabeth S. White, deceased, is respondent, in this respect, to wit: that the said decree ordered, adjudged and decreed that the decree of the Orphans' Court be affirmed and that the appeal of the appellant be dismissed. And your petitioner humbly appeals from each and every part of said decree upon the ground that the same is erroneous for that the said Ordinary should have decreed that the said order of the Orphans' Court of Camden county be reversed, set aside and
30 for nothing holden.

Your petitioner therefore prays that the said decree of the said Ordinary 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 may seem meet.

JOHN F. HARNED,
Solicitor of Appellant,
Of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF LOUISA M. WADSKIER, DECEASED.	ON APPEAL. ANSWER TO PETITION.

10

The answer of Joshua R. Morgan, the executor of Elizabeth S. White, deceased, respondent, to the petition of appeal of John F. Harned, executor of Louisa M. Wadskier, deceased, appellant.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the tenth day of December, nineteen hundred and fifteen, made and entered in the Prerogative Court by His Honor, Edwin Robert Walker, 20 Ordinary of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to law and equity and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

C. V. D. JOLINE,
Solicitor of and of Counsel with Respondent. 30

Endorsed:

"Filed Jan. 3, 1916,
THOMAS F. MARTIN,
Clerk."