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New Jersey Court of Errors and Appeals

Between SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, etc., of James A. Bradley, deceased, Complainant-respondent, AND JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, etc., of Louis C. Gillespie, et als., Defendants-respondents.	On Appeal from Chancery. BRIEF.

This brief is on behalf of the First Presbyterian Church of Asbury Park, New Jersey, The Trustees of Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey.

STATEMENT OF CASE.

This is an appeal from parts of the final decree of the Court of Chancery entered December 16, 1924, construing the will of James A. Bradley, deceased.

The will was dated June 26, 1896, (p. 101, l.13).

The Seventh Codicil was dated May 3, 1916, (p. 101, l.20).

The Eighth Codicil was dated March 3, 1919, (p. 101, l.21).

The Testator died June 6, 1921, (p. 101, l.11).

The deceased left personal estate in excess of $100,000.00, (p. 103, l.17), and valuable real estate appraised in excess of $1,000,000.00. (p. 103, ll. 19 & 20; p. 164).

This appeal is in relation to the construction of the Seventh and Eighth Codicils.

The portions of the Seventh Codicil relative to the point at issue are as follows: (p. 44, 1.24).

"FIRST: I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate.

SECOND: I do hereby give, and bequeath to each of the following persons and institutions or corporations, the sum of Five thousand ($5,000.) dollars: Albert Smith, Sr., * * * * Churches at Asbury Park, New Jersey, as follows: First Methodist Episcopalian, Reformed Dutch, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, * * * * *

* * * * * * * * *

NINTH: All the rest, residue and remainder of my estate I give and bequeath to the aforesaid legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively.

TENTH: I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my Executor, and give him full power of sale, to sell any and all of my real estate to pay said legacies, and give him power to execute deed or deeds therefor."

The portions of the Eighth Codicil relating to the point at issue are as follows: (p. 48, 1.25).

"FIRST: In lieu of the legacies of Five thousand ($5,000.) dollars each to Josephine Hewitt, Helen Jackson and Minnie Hueston, I give and bequeath to said Josephine Hewitt, Helen Jackson and Minnie Hueston the sum of Fifteen thousand ($15,000.) dollars to each.

* * * * * * * * *

THIRD: In lieu of the legacies of Five thousand ($5,000.) dollars each, provided in the second clause of the codicil to my will bearing date the third day of May, One thousand nine hundred and sixteen, and given as follows: Churches at Asbury Park, New Jersey: First Methodist Episcopalian, Reformed Church, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, * * * * I give and bequeath to each of the aforesaid the sum of One thousand, ($1,000.) dollars, i.e. I reduce the

aforesaid legacies as originally provided for in the aforesaid codicil from Five thousand ($5,000.) dollars to One thousand ($1,000.) dollars.

* * * * * * * * *

EIGHTH: * * * * * In all other respects I ratify, confirm and re-publish my aforesaid will and my aforesaid codicil bearing date the Third day of May, in the year One thousand nine hundred and sixteen."

THE STATUS OF THE SECOND CHURCH OF CHRIST, SCIENTIST, OF ASBURY PARK.

This church was formed in 1916. (p. 144, l.26). It was incorporated June 9, 1920. (p. 144, l.30).

The church held Sunday and Wednesday services continuously after its formation in 1916. (p. 144, ll.34, 35 & 36).

AS TO THE RIGHT OF THE SECOND CHURCH OF CHRIST, SCIENTIST, OF ASBURY PARK, TO TAKE UNDER THE SEVENTH AND EIGHTH CODICILS.

This church was formed in 1916, the year of the making of the Seventh Codicil, and some three years prior to the making of the Eighth Codicil, and was incorporated in 1920, a year prior to the Testator's death.

Church services were held by the Society continuously, after its formation in 1916, two services being held on each Sunday and one on Wednesday, so without doubt the Testator had knowledge of its existence prior to the drawing of the Eighth Codicil.

It was clearly the intention of the Testator to make provision for all the "Churches at Asbury Park, New Jersey."

The Testator lived some two years after the making of the Eighth Codicil, and a year after the incorporation of the church, and during that period no codicil was made to eliminate the church from its provisions.

We are unable to find any case or provision that holds

or requires that a society or association must be incorporated in order to take under a will.

At the time of the drawing of the Eighth Codicil, there were two, "Scientist" Churches in Asbury Park. The First Church of Christ, Scientist, and the Second Church of Christ, Scientist.

As Vice-Chancellor Backes held that the two Catholic Churches in Asbury Park were each entitled to the bequest under the Seventh and Eighth Codicils, which gave "to Churches at Asbury Park: * * * * * Catholic." (p. 182 1. 8 to 31), we insist that the two "Scientist" Churches should also share therein.

> "In the construction of a will the court must do everything in its power to discover the Testator's intention, and to see that they are carried out, if possible."
>
> Johnson vs. Brown, 85 Eq. 76.

In the case of Young Men's Christian Association vs. Appleby, decided November 22, 1924, the Testator gave "twenty per cent of the net income and receipts of the said Commercial Block unto the Young Men's Christian Association of the Borough of Matawan, *provided said Association is incorporated at that time.*" (Italics ours.)

In this case the Association was not incorporated during the lifetime of the Testator, but after his death.

Vice-Chancellor Foster held that inasmuch as it was incorporated after the death of the Testator it was sufficient to permit it to take under the will.

AS TO WHETHER THE EIGHTH CODICIL CHANGED THE PROPORTIONS IN WHICH THE LEGATEES UNDER THE SEVENTH CODICIL WERE ENTITLED TO SHARE IN THE RESIDUE OF THE PERSONAL ESTATE.

The appellants' insistment is that the Testator intended that their proportion of the residuary estate under the said

Codicils should be in the proportion which Five thousand dollars bears to the amount of the specific legacies given by the Seventh Codicil.

The defendants, The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York, have also taken an appeal, making a similar insistment as to the method of calculation of the proportion of the residue estate, and as their Solicitors, Messrs. Pitney, Hardin & Skinner have prepared an exhaustive brief on the subject, we have taken the liberty of relying on the authorities cited by them.

For the reasons stated, we respectfully submit that the decree below in so far as it holds that the defendant, Second Church of Christ, Scientist, is not entitled to receive any share or portion of the Testator's estate, and in so far as it directs and fixes the proportion of the residue estate to be paid to your defendants, should be reversed.

PATTERSON, RHOME AND MORGAN,
Solicitors and of counsel with the Defendants-appellants,

First Presbyterian Church, of Asbury Park, New Jersey, the Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey.

KAYS R. MORGAN,
Of Counsel.

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and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, etc., of Louis C. Gillespie, *et als.*, Defendants-Respondents.

On Appeal from Chancery.

This brief is submitted on behalf of the following defendants-respondents, John T. Gillespie and Samuel H. Gillespie, executors of the Last Will and Testament of Louis C. Gillespie, deceased; John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine G. Erskine, Helen G. Sanford, Mary G. Illman, George Fletcher Illman, Josephine Hewitt, Helen Jackson and Minnie Hueston.

All of the above named, except Mary G. Illman and George Fletcher Illman, are nephews and nieces of the testator, and Mary G. Illman and George Fletcher Illman are children of a niece of the testator.

Many interesting and important questions were argued in the Court below and are discussed in the opinion of the learned Vice Chancellor. The prin-

cipal objection made by the appellants to the decree below is as to the effect which it gives to the Eighth Codicil upon the disposition of the residue of the estate. It is, therefore, to this point that we shall address our argument.

As appears from the opinion below, and as is conceded in this Court, the testator, in making the Seventh Codicil to his Will, thought, and correctly, that he was by such codicil making a new disposition of the great bulk of his estate. That codicil was undoubtedly made necessary in his mind by the numerous changes by reason of death and otherwise, which had occurred in his relationships since the time when he had, with great thoroughness, embodied a testamentary scheme in his Last Will and Testament. Realizing, therefore, its comprehensive effect with respect to the greater part of his estate, the testator in the Seventh Codicil provided for all those who had claims upon him by reason of relationship, friendship, or faithful service in his employ, as well as for the needs of the charitable, religious and philanthropic institutions for the aims and work of which he had interest and sympathy. One cannot read the Seventh Codicil without being convinced that it was his intention to divide all of his personal property, as well as all of his real estate, which he had directed to be converted into personalty, among the persons and institutions mentioned in the Seventh Codicil. He must, before he executed this codicil, have made in his own mind a rough estimate as to the amount of the property so to be divided, apparently endeavoring, as far as round figures would do it, to dispose of all the property through such legacies, and taking round figures also for the purposes of convenience in distributing the residue of the estate, if any, among the same persons to whom the specific legacies were given.

It is interesting to observe here that at the time of his death the testator's real estate was encumbered by mortgages of approximately $285,000, and that the amount of these primary legacies, so-called, is approximately $259,000. Is it not likely that, realizing the manner in which he had acquired the real estate, the testator considered his equity therein as of approximately the same amount to which it was encumbered? But, at the same time, he allowed for the possibility of his estate proving to be of greater value and added the provision of the ninth paragraph of the Seventh Codicil; thereby in effect increasing (quite in the manner of *Hayes' Executors* v. *Hayes, infra*) the amount of the legacies theretofore given, such increase being in proportion to the amounts of the respective legacies. In other words, the legacies, plus the residuary interest in the case of each legatee, constituted in the mind of the testator but one gift or legacy. That there can have been no other thought in his mind, seems clear in view of the fact that all of the legatees are included in the benefit of the residuary provision and that clause was inserted by the testator merely to make sure that he was disposing of all of his available estate among them. The interest is based upon the proportion or percentage that the legacies "are given to them."

With this clear arrangement in effect, the testator, in the course of a few years, executed the Eighth Codicil. The important question now before the Court is what his actual intention was in the execution of the Eighth Codicil.

We shall, at a later point, refer with more detail to the arguments contained in the very ingenious brief filed on behalf of the appellants, and shall also discuss the authorities cited on both sides. At this point we desire merely to suggest that the appellants in their zeal for refinements of argument, overlook what is, after all, the effort

of the Courts in all cases, to ascertain from the testator's own language what his intention was and that without too much regard to so-called rules of construction, as interesting as those rules sometimes are for purposes of illustration. As will appear from the authorities to be discussed, it is apparent that in each case the Courts exercised the greatest care to scrutinize the testator's own language to ascertain therefrom, if possible, what he actually had in mind. Therefore, without in the first instance considering the authorities or technical rules of construction, it is well to look at the language of these codicils with an open mind and endeavor to place one's self in the position of the testator as he employed as a layman the English language.

Upon reading the Eighth Codicil, it is at once clear that the testator had come to feel doubt of the propriety of the dispositions he had made of his estate, in view of what he came at that time to feel its value was. Furthermore, it is equally apparent that he had concluded that he had not, by the Seventh Codicil, benefited sufficiently his relatives (for whom apparently he had the highest regard) his friends, the employees who had served him faithfully, and certain institutions in the work of which he was specially interested. He decided, therefore, upon a totally different apportionment of the bulk of his estate, and did, by language which he thought appropriate, the same as though he had with pen and ink edited his Seventh Codicil, making erasures therein, inserting in lieu of such erasures different figures and then republishing his Codicil pursuant to the statute. The lanuage he used makes it quite clear that this is what he thought he was in effect doing. In other words, he thought, after the execution of the Eighth Codicil, that his testamentary disposition was included within the confines of his Will and

the Seventh Codicil, as the Seventh Codicil had been altered by reason of the changes of amount and revocations made by the Eighth Codicil.

Thus, in the first paragraph of the Eighth Codicil the testator provides that the sum of $15,000 each is given to Josephine Hewitt, Helen Jackson and Minnie Hueston "in lieu" of the legacies of $5,000. This is the same as if the testator had said, "I wish my Seventh Codicil to stand, but I am now in the second paragraph striking out the sum of $5,000 insofar as it relates to Josephine Hewitt, Helen Jackson and Minnie Hueston, and substituting therefor the sum of $15,000." "In lieu" means "in substitution," "in the place of." With the same thought in mind, he says in the third paragraph that "in lieu" of the legacy of $5,000 provided in the second clause of the Seventh Codicil, he desires to give to each of the institutions named the sum of $1,000. Then to make it perfectly clear that what he was in effect doing was making an alteration in the second clause of the Seventh Codicil, he explains, "I reduce the aforesaid legacy *as originally provided for* in the aforesaid Codicil from $5,000 to $1,000 to each."

Reading the Codicils together with the Will as one instrument, as we must, it is equally apparent that the second clause must be read in the light of the substitutions made by the testator in its provisions, and that when we come to enforce the residuary provision of the ninth clause of the Seventh Codicil and inquire the percentage in which previous legacies *"are given"* to the beneficiaries, we must adopt the percentage as fixed by the Eighth Codicil. The Eighth Codicil, in effect, in the case of all these persons and corporations, fixes the amounts "given" to these persons and corporations as of the date of the testator's death. It is quite like the construction to be given to a statute after an amendment. By amendment the statute be-

comes altered and must be construed in all its parts as though the amendment had been embodied in the statute as first promulgated.

The concluding paragraphs of the Eighth Codicil bear out the view that the testator considered all of his provisions for the benefit of the respective legatees mentioned in the Seventh Codicil, as one gift or legacy in the case of each, namely, a specific sum to be reduced by operation of law proportionately in case of a deficiency in the amount of the estate, and to be increased proportionately by this provision in the case of an excess in the amount of the estate. Therefore, in the fourth, fifth and sixth paragraphs of the Eighth Codicil, where he revokes the provisions made for persons who had died subsequent to the date of the Seventh Codicil, he refers specifically only to the third, fourth and fifth clauses of said Codicil. In view of the death of these persons, it is quite obvious that he considered it no longer necessary to benefit them. That applied as well to the specific legacies as well as to their interest in the residue. Yet he says only that he makes null and void the legacies bequeathed to them in the third, fourth and fifth clauses of the codicil. In other words, he again indicates his view that he was in effect striking out these provisions of clauses three, four and five and thereby inferentially disposing of any possible claim to the residuary bequest. In the case of Smith and Howland in the sixth clause, he refers to them as "named in the fifth clause," not deeming it necessary to say further, "and also sharing under the ninth clause." Counsel for the appellants, Methodist Episcopal Hospital in the City of New York, and others, refer on page eleven of their brief to the distinction between "a legacy" and a gift of a portion of the residue, citing *Quincy* v. *Rogers,* 9 Cush. (Mass.) 291, and they infer that the testator had this distinction in mind. Paragraph sixth

of the Eighth Codicil shows distinctly that he did not have it in mind, that he ignored it and that he considered both benefits as constituting together a legacy. In the sixth paragraph he says as to Smith and Howland, "I make null and void the *legacies* given to them."

As against the above considerations which appear on the face of the two codicils, counsel for the appellants with much ingenuity argue upon technical rules of construction and elaborate upon deductions which they make from the appraised value of the estate and the result in figures of their construction of the Will and that adopted by the Court below.

We submit that speculation in figures should be indulged in only with the greatest caution. The testator obviously did not know what the appraised value of his estate was going to be. Much happened in the real estate world between the dates of the Seventh and Eighth Codicils and the date of the testator's death. We cannot conceive of the testator involving himself in the rather elaborate figuring indulged in by counsel for the appellants. We are not justified in considering the amounts in question further than to ask, as did the Court below, whether it is reasonable to suppose that the testator, by the Eighth Codicil, intended both to decrease and increase by the same stroke of the pen his provisions for the institutions involved. Although the testator made no elaborate computation, he did undoubtedly realize that by cutting off amounts from the specific legacies he was thereby largely increasing the residue of his estate, and that accordingly, if he were allowing the shares in the residue to remain as fixed in the Seventh Codicil, he was thus increasing the fund in which the institutions whose specific legacies were cut down would share. As pointed out on page nine of the appellants' brief, upon their construction, in

view of this increase of the residue, the net result in the case of the churches and charities amounts to approximately $53,000 only. We submit that if this were all that the testator contemplated he would not have felt it necessary to execute the Eighth Codicil with its very evident intention to effect a disposition of his entire estate along lines which he had come to feel more advisable.

Too much weight cannot be given to the circumstance that the persons and corporations which gain under the construction given by the Court below are the relatives and friends of the testator and certain favored institutions in which he had shown an especial interest, as for example the Methodist Episcopal Home for the Aged of Ocean Grove, to which institution he had at one time by the Sixth Codicil (p. 44) given the entire residue of his estate. Counsel for the appellants in their effort to find some explanation for the Eighth Codicil, other than a desire on the part of the testator to re-apportion his entire estate among the objects of his bounty, argue on page nine of their brief, that the reason for the Eighth Codicil was that the testator realized it might take a long time to dispose of his real estate to advantage and that

> "He had set his heart on certain of his kindred, connections and employees receiving certain minimum amounts and concluded that, if the cash should be slow in coming to hand and the Executors should make payments on account of the legacies, such payments would go more largely to the living who were legatees, if he should increase certain of their primary legacies and decrease the legacies to institutions. Such solicitude for the prompt payment of certain specified sums to living persons does not at all militate against the view that as to the residuary he wished the institutions to take proportions as under the earlier instrument."

The fallacy of this argument is that the testator did not reduce the provisions for all of the insti-

tutions as he would have done if his only desire was to enable the living persons to have more immediate payments. Furthermore, such reduction alone would not have accomplished the result. If that had been his desire, he could easily have stated that he wished the individuals to be paid their legacies before anything should be paid to the institutions. But the conclusive answer is that he did not reduce all of the institutions. As significant examples, he left the same provision for the "Methodist Episcopal Home for the Aged of Ocean Grove", "Searles Memorial Home for Aged Women", and "New Jersey Conference Fund of the Methodist Episcopal Church for Superannuated Preachers." A reading of the list of beneficiaries, we submit, will demonstrate that undoubtedly some of the institutions reduced had greater need for immediate cash than the three institutions just named. The fact that each of these institutions has to do with aged people must indicate a special interest in that kind of work on the part of the testator. Surely in differentiating between these institutions and the others, he indicated his wish to have them included with his relatives, friends and employees in the greater distribution of the bulk of his estate resulting under the proper construction of the Eighth Codicil.

It is appropriate now to discuss the authorities involving situations somewhat similar to those at bar. The cases unite in the view that after all, it is a question of the testator's intention. Invariably the Court has endeavored to seize upon any words and clauses in the Will shedding light upon what the testator's intention actually was. The nearest case in our own reports is *Hayes' Executors* v. *Hayes,* 21 N. J. Eq. 265. There the decedent, by his Will, gave the sum of $15,000 to his executors in trust to pay the income thereof to his brother during his life, and after his death the

remainder to his children. The tenth paragraph of his Will stated that the bequests in his Will amounted to $70,000 and he directed that if the net proceeds of his estate should amount to more or less than that sum, the bequests should be increased or diminished, as the case might be, and in proportion to such bequests and thus made to absorb his residuary estate. This, as we have shown, is the equivalent of what the decedent did in the case at bar. By a codicil to the Hayes' will, it was provided, "Having since the date of said Will provided my brother, John C. Hayes, with a place for a permanent home, I do hereby reduce the amount bequeathed to my executors for his benefit, from $15,000 to $10,000." Other deductions were made by this codicil, amounting in all to $7,000, and the codicil then provided, "It is my will that the said amount be apportioned by my executors and paid over by them among and to the remaining legatees particularly named in the fourth, sixth and seventh paragraphs of my said Will, according to the amount they are entitled by said Will to receive." With respect to the share to be taken by the brother in the residue of the estate, the Court said:

> "The proportion of the $7,000 and of the residue of the estate to be paid to John C. Hayes must be calculated upon $10,000, that being the amount to which his legacy is reduced by the codicil."

Another important case which is quite in point is *Hard* v. *Ashley,* 23 N. E. (Court of Appeals of N. Y.), page 177. There the testator, after various bequests of money and property in the earlier clauses of his Will, by the residuary clause thereof, gave his residuary estate "to the same parties, in the same ratio and proportion as are given and specified in the foregoing bequests." For the purpose of establishing such proportions he valued the

real estate comprised in the bequests at certain stated sums. One of the legatees, a Mrs. Wilcox, was given the use of a farm for life, with remainder to her children, and the testator valued this farm at the sum of $15,000. By a codicil to his will, the testator, after referring to the fact that he had given the use of this farm to Mrs. Wilcox with remainder to her children, continued, "in lieu and instead of said bequests, I do hereby give the said Zipporah E. Wilcox and her heirs, $8,000, payable as soon as conveniently may be after my death, etc." In the lower court, it was held that this provision operated to destroy completely Mrs. Wilcox's right to share in the residue. The Court of Appeals, in an opinion by Judge Gray, held that this was not the proper construction, that Mrs. Wilcox was entitled to share in the residue, but on the basis of $8,000 and not $15,000, as originally provided. The Court referred to the rule "that a will and codicil shall be taken and construed together —in connection with each other,—as parts of one and the same instrument, and that the dispositions of a will shall not be disturbed further than to the extent necessary to give effect to the codicil." And the Court continued:

> "Here the clause of the codicil in question does not in terms revoke anything but the bequest of the farm; but it substitutes for that which is thus revoked, a gift of a sum of money. The language 'in lieu and instead of said bequests' seems to me to be entitled to considerable significance, and to warrant our reading the original will without other change in that regard, than the mere substitution of the gift of $8,000 in money for the gift of the farm. * * *
>
> "The disposition of the residuary estate by the testator was its division among those certain persons to whom legacies had been previously given, and in that proportion to each which the stated value of his or her legacy

bore to the aggregate value of all of those legacies. The subsequent execution of a codicil only affected that disposition by lessening the amount of the legacy to Mrs. Wilcox from $15,000 to $8,000. That did not strike her out as one of the persons denominated by the residuary clause as a residuary legatee. It left her in, but in lieu of the farm gave her a sum of money representing less in value than the farm was valued at. This change, effected by the codicil, operated to introduce a new divisor in the distribution of the residuary estate. In other words, in reading the will we take in the codicil, and, in place of the gift, in the record clause, of a farm valued at $15,000, we read a substituted gift of $8,000, and the disposition of the residuary estate proceeds upon precisely the same principle. I think in that way the clear and obvious purpose of the testator is given effect. His will spoke from the time of his death, and then it was evidenced by the will and the codicil, taken together."

A case directly in point is *In re Courtauld* v. *Cawston,* 47 Law Times, 647. There a testator, by his will, bequeathed £70,000 upon certain terms and conditions to his one adopted daughter for life, and with power of appointment, etc. upon her part, and the sum of £80,000 to another adopted daughter upon like terms, and by his residuary clause he left the residue of his estate to his trustees to pay debts and other expenses and duties and to distribute the remainder to his "residuary legatees." His residuary legatees he had previously defined to be the persons named in his will as pecuniary legatees and in his residuary clause he provided that such residue should be divided among such "residuary legatees" pro rata in proportion to the amounts of the legacies thereinbefore bequeathed to them.

By separate provisions of a codicil thereafter made, the testator revoked such legacies of £70,000 and £80,000 and "in substitution for and not in

addition to" such legacies he bequeathed £80,000 to the one adopted daughter upon the same trusts and provisions as declared in his will, and £140,000 to the other adopted daughter upon the trusts and provisions declared in his will. Upon the very thorough argument of the cause by eminent counsel, various questions were raised. First, as to whether or not the adopted daughters, in view of the codicil, took any share whatever in the residue, and in the second place, assuming that they did, whether they shared in proportion to the legacies given to them in the will, or in proportion to their legacies as increased by the codicil. As appears from the argument of counsel, the Court (Kay, *J.*) was impressed by the fact that the testator, having used the word "substitute", indicated his intention that the will should be read as though the new amount appeared in place of the old, and further, as the Court remarked in language particularly apt to the case at bar:

> "The scheme of the whole instrument was to give certain sums, which the testator supposes would probably exhaust the estate, and then he chooses to divide the residue amongst them in certain proportions."

The Court held that the codicil did not operate to cancel and revoke the bequest of a share in the residue and that the adopted daughters, therefore, were entitled to share in the residue in proportion to their legacies as bequeathed by the codicil. In other words, by the codicil the larger sums had been substituted for the smaller sums in the will, and reading the instruments together, it was the duty of the Court, in carrying out the testator's intention, to permit the adopted daughters to share in the residue on the basis of their substituted legacies.

The Court said:

> "Now the scheme of the will was obviously this, to give certain pecuniary legacies to dif-

ferent legatees, and then to divide what might be left of his personal estate among the legatees in those proportions which the amounts of their pecuniary legacies had determined. The question is whether, having by this codicil revoked two of those legacies (the other revocation being practically in the same words as this), and having substituted another legacy which is to be held, as I have already determined, upon the same trusts as the former legacies in all respects which he has given to the same trustees, and is to be held upon the same trusts, and in the same manner as if they were here repeated—whether that is a substitution for the previous legacy, not merely so far as relates to the trusts of and incident to that particular legacy, but also so as to occasion a different division of the residue from that which would have been made if this revocation of the legacy had not taken place at all. Of course, the argument on one side is that, unless you do read the codicil so as to substitute this legacy for all purposes in the will, you do not give the full effect to the word 'substitution', and that the real meaning of the testator was that you must read in the will in the place where he has put the figure 70,000 L the figure 80,000 L. Of course, if that is so, then the residue is to be divided in this proportion. On the other hand, it is said that the proportions in which the residue was to be divided were most clearly ascertained on the face of the will, and there has been no express alteration of this proportion, and, of course, it would have been very easy for the testator to say in the codicil that he meant the residue to be divided in this new proportion, if he had intended that. It is argued that, not only has he not said so, but he has said something on which both sides rely in the codicil, namely, that in all other respects he confirms his will, which one side says means: I repeat the residuary bequest which is contained in it; the other side says it means something quite different, namely, I make a residuary bequest here as if the legacy were substituted. I

confess the problem is not a very easy one to solve. The effect of the argument on one side no doubt is to alter the proportion in which the residue is to be divided. The argument on the other side, is, that the effect of revoking these legacies was to revoke the gift of any share of residue to these particular legatees, and that as to these shares of residue, I suppose, there is to be an intestacy. I am perfectly unable to follow that. It seems to me there is no exception certainly of the gift of residue in the will, and that the legatees must be entitled to their shares of residue either in the proportion given by the will, or in that given by the codicil. I think on the whole, in the absence of authority, I am bound to give to the word 'substitution' its largest meaning, and to read the will and codicil as one is bound to do, as one document, and to treat the words of the testator as if he had said: I direct that these increased legacies shall be read as if they were inserted in the will for all purposes; in which case the residue must be divided amongst the legatees as if their original legacies had been the amounts mentioned in the codicil, and not in the will. Until it was pointed out to me, I did not observe that the particular words 'in the same manner as if they were here repeated' occur with reference to the 70,000 L., and are not actually repeated with reference to the 80,000 L. But I do not think on that account it would be possible to make distinction between the two; because the words 'in substitution' occur in both cases, and those words probably are not again repeated as to the legacy of 80,000 L., because the testator has made his intention quite sufficiently clear without using the words again."

It is, of course, well settled that a legacy given as a substitute for another is subject to the incidents of the original. As it was stated in *Executors of Condict* v. *King,* 13 N. J. Eq. 375, at page 381, "where one legacy is given as a mere substi-

tute for another, the substituted gift is subject to the incidents of the original, although not so expressed in the testamentary instrument."

Under this rule, it was held in *Johnstone* v. *The Earl of Harrowby*, 1 De Gex, F & J 183, that a legacy given by a codicil to a legatee to whom another legacy was given by another codicil, was cumulative and payable out of the same funds and upon the same conditions, including exemption from legacy duty. The Lord Chancellor said:

> "Added legacies are put on the same footing as substituted legacies; and the test proposed is whether the second legacies really are in point of law and in effect substituted or added."

Cases cited to the contrary of the view above expressed will be found on examination to be distinguishable on the ground that the Court in each found evidence of the testator's intention that the revocation of a specific bequest should not affect an independent bequest of a share in the residue. Every one of the cases contains the element of a revocation of the specific bequest and not, as in the case at bar and the cases just cited, the substitution of one specific bequest for another of a different amount.

The leading case is *Colt* v. *Colt*, 32 Conn. 422. In that case, Colonel Colt, the decedent, in his will bequeathed to various persons each a certain number of the shares of stock of Colt's Patent Fire Arms Manufacturing Co., and, among others, to his brother, James B. Colt, the use of 500 shares of said stock during his lifetime, with remainder to his issue. By the residuary clause of the will he bequeathed all the remaining stock of said company to be "divided among the several persons and parties to whom I have hereinbefore given legacies of stock, in the ratio and proportion in which said legacies of stock are hereinbefore given." By a

codicil to his will, Colonel Colt provided, among other things, "I also revoke and cancel, for reasons *growing out of his late unbrotherly conduct toward me,* the legacy of 500 shares of the stock of Colt's Patent Fire Arms Manufacturing Co. given in the aforesaid will to James B. Colt for life, remainder to his children," and he then gave this stock to another legatee. The issue thus was whether the testator, by his revocation of the specific legacy to his brother, and without in any way mentioning his brother's share in the residue, had also revoked the gift of a part of the residue. The inquiry thus was not, as in the case at bar, whether a proportionate interest in the residue had been increased or diminished by reason of the codicil, but rather whether the revocation of one gift had impliedly revoked the other. There was no substitution of one legacy for another and a discussion of the effect of such action, but rather the sole inquiry whether the two legacies were so dependent that the revocation of one impliedly revoked the other. The opinion of the Court is long and careful. At the outset, reference is made to the following rules of construction:

> "That the construction is to be put upon the instrument as a whole and not upon detached portions of it, so if there is a codicil, that is to be read in connection with the will, and the construction is to be put upon the whole as one instrument. * * * Another important rule is that the different parts of a will or of a will and codicil, shall be reconciled if possible, and where a bequest has been once made, it shall not be considered revoked unless no other construction can be fairly put upon the language used by the testator."

The Court held that the brother's share of the residue had not been revoked by the codicil. The

case is, of course, obviously distinguishable from the case at bar. It is not necessary to add anything to the clear and conclusive discussion of this case found in the brief for the complainant-respondent. The distinctions there stated between the *Colt* case and the case at bar are substantial and controlling. It is quite apparent that in the *Colt* case the Court did not consider that the testator meant to bequeath his entire estate proportionally to all his beneficiaries as in the case at bar. Furthermore, there was no element of substitution, but the issue was entirely whether the revocation of a specific gift made for a particular reason involved also a revocation of a residuary gift disconnected with the particular reason. The specific gift there was made, as the testator himself said, in satisfaction of an alleged claim which his brother had against him. His brother by his conduct with respect undoubtedly to this very claim had so changed the situation that when the testator made his codicil he felt he was no longer under any obligation to make the specific bequest. Naturally the Court thought that a revocation made for this reason should not be permitted to disinherit entirely the testator's blood relative. In this aspect, therefore, the case is entirely like *Wetmore* v. *Parker*, which we shall next discuss.

Before leaving the *Colt* case reference may be made to the following significant language of the Court:

> "The strongest ground that can be taken for the respondents is, that there is virtually but one legacy to James B. Colt; that the testator had determined to divide all of his stock in Colt's Patent Fire Arms Company among certain persons in certain proportions, but not being certain how much he should leave at his death, he gave certain specified amounts to

> the legatees, in the proportion in which he intended to divide his whole stock, and then gave as a part of the same bequest the indefinite residue in the same proportions. It may be urged that he adopted this course in lieu of bequeathing the whole at once in proportion to certain numbers. There is some plausibility in this claim. *If it is correct there would be a clear revocation of the whole bequest.* But the most that can be said of it with any certainty is, that this *may* have been his intention."

Wetmore v. *Parker*, 52 N. Y. 450, involved practically the same question as the *Colt* case, the inquiry again being whether the revocation of a specific legacy impliedly revoked the right given in the will to share in the residue. The testatrix there, in her will, gave $10,000 to the Utica Female Academy for certain purposes, and $10,000 to the Reformed Dutch Church of Utica for certain other purposes, and by her residuary clause gave and bequeathed the rest and residue of her estate "to the several persons, corporations and societies to whom I have hereinbefore made bequests and who shall be living and existing and able to take the same, in proportion to the amounts given and bequeathed to them respectively". By a codicil to her will, she referred to the clause of her will giving $10,000 to the Utica Female Academy and "whereas I have at this time given to the said Academy the sum of $3,000 to said Academy, intending the same to be part of, and to be paid in anticipation of so much of said legacy, Now, Therefore, I do hereby revoke the bequest of $3,000, part of the said sum of $10,000, and do hereby bequeath to the said Utica Female Academy, the sum of $7,000 (instead of $10,000) to be expended by the trustees thereof", etc.

By another codicil, she recited the clause of her will giving $10,000 to the Reformed Dutch Church of Utica for the purpose of aiding in the erection of its church edifice and "it now appearing probable that said purpose will soon be accomplished, and I having concluded to give at this time the sum of $3,000 towards the extinguishment of the debt incurred as aforesaid, do hereby revoke my said bequest of $10,000 to the Reformed Dutch Church." The Court held that these revocations did not affect the rights of the two institutions in the residue as conferred upon them by the will and that the proportion in which they took the residue was the same as if no codicil had been made. The distinction between that case and the case at bar is obvious. It was apparent from the will that the testatrix intended by the specific legacies to give money to the two institutions for certain specific purposes, and then for the general purposes of these institutions conferred upon them a proportionate share of the residue of her estate. Her codicils show that she was satisfied that she had done all that it was necessary for her to do as far as the specific purposes for which the definite legacies were intended were concerned, and therefore she revoked these bequests for these specific purposes, but obviously that did not indicate any intention on her part to take from these institutions the share of the residue given to them for their general purposes. The Court very properly held that she did not do so. Thus the Court said:

> "We are justified in inferring that the testatrix had two objects in view—one to aid in completing and furnishing the building, the other to contribute toward a fund for perma nent support. The first bequest would necessarily be expended at once, the latter might and ordinarily would be permanently invested."

And it is significant that the Court, in distinguishing *Hayes* v. *Hayes, supra,* said:

> "It is evident that the testator (in the *Hayes* case) intended to divide his whole estate in certain proportions and the codicil only changed the proportion."

In *Pendergast* v. *Tibbetts,* 41 N. E. (Mass.) 294, the testator gave various pecuniary legacies to different persons and then divided the rest and residue among them in proportion to the respective amounts thus given. By a codicil, the testator revoked certain of such legacies, amounting to $10,000 each, and "in place thereof" gave to each of said persons the sum of $5,000, and by another clause of the codicil gave to as mnay other persons legacies of $5,000 each. The Court held that the new legatees of $5,000 were not entitled to share in the residue and that the original legatees were entitled to share therein in proportion to the gifts originally given to them. Here again the case is distinguishable. The authorities are uniform that a legatee in a codicil does not, under circumstances like those in the case at bar, obtain any benefit by a residuary clause of this character in the will. What the testator did in the *Pendergast* case, as appears clearly from the fact that the new bequests made were for the exact amount taken away from the original legatees, was to reduce those specific legacies by $15,000 in all, and give that particular $15,000 to three other persons in three bequests of $5,000 each. There was, therefore, no element of a substitution of a new scheme of distribution for an old one, as in the case at bar. Here, again, the issue was one of implied revocation and not the substitution of one legacy for another as in the cases we have cited above. The Court said:

> "The reducing of the legacies given to Mrs. Nutter, Mrs. Whitehouse and Mrs. Varney in

> the second clause of the will from $10,000 each to $5,000 and giving the amounts thus taken from them to the other three nieces named in the codicil is consistent with an intention on the part of the testator to have Mrs. Nutter, Mrs. Whitehouse and Mrs. Varney to share in the rest and residue as the will provides that they should."

In none of the cases was there a general scheme of distribution involved as in the case at bar, and in each of them there were significant circumstances indicating a lack of intention on the part of the testator to affect by his codicils, the residuary distribution directed by his will. Here it is significant to note that the very eminent Court which decided *Hard* v. *Ashley, supra,* cited in their opinion *Colt* v. *Colt* and *Wetmore* v. *Parker,* not deeming these cases to be contrary to the conclusion reached on the facts in *Hard* v. *Ashley.* It is clear that the Court in *Hard* v. *Ashley* considered that these authorities went no further than to prevent the implied revocation of the residuary bequest, and that they did not touch, however, the effect of a substituted bequest as far as the residue is concerned.

We cannot justly assume as do the appellants that the Court of Appeals in deciding *Hard* v. *Ashley* overlooked the true significance of *Colt* v. *Colt* and *Wetmore* v. *Parker.*

Other authorities cited by appellants are obviously distinguishable and we do not feel it necessary to burden the Court with a detailed discussion thereof.

We submit very respectfully that the decree below embodies in all respects the testator's plain intention and should be affirmed.

Respectfully submitted,

McCarter & English,
Solicitors for John T. Gillespie and Samuel H. Gillespie, executors of the Last Will and Testament of Louis C. Gillespie, deceased; John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine G. Erskine, Helen G. Sanford, Mary G. Illman and George Fletcher Illman.

Katzenbach & Hunt,
Solicitors for Josephine Hewitt, Helen Jackson and Minnie Hueston.

Edward L. Katzenbach,
Arthur F. Egner,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between

SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, &c., of James A. Bradley, deceased, Complainant-Respondent,

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, &c., of Louis C. Gillespie, deceased, *et als.*, Defendants-Respondents.

On Bill, etc.
On Appeals from Chancery.

ON APPEAL OF: The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York,
Defendants-Appellants,

and

ON APPEAL OF: First Presbyterian Church of Asbury Park, New Jersey; The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey,
Defendants-Appellants.

BRIEF ON BEHALF OF COMPLAINANT-RESPONDENT.

The Nature of the Proceedings.

This suit was instituted in the Court of Chancery to obtain a construction of the last will and testament and eight codicils thereto of James A.

Bradley, deceased, late of Asbury Park, New Jersey. The bill was filed by Samuel H. Gillespie as the sole acting executor and surviving trustee of Mr. Bradley's estate. Of the seventy-six beneficiaries or possible beneficiaries, all of whom were made defendants, fifty appeared and answered in the suit. Numerous questions were raised by the pleadings and proofs, all of which were considered and passed upon by Vice-Chancellor Backes before whom the cause was heard (Record, pp. 167-183). The decree advised by him contains a clear adjudication of the rights of each of the defendants under such will and codicils (Record, pp. 184-201).

Of the large number of defendants whose interest or want of interest in the testator's estate was thus determined, only six have appealed. Their appeals, two in number, are now before this Court and present only the following questions: (1) The correctness of the learned Vice-Chancellor's finding that the changes made by the Eighth Codicil in the amounts of primary bequests given by the Seventh Codicil changed the proportions in which by the provisions of the Seventh Codicil the beneficiaries named therein were entitled to share in the residue of the estate (Record, p. 202), and (2) the correctness of his further finding that the Trustees of the Second Church of Christ, Scientist, of Asbury Park was not entitled to a legacy under the Seventh or Eighth Codicils (Record, p. 207).

None of the facts are disputed. Upon the hearing and with the approval of the court below nearly all of the facts were read into the record by counsel for the complainant and stipulated to be proven. It is believed that it will serve no useful purpose to review the evidence generally, but rather that its bearing upon each of the two ques-

tions involved on the appeals should be shown in connection therewith.

Mr. Gillespie in addition to being the executor and trustee of the testator's estate is also a beneficiary thereof and therefore has an individual interest in the outcome of the litigation. In order that the questions involved in the construction of the testator's will and codicils may be impartially presented, Mr. Gillespie as such complainant is represented in this Court, as he was in the Court below, by counsel who in nowise represent him or speak for him in his individual capacity. Here, as there, it will be our sole aim as such counsel to impartially aid the Court in its task of determining the questions presented.

We respectfully submit that each thereof was correctly decided by the learned Vice-Chancellor and that the portions of the decree from which the appeals are taken should therefore be affirmed.

ARGUMENT.

I.

The changes made by the Eighth Codicil in the amounts of the primary bequests given by the Seventh Codicil changed the proportions in which by the provisions of the Seventh Codicil the beneficiaries named therein were entitled to share in the residue of the testator's estate.

Mr. Bradley died on June 6, 1921. His will was dated June 26, 1896 (Record, p. 101). In it he made numerous bequests and devises, which were somewhat changed by the first six of his codicils, but in a manner which has no bearing on the present appeals (Record, pp. 17-44). By

his Seventh Codicil dated May 3, 1916, the testator without revoking any of the devises theretofore made by him or altering the powers theretofore conferred upon his executor, revoked all of the bequests made by his will or any of the prior codicils thereto and except for the lands so theretofore devised, disposed of his entire estate as follows:

By the second item of this Codicil he gave and bequeathed to sixteen individuals the sum of $5,000 each. They included all of his relatives and numerous relatives of his wife, she having died shortly prior to the execution of such codicil, and also two of the testator's employees. In the same item he gave and bequeathed the same amount ($5,000) to each of numerous churches located in or near Asbury Park, and to each of numerous charitable institutions, some of which were similarly located and others of which carried on their activities in more distant places (Record, pp. 44-45).

By the third item he gave $5,000 in trust to pay the income therefrom to his nephew, William Dickinson, for life, and upon his death to pay the principal to another named charitable institution (Record, pp. 45-46).

By the fourth item he gave $5,000 in trust to pay the income therefrom to the widow of Anthony Comstock, one of his life-long friends, and upon her death to pay the principal to another named charitable institution (Record, p. 46).

By the fifth item he gave $500 to each of eight additional employees (Record, p. 46).

By the sixth and seventh items respectively he gave $500 to another friend and $300 to a former employee (Record, p. 46).

By the eighth item he disposed of his wearing apparel.

The ninth and tenth items read as follows:

> "Ninth: All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively.
>
> "Tenth: I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my Executor, and give him full power of sale, to sell any and all of my real estate to pay said legacies, and give him power to execute deed or deeds therefor" (Record, pp. 46-47).

By his Eighth Codicil dated March 3, 1919, made about three years after the Seventh Codicil and about two years before his death, the testator rearranged the distribution of his estate (other than the real estate specifically devised by his will and the first six codicils thereto) among the beneficiaries named in the Seventh Codicil without, however, eliminating any of them as beneficiaries. In addition, by his Eighth Codicil the testator gave a specific legacy to a charitable institution not named in the Seventh Codicil.

The pertinent provisions of such Eighth Codicil are as follows:

> "First: In lieu of the legacies of Five thousand ($5,000) dollars each to Josephine Hewitt, Helen Jackson and Minnie Hueston, I give and bequeath to said Josephine Hewitt, Helen Jackson and Minnie Hueston the sum of Fifteen thousand ($15,000) dollars to each."
>
> "Third: In lieu of the legacies of Five thousand ($5,000) dollars each, provided in the Second clause of the Codicil to my Will bearing date the third day of May, One thousand, nine hundred and sixteen, and given as follows:" (Then follows the names of all of the churches and all of the charitable insti-

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tutions, excepting three, named in the second item of the Seventh Codicil) "I give and bequeath to each of the aforenamed the sum of One thousand ($1,000) dollars, i. e. I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each."

"Fourth: As William Dickinson is now deceased, I make null and void the legacy of Five thousand ($5,000) dollars given and bequeathed to my Executor in Trust for him by the Third clause of the aforesaid Codicil."

"Fifth: As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five thousand ($5,000) dollars given and bequeathed to my Executor in trust for her by the Fourth clause of the aforesaid Codicil."

"Sixth: As Sylvester Smith and Edward Howland named in the Fifth clause of the aforesaid Codicil are now deceased, I make null and void the legacies given to them by the aforesaid Codicil."

"Eighth: * * *

In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand, nine hundred and sixteen" (Record, pp. 48-50).

The learned Vice-Chancellor held that the changes so made by the testator in the Eighth Codicil in the amounts of the primary bequests given by the Seventh Codicil changed the proportions in which by the provisions of the Seventh Codicil the beneficiaries named therein were entitled to share in the residue of the testator's estate, and that such residue should be distributed among the individuals, churches and charitable institutions

named in the Seventh Codicil as "the aforenamed legatees" in the proportions or percentages that the primary bequests therein given them stand as changed by the Eighth Codicil. The correctness of this view is challenged by both of the appeals. We submit, however, that it is sound both from the standpoint of reason and authority, and should be sustained for the following reasons:

(a) *The primary bequests given by the Seventh Codicil and the bequests of proportionate parts of the residue given by the ninth item thereof, in intention and effect constituted single legacies to each of the legatees therein named.*

The Vice-Chancellor did not adopt this view for he said "The pecuniary and residuary legacies are clearly severable" (Record, p. 176, l. 20). Although in nowise affecting the correctness of his decision we do not think that such a finding was right.

The net appraised value as of the time of the testator's death of the real estate included in the devises which were not revoked by either his Seventh or Eighth Codicil was $64,950. The appraised value as of the same date of all of his real estate was $1,432,215.12 and of his equity therein $1,147,256.65. The appraised value of all of his personal estate was, however, only $101,640.87 and his debts other than his mortgage indebtedness amounted to $70,151.81 (Record, pp. 102-103; p. 112; p. 164). His personal estate included no bonds or shares of stock and more than three-fourths thereof consisted of his investment in the brush manufacturing business conducted by him in New York under the name of Bradley & Smith, and of amounts due or to grow due him upon contracts for the sale of real estate (Record, pp. 102-103). Little of the testator's per-

sonalty had a definite or readily ascertainable market value and practically all of his property was of such a character that it was impossible for him to estimate with any degree of accuracy what the realizable value thereof was likely to be at any time or to fairly divide the same in kind among those whom he desired to share therein upon his death. These beneficiaries were numerous. They included not only all of his living relatives and those of his wife for whom he had made provision in his will or earlier codicils, but practically all of the children of those thereof who had died, two or three close friends, numerous religious, charitable and philanthropic institutions, and a number of his old employees. As appears by his Seventh Codicil there were at least sixty-four individuals or agencies whom the testator desired to benefit. He found himself possessed of personal property of a value much less than the mortgages covering his real estate and with numerous parcels of realty, the value of which was necessarily largely problematical.

What he clearly desired and determined to accomplish by his Seventh Codicil was the distribution among these numerous beneficiaries of the proceeds of all of his property, personal and real (other than the real estate theretofore specifically devised by him) in certain definite proportions upon which he had then decided. In order to do this it was necessary for him to fix upon the numerators of the fractional parts of the proceeds of his estate which he desired to go to his named beneficiaries. By this plan whether his estate proved to be of greater or less value than at the time he made his Seventh Codicil, or of greater or less value than he might believe it to be at the time it took effect, he could be certain of the distribution of his estate in accordance with

his wishes. His intention to bring about this result is manifest upon a reading of the Seventh Codicil. In its accomplishment it was immaterial what the size of the respective numerators were as long as they bore the same ratio to each other. Except for appearances, or for the testator's natural desire that some material portion of the money he proposed to have his executor distribute should be paid over promptly, he could as well have chosen as the amounts of the primary legacies named in the Seventh Codicil sums varying from $3 to $50 or 3¢ to 50¢. The mere fact that he found it convenient to effect his manifest object by first giving numerous primary legacies and then giving to all the legatees the residue of his estate "in the proportion or on the percentage that the aforementioned legacies are given to them respectively" in nowise detracts from the force of the view that he intended that each should receive what was in effect a single legacy. The same result would have been accomplished if after providing as he did for primary legacies to a total amount of $259,800 he had directed that if the net proceeds of his estate should prove to be less or more than this sum such legacies should be proportionately abated or increased. The mere form which he saw fit to employ in carrying out his evident intention cannot be allowed to defeat it.

(b) *Even if the primary and residuary legacies given by the Seventh Codicil be regarded as several and not as constituting a single legacy to each of the legatees named therein, the manifest intention of the testator was to apportion his estate according to the substituted table of primary legacies contained in the Eighth Codicil.*

No one questions that the gifts contained in the first and third items of the Eighth Codicil were

substitutionary bequests. The appellants contend, however, that the substitution was merely of different primary legacies in place of those given by the second item of the Seventh Codicil, in nowise affecting the proportionate distribution of the residuary estate. They base this contention upon the view that these legacies were independent and distinct from those given by the ninth item of the same Codicil. As already appears, we cannot concur in this view but regard the provisions contained in the second and ninth items of the Seventh Codicil as constituting a single legacy of a proportionate share in the testator's estate in favor of each of the named or designated legatees.

Assuming, however, for the purposes of argument that the appellants' view as to the legacies being independent and distinct is the correct one, it does not sustain their contention as to the extent and effect of the substitutionary clauses of the Eighth Codicil, and should not be permitted to give the result which they desire to obtain. For it is evident that when the testator in the Eighth Codicil made a new table of primary bequests for all of the legatees named in the second item of the Seventh Codicil he intended that it should be substituted for the earlier one and control in the distribution of the proceeds of his estate. If instead of making the Eighth Codicil the testator had obliterated with pen and ink the amounts contained in the second item of the Seventh Codicil and written other amounts above the ones so obliterated and had then re-executed and republished such codicil, no one would doubt that the changes so effected had altered the proportionate shares of the residuary estate to which the beneficiaries named in that item would otherwise have been entitled. This would be true whether the

bequests made by the second and ninth items are regarded as several or single bequests to each of the legatees. We can see no difference between the result which the testator would have accomplished by adopting this course and the one which resulted from the course he followed.

The two codicils must of course be read together as part of one testamentary instrument. When this is done the intention of the testator becomes apparent. By the substitutionary clauses which he employed in the Eighth Codicil he said that when his estate was distributed among his "aforenamed legatees" of the Seventh Codicil the benefits conferred thereby must be regarded as changed by the Eighth Codicil to the extent therein provided. In the case of his three nieces the testator in effect said: "In the second item of my Seventh Codicil I strike out the sum of $5,000 in so far as it applied to Josephine Hewitt, Helen Jackson and Minnie Hueston and substitute therefor the sum of $15,000." In the case of the churches and certain of the charitable institutions he in effect said: "In the second paragraph of my Seventh Codicil I strike out the sum of $5,000 in so far as it applied to the following named churches and charitable institutions (naming them) and substitute therefor the sum of $1,000, *i. e.*, in each such case I reduce the sum of $5,000 to $1,000." Having done this, he in effect added: "Except as so changed I wish my Seventh Codicil to stand."

The learned Vice-Chancellor well expressed his views to this effect in the following words:

> "It would seem upon reading the will and operating codicils, and visualizing the testamentary scheme, that the manifest intention of the testator was, to apportion the residue according to the last table of pecuniary lega-

> cies. That is one's first and enduring impression. By the Seventh Codicil the testator put his relatives and friends on a par with the institutions; all were to pro-rate in the distribution of the residue on the basis of $5,000 bequests to each. For reasons of his own, as to which there need be no speculation, he concluded to prefer his relatives and friends, and by the Eighth Codicil gave, 'In lieu of' the legacies given by the Seventh Codicil, legacies of other amounts, indicating, by the substitution of amounts, an intention to introduce a new division in the apportionment of the residue and that it was to be distributed according to the new schedule. Evidence of the testator's trend of mind is, that after he had in plain and unmistakable language substituted the $1,000 legacies for the $5,000 legacies to the institutions he added '*i. e.* I reduce the aforesaid legacies as originally provided for in the aforesaid codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each'; intimating that the original legacies, in reduced amounts, were to be the measure of participation in the residuary estate * * *'' (Record, p. 174).

That the substitutionary clauses of the Eighth Codicil were not intended to and did not have the limited effect claimed by the appellants, namely, that they merely substituted pecuniary legacies of different amounts for the primary legacies given by the second item of the Seventh Codicil, is also shown by the language used by the testator in the fourth and fifth items of the Eighth Codicil. Among the legatees who under the ninth item of the Seventh Codicil were to share in the division of the residuary estate were William Dickinson and the widow of Anthony Comstock. By the third and fourth items of such Codicil the testator had provided a trust legacy of a specific

amount for each of these legatees and by the ninth item thereof he had created a trust for each of them in a proportionate part of his residuary estate. They were included among the "aforenamed legatees" whom the testator in that codicil provided should receive his residuary estate upon the proportions or percentages therein fixed. Mr. Dickinson and Mrs. Comstock both died between the making of the Seventh and Eighth Codicils. None of the appellants and no one else questions that by the fourth and fifth items of the Eighth Codicil the testator intended to and did revoke everything he had given these deceased legatees by his Seventh Codicil; that is by the ninth item thereof as well as by the third and fourth items. In effecting such revocations the testator said as follows:

> "Fourth: As William Dickinson is now deceased, I make null and void the legacy of Five thousand ($5,000) dollars given and bequeathed to my Executor in Trust for him by *the Third clause* of the aforesaid Codicil" (Record, p. 49).
>
> "Fifth: As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five thousand ($5,000) dollars given and bequeathed to my Executor in trust for her by *the Fourth clause* of the aforesaid Codicil" (Record, pp. 49-50).

The language of these items is most significant. For in each instance the testator in terms revoked only the legacies given by the third and fourth clauses of the Seventh Codicil and made no mention whatever of the ninth item thereof or the benefits conferred thereby. In changing the benefits which he had conferred upon certain of the churches and institutions named in the second item of the Seventh Codicil the testator employed

the same restricted language and must, we submit, in so doing have intended to give to it the same comprehensive effect which everyone concedes he did when employing it with regard to such deceased legatees. There is no ground upon which in the one instance the use of the same language can be said to have been intended to effect a complete revocation of the benefits conferred by the ninth item of the Seventh Codicil and yet in the other instance not to have worked any change in the benefits conferred by that item.

There is additional evidence in the record to sustain the construction placed by the Court below upon the substitutionary clauses of the Eighth Codicil. Throughout Mr. Bradley's long will and the codicils thereto he uniformly made careful provision for his relatives and those of his wife. As deaths occurred among them from time to time he dealt with the resulting changed conditions by making substitutionary gifts to the children of those so dying. In his Seventh Codicil he provided for every individual still living for whom he had made provision either in his will or any of its earlier codicils, and in the case of those who had died he made a substitutionary gift to their children. By his Eighth Codicil he (1) increased threefold the amount of the primary legacies to his three nieces; (2) left unchanged the primary legacies of all the other individuals, who constituted additional relatives, friends and employees; and (3) reduced from $5,000 to $1,000 all but three of the primary legacies he had given the numerous churches and other institutions named in the second item of the Seventh Codicil. This action being in conformity as it was with the long course of conduct disclosed by the testator's several testamentary instruments all of which are before the Court, further evidences his

intention to make a new table of numerators that should govern the distribution of his estate in lieu of the one contained in the Seventh Codicil by means of which the relatives of his wife and himself and his close friends and old and trusted employees would each receive a greater proportion of his estate and the churches and institutions a smaller proportion thereof than he had proposed when he made his Seventh Codicil.

There is no foundation for the claim made in the appellants' brief that a contrary intention can be drawn from the substitutionary clauses in question because by the sixth item of his original will made twenty-three years earlier Mr. Bradley had provided that the proceeds of one-half of the bulk of his estate should go to charitable institutions. As a matter of fact the income from the proceeds derived from the sale of the property described in the sixth item of his will was given entirely to his wife for life and after her death three-eighths of the corpus went to her relatives, another one-eighth to the appointees under her will and only three-eighths to three charitable institutions. The remaining one-eighth was given to the Ocean Grove Camp Meeting Association, but this gift was revoked by the Second Codicil made in 1906 (Record, pp. 19-30; 41). No one can read Mr. Bradley's will and codicils without being impressed with the fact that his first and greatest concern in making provision for the distribution of his estate was always that his own relatives and those of his wife should be amply provided for. Even were it true as claimed by the appellants that Mr. Bradley had originally provided that the three charitable institutions which he named in his will should receive one-half of the major part of his estate, this would in nowise indicate that when making his Eighth Codicil nearly

a quarter of a century later he did not then intend to make a new apportionment of his estate among the more than three score of individuals, churches and other institutions to whom his Seventh Codicil apportioned practically all of his estate. In this connection it should also be borne in mind that the provision made by the testator in the Seventh Codicil for each of the three of the six appellants who comprise the charitable institutions mentioned in his original will was no greater than that made for each of the more than thirty other institutions which he sought to benefit thereby, none of which had been mentioned in any of his earlier testamentary instruments. The statement made on page 9 of the appellants' brief that when Mr. Bradley made his Eighth Codicil he still owned most of the real property described in the sixth item of his will is not supported by anything in the record and is not the fact. The appraisal of the personal and real estate owned by him at the time of his death appearing on page 164 of the Record which is cited as authority for this statement in nowise supports it. On the other hand it appears from various parts of the Record that Mr. Bradley during this long period was constantly disposing of his real estate holdings, and anyone familiar with the history of Asbury Park knows that between 1896 and 1919 he had parted with a large part of his holdings including, as the Record shows, the entire Asbury Park beach front (Record, pp. 103-107; pp. 115-116; p. 118).

As appears by Exhibits C-4 and C-5, the appraised net value of the testator's estate as of the date of his death was $1,173,306.22. The similar value of the devises given by the will and Second Codicil, constituting the only gifts not revoked by the Seventh Codicil, was $64,950, leaving $1,108,356.22 as the appraised net value of the

property for the distribution of which provision was made by the Seventh Codicil. Of this amount $259,800 was included in the primary legacies there given. Apart from the expenses of administering the estate, the residue thereof was, therefore, appraised at $848,556.22. Of this residue (disregarding the decrease therein resulting from the administration expenses) had the testator never made his Eighth Codicil his relatives and the other individuals provided for by his Seventh Codicil would have received $309,634.87 and the churches and institutions provided for therein $538,921.35. In this calculation the two $5,000 legacies given in trust for the lives of individuals with remainders to institutions have been treated as gifts to the individuals. If these legacies are considered as gifts to the institutions there named, the amount of the residue which the individuals would have received is $276,972.95 and the amount which the institutions would have received is $571,583.27.

As a result of the changes in the primary legacies made by the Eighth Codicil, the residue was increased to $934,056.22. Under the construction which the appellants would have the court place upon the two codicils this residue would be divided between the individuals and institutions, considering the two legacies given in trust as gifts to individuals, as follows: $340,833.37 to the individuals and $593,222.85 to the churches and institutions. If the two legacies given in trust be treated as for the benefit of the two institutions therein named, the division of the residue under such construction would be as follows: $304,880.47 to the individuals and $629,175.75 to the churches and institutions. In the one case the result of the making of the Eighth Codicil would be to increase the share of the churches and institutions in the

residue by $54,301.50, while in the other it would increase it by $57,592.48.

The effect of this showing, which was also pointed out in the court below, is sought to be overcome by the appellants in several tables of figures set forth on pages 6 to 9 of their brief. These tables merely show that under the construction the appellants would like to have placed upon the Codicils under review the distribution of the testator's entire estate would more nearly equal the distribution thereof provided for in the Seventh Codicil than would the construction placed upon these instruments by the lower court. This, however, constitutes no proof of what the testator meant to accomplish by the making of his Eighth Codicil. It is manifest from the nature of his property that at the time he made either of these Codicils he could not have known even the approximate value of what he then owned or estimate the value of the portion thereof which might remain at the time of his death. It is therefore futile to attempt to test the intention which the testator sought to accomplish by the making of his Eighth Codicil through a refinement of figures taken from the inventory of his estate. But it is justifiable in testing his intention when making his Eighth Codicil to consider the effect which the diverse constructions sought to be placed thereon would have upon the distribution of the residuary part thereof. And it is also justifiable to find, as did the learned Vice-Chancellor, that by materially increasing the units which prior to such changes had measured the participation which some of the individuals were to have in the estate, leaving unchanged the similarly measuring units of all of the other individuals, and greatly reducing the similarly measuring units of all of the churches and nearly all of the institutions, the testator did

not intend to increase the shares of all of the churches and institutions in his residuary estate at the expense of his close relatives and friends. Particularly must this be so because of the admitted inability of the testator to even approximately measure the value of his residuary estate.

(c) *The Vice-Chancellor's construction of the Seventh and Eighth Codicils is sustained by the authorities.*

In his able opinion Vice-Chancellor Backes says, "The problem here involved has not been before our courts for decision." He was unwilling to accept *Hayes' Executors* v. *Hayes,* 21 N. J. Eq. 265, as an authority in point because, as already shown, he regarded the primary and residuary legacies of the Seventh Codicil as several. If he is right in this view we agree with him as to the inapplicability of the decision in that case. If however, as we have contended, the benefit conferred upon the legatees named in such codicil constituted a single bequest to each thereof of a share in the testator's personal estate, we think that the *Hayes case* is directly in point. In that case the testator by his will gave a number of bequests aggregating $70,000. He then directed that if the net proceeds of his estate should amount to more or less than such sum, the bequests should each be increased or diminished, as the case might be, and thus made to absorb his residuary estate. This, it will be remembered, is the same result which we have argued was intended to be accomplished by Mr. Bradley through his Seventh Codicil. By a codicil the testator in this earlier case reduced the amounts of certain of the specific bequests and entirely revoked others thereof. Among those so reduced was one in favor of his brother, John C. Hayes, which was changed from $15,000 to $10,000.

The total amount of the reductions thus effected was $7,000, and the testator by his codicil directed that this amount should be apportioned by his executors, and paid over to certain of the remaining legatees according to the amount they were entitled by his will to receive. Chancellor Zabriskie held that both the $7,000 referred to and the residue of the estate must be distributed among the legatees entitled thereto upon the basis of their legacies as changed by the codicil, and that the proportion of the $7,000 and of the residue to be paid to John C. Hayes must be calculated upon $10,000, that being the amount to which his legacy had been reduced by the codicil.

The English case of *In re Courtauld* (sometimes cited as *Courtauld* v. *Cawston*), 47 Law Times, 647, squarely sustains the Vice-Chancellor's opinion. There the testator by his will gave his trustees £70,000 to invest and pay the income therefrom to his adopted daughter, Sarah Ann Cawston, for life, without power of anticipation, and after her death to divide the trust fund among such persons as she should by will or codicil appoint, and in default of appointment in trust for her next of kin. He then gave £80,000, in similar terms, upon trust for his other adopted daughter, Louisa Ruth Lowe, for life and after her death for such of her issue as she should by will or deed appoint, and in default of appointment upon trust for her children equally and in case there should be no children then upon trust for her next of kin. After giving a number of other legacies to be paid out of the general residuary personal estate the testator declared that the term "the said residuary legatees" thereinafter used should be considered to designate all of the persons thereinbefore named as pecuniary legatees whether of or to be paid out of his partnership capital or out of his

general residuary personal estate. He then gave all of his personal estate not otherwise disposed of to his trustees with a direction that they should convert the same and divide the proceeds among "the said residuary legatees" *pro rata* in proportion to the amounts of the legacies thereinbefore bequeathed to "the said residuary legatees respectively." Thereafter the testator made a codicil by which he revoked the legacy of £70,000 so given to his trustees in trust for his adopted daughter, Sarah Ann Cawston, her appointees and next of kin, and in substitution for and not in addition to such legacy gave his trustees the sum of £80,000 in trust to pay the income therefrom to Sarah Ann Cawston for life subject to such trusts and provisions as were declared in his will respecting the revoked legacy of £70,000 and in the same manner as if they had been repeated in the codicil. He also revoked the gift of £80,000 made by his will to his trustees in trust for his other adopted daughter, Louisa Ruth Lowe, her appointees and next of kin, and in substitution for and not in addition to that gift gave his trustees the sum of £140,000 upon the trusts declared in his will, and in all other respects he confirmed his will.

As appears from the report of the decision the case was exhaustively argued by able counsel. After giving careful consideration to the arguments as well as the various provisions of the will and codicil, the court concluded that the residue of the testator's estate should be divided among the legatees as if their original legacies had been the amounts mentioned in the codicil and not in the will. In so deciding Kay, J., said:

> "I think on the whole, in the absence of authority, I am bound to give the word 'substitution' its largest meaning, and to read the will and codicil as one is bound to do, as one

> document, and to treat the words of the testator as if he had said: I direct that these increased legacies shall be read as if they were inserted in the will for all purposes; in which case the residue must be divided amongst the legatees as if their original legacies had been the amounts mentioned in the codicil, and not in the will."

Counsel for the appellants attempt to distinguish this case by referring to the fact that the codicil provided that the legacy of £80,000 should be subject to the trusts and provisions of the will respecting the £70,000 legacy for which it was substituted *"in the same manner as though they were here repeated"* and that Judge Kay attributed importance to the words just quoted. They infer that the Court regarded this language as in effect repeating in the codicil the clause of the will directing distribution of the residue in proportion to the primary legacies. An examination of the opinion shows that this inference is entirely unfounded. The language in question clearly referred only to the provisions of the will which defined the trusts upon which the original legacy was given which trust provisions were made applicable to the legacy given by the codicil. That this was the understanding of the court appears from what immediately follows the portion of the opinion quoted by appellants' counsel:

> "Now, the scheme of the will was obviously this, to give certain pecuniary legacies to different legatees, and then to divide what might be left of his personal estate among the legatees in those proportions which the amounts of their pecuniary legacies had determined. The question is whether, having by this codicil revoked two of those legacies (the other revocation being practically in the same words as this), and having substituted an-

> other legacy which is to be held, as I have already determined, *upon the same trusts* as the former legacies in all respects which he has given to the same trustees, and is to be held upon the same trusts, and in the same manner as if they were here repeated—whether that is a substitution for the previous legacy, not merely so far as relates to the trusts of and incident to that particular legacy, but also so as to occasion a different division of the residue from that which would have been made if this revocation of the legacy had not taken place at all. Of course, the argument on one side is that, unless you do read the codicil so as to substitute this legacy for all purposes in the will, you do not give the full effect to the word *'substitution'*, and that the real meaning of the testator was that you must read in the will in the place where he has put the figure £70,000, the figure £80,000.'' (The italics are ours.)

There is nothing in the opinion which in any way indicates that the court regarded the words ''in the same manner as if they were here repeated'' as referring in any way to the residuary bequest. These words in the opinion of the court emphasized the substitutionary character of the legacy in the codicil and because of this substitutionary character the court held that the will and codicil must be construed together as though the legacies provided in the codicil had originally been inserted in the will. The case is not, therefore, distinguishable from the case at bar for the legacies in the Eighth Codicil were given in lieu of the legacies in the Seventh Codicil and the words ''in lieu of'' are equivalent to the words ''in substitution for.''

Hard v. *Ashley,* 117 N. Y. 606 (N. Y. Ct. of Appeals, 1890), is likewise directly in point. There the testator, by the first clause of his will,

gave pecuniary legacies of various amounts to nine named relatives. By the second clause he gave to Zipporah E. Wilcox the use of his farm on which she then resided, during her life, and at her death to her children then living, in equal shares. After making other specific bequests and devises he gave his residuary estate "to the same parties in the same ratio and proportions as are given and specified in the foregoing bequests" and for the purposes of such apportionment he fixed the value of the farm given to Mrs. Wilcox and her children at $15,000. Thereafter the testator executed a codicil by which after reciting the making of such gift of his farm to the use of Zipporah E. Wilcox for life and at her death to her children then living, he directed as follows:

> "I do hereby revoke said bequest, as well the one to the children of said Zipporah, living at her death, as the one to said Zipporah herself, and in lieu and instead of said bequest, I do hereby give to the said Zipporah E. Wilcox and her heirs, eight thousand dollars, payable as soon as may be conveniently after my death."

The Court of Appeals of New York in reversing the judgment of the Supreme Court, held that Mrs. Wilcox and her children were entitled to share in the residue of the testator's estate only in the proportion which $8,000 bore to the total amount of such residue, that being the amount to which the original devise of the farm (appraised by the testator at $15,000) was reduced by the codicil. Gray, J., in delivering the unanimous opinion of the court, said:

> "* * * Here the clause of the codicil in question does not in terms revoke anything but the bequest of the farm; but it substitutes

for that which is thus revoked a gift of a sum of money. The language 'in lieu and instead of said bequests' seems to me to be entitled to considerable significance, and to warrant our reading the original will without other change in that regard than the mere substitution of the gift of $8,000 in money for the gift of the farm. * * *

The disposition of the residuary estate by the testator was its division among those certain persons to whom legacies had been previously given, and in that proportion to each which the stated value of his or her legacy bore to the aggregate value of all of those legacies. The subsequent execution of a codicil only affected that disposition by lessening the amount of the legacy to Mrs. Wilcox from $15,000 to $8,000. That did not strike her out as one of the persons denominated by the residuary clause as a residuary legatee. It left her in; but in lieu of the farm gave her a sum of money representing less in value than the farm was valued at. *This change, effected by the codicil, operated to introduce a new divisor in the distribution of the residuary estate. In other words, in reading the will we take in the codicil, and, in place of the gift in the second clause of a farm valued at $15,000 we read a substituted gift of $8,000, and the disposition of the residuary estate proceeds upon precisely the same principle. I think, in that way, the clear and obvious purpose of the testator is given effect.* * * *'' (The italics are ours.)

The learned Vice-Chancellor rightly held that the cases upon which the appellants rely in support of their contention are clearly distinguishable from the one at bar. They afford little or no assistance, therefore, in determining the proper solution of the question under consideration.

The appellants' principal reliance is upon the decision of the Supreme Court of Errors of Connecticut in *Colt* v. *Colt,* 32 Conn. 422 (1865).

That case arose on a demurrer to a bill filed by James B. Colt as a legatee under the will of his brother, Samuel Colt, deceased, to compel the executors to transfer to him certain shares of stock of the Colt's Patent Fire Arms Manufacturing Company, with the dividends alleged to have been received by the executors on such shares. The testator died on January 10, 1862, owning at the time of his death 9,996 shares of stock in the Arms Company. On June 6, 1856 when, owning a much smaller number of such shares, he made a will by which he distributed the stock then owned by him among different legatees, giving such brother and his issue 500 shares thereof by the following bequest:

> "To my brother James B. Colt, now of said city of Hartford, I give and bequeath the use and improvement during his life of five hundred shares of the stock of said Colt's Patent Fire-arms Manufacturing Company, and after the death of my said brother to his issue lawfully begotten as an absolute estate. This bequest is on condition that the said James B. Colt shall waive and relinquish all claims and demands actual or pretended which he may have against me or against said Colt's Patent Fire Arms Manufacturing Company. I also give and bequeath to my executors and their successors in said office five hundred shares of the stock of said Colt's Patent Fire Arms Manufacturing Company, in trust for the issue of said James B. Colt lawfully begotten, the profits and dividends thereof to be applied to the education of his said issue, so far as the same may be necessary for that purpose, until the youngest surviving of said issue shall have reached the age of twenty-one years, when said stock, and all accumulations thereof, if any, shall go to said issue in equal proportions as an absolute estate."

After making various other bequests and devises the testator then directed as follows:

> "All the rest and residue of my estate, of every kind and description, not herein disposed of, I give, bequeath and devise as follows: All the remaining stock of said Colt's Patent Fire Arms Manufacturing Company of which I shall die possessed shall be divided amongst the several persons and parties to whom I have hereinbefore given legacies of stock, in the ratio and proportion in which said legacies of stock are hereinbefore given. * * *"

On January 12, 1858, the testator made a codicil by which he revoked various legacies of stock in the Arms Company given by his will and by the following clause revoked the legacy of 500 shares thereof given to his brother James:

> "I also revoke and cancel, for reasons growing out of his late unbrotherly conduct towards me, the legacy of five hundred shares of the stock of Colt's Patent Fire Arms Manufacturing Company, given in the aforesaid will to James B. Colt for life, remainder to his children; and in lieu thereof I give and bequeath said five hundred shares of stock to the trustees named in said will for founding a school for practical mechanics and engineers, subject to the uses and trusts created in said will for that purpose."

The court held that the revocation of the primary bequest of five hundred shares of such stock given the brother by the will did not deprive him of his proportionate share of the testator's residuary stock. In reaching this conclusion the court was influenced by several important features appearing on the face of the will and codicils which clearly distinguish it from the codicils now under consideration.

First, the primary bequest of the five hundred shares of stock to the testator's brother was given upon the express condition that "the said James B. Colt shall waive and relinquish all claims and demands actual or pretended which he may have against me or against said Colt's Patent Fire Arms Manufacturing Company." No conditions of any kind or character were attached to the residuary bequest, but such bequest constituted an absolute and unconditional gift. It thus appears on the face of the will itself that the testator contemplated making two separate and distinct bequests to his brother, the one being intended as satisfaction for all claims or demands actual or pretended which the brother might have against the testator or the corporation, and the other as an unconditional gift of a portion of his residuary estate.

Second, the codicil did not make a substitutionary gift to the testator's brother in lieu of the gift of the five hundred shares of stock, but merely revoked the primary gift of those shares and provided that they should go to another legatee not related to the testator.

Third, it clearly appeared from the will and codicils that the testator intended to confine the operation of the revocation to the primary bequest to his brother, for when he came to revoke both the primary legacy and the residuary legacy to the children of James B. Colt he said: "I hereby cancel and wholly revoke any and all other legacies or devises by me heretofore at any time made to or for the use and benefit of said children or any of them," and when he revoked the legacy to the oldest son of Christopher Colt, another brother, the language which he used was: "and

all legacies heretofore made in his favor are cancelled and revoked." The language of these revocations demonstrates that if Mr. Colt had desired to wholly deprive his brother, James, from participating in any of his property he would have done so by the use of similar language and not by the restricted language which he actually employed.

Fourth, in reaching its conclusion the Court applied the well established rule of construction that where a will is capable of two interpretations that one will be adopted which prefers those of the blood of the testator to strangers.

That the Court had all of these things in mind in reaching its decision appears by the following quotation from the opinion of Judge Dutton at page 449:

> "Besides, the dissatisfaction seems on the face of the will to be confined in its influence to the legacy of five hundred shares. The condition of relinquishing all claims and demands is limited to that legacy. We are not informed what the unbrotherly conduct of the legatee was. If we were to hazard a conjecture, it would be that James B. Colt had, after the making of the will, sued his brother on a demand which he characterizes as 'actual or pretended'—implying that he thought it, in part at least, unfounded. If this was so we should infer that the testator's train of thought was this. 'I have inserted in my will a legacy to my brother which is much more than any real or pretended claim which he has against me. But he has seen fit to sue me. I will therefore revoke that legacy and let him recover whatever he can.' Viewed in this light it furnishes no reason why the testator should refuse to do any thing whatever for a brother, when he had such abundant means, and when he was at the time of the revocation giving so munificently to benevolent objects."

A comparison of Mr. Colt's will and codicil with the codicils under consideration in the case at bar illustrates the wide difference between the two cases.

First, all of the primary legacies in Mr. Bradley's Seventh Codicil were unconditional.

Second, the provisions of the first and third items of his Eighth Codicil constituted not naked revocations of the legacies given in the Seventh Codicil, but were intended and stated to be substitutionary gifts to the same beneficiaries.

Third, as above explained, Mr. Bradley in revoking the legacies to deceased legatees referred to the primary legacies given to such legatees in the Seventh Codicil and made no reference whatever to the residuary bequests, although it is obvious that it was his intention by that language to revoke all bequests to them.

Fourth, the rule of construction that where a will is capable of two interpretations, that one will be applied which prefers those of the blood of the testator to strangers, relied upon by the Connecticut court to sustain the residuary bequest in the Colt case, when applied to the case at bar has the opposite effect.

All of the excerpts quoted in appellant's brief from the opinion of the Court in *the Colt case* are taken from Judge Blatchford's opinion in the Federal Court for the District of Connecticut, 48 Fed. 399, (1881). In that case other legatees under the Colt will filed a bill in equity to recover the shares of the residuary stock of the Colt's Patent Fire Arms Manufacturing Company which they contended they were entitled to receive under the will. The defendants set up the decision in the

State Court as a bar to the new action. The only question decided by the Federal Court was that the decision of the state court of Connecticut in the earlier suit was *res adjudicata.* The language quoted by the appellants from Judge Blatchford's opinion is therefore *obiter dicta.*

Wetmore v. *Parker,* 52 N. Y. 450, (N. Y. Ct. of App., 1873) is likewise distinguishable from the case at bar. In that case the testatrix by her will gave $10,000 to the Reformed Dutch Church of the City of Utica. The purpose of this legacy was to aid in defraying the expense incurred or to be incurred in the erection and completion of its church edifice then being erected in that city. She also gave the Utica Female Academy the sum of $10,000 to be expended by the trustees thereof in erecting a new academy building on the site of its building destroyed by fire, or in the payment of any debt incurred by the trustees in the erection and completion of such building; or if the building should be completed and paid for before the bequest should take effect then the trustees were to expend the money in the erection of fences, construction of walks, improvement of the lot, and in the purchase of furniture, books and apparatus for the Academy. After making these and other specific bequests the testatrix then bequeathed all the rest and residue of her estate to "the several persons, corporations and societies to whom I have hereinbefore made bequests, and who shall be living and existing and able to take the same, in proportion to the amounts given and bequeathed to them respectively."

Thereafter the testatrix executed a codicil containing the following clause:

> "Whereas, by the eleventh clause of my said will, I have devised to the Utica Female Academy the sum of $10,000, as is particularly

> set forth in said clause; and whereas I have at this time given to the said academy the sum of three thousand ($3,000) to said academy, intending the same to be part of and to be paid in anticipation of so much of said legacy. Now, therefore, I do hereby revoke the bequest of $3,000, part of the said sum of $10,000, and do hereby bequeath to the said Utica Female Academy the sum of $7,000 (instead of $10,000), to be expended by the trustees thereof for the purposes of and in the manner prescribed in and by the said eleventh clause of my said will."

After this she executed a further codicil containing the following clause:

> "I having given, by the sixth clause of my said will, the sum of $10,000 to the Reformed Dutch Church, in Utica, for the purpose, principally, of aiding in the erection of its church edifice and in paying any debt that might thereby be incurred; and it now appearing probable that said purpose will soon be accomplished, and I having concluded to give at this time the sum of $3,000 towards the extinguishment of the debt incurred as aforesaid, do hereby revoke my said bequest of $10,000 to the said Reformed Dutch Church."

The court held that the revocations contained in the two codicils above mentioned did not affect the proportionate interests in the residuary estate which the Reformed Dutch Church of Utica and the Utica Female Academy were given respectively by the will, but that they were entitled to their proportion thereof the same as if no codicil had been executed. It will be observed, however, that the provisions of that will and codicils were radically different from those of Mr. Bradley's Seventh and Eighth Codicils. The intent of the testatrix in that case was apparent upon the face

of the will. She intended to give the specific bequests to the two institutions there named for certain specific purposes therein stated, and by her residuary clause intended each of them to receive a proportionate part of the residue for the general purposes of each institution. As pointed out by Chief Justice Church in the course of his opinion:

> "They are for different purposes; one for particular, the other for general purposes. We are justified in inferring that the testatrix had two objects in view; one to aid in completing and furnishing the building, the other to contribute toward a fund for permanent support. The first bequest would necessarily be expended at once; the latter might and ordinarily would be, permanently invested."

The codicils show that when they were executed the testatrix had satisfied herself that she had contributed all that she felt justified in contributing to either of such institutions for the special purposes which the specific bequests contained in her will were intended to cover. They did not indicate any intention to take from either of these institutions the share of her residuary estate which she had given them for their general purposes and the court properly held that she had not done so.

In this connection it will be remembered that *Hard* v. *Ashley, supra,* came before the New York Court of Appeals seventeen years after its decision in *the Wetmore case,* and that in reaching the conclusion to which it came in this later decision the court cited both *Colt* v. *Colt* and *Wetmore* v. *Parker* and relied upon them in so far as they were applicable, although it reached a different conclusion as to the effect of the codicil upon the

residuary bequest. The decisions in these cases illustrate the application of the primary rule governing the construction of wills, namely, that the intention of the testator must control and that such intention is to be gathered from the particular will and codicils under consideration construed in the light of the attendant circumstances.

In *Prendergast* v. *Tibbetts,* 41 N. E. 294 (Mass. 1895), the testator by his will gave various pecuniary legacies to certain of his relatives there named and divided the rest and residue of his estate among them in proportion to the respective amounts thus given. Among the legatees named were three nieces of the testator who were given $10,000 each. By a codicil the testator revoked their legacies and in place thereof gave each of such three nieces $5,000 and also gave three other nieces who were not named in the will $5,000 each. The court held that the new legatees who by the codicil were given $5,000 each were not entitled to share in the residue of the testator's estate and that the three other nieces whose bequests were so reduced were entitled to share therein in proportion to the bequests originally given them. Here also the case is distinguishable from the one under consideration. The evident intention of the testator as expressed in his will and codicil was to make provision for three of his nieces whom he had not mentioned in his will by giving each thereof a specific sum of money. To do this he reduced the specific bequests originally given to his three other nieces by $5,000 each or a total of $15,000 and divided such sum among the three nieces whom he had not theretofore remembered. No change was made in the total amount of the particular bequests and the amount of the residue was therefore not affected. The three legatees named for the first time in the codicil were clearly

not entitled to a share in the residue and the court held that the testator did not intend to modify the proportionate shares of the residue originally given to his residuary legatees. The codicil under consideration in the case cited was therefore very different from the one in the case at bar.

In the other cases cited and relied upon in the appellants' brief the testamentary instruments under construction were so obviously different from the Seventh and Eighth Codicils to Mr. Bradley's will that the decisions therein will afford no assistance to the court. We therefore deem it unnecessary to make further mention of them.

The supposititious will which appellants' counsel set forth on page 26 of their brief strikingly illustrates the fallacy of applying arbitrary rules of construction regardless of the intention of a testator as expressed in his will. Counsel assume that because the Vice-Chancellor in the case at bar distinguished *Colt* v. *Colt* by referring to the fact that in that case there was a naked revocation confined by the language of the will and attendant circumstances to the primary bequest to the testator's brother, while in Mr. Bradley's will there was a substitutionary bequest, that this distinction must necessarily apply to every will which presents similar bequests regardless of the other provisions thereof which might evince a contrary intention. We believe that it is entirely futile to speculate upon the construction which would be placed upon a will containing the provisions suggested by counsel. Such a will would be the product of a testamentary scheme entirely different from that which prompted Mr. Bradley's Seventh and Eighth Codicils, and the court, if called upon to construe it, would be obliged to determine the intent of the testator as

evidenced by all of the provisions of the testamentary instruments and attendant circumstances. After all, every will is a law unto itself and rules of construction are invoked only in cases where the intention of the testator is doubtful, and then for the sole purpose of discovering such intention. Where such intention is plainly expressed, there is no need for the application of technical rules of construction and the courts have uniformly refused to apply them. Every will differs from every other will, and therefore decisions construing other wills are of no value unless considered in the light of all of the provisions of the will so construed and of the attendant circumstances.

We respectfully submit that the Vice-Chancellor's construction of the codicils in question was the proper one.

II.

"The Trustees of the Second Church of Christ, Scientist, of Asbury Park," is not entitled to a legacy under the Seventh and Eighth Codicils.

By the second item of the Seventh Codicil the testator provided as follows:

> "I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of Five thousand ($5,000) dollars: * * *
>
> Churches at Asbury Park, N. J. as follows: First Methodist, Episcopalian, Reformed Dutch, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist (colored), Mt. Pisgah Baptist (colored) and Episcopalian (colored); * * *."

The third item of the Eighth Codicil is as follows:

> "Third: In lieu of the legacies of Five thousand ($5,000) dollars each, provided in the Second clause of the Codicil to my Will bearing date the third day of May, one thousand, nine hundred and sixteen, and given as follows: Churches at Asbury Park, New Jersey: First Methodist, Episcopalian, Reformed Church, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist (colored), Mt. Pisgah Baptist (colored), Episcopalian (colored); * * *
>
> I give and bequeath to each of the aforesaid the sum of One thousand ($1,000) dollars, *i. e.*, I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each."

Under the evidence presented the learned Vice-Chancellor found that the First Church of Christ, Scientist, of Asbury Park, was entitled by reason of such quoted provisions of the Seventh and Eighth Codicils to share in the testator's estate, but that "The Trustees of the Second Church of Christ, Scientist, of Asbury Park," was not entitled so to do (Record, p. 183). Such Trustees and two other of the defendants have appealed from the portion of the decree embodying this finding.

It is our view that upon the proofs the finding of the Vice-Chancellor is sound and should be affirmed.

The evidence shows that the First Church of Christ, Scientist, was incorporated several years before the Seventh Codicil was made. It had then erected its church edifice at the northwest corner of Third Avenue and Emory Street in

Asbury Park, and had regularly conducted services therein for a number of years prior to the date of such codicil and continued to do so at the time of the testator's death (Record, pp. 127-128). The second of such Churches was originally formed as a separate society during the month of April, 1916 by certain members of the First Church of Christ, Scientist, who withdrew from that Church and formed a separate society of their own. From then until June 9, 1920, it was an unincorporated association. At first it conducted its services in the Metropolitan Hotel on Asbury Avenue in Asbury Park, later in the State Armory on Lake Avenue, and thereafter in the Public Library at the corner of First and Grand Avenues in that city until it became incorporated on June 9, 1920. Upon becoming incorporated it bought a house and lot on the southeast corner of Asbury and Grand Avenues in Asbury Park which it remodeled and has since used as its place of worship (Record, p. 128; pp. 144-145). It will thus be seen that the society which subsequently became "The Trustees of the Second Church of Christ, Scientist," was not formed until about a month before the Seventh Codicil was made and did not become an incorporated church until more than a year after the execution by the testator of his Eighth Codicil. During this period it owned neither a church edifice nor any other building where it could conduct its services, nor did it have any regular place of worship. There is nothing in the evidence to show that the testator ever made any contributions to this society or in fact knew of its existence. We do not believe that a mere unincorporated society which had no fixed place for public worship, can be said to fall within the terms of the codicils merely because of the time

they were executed such society designated itself as "The Second Church of Christ, Scientist," although it then had none of the characteristics of a church.

It plainly appears from a reading of the second item of the Seventh Codicil and the third item of the Eighth Codicil that the bequests therein contained were made to persons and organizations in existence at the time such codicils were executed and not to persons or organizations which might subsequently come into being and comply with the description therein contained. The individuals to whom bequests are given are specified by name. Five of the churches and all of the other organizations are also designated by name. In view of this the conclusion seems irresistible that when the testator designated other churches by naming the denomination to which they belonged and the respective places at which they were located he intended to benefit churches of such denominations which were then in existence. He obviously referred to existing beneficiaries then known to him and did not intend to provide for organizations which might subsequently come into existence.

The intention of the testator is to be ascertained by determining what was in his contemplation at the time he executed the codicils in question and not by what occurred thereafter.

As was said by Vice-Chancellor Pitney in *Gray* v. *Hattersley,* 50 N. J. Eq. 206:

> "The rule that a will, for some purposes, speaks from its date, and for other purposes from the death of the testator, applies only to the ascertainment of the property which passes by it. *It relates to the effect and operation of the instrument rather than to its construction. It has no application to a case where the meaning of language is involved.*" (The italics are ours.)

In *Henderson* v. *Henderson,* 77 N. J. Eq. 317, at page 318, Vice-Chancellor Stevens said:

> "It is no doubt true that a will is for some purposes regarded as speaking from the death. All property fairly falling within the descriptive words will pass whether acquired before or after the making of the will. It is said, that the rule that it so speaks, applies to the effect and operation of the will; to the ascertainment of the property passing by it, but that it does not apply to its construction. *Gray* v. *Hattersley,* 50 N. J. Eq. (5 Dick.) 213."

To the same effect see *Gold* v. *Judson* (Supreme Court of Errors, 1852), 21 Conn. 616, 622, in which Ellsworth, J., stated the rule as follows:

> "Whenever a testator refers to an actually existing state of things his language should be held as referring to the date of the will and not to his death."

Webb v. *Webb* (Supreme Court of Ark. 1914), 163 S. W. 1167, 1169, where the following appears:

> "As to the effect and operation of the will, as a general rule, in the absence of language showing a contrary intention, it speaks from the death of the testator. But when the purpose is to ascertain what the intention of the testator was from the construction of the language used by him in the will, then the will should be construed as of the date of its execution" (citing cases).

In re Hoffman's Will (N. Y. Ct. of App., 1911), 94 N. E. 990, 993, where Justice Gray declared the rule to be:

> "The intention of the testator in disposing of his residuary estate is to be ascer-

> tained, not by what occurred long after the execution of his will, but by what was, apparently, or presumably, in his contemplation, at the time he was making it. A testator is presumed to speak as of the time of executing his will and to base his calculations upon his dispositions taking effect'' (Citing cases).

The rule being thus firmly established it logically follows that the bequest under consideration should be construed in the light of the facts existing at the time the codicils were executed and without regard to what may have subsequently occurred. The Trustees of the Second Church of Christ, Scientist, was not then a ''church'' within the meaning of the term as therein used and it is difficult to perceive how it can be successfully contended that the testator intended to bestow a benefit upon it.

Conclusion.

For the reasons stated we respectfully submit that the portions of the decree appealed from should be affirmed.

March Term, 1925.

Respectfully submitted,

Edward K. Mills,
Solicitor of Complainant-Respondent.

Edward K. Mills,
Frederic J. Faulks,
Walter D. Barker,
Of Counsel.

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BILL OF COMPLAINT.

Filed July 14, 1923.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:

The complaint of Samuel H. Gillespie, Sole Acting Executor and Surviving Trustee under the Last Will and Testament and Codicils thereto of James A. Bradley, deceased, late of the City of Asbury Park, in the County of Monmouth and State of New Jersey, respectfully shows:

1. That James A. Bradley, then a resident of the City of Asbury Park, County of Monmouth and State of New Jersey, died on the 6th day of June, 1921, leaving a last will and testament with codicils thereto attached, which (with said codicils) was duly admitted to probate by the Surrogate of Monmouth County on the 8th day of July, 1921, and letters testamentary were on the same day issued by said Surrogate to the said Samuel H. Gillespie, an Executor named in said will, and the sole surviving Trustee named in said will. A true copy of said will is hereto annexed and hereby made a part hereof, and marked "Exhibit A."

2. That said Executor and Trustee duly qualified and entered immediately upon his duties as such Executor and Trustee and has continued to administer said estate until this time.

3. That said estate at the time of the death of the testator consisted of both real and per-

sonal property; that a small portion of the real estate was situated in Kings County, in the State of New York; that the major portion of the real estate of which the testator died seized was situated at Asbury Park, Bradley Beach, Avon-by-the-Sea, Belmar, and in Neptune Township, all in the County of Monmouth, in the State of New Jersey; that his real estate holding in the City of Asbury Park and Bradley Beach aforesaid was of more considerable value than real estate located elsewhere; that the real estate situated as aforesaid in Monmouth County was reasonably valued at the time of his death at approximately $1,430,715.12; that the value of the Kings County real estate aforesaid was approximately $3,000; that his personal estate, for the most part, consisted of a business devoted to the manufacture of brushes, which the testator conducted at 251 Pearl Street, New York City, New York, under the trade name of Bradley & Smith; that the major part of his estate consisted of the real estate holdings aforesaid, and that by judicious management of the Executor, there has already been realized from the sale of real estate in the State of New Jersey about $825,000 and from the sale of real estate in Kings County, New York, about $3,250; that at the time of the death of the testator, the real estate holdings of the testator were mortgaged to the extent of approximately $241,958 and the decedent owed, in addition, on debts, for the most part secured, to the amount of $108,302 and upwards; that the Executor has paid off and discharged all the mortgage indebtedness with the exception of one mortgage, upon which there is due now approximately $2,400 and which he is now prepared to pay and satisfy.

4. That the total amount of specific legacies which will pass under the will and its various codicils, according to the construction thereof which the complainant deems to be the true construction, is approximately $165,000; that the complainant now has in hand in cash approximately the sum of $420,000; which he is ready and willing to pay to the legatees named in said will and the codicils thereto annexed, but that this complainant is uncertain as to how and to whom the money now in hand as aforesaid is to be distributed.

5. That said will was dated and executed on the 26th day of June, 1896; that the general scheme of disposing of his estate as set forth in said will (after giving to his Executors and Trustees a small plot of land at the head of Wesley Lake in trust to sell and pay the proceeds of such sale to his wife, Helen M. Bradley, or in case of her death before him, to certain of her relations therein named) was to divide his real estate holdings into twelve parcels, which he devised to his Executors in trust to sell and dispose of and to distribute and divide the proceed of such sales to eight persons or corporations in proportions named in the sixth item of his said will; that on the 3d of May, 1916, the testator executed in due form a seventh codicil to his last will and testament, and between the date of the making of his original will, to wit, the 26th of June, 1896, and the date of making such codicil, some twenty years had elapsed and in that period many changes had taken place in the life, surroundings and property holdings of the testator. Certain beneficiaries named in the original will had died, including his wife, his sister Mary Ann Dickinson, also her children ex-

cepting one son, George Dickinson; his brother-in-law, Louis G. Gillespie, had died, his half-brother, Foster N. Smith, with whom he had been closely associated in the brush business aforesaid in the City of New York, had died, with the result that at the time of the making of the codicil aforesaid of May 3, 1916, there were no near relatives of his blood living except one nephew, the said George Dickinson. These, with other circumstances, apparently induced the testator to evolve an entirely new scheme for the disposition of his estate, which he sought to express in the codicil aforesaid of May 3, 1916, which may be conveniently referred to as the seventh codicil. By the first paragraph thereof, the testator revoked "any and all legacies given and bequeathed in any and all former wills and codicils," and directed "that the following shall be the only bequests distributed in my estate;" certain legacies and bequests were then given to certain persons, institutions and corporations. The testamentary purpose therein set forth (whatever it may have been) remained unchanged, except as modified by the final codicil to his will, bearing date March 3, 1919. This complainant, as already set forth, is uncertain as to how the fund in hand shall be distributed and is unable to make said distribution with safety to himself and the beneficiaries in interest, and cannot safely proceed in the discharge of his duties and in the settlement of said estate until said will with its codicils has been interpreted and construed and the meaning of the several provisions contained in said will and codicils has been fixed and determined by decree of this court. Said doubt and uncertainty arises in respect to the following particular matters:

(a) The meaning, effect, purport and application of the seventh codicil aforesaid, bearing date May 3, 1916.

And in this connection what meaning, effect, purport and application shall be given to the first paragraph of said codicil, which reads as follows:

"I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate."

The complainant is in doubt as to whether the words "all legacies" and the words "only bequests" above quoted apply to devises, as well as gifts of personal property found in the original will and in preceding codicils and, being in doubt, desires to be advised.

(b) The meaning, effect, purport and application of the eighth codicil aforesaid, bearing date March 3, 1919, which, among other details, modifies and changes the codicil of May 3, 1916.

(c) As to what effect in the distribution and settlement of the estate shall be given to the original will, dated June 26, 1896, as changed or modified by the various codicils, and especially the seventh, thereto annexed.

(d) And incidentally, as to what trusts or duties are still outstanding and operative as created by said original will of June 26, 1896.

(e) The sixth paragraph of the seventh codicil aforesaid is as follows:

"I give and bequeath to the widow of George Truax, who formerly resided at Asbury Park, N. J., and now lives several miles west of Asbury Park, the sum of Five hundred ($500) dollars."

This legacy is claimed by the widow of one George Truax, and also by the widow of one Charles Truax. By the latter it is insisted that the widow of George Truax was practically unknown to the testator, but that she, the widow of Charles Truax, was well acquainted with the testator, and that he had evinced in his lifetime an interest in her work, which was that of superintending the Poor Farm at Asbury Park, New Jersey; and that the said testator in his lifetime had contributed of his own means to the widow of said Charles Truax sums of money to be used by her in her work and in the support of the poor; and that said legacy was accordingly intended by the testator as a gift to her. The full name of the widow of Charles Truax is Susan A. Truax. The widow of George Truax intermarried with one————————Coward, who is now dead. The full name of the said widow of George Truax is Jane Amanda Coward.

In further support of the claim advanced by the widow of Charles Truax, it is pointed out by her that the seventh paragraph of the eighth codicil is as follows:

"The widow of George Truax, named in the Sixth clause of the aforesaid Codicil, is now the Superintendent of the Poor Farm near Asbury Park, New Jersey."

The widow of said George Truax was never Superintendent of said Poor Farm, but the said widow of Charles Truax has been and is such Superintendent.

(f) The sixth paragraph of the eighth and final codicil to said will is as follows:

"As Sylvester Smith and Edward Howland named in the Fifth clause of the aforesaid Codi-

cil (referring to the seventh codicil) are now deceased, I make null and void the legacies given to them by the aforesaid Codicil."

It appears that at the time of making this eighth and final codicil, namely, March 3, 1919, Sylvester Smith, the legatee therein named, was dead, but Edward Howland was then living and is still alive. It is claimed by the said Edward Howland that the legacy given to him as aforesaid in said seventh codicil was revoked under a misapprehension of fact, and that he is now entitled to receive said legacy.

(g) By the seventh codicil aforesaid and by the eighth codicil aforesaid, various legacies were given to certain institutions, corporations and churches. By the seventh codicil it was provided, among other things, as follows:

"I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of Five thousand ($5,000.) dollars:"

(here follow the names of certain persons).

The paragraph then proceeds:
"Churches at Asbury Park, N. J.," (naming certain churches)

The paragraph then proceeds:
"Churches at Avon, N. J., as follows: Methodist and Baptists."

This is followed in a new paragraph by the names of certain other churches, associations and institutions.

By the eighth codicil there is a similar recital of institutions and corporations who are to be beneficiaries, not in the sum of $5,000, as provided in the seventh codicil, but in the sum of $1,000. Complainant is in doubt, upon an exami-

nation of the two codicils, whether it was the intention of the testator to name particular and specific churches, or whether it was his purpose to provide for every church of the denomination named, whether specifically indicated or not.

A legacy is given by said eighth codicil to certain "Churches at Asbury Park, New Jersey." Among other churches therein named is the "Catholic." It now appears that there are two Catholic Churches in Asbury Park, one The Church of the Holy Spirit, the first and oldest established Catholic Church in Asbury Park, and the other a Catholic Church on the west side known as "Our Lady of Mt. Carmel Church." Both churches were organized when said codicil was executed. Each of these churches claims to be entitled to a legacy, and in respect to the rights of these respective claimants this complainant, being now in doubt, desires to be advised. In the same codicil and in the same connection and after the words, "Churches at Asbury Park, New Jersey:" appear the words "Christian Scientist." It now appears that there are two Churches of Christ Scientist in Asbury Park, the first established several years ago and before the death of the testator, the second known as "Second Church of Christ, Scientist," which, while not incorporated, was in existence before said codicil was executed, and held regular worship, quite independent of the first named church. It was, in fact, incorporated after the death of the testator. Both said churches claim legacies under said will, and in respect to the rights of these respective claimants, this complainant, being now in doubt, desires to be advised.

(h) In like manner, similar conflicting claims have arisen and are now set up and insisted upon by certain other churches claiming legacies under said seventh and eighth codicils.

(i) The second paragraph of the eighth codicil aforesaid is as follows:

"I give and bequeath to the hospital located on Asbury Avenue, in Asbury Park, New Jersey, the sum of Five thousand ($5,000.) dollars."

Said eighth codicil also contained the following provisions:

"In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand, nine hundred and sixteen."

Said seventh codicil (dated May 3, 1916) made no provision for said hospital. Said seventh codicil contained, however, in its ninth paragraph the following provision:

"All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the afore-mentioned legacies are given to them respectively."

It now appears that the hospital aforesaid located on Asbury Avenue, in Asbury Park, claims an interest in the "rest, residue and remainder" of the estate, and in respect to the rights of this claimant this complainant, being now in doubt, desires to be advised.

(j) By a paragraph contained in the sixth item of the original will, it is provided as follows:

"If the aforesaid Borough of Asbury Park shall purchase and accept the same upon the

conditions hereinafter mentioned, the second and fourth of the aforesaid parcels of real estate (which were definitely described and identified in a previous clause of the will) may be sold and conveyed to said Borough for the consideration of One dollar, at any time within four years next after the death of my said wife or after my death in case she shall not survive me."

Then follows a recital to the effect that the conveyance, if taken by the Borough of Asbury Park, must be upon certain conditions, and the further recital that if the Borough shall not "purchase and accept the said second and fourth parcels of real estate within the last mentioned limited time," then said parcels shall be sold at public or private sale and the proceeds of sale applied in a definite way. This complainant is now uncertain and in doubt as to whether this provision for the Borough of Asbury Park (now the City of Asbury Park) is operative and effective or as to whether the same has been rendered nugatory, null and void by the seventh and eighth codicils aforesaid and other provisions of the will and codicils.

(k) The third paragraph of the seventh codicil is as follows:

"I give and bequeath to my Executor the sum of Five thousand ($5,000.) dollars to be held in Trust, and direct him to pay the income therefrom to my nephew William Dickinson during the term of the life said William Dickinson, and on his death to pay the principal to the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated."

The fourth paragraph of the eighth codicil is as follows:

"As William Dickinson is now deceased, I make null and void the legacy of Five thousand ($5,000.) dollars given and bequeathed to my Executor in Trust for him by the Third Clause of the aforesaid Codicil."

The "Society for the Prevention of Cruelty to Animals at Asbury Park, N. J.," mentioned as aforesaid, is using as its corporate name "Asbury Park Society for the Prevention of Cruelty to Animals," and it is claimed that notwithstanding the death of the said William Dickinson, it, the said Society, is entitled to receive as legatee the sum of $5,000 mentioned as aforesaid in the third paragraph of the seventh codicil.

(l) The fourth paragraph of the seventh codicil provides as follows:

"I give and bequeath to my Executor the sum of Five thousand ($5,000.) dollars, to be held in Trust, and to pay the income therefrom to the widow of Anthony Comstock of the City of New York, during the term of her natural life, and on her death to pay the principal to the Society for the Prevention of Crime in the City of New York."

The fifth paragraph of the eighth codicil provides as follows:

"As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five thousand ($5,000.) dollars given and bequeathed to my Executor in trust for her by the Fourth clause of the aforesaid Codicil."

The said Anthony Comstock aforementioned was a personal friend of the testator and for

many years prior to the death of the testator was the active head of a body corporate of the State of New York known as "The New York Society for the Suppression of Vice," which enjoyed the confidence and pecuniary support of the testator. For many years prior to the death of the testator there was another body corporate of the State of New York known as "Society for the Prevention of Crime in the City of New York." It is claimed that, notwithstanding the death as aforesaid of the said widow of Anthony Comstock, the legacy mentioned as aforesaid in the fourth paragraph of the seventh codicil is due and payable to either the Society for the Prevention of Crime in the City of New York or to The New York Society for the Suppression of Vice.

(m) One of the legatees named in the second paragraph of the seventh codicil is thus designated, "Seney Hospital, Borough of Brooklyn, N. Y." Among the legatees named in the third paragraph of the eighth codicil appears "Seney Hospital in the Borough of Brooklyn, New York." It appears that there never was a corporation or organization using the corporate or legal name of "Seney Hospital." It does appear, however, that one George Seney was active in founding a hospital in the city of Brooklyn some years prior to the death of the testator, which hospital adopted the corporate name of "The Methodist Episcopal Hospital in the City of Brooklyn," and that this institution is often referred to and designated as "Seney Hospital." It is claimed that The Methodist Episcopal Hospital in the City of Brooklyn is entitled to receive the legacy named as aforesaid in the second paragraph of the said seventh codicil.

6. Complainant is without adequate remedy in the courts of law or probate, and therefore prays:

1. That the parties in interest, who are the appropriate defendants herein, may severally answer this bill of complaint without oath, and may severally answer each statement made in this bill of complaint. Said parties in interest appropriately made defendants are as follows:

John T. Gillespie and Samuel H. Gillespie, Executors of the Last Will and Testament of Louis C. Gillespie, deceased; John T. Gillespie; James P. Gillespie; Samuel H. Gillespie; Josephine G. Erskine; Helen G. Sanford; Mary G. Illman; George Fletcher Illman; Josephine Hewitt; Helen M. Jackson; Minnie Hueston; The Methodist Episcopal Church Home in the City of New York, body corporate of the State of New York; Old People's Home (Methodist) in the Borough of Manhattan, New York; Methodist Episcopal Church Home of New York City for the Aged and Infirm, body corporate of the State of New York; The Brooklyn Methodist Episcopal Church Home, body corporate of the State of New York; Old People's Home (Methodist) in the Borough of Brooklyn, New York; Brooklyn Methodist Episcopal Church Home for the Aged, body corporate of the State of New York; Seney Hospital in the Borough of Brooklyn, New York; The Methodist Episcopal Hospital in the City of Brooklyn, body corporate of the State of New York; Samuel H. Gillespie, Executor of the Last Will and Testament of Helen M. Bradley, deceased; Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, body corporate of the State of New York; Martha E. Rossiter; Mollie Abbott; Al-

bert P. Smith Sr.; Albert P. Smith, Jr.; Foster N. Smith; Frank R. Smith; James A. Smith; George L. Dickinson; Gustave Meyers; William S. Wells; First Methodist Episcopal Church of Asbury Park, N. J., body corporate of the State of New Jersey; The Rector, Wardens and Vestry of Trinity Church, Asbury Park, body corporate of the State of New Jersey; Reformed Church at Asbury Park, New Jersey; The Grand Avenue Reformed Church of Asbury Park, New Jersey, body corporate of the State of New Jersey; First Baptist Church of Asbury Park, N. J., body corporate of the State of New Jersey; The First Presbyterian Church of Asbury Park, New Jersey, body corporate of the State of New Jersey; Evangelical Lutheran Church of the Atonement of Asbury Park, N. J., body corporate of the State of New Jersey; Ballard Memorial Methodist Episcopal Church of Asbury Park, New Jersey, body corporate of the State of New Jersey; The Church of the Holy Spirit, Asbury Park, body corporate of the State of New Jersey; Our Lady of Mt. Carmel, Asbury Park, N. J., body corporate of the State of New Jersey; First Church of Christ, Scientist, Asbury Park, N. J., body corporate of the State of New Jersey; The Trustees of Second Church of Christ, Scientist, of Asbury Park, New Jersey, body corporate of the State of New Jersey; Congregation, Sons of Israel, body corporate of the State of New Jersey; St. Stephen's A. M. E. Zion Church, Asbury Park, N. J., body corporate of the State of New Jersey; Mt. Pisgah Baptist Temple, Asbury Park, N. J., body corporate of the State of New Jersey; The Rector, Wardens and Vestrymen of St. Augustin's Church, body corporate of the State of New Jersey; First Methodist

Episcopal Church, Bradley Beach, N. J., body corporate of the State of New Jersey; St. James' Episcopal Church at Bradley Beach, New Jersey; St. James' Mission, Bradley Beach, N. J.; The Church of the Ascension, Bradley Beach, N. J., body corporate of the State of New Jersey; Avon-by-the-Sea Methodist Protestant Church, body corporate of the State of New Jersey; First Baptist Church of Key East, body corporate of the State of New Jersey; West Grove Methodist Episcopal Church, body corporate of the State of New Jersey; The Methodist Episcopal Home for the Aged of New Jersey, body corporate of the State of New Jersey; Searles Memorial Non-Sectarian Seashore Home for Aged Women, body corporate of the State of New Jersey; Young Men's Christian Association of Asbury Park and Ocean Grove, N. J., body corporate of the State of New Jersey; Woman's Christian Temperance Union of Asbury Park, N. J., body corporate of the State of New Jersey; Asbury Park Library, Asbury Park, New Jersey; Asbury Park Society for the Prevention of Cruelty to Animals, body corporate of the State of New Jersey; Ann May Memorial Homeopathic Hospital, Spring Lake, N. J., body corporate of the State of New Jersey; Monmouth Memorial Hospital Association, Long Branch, N. J., body corporate of the State of New Jersey; Fund for Superannuated Preachers, New Jersey Conference (Methodist); John R. Mason, Secretary in charge of Fund for Superannuated Preachers, New Jersey Conference; Andrew Eckel; Frederick Thorne; John Smith (John Schmitt); Martin Sther (Martin Stehr); Holmes C. Clayton and Ira A. Clayton, Executors of the Last Will and Testament

of Homer Clayton, deceased; Edward Howland; Asbury Park Hospital, body corporate of the State of New Jersey; Asbury Park, a body politic and corporate of the State of New Jersey; Susan A. Truax; Jane Amanda Coward; Society for the Prevention of Crime in the City of New York, body corporate of the State of New York; The New York Society for the Suppression of Vice, body corporate of the State of New York.

2. That said defendants may severally set forth the construction of said will and codicils thereto annexed which they contend this court should make.

3. That they may severally set forth specifically and in detail the rights which they respectively claim under said will and codicils thereto annexed and the rights which they severally claim in and to the estate of the testator.

4. That this court may interpret and construe said will and codicils thereto annexed, and by its decree fix the respective rights of the defendants under said will and codicils thereto annexed, and their respective rights in and to the estate of the testator.

5. That complainant may be given all necessary instructions and directions to enable him to discharge his duties as Executor and Trustee of said will and codicils thereto annexed, and to settle and distribute the estate of said testator.

6. That a writ of subpoena may be issued, commanding the defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

EDWARD K. MILLS,
Solicitor for Complainant.

Exhibit A.

In The Name of God, Amen.

I, James A. Bradley, of the Borough of Asbury Park, in the County of Monmouth and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this my last will and testament, in manner following, that is to say:

First Item: It is my will and I do order and direct that all my just debts and funeral expenses be duly paid and satisfied, as soon as conveniently can be after my decease; regard to be had in the payment of my indebtedness to certain provisions of my will relating thereto, hereinafter contained.

Second Item: I nominate and appoint my wife, Helen M. Bradley, my brother-in-law Louis C. Gillespie, and Alfred Walling, Jr., of Keyport N. J., trustees of the several trusts created in and by the third, sixth, seventh, eighth, tenth and fifteenth items of this my will; the estates bequeathed and devised in trust to said trustees in the said items of this my will are to go to and be held and all the powers given to said trustees in any of the items of this my will are to be exercised by such only of said trustees as accept the said trusts and to and by the survivors or survivor of such of said trustees as accept the said trusts for life, if such trusts or any of them continue so long; and upon the death of the survivor of such of said trustees as accept the said trusts, during the continuance of any of said trusts, said estates are to go to and be held and said powers exercised by such person or persons as shall be lawfully appointed to carry out said trusts respectively.

THIRD ITEM: I give and devise unto the aforesaid trustees and to the survivors and survivor and successor of them as mentioned and provided in the second item of this my will all the real estate owned by me in said Borough of Asbury Park lying within the following boundaries, viz: north by the centre of Lake Avenue; east by a line parallel with Main Street and distant one hundred and twenty-five feet easterly from the east line of said Main Street; south by the line of lands of the Ocean Grove Camp Meeting Association, or the center line of Wesley Lake, and west by the centre of Main Street; to have and to hold the same as trustees or trustee in trust to convey the same in fee, within three months after my death for the consideration of one dollar to my said wife, Helen M. Bradley, or in case of her death before me, or before the execution of the conveyance to such persons, other than Catherine Churchill, sister of my said wife, or any of her issue, as would by the law of this state inherit said real estate in case my said wife had died intestate and seized thereof, and to them in the same proportions, that they would so inherit.

I direct the trustees or trustee executing the conveyance for the real estate devised in this item of my will to cause to be inserted in such conveyance a covenant on the part of the grantee or grantees, to run with the land, that no building shall ever be erected on said land nearer to the line of said Main Street than the front line of the buildings now fronting on the east side of said Street between Lake Avenue and Cookman Avenue; provided however, that no conveyance shall be made in pursuance of the directions of this item of my will unless the adjoining land on said

street, now owned by my said wife, has been subjected to the same condition as aforesaid as to building line.

Fourth Item: I direct the trustees or trustee executing the conveyance for the real estate devised in the third item of my will to cause to be inserted in such conveyance a covenant on the part of the grantee or grantees, to run with the land, that said estate shall never be used for the manufacture or sale of intoxicating liquors thereon.

Fifth Item: I hereby lay out and dedicate as public streets, over lands owned by me, four streets from Sunset Avenue southerly to Fifth Avenue, of the same width as and in extension of Park Avenue, Grand Avenue, Emory Street and Bond Street, as such avenues and streets are laid down on the latest plan of Asbury Park northward from Sunset Avenue; the same to be known and designated by the same name as the avenue or street of which those hereby laid out and dedicated are respectively an extension.

Sixth Item: I give, bequeath and devise unto the aforesaid trustees and to the survivors and survivor and successor of them, as mentioned and provided in the second item of this my will, all my personal estate of every kind and description, and wheresoever the same may be, all the sewers and works connected therewith owned by me at Asbury Park aforesaid, known as the Asbury Park Sewer Works, and hereinafter called "Sewer Works," and all the following described parcels of real estate:

First Parcel. All my real estate whatsoever situate in the State of New York.

Bill of Complaint—Exhibit A.

[Here follow descriptions of eleven separate parcels, seven in the Borough of Asbury Park, three in Neptune Township and one in Wall Township.]

To have and to hold the aforesaid personal property, "Sewer Works," and twelve parcels of real estate as trustees or trustee, in trust to and for the following uses and purposes, that is to say.

In trust to sell, according to the directions hereinafter given, as soon after my death as it can be prudently done, out of the aforesaid eighth, ninth, tenth, eleventh and twelfth parcels of real estate enough lots to pay and satisfy any and all mortgages that may be liens upon any of my real estate at the time of my death.

And in further trust, according to the directions hereinafter given, during the lifetime of my said wife, to control, invest, convert and sell the aforesaid personal property: (my brush business now carried on by me at No. 251 Pearl Street, New York City, to be liquidated as soon after my death as the same can be properly done;) to keep in order and carry on as heretofore carried on by me the aforesaid "sewer Works;" to rent, manage and keep in order the aforesaid twelve parcels of real estate and to sell and dispose of the first, third, fifth and remainder of the eighth, ninth, tenth, eleventh and twelfth of the aforesaid parcels of real estate, and out of the interests, profits and rents and proceeds of sale and conversion of all of the same to pay to my said wife, Helen M. Bradley, from the date of my death, the sum of twenty-five thousand dollars each and every year of her life, in such amounts and at such times during each year as she shall demand.

And in further trust according to the directions hereinafter given, after the death of my said wife, or after my death in case she shall not survive me, to control, convert and sell the aforesaid personal property or what remains thereof: (my said brush business to be liquidated as aforesaid if my said wife shall not have survived me.) to keep in order, carry on and sell the aforesaid "Sewer Works," and to sell and dispose of all of the real estate in this item of my will mentioned and described, not sold and disposed of in the lifetime of my said wife, and at the time hereinafter mentioned, to distribute, divide and pay all money derived therefrom as follows:

1st. One eighth part thereof to my said brother-in-law Louis C. Gillespie, or in case of his death, either before or after my death, to his legal personal representative, to be by such representative distributed as a part of the estate of my said brother-in-law in the same way as if he had died possessed thereof.

2nd. One eighth part thereof in equal shares to the now living children of my said brother-in-law, Louis C. Gillespie, or in case of the death of any of said children, either before or after my death, the equal share of such deceased child, to his or her legal personal representative, to be by such representative distributed as a part of the estate of such deceased child in the same way as if such child had died possessed thereof.

3rd. One eighth part thereof in equal shares to the three now living daughters of my brother-in-law, Charles F. Walker, or in case of the death of any of said daughters either before or after my death, her equal share to her legal personal representative, to be by such representative dis-

tributed as a part of the estate of such deceased daughter in the same way as if she had died possessed thereof.

4th. One eighth part thereof to The Methodist Episcopal Church Home in the City of New York, body corporate, now located in Tenth Avenue, New York City.

5th. One eighth part thereof to The Brooklyn Methodist Episcopal Church Home, body corporate, in the City of Brooklyn, State of New York.

6th. One eighth part thereof to the Methodist Episcopal Hospital in the aforesaid City of Brooklyn, a corporation duly incorporated by the legislature of the State of New York by an act entitled "An Act to Incorporate the Methodist Episcopal Hospital in the City of Brooklyn," passed May 27, 1881.

7th. One eighth part thereof to the executor of my said wife, Helen M. Bradley, to be by such executor distributed as a part of the estate of my said wife according to the directions of her will; or, if my said wife shall die intestate, to her administrator, to be by such administrator distributed as a part of the estate of my said wife in the same way as if she had died possessed thereof, excepting only that the aforesaid Catharine Churchill shall not, nor shall any of her issue, receive any part thereof as next of kin to my said wife.

8th. One eighth part thereof to "The Ocean Grove Camp Meeting Association of the Methodist Episcopal Church," body corporate of the Township of Neptune, in the County of Monmouth and State of New Jersey.

I authorize, empower and direct the trustees or trustee then executing the trusts created in and

by this item of my will to keep in order and carry on as heretofore carried on by me, my aforesaid "Sewer Works;" to keep in order the various improvements upon the sixth of the aforesaid parcels of real estate; to carry on the various matters heretofore conducted by me upon said last named parcel of real estate until all are sold as hereinafter directed, and to employ and pay all necessary agents and workmen for that purpose, the expense thereof, if greater than the income and profits therefrom, to be borne by and paid out of the estate by this item of my will bequeathed and devised; provided, however, that in case of extraordinary destruction to said "Sewer Works" or to the improvements on said last named parcel of real estate said trustees or trustee shall not reconstruct unless the probable benefit thereby will exceed the cost of reconstruction and repair in the judgement of such trustees or trustee.

I authorize, empower and direct the trustees or trustee then executing the trusts created in and by this item of my will as soon as it can be prudently done after my death, to sell out of the eighth, ninth, tenth, eleventh and twelfth of the aforesaid parcels of real estate enough lots to pay and satisfy all my mortgage indebtedness as aforesaid, and at any time during the life of my said wife to sell all or any part of the first, third, fifth and remainder of the eighth, ninth, tenth, eleventh and twelfth of the aforesaid parcels of real estate described in this item of my will in lots or otherwise, at public or private sale, and for such prices as such trustees or trustee shall deem sufficient.

I authorize, empower and direct the trustees or trustee then executing the trusts created in and

by this item of my will, after the death of my said wife, or after my death in case she shall not survive me, to sell and convey in the manner, according to the directions and within the periods hereinafter specified, my aforesaid, "Sewer Works" and all the real estate in this item of my will mentioned and described not sold during the lifetime of my said wife, that is to say: the parts unsold of the first, third, fifth, eighth, ninth, tenth, eleventh, and twelfth of the aforesaid parcels of real estate shall be sold in lots or otherwise at public or private sale for such prices as such my said wife, or after my death, in case shall not survive me.

If the aforesaid Borough of Asbury Park, shall purchase and accept the same upon the conditions hereinafter mentioned, the second and fourth of the aforesaid parcels of real estate may be sold and conveyed to said Borough for the consideration of One Dollar, at any time within four years next after the death of my said wife or after my death in case she shall not survive me; upon condition, however, that said last named two parcels of real estate shall forever be used as public lakes and parks subject to the regulation and control of said Borough; that no booths or buildings shall ever be erected on the second parcel aforesaid other than houses to be used only for and in connection with the bridges now or hereafter to be constructed over said last named parcel; that no buildings shall ever be erected on the fourth parcel aforesaid east of Webb Street; that no buildings shall ever be erected on said last named parcel of real estate west of Webb Street except such as are usually erected in public parks, and that the premises conveyed shall never be used for the manufacture

or sale of intoxicating liquors thereon; and if second and fourth parcels are conveyed to said Borough the aforesaid conditions shall be expressly declared in the deed or deeds therefor.

If the aforesaid Borough shall not purchase and accept the said second and fourth parcels of real estate within the last mentioned limited time, then within one year next after the expiration of said limited time the said last named two parcels of real estate shall be sold at public or private sale, for such prices as may be deemed sufficient, and conveyances made therefor, such conveyances to contain and the trustees executing the same shall cause to be inserted therein covenants on the part of the grantee or grantees, to run with the land, that the premises granted shall be forever used as public lakes and parks; that no booths or buildings shall ever be erected upon the second parcel aforesaid other than houses to be used only for and in connection with the bridges now or hereafter to be constructed over said last named parcel; that no buildings shall ever be erected upon the fourth parcel aforesaid east of Webb Street; that no buildings shall ever be erected upon said last named parcel west of Webb Street except such as are usually erected in public parks, and that the premises conveyed shall never be used for the manufacture or sale of intoxicating liquors thereon.

The sixth of the aforesaid parcels of real estate described in this item of my will, including my said "Sewer Works" as one parcel, may be sold to said Borough of Asbury Park for any sum not less than one hundred and fifty thousand dollars at any time within five years next after the death of my said wife, or after my death in case she shall not survive me, or for any

sum not less than two hundred thousand dollars at any time within the four years next after the expiration of the last mentioned limited time; and in case the said Borough shall not buy the same within the time hereinbefore limited, then within one year next after the expiration of said last mentioned limited time the said last named parcel of real estate and said "Sewer Works" shall be sold as one parcel, at public or private sale, for such prices as shall be deemed sufficient.

If the trustees or trustee then executing the trusts created in and by this item of my will and the said Borough cannot agree upon the price to be paid for the last named parcel of real estate and "Sewer Works," I do, in that event, authorize and empower such trustees or trustee to submit the difference to arbitration, and to sell at the price determined by such arbitration, provided such prize is not less than the amount hereinafter specified.

The conveyance of the aforesaid sixth parcel of real estate described in this item of my will, to whomsoever made, shall contain, and the trustees or trutsee executing the same shall cause to be inserted therein, covenants on the part of the grantee or grantees, to run with the land, that no buildings shall ever be erected on said last named parcel of real estate in front of Atlantic Square, nor in front of the streets or avenues terminating on Ocean Avenue; that no board or other walk shall ever be constructed thereon at a gerater heighth than the present board walk and that the premises granted shall never be used for the manufacture or sale of intoxicating liquors thereon.

If the Ocean Grove Camp Meeting Association shall, within one year after the death of my said wife or within one year after my death in case my said wife shall not survive me, in a manner and by a deed of dedication satisfactory to the trustees or trustee then executing the trusts created in and by this item of my will, dedicate to the use of the public as a public lake or park the lands of said Association under the waters of Wesley Lake south of the centre line thereof, then, in that event, I authorize, empower and direct the said trustees or trustee for the consideration of one dollar, to dedicate the seventh of the parcels of real estate described in this item of my will to the same public use by a similar deed of dedication; and in case no dedication shall be made of this last named parcel of real estate in the manner and within the time specified, I authorize, empower and direct the trustees or trustee then executing the trusts created in and by this item of my will to convey the last named parcel of real estate to the said Borough of Asbury Park for the consideration of one dollar, at any time within the three years next after the expiration of the last mentioned limited time, upon condition, however, and that said last named parcel of real estate shall be forever used as a public lake or park; that no booths or buildings shall ever be erected thereon other than houses to be used only for and in connection with the bridges now or hereafter to be constructed over said last named parcel and that the premises dedicated or conveyed shall never be used for the manufacture or sale of intoxicating liquors; and if said last named parcel of real estate shall be dedicated or conveyed as hereinbefore authorized the aforesaid conditions shall

be expressly declared in the deed of dedication or conveyance.

If the said last named parcel of real estate shall not be sold or conveyed as hereinbefore authorized then within one year after the expiration of the last mentioned limited time it shall be sold at public or private sale for such price as may be deemed sufficient, and conveyance made therefor, such conveyance to contain, and the trustees or trustee executing the same shall cause to be inserted therein, covenants on the part of the grantee or grantees, to run with the land, that the premises granted shall be forever used as a public lake or park; that no booths or buildings shall ever be erected thereon other than houses to be used only for and in connection with the bridges now or hereafter to be constructed over the same, and that the premises granted shall never be used for the manufacture or sale of intoxicating liquors thereon.

I authorize and empower the trustees or trustee then executing the trusts created in and by this item of my will to make, execute, acknowledge and deliver a good and sufficient deed or instrument of dedication for the last named parcel of real estate if the same shall be dedicated as aforesaid; and to make, execute, acknowledge and deliver good and sufficient deeds and conveyances for all the real estate mentioned in this item of my will; such deeds and conveyances hereinbefore particularly referred to be upon condition or to contain covenants by the grantee or grantees as hereinbefore directed, and all deeds and conveyances to whomsoever made for the third and fifth of the aforesaid twelve parcels of real estate, or for any part thereof, shall contain, and the trustees or trustee execut-

ing the same shall cause to be inserted in every deed and conveyance covenants on the part of the grantee or grantees, to run with the land, as to the use of the premises granted and the erection of buildings thereon, (the building line to be determined by the locality,) similar to the covenants of like character in the latest deed from me to William Mills for lands on Eighth Avenue in said Borough of Asbury Park; and all deeds and conveyances to whomsoever made for the third, fifth, eighth, ninth, tenth, eleventh, and twelfth of the aforesaid twelve parcels of real estate, or for any part thereof, shall also contain, and the trustees or trustee executing the same shall cause to be inserted therein, covenants on the part of the grantee or grantees, to run with the land, that the premises granted shall never be used for the manufacture or sale of intoxicating liquors thereon.

All provisions of this my will relating in any way to the said Borough of Asbury Park shall apply to any municipal corporation existing in the place of or as successor to the present Borough of Asbury Park at the time when such provisions, or any of them, may or shall become operative.

I authorize, empower and direct the trustees or trustee executing the trusts created in and by this item of my will, at the end of each year after the death of my said wife, or at the end of each year after my death, in case my said wife shall not survive me, to pay to the persons and corporations entitled thereto under the provisions of this item of my will, so much of the money on hand as shall by said trustees or trustee be deemed prudent considering the interests of all concerned; and at the expiration

of the time hereinbefore limited for the sale of all of the aforesaid real estate to pay the residue in like manner.

In case my personal property shall not be sufficient to pay my just debts, (other than indebtedness secured by mortgage), and funeral expenses; and in case the proceeds of sale of the aforesaid eighth, ninth, tenth, eleventh, and twelfth parcels of real estate shall not be sufficient to pay and satisfy all mortgages that may be liens upon any of my real estate at the time of my death, I order and direct that the deficiency in either or both cases be made up from the proceeds of sale and conversion of any of the personal or real property bequeathed and devised in and by this item of my will.

SEVENTH ITEM: I give and devise unto the aforesaid trustees and to the survivors and survivor and successor of them as mentioned and provided in the second item of this my will, all the real estate owned by me in the Borough of Asbury Park aforesaid lying within the following boundaries, viz: north by the centre of Asbury Avenue; east by the centre of Main Street; south by the Centre of Summerfield Avenue and west by the New York and Long Branch Railway; to have and to hold the same as trustees or trustee in trust to and for the following uses and purposes, that is to say: to lease the same or any part thereof to the persons who may be lessees thereof at the time of my death, or to any other person or persons in case said lessees shall not desire to rent the same, for any term that shall not extend beyond ten years after my death at a rental to be agreed upon with the parties, or by arbitration in case of difference, as now provided in my

leases for parts of said real estate; to collect all rents and after paying all taxes and other charges against said real estate or incident to the execution of this trust to pay out of the net income thereof the sum of fifteen hundred dollars annually to my sister Mary Ann Dickinson, and the residue of such net income to pay annually to my wife, Helen M. Bradley, in both cases from my death for and during the term of ten years thereafter.

And in further trust after the expiration of ten years after my death to sell and convey all of said last named parcel of real estate and out of the net proceeds to pay to my said sister, Mary Ann Dickinson, the sum of twenty-five thousand dollars and the residue of such net proceeds to pay to my said wife, Helen M. Bradley.

If my said sister shall die before the distribution of the proceeds of the sale of the last named parcel of real estate, either before or after my death it is my will and I direct that all money in this item of my will directed to be paid her, shall after her death be paid to her legal personal representative, to be by such representative distributed as a part of the estate of my said sister and in the same way as if she had died possessed thereof.

If my said wife shall die before me or before the expiration of ten years after my death, it is my will and I direct that all money in this item of my will directed to be paid to her, shall after her death be paid to her legal personal representative, to be by such representative distributed as a part of the estate of my said wife and in the same way as if she had died possessed thereof; provided, however, that in case

my said wife shall die intestate the aforesaid Catharine Churchill shall not nor shall any of her issue receive any part of said money from the representative of my said wife.

Eighth Item: I give and devise unto the aforesaid trustees and to the survivors and survivor and successor of them as mentioned and provided in the second item of this my will all the real estate owned by me in the Borough of Asbury Park aforesaid lying within the following boundaries, viz: north by the centre of Fifth Avenue; east by the centre of Main St.; south by the Centre of Asbury Avenue and west by the New York and Long Branch Railway; to have and to hold the same as trustees or trustee in trust to and for the following uses and purposes, that is to say: to lease the same or any part thereof to the persons who may be lessees thereof at the time of my death or to any other person or persons in case said lessees shall not desire to rent the same for any term that shall not extend beyond ten years after my death, at a rental to be agreed upon with the parties, or by arbitration in case of difference as now provided in my leases for some parts of said real estate, to collect all rents and after paying all taxes and other charges against said real estate or incident to the execution of this trust to pay out of the net income thereof the sum of fifteen hundred dollars annually to my half brother, Foster N. Smith, and the residue of such net income to pay annually to my wife, Helen M. Bradley, in both cases from my death for and during the term of ten years thereafter.

And in further trust, after the expiration of ten years after my death, to sell and convey all of said last named parcel of real estate and out .

of the net proceeds to pay to my said half brother, Foster N. Smith, the sum of twenty-five thousand dollars, and the residue of such net proceeds to distribute in the manner provided for the distribution of the trust estate bequeathed and devised in and by the sixth item of this my will as if the said residue of such net proceeds had been specifically bequeathed in and by said sixth item of this my will.

If my said half brother shall die before the distribution of the proceeds of the sale of the last named parcel of real estate, either before or after my death, it is my will and I direct that all money in this item of my will directed to be paid to him shall after his death be paid by my trustees or trustee to the next of kin of my said half brother in the same way and proportions as if my said half brother had died intestate and possessed thereof.

If my said wife shall die before me or before the expiration of ten years after my death it is my will and I direct that all money in this item of my will directed to be paid to her shall after her death be paid to her legal personal representative to be by such representative distributed as a part of the estate of my said wife and in the same way as if she had died possessed thereof; provided, however, that in case my said wife shall die intestate the aforesaid Catharine Churchill shall not nor shall any of her issue receive any part of said money from the representative of my said wife.

NINTH ITEM: I authorize, empower and direct the trustees or trustee then executing the trusts created in and by the seventh and eighth items of this my will, at and after the expiration of ten

years after my death, to sell the parcels of real estate described in the last mentioned two items of this my will in lots or otherwise, at public or private sale, at their discretion, for such prices as shall be deemed sufficient, and to make, execute, acknowledge and deliver good and sufficient conveyances therefor; but all conveyances for said last named two parcels of real estate, or for any part thereof, to whomsoever made, shall contain, and the trustees or trustee executing the same shall cause to be inserted therein covenants on the part of the grantee or grantees, to run with the land, that the premises granted shall never be used for the manufacture or sale of intoxicating liquors thereon.

TENTH ITEM: I give and devise unto the aforesaid trustees and to the survivors and survivor and successor of them as mentioned and provided in the second item of this my will, all the real estate owned by me in the aforesaid Borough of Asbury Park lying within the following boundaries, viz: north by the centre of Summerfield Avenue; east by the centre of Main Street; south by the centre of Bangs Avenue and west by the New York and Long Branch Railway; to have and to hold the same as trustees or trustee in trust to and for the following uses and purposes that is to say; in trust to sell and convey the same to the Borough of Asbury Park aforesaid at any time within five years next after my death, for the consideration of ten thousand dollars, and if so sold to pay the net proceeds to my said wife, Helen M. Bradley, or in case of her death, either before or after my death, to her legal personal representative to be by such representative distributed as a part of the estate of my said wife and in the

same way as if she had died possessed thereof; provided, however, that in case my said wife shall die intestate the aforesaid Catharine Churchill shall not, nor shall any of her isuse, receive any part of said money from the representative of my said wife.

And in further trust, if the aforesaid Borough shall not purchase said last mentioned real estate to convey the same in fee at and upon the expiration of said last mentioned limited time for the consideration of one dollar, to my said wife, Helen M. Bradley, or in case of her death before me, or before the execution of the conveyance, to such persons, other than said Catharine Churchill or any of her issue, as would by the laws of this state inherit said real estate in case my said wife had died intestate and seized thereof, and to them in the same proportions that they would so inherit.

I direct the trustees or trustee executing the conveyance for the lands devised in this item of my will to cause to be inserted in such conveyance a covenant on the part of the grantee or granteees, to run with the land, that said last named lands shall never be used for the manufacture or sale of intoxicating liquors thereon.

Eleventh Item: In all cases where my trustees are directed to sell real estate after the expiration of a certain limited time without further direction as to time of sale such sales shall be made within a reasonable period of time after the expiration of such limited time, to be determined by the trustees or trustee after taking into consideration the condition of the market and other relevant factors.

TWELFTH ITEM: I give, bequeath and devise unto "The Ocean Grove Camp Meeting Association of the Methodist Episcopal Church," body corporate, all my right, title and interest of, in and to all the land at Ocean Grove in the said township of Neptune, lying within the following boundaries, viz: north by the centre line of Wesley Lake and the south line of my riparian lands in front of Asbury Park, N. J.; east by the Atlantic Ocean, south by Main Street in Ocean Grove and west by Main Street of Asbury Park on the road leading from Asbury Park to Shark River Bridge; together with all my right and interest in that part of the bridges over said Wesley Lake which lies south of the center line thereof.

THIRTEENTH ITEM: All the streets or avenues in the Borough of Asbury Park in any item of my will mentioned are the streets or avenues so named on the latest plan of said Borough.

All streets or avenues in said Borough herein referred to, or laid down on said latest plan, are hereby dedicated to public use as streets and avenues, and all devises of real estate in and by this my will made are to be subject to this dedication.

FOURTEENTH ITEM: The provisions herein made for, and the devises and bequests herein to my said wife, Helen M. Bradley, are made and given and are to be by her accepted as in lieu of her right of dower in all the real estate of which I die seized.

FIFTEENTH ITEM: I give and devise unto the aforesaid trustees and to the survivors and survivor and successor of them as mentioned and provided in the second item of this my

will, all the estate, vested or contingent, right of entry for condition broken, or other interest whatsoever, (not including any interest secured to me by way of mortgage,) in and to any and every lot or parcel of land in the County of Monmouth and State of New Jersey heretofore owned and conveyed by me, (and not reconveyed to and now owned by me,) to which I am now or hereafter can or may be entitled, or which I, or any one from and under me, now or hereafter can demand and recover by reason of any condition or clause of forfeiture or reversion whatever contained in any of the conveyances heretofore made by me for any of said lots or parcels of land; to have and to hold the same as trustees or trustee in trust to and for the following uses and purposes, that is to say: in trust, upon the application of the owner or owners of any of said lots or parcels of land, at any time hereafter during the period that this trust can lawfully continue, to convey and release to such owner or owners all such estate, right of entry for condition broken or other interest whatsoever hereby devised, in his, her or their lot or parcel of land, for a sum sufficient to cover the cost incident to the execution of this trust; provided such owner or owners shall at the same time and in consideration of such conveyance and release, execute and deliver to the trustees or trustee then executing the trusts created in and by this item of my will a deed or other legally sufficient instrument of writing in and by which such owners shall covenant with such trustees or trustee, by covenants running with the land, as to the non-manufacture or sale of intoxicating liquors upon and the non-user of the same premises similar

in substance to the covenants of like character of the grantee in the aforesaid deed made by me to William Mills.

SIXTEENTH ITEM: I give and devise all the rest and residue of my real estate whatsoever and wheresoever to my said wife, Helen M. Bradley, and my said brother-in-law, Louis C. Gillespie, as joint tenants and not as tenants in common, and to the survivor of them in fee.

While I do not subject this residuary devise to any condition or trust whatsoever, I feel assured that the devisees will so dispose of this residuary estate as to carry out my expressed wishes in connection therewith.

If my said wife and last named brother-in-law shall die before me I do in that event give and devise the real estate in this item of my will mentioned, in fee, to such persons, other than the said Catharine Churchill or any of her issue, as would by the laws of this state inherit said real estate in case my said wife had died intestate and seized thereof, and to them in the same proportions that they would so inherit.

SEVENTEENTH ITEM: If any person or persons who shall be entitled to any benefit under and by reason of any bequest or devise in this my will shall commence any suit or suits in any court whatever to prevent the probate of this my will, or to prevent any person or corporation herein named from receiving and enjoying the possession of what to him, her or it is by this will given, bequeathed, devised or directed to be paid, then it is my will that any and every legacy, devise or benefit by this my will given, bequeathed, devised or directed to be paid to

such person or persons so commencing such suit or suits shall thereupon become and be utterly void; and in such event I do give, bequeath and devise all and every such legacies, devises and benefits which I had by this my will given, beqeathed, devised or directed to be paid to such person or persons so commencing such suit or suits, to my said wife, Helen M. Bradley, absolutely and forever.

Lastly: I appoint my said wife, Helen M. Bradley, executrix and my said brother-in-law, Louis C. Gillespie, and the said Alfred Walling Jr., executors in this my last will and testament. It is my will and I do order and request that letters testamentary hereon be issued and granted by the proper court or officer, to my said executrix and executors, or any of them in this or in any other state wherein it shall or may be necessary to prove this my will and issue letters testamentary thereon, without security, and without requiring my said executrix and executors, or any of them, to give bond or bonds thereon or therefor, the fact of non-residence to the contrary notwithstanding. I revoke all former wills and codicils by me made.

In Witness Whereof, I have hereto set my hand and seal this twenty-sixth day of June eighteen hundred and ninety-six.

James A. Bradley (L. S.)

(Attestation Clause.)

First Codicil, June 7, 1901.

I, James A. Bradley, of the City of Asbury Park in the County of Monmouth and State of New Jersey, having made my last Will and Testament bearing date the 26th day of June 1896, do now make this codicil to be taken as a part of the same.

I do hereby ratify and confirm said will in every respect except so far as any part of it is inconsistent with this codicil.

The item in my last will and testament relating to the sale of Beach and Sewers is hereby revoked so far as the limit of time of sale is concerned and I direct my executors to sell the Beach and Sewers at any time they may think best for such sum of money as they may deem satisfactory.

In witness whereof I have hereunto set my hand and seal this seventh day of June in the year Nineteen hundred and one.

James A. Bradley (L. S.)

(Attestation Clause.)

Second Codicil, January 12, 1906.

I hereby declare this to be a Codicil to my last Will and Testament, made June Twenty sixth, Eighteen Hundred and Ninety Six, in which I devise a certain portion of my estate to the children of my brother-in-law, Charles F. Walker.

That Bequest I revoke so far as the interest of Helen M. Jackson is concerned; and I hereby give to my Nephew, Samuel H. Gillespie, as Trustee, the portion of said Bequest that would have been given to said Helen M. Jackson, and to pay to her the interest thereof during her

lifetime and at her decease to divide the principle between her surviving daughters, Mrs. M. E. Rossiter, and Mrs. Mollie Abbott, or their heirs.

Item 2. I also revoke that Bequest in my will (above mentioned), that would apply to the late Mrs. Minnie Ilman, daughter of Louis C. Gillespie, or her heirs, and bequeath such portion as would have been given to them, to my nephew, Samuel H Gillespie, for his services as Trustee to or for, Mrs. H. M. Jackson.

Item Third. I also hereby revoke the Bequest made in said Will, of One Eighth of a certain "Portion" to be given to the Ocean Grove Camp Meeting Association, and I hereby devise and Bequeath to the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, all right title or interest I may have in lands in Ocean Grove, bounded on the North by Wesley Lake, on the East by the Atlantic Ocean, on the South by Fletcher Lake, and on the West by Main Street.

In Witness Whereof, I have hereto set my hand and Seal this Twelfth day of January Nineteen hundred and six.

James A. Bradley (L. S)

(Attestation Clause.)

Third Codicil, January 11, 1907.

I, James A. Bradley, of the City of Asbury Park, County of Monmouth, State of New Jersey, do make this my Codicil, hereby confirming my last Will made on the Twenty Sixth day of June, in the year of our Lord, One Thousand Eight Hundred and Ninety Six, and all my for-

mer Codicils, if there be any, so far as this Codicil is consistent therewith, and do hereby appoint my nephew-Samuel H. Gillespie of Morristown, New Jersey Co-executor and Trustee with my wife Helen M. Bradley and my brother-in-law, Louis C. Gillespie.

In witness whereof, I have hereunto set my hand and Seal Eleventh day of January in the year Nineteen Hundred and Seven.

James A. Bradley (L. S.)

(Attestation Clause.)

Fourth Codicil, January 16, 1907.

[Repeats provisions of second codicil above, substantially verbatim, with verbal corrections.]

Fifth Codicil, June 11, 1909.

I, James A. Bradley, do make, publish and declare this to be a Codicil to my last Will and Testament heretofore made.

My half brother, Foster N. Smith, and my sister, Mary Ann Dickinson, named in my last Will and Testament, having departed this life, I do hereby revoke any and all provisions made in their behalf and each of them.

First: In lieu thereof, I do give and bequeath to my nephew, George Dickinson, Five thousand ($5,000.) dollars. And I do give and bequeath to Samuel Gillespie Five thousand ($5,000.) dollars, to hold the same in trust and pay the income thereof to my nephew, William Dickinson, during the term of his natural life, and on his death to pay the principal and net

accumulation of interest to his issue, should he leave any surviving. And in the event of said William Dickinson dying without issue then to pay said principal and any accumulation to the surviving children of said George Dickinson, in equal shares.

Second: I do give and bequeath to my nephew, Albert Smith, Sr., Five thousand ($5,000.) dollars; and to his son Albert Smith, Jr., Five thousand ($5,000.) dollars; and to his son, Foster Smith, Five thousand ($5,000.) dollars; and to his son, Frank Smith, Five thousand ($5,000.) dollars, and to his son, James Smith, Five thousand ($5,000.) dollars.

Third: In the event of any of the executors named in my last Will and Testament, or any codicil heretofore made, predeceasing me or not qualifying as executor, I do nominate and appoint Charles Wesley Erskine of Morristown, New Jersey, executor of my said last Will and Testament.

Fourth: All the rest, residue and remainder of my estate not devised or bequeathed by my last Will and Testament, or any codicil heretofore made, or this codicil, I give, devise and bequeath to my wife, Helen M. Bradley. And in the event of my said wife predeceasing me, it is my will that my residuary estate shall form and become a part of the estate of my said wife, and be divided according to the terms of her last Will and Testament.

In Witness Whereof, I have hereunto set my hand and seal this Eleventh day of June, in the year one thousand, nine hundred and nine.

James A. Bradley (L. S.)

(Attestation Clause.)

Sixth Codicil, January 17, 1914.

[Sixth codicil repeats verbatim provisions of the fifth codicil, with the exception of the fourth clause, as follows:]

Fourth: All the rest, residue and remainder of my estate not devised or bequeathed by my last Will and Testament, or any codicil heretofore made, or this codicil, I give, devise and bequeath to the Home for the Aged, Number 63 Clark Avenue, Ocean Grove, New Jersey.

In Witness Whereof, I have hereunto set my hand and seal this 17th day of January, in the year One thousand, nine hundred and fourteen.

James A. Bradley (L. S.)

(Attestation Clause.)

Seventh Codicil, May 3, 1916.

I, James A. Bradley, do make, publish and declare this to be a codicil to my last Will and Testament.

First: I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate.

Second: I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of Five thousand ($5,000.) dollars: Albert Smith Sr., Albert Smith Jr., James Smith, Frank Smith and Foster Smith, being children or grandchildren of my deceased half-brother Foster Smith; my nephews and nieces Samuel Gillespie, John Gillespie, James

Gillespie, Helen Sandford, Josephine Erskine, Josephine Hewitt, Helen Jackson, Minnie Hueston and George Dickinson; my employees Gustave Meyers and William Wells;
Churches at Asbury Park, N. J. as follows: First Methodist, Episcopalian, Reformed Dutch, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist (colored), Mt. Pisgah Baptist (colored) and Episcopalian (colored);
Churches at Bradley Beach, N. J., as follows: Methodist, St. James' Episcopal and Catholic;
Churches at Avon, N. J. as follows: Methodist and Baptist;

Methodist Church at West Grove, N. J.; Methodist Home for the Aged, Ocean Grove, N. J.; Sales Non-Sectarian Home for the Aged, Asbury Park, N. J.; Young Men's Christian Association, Asbury Park, N. J.; Woman's Christian Temperance Union, Asbury Park, N. J.; Asbury Park Library, Asbury Park, N. J.; Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated; Ann May Hospital, Spring Lake, N. J.; Long Branch Hospital, Long Branch, N. J.; Seney Hospital, Borough of Brooklyn, N. Y.; Old People's Home (Methodist), Borough of Manhattan, N. Y.; Old People's Home (Methodist), Borough of Brooklyn, N. Y., and Fund for Superannuated Preachers, New Jersey Conference (Methodist).

Third: I give and bequeath to my Executor the sum of Five thousand ($5,000.) dollars to be held in Trust, and direct him to pay the income therefrom to my nephew William Dickinson during the term of the life said William

Dickinson, and on his death to pay the principal to the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated.

Fourth: I give and bequeath to my Executor the sum of Five thousand ($5,000.) dollars, to be held in Trust, and to pay the income therefrom to the widow of Anthony Comstock of the City of New York, during the term of her natural life, and on her death to pay the principal to the Society for the Prevention of Crime in the City of New York.

Fifth: I give and bequeath to the following named persons, who are now in my employ, the following sums:

Sylvester Smith, Five hundred ($500.) dollars; Andrew Eckel, Five hundred ($500.) dollars; Frederick Thorne, Five hundred ($500.) dollars; John Smith, Five hundred ($500.) dollars; Martin Sther, Five hundred ($500.) dollars; John Raymond, Five hundred ($500.) dollars; Homer Clayton, Five hundred ($500.) dollars; and Edward Howland, Five hundred ($500.) dollars.

Sixth: I give and bequeath to the widow of George Truax, who formerly resided at Asbury Park, N. J., and now lives several miles west of Asbury Park, the sum of Five hundred ($500.) dollars.

Seventh: I give and bequeath to George Morrow (colored), a former employee, the sum of Three hundred ($300.) dollars.

Eighth: I give and bequeath to my nephew, Albert Smith, Sr., son of my deceased half-brother, Foster Smith, all my wearing apparel.

Ninth: All the rest, residue and remainder of my estate, I give and bequeath to the afore-

named legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively.

Tenth: I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my Executor, and give him full power of sale, to sell any and all of my real estate to pay said legacies, and give him power to execute deed or deeds therefor.

Eleventh: I direct that my Executor shall continue the brush business now conducted by me at No. 251 Pearl Street, in the Borough of Manhattan, for a period of one year after my decease in the same manner as now conducted by me, and that he shall continue to employ therefor, at the same wages, all persons employed by me at the time of my death in the conduct of said business.

Twelfth: For the purpose of making this codicil and my said will final effectual and conclusive upon all my heirs, legatees and next-of-kin, I do hereby declare that if any of my heirs, legatees or next-of-kin named or not named herein shall, directly or indirectly, or in any manner, interfere with or delay the settlement of my estate, or attempt to break or change my said will or this or any other codicils thereto, or to interfere with or make null any provisions thereof, such act shall ipso facto operate and be effectual as a release of all estate, right, title, interest or claim of such heir, legatee, or next of kin to any of my estate. Any provision of my said will or of this or any codicil thereto in favor of such party, I hereby abrogate, make null and void, and the property bequeathed or devised to such person, institution or corporation shall immediately revert and form a part of my residuary estate; and I further declare that my heirs,

next-of-kin and legatees shall under no circumstances be entitled to any other or greater interest in my estate than is given in my will and this or any other codicil thereto.

Thirteenth: I hereby ratify and confirm my said will and the appointment of the Executor therein named, except in so far as the same is changed by this, a codicil thereto.

In Witness Whereof, I, said James A. Bradley, have hereunto set my hand and seal this Third day of May, in the year One thousand, nine hundred and sixteen.

James A. Bradley (L. S.)

(Attestation Clause.)

Eighth Codicil, March 3, 1919.

I, James A. Bradley, do make, publish and declare this to be a further Codicil to my last Will and Testament.

First: In lieu of the legacies of Five thousand ($5,000.) dollars each to Josephine Hewitt, Helen Jackson and Minnie Hueston, I give and bequeath to said Josephine Hewitt, Helen Jackson and Minnie Hueston the sum of Fifteen thousand ($15,000.) dollars to each.

Second: I give and bequeath to the hospital located on Asbury Avenue, in Asbury Park, New Jersey, the sum of Five thousand ($5,000.) dollars.

Third: In lieu of the legacies of Five thousand ($5,000.) dollars each, provided in the second clause of the codicil to my Will bearing date the third day of May, One thousand, nine hundred and sixteen, and given as follows:

Eighth Codicil.

Churches at Asbury Park, New Jersey: First Methodist, Episcopalian, Reformed Church, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist (colored), Mt. Pisgah Baptist (colored), Episcopalian (colored); Churches at Bradley Beach, New Jersey; Methodist, St. James Episcopal and Catholic; Churches at Avon, New Jersey; Methodist and Baptist; Methodist Church at West Grove, New Jersey; Young Men's Christian Association at Asbury Park, New Jersey; Woman's Christian Temperance Union at Asbury Park, New Jersey; Asbury Park Library, Asbury Park, New Jersey; Society for the Prevention of Cruelty to Animals at Asbury Park, New Jersey (if incorporated); Ann May Hospital at Spring Lake, New Jersey; Long Branch Hospital at Long Branch, New Jersey; Seney Hospital in the Borough of Brooklyn, New York; Old People's Home (Methodist) in the Borough of Manhattan, New York; Old People's Home (Methodist) in the Borough of Brooklyn, New York, I give and bequeath to each of the aforenamed the sum of One thousand ($1,000.) dollars, i. e. I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000.) dollars to One thousand ($1,000.) dollars to each.

Fourth: As William Dickinson is now deceased, I make null and void the legacy of Five thousand ($5,000.) dollars given and bequeathed to my Executor in Trust for him by the Third clause of the aforesaid Codicil.

Fifth: As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five thousand ($5,000.) dollars given and be-

queathed to my Executor in trust for her by the Fourth clause of the aforesaid Codicil.

Sixth: As Sylvester Smith and Edward Howland named in the Fifth clause of the aforesaid Codicil are now deceased, I make null and void the legacies given to them by the aforesaid Codicil.

Seventh: The widow of George Truax, named in the Sixth clause of the aforesaid Codicil, is now the Superintendent of the Poor Farm near Asbury Park, New Jersey.

Eighth: By a codicil earlier than the aforesaid Codicil, I gave and devised to the Ocean Grove Camp Meeting Association any interest that I may have in Ocean Grove, New Jersey, between Wesley Lake and Fletcher Lake, and I hereby reinstate said provision and give it full force and effect.

In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand, nine hundred and sixteen.

In Witness Whereof, I, said James A. Bradley, have hereunto set my hand and seal, this third day of March, in the year one thousand, nine hundred and nineteen.

James A. Bradley (L. S.)

(Attestation Clause.)

Answer of Executors.

Answer of John T. Gillespie and Samuel H. Gillespie, Executors, etc.

Filed December 19, 1923.

The defendants, John T. Gillespie and Samuel H. Gillespie, executors of the last will and testament of Louis C. Gillespie, deceased, John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine R. Erskine, Helen G. Sanford, Mary G. Illman and George F. Illman answering the bill of complaint, say:

1. They admit the first and second paragraphs.

2. They believe the facts set out in the third, fourth and fifth paragraphs to be true.

3. These defendants further answering say that they are interested in whatever construction may be made of said will and codicils and join the complainant in his prayer that the Court may interpret and construe the same.

ALFRED ELMER MILLS,
Solicitor of Defendants.

Same answer filed April 15, 1924, for Samuel H. Gillespie, executor of the last will and testament of Helen M. Bradley, deceased, by

ALFRED ELMER MILLS,
Solicitor.

Same answer filed May 15, 1924, for George L. Dickinson, Albert P. Smith, Sr.; Albert P. Smith, Jr.; Foster N. Smith, Frank R. Smith, James A. Smith, John Smith and Martin Sther.

H. H. SNEDEKER,
Solicitor.

Answer of William S. Wells.

Filed January 5, 1924.

The defendant, William S. Wells, answering the bill of complaint, says:

1. He admits the first and second paragraphs.

2. He believes the facts set forth in the third, fourth and fifth paragraphs are true.

3. He claims the legacy of five thousand dollars bequeathed to him as set forth in the second clause of the seventh codicil (dated May 3, 1916), and also the share of the residuary estate mentioned in the ninth clause of said codicil.

4. He joins in the prayer that the Court may interpret and construe said will and codicil.

WILLIAM S. WELLS,
Pro Se.

Answer of First Methodist Episcopal Church of Bradley Beach, N. J.

Filed September 17, 1923.

The defendant, First Methodist Episcopal Church, Bradley Beach, N. J., body corporate of New Jersey, answering the bill of complaint, says that:

1. It admits paragraph one of said bill of complaint.

2. It admits paragraph two of said bill of complaint.

3. Defendant has no knowledge or information sufficient to form a belief as to the allega-

tions set forth in paragraph three of said bill of complaint.

4. Defendant has no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph four of said bill of complaint.

5. Defendant has no knowledge or information sufficient to form a belief as to the allegations set forth in paragraph five of said bill of complaint.

6. Defendant is the corporation mentioned in the second paragraph of the seventh codicil to the last will and testament of James A. Bradley, deceased, which codicil bears date May 3, 1916, under the heading "Churches at Bradley Beach, N. J.," and referred to as "Methodist," this defendant being the only Methodist Church in Bradley Beach, N. J.

7. Defendant is one of the legatees of the class mentioned in the ninth paragraph of the seventh codicil to the last will and testament of James A. Bradley, deceased, and, in addition to the specific legacy of $5,000 given to it under the second paragraph of the seventh codicil and reduced to $1,000 under the third paragraph of the eighth codicil to the last will and testament of James A. Bradley, deceased, is entitled to participate in the rest, residue and remainder of the estate of James A. Bradley, deceased, under the ninth paragraph of the seventh codicil.

JOSEPH R. MEGILL,
Solicitor for Defendant,
First Methodist Episcopal Church,
Bradley Beach, N. J., Body Corporate.

Same answer filed April 30, 1924, for First Methodist Episcopal Church of Asbury Park, N. J., by

DURAND, IVINS & CARTON,
Solicitors.

Same answer filed April 30, 1924, for Evangelical Lutheran Church of the Atonement of Asbury Park, N. J., by

DURAND, IVINS & CARTON,
Solicitors.

Same answer filed April 30, 1924, for Asbury Park Society for the Prevention of Cruelty to Animals, with addition of following paragraphs:

7. The Asbury Park Society for the Prevention of Cruelty to Animals is now a corporation duly organized and existing under the laws of the State of New Jersey.

9. Defendant, Asbury Park Society for the Prevention of Cruelty to Animals, body corporate of the State of New Jersey, further answering the bill of complaint, says that it is the institution mentioned in the third paragraph of the seventh codicil to the last will and testament of James A. Bradley, deceased, which codicil bears date May 3, 1916, and referred to in said paragraph as "the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated," in and by which said paragraph this defendant is bequeathed the sum of five thousand dollars upon the death of William Dickinson, a nephew of the said James A. Bradley, deceased; and this defendant says that it is entitled to receive the

said legacy of five thousand dollars bequeathed to it under the third paragraph of the seventh codicil to the last will and testament of the said James A. Bradley, deceased.

DURAND, IVINS & CARTON,
Solicitors for Defendant,
Asbury Park Society for the Prevention of Cruelty to Animals, Body Corporate.

Answer of Asbury Park.

Filed April 30, 1924.

The defendant, Asbury Park, a municipal corporation of the State of New Jersey, answering the bill of complaint, says that:

1. It has no information sufficient to form a belief on any of the matters referred to in the complainant's bill with the exception of the references therein to this defendant and therefore neither admits nor denies same.

2. Defendant is the corporation referred to in the sixth item of the will of the said James A. Bradley, deceased, set out in complainant's bill and referred to in said will as the Borough of Asbury Park. The said Asbury Park at the time of the execution of said will being a borough and having later been incorporated as a city succeeding to all the rights and property of the former Borough of Asbury Park and is entitled to the devises referred to in said will and has heretofore elected to exercise its option to take said devises under the terms of said will having

agreed to pay the stipulated sums as in said will provided.

DURAND, IVINS & CARTON,
Solicitors of Defendant,
Asbury Park.

10

Answer of The Methodist Episcopal Hospital in the City of Brooklyn.

Filed October 10, 1923.

The answer of the defendant, The Methodist Episcopal Hospital in the City of Brooklyn to the bill of complaint of Samuel H. Gillespie, sole acting executor and surviving trustee, etc., of
20 James A. Bradley, deceased, complainant answering shows and says:

1. That the defendant, "The Methodist Episcopal Hospital in the City of Brooklyn," having its principal place of business at Seventh avenue and Sixth street, Brooklyn, N. Y., was incorporated by an Act of the Legislature of the State of New York passed May 27th, 1881, as set forth in sub-division six of paragraph six of the will attached to the bill herein.

30 That said hospital was founded by George I. Seney, as is set forth from year to year on the cover of its annual report.

That as stated in the said bill, this defendant is often referred to as the Seney Hospital; it has frequently received by will devises and bequests with no other designation than a gift to the Seney Hospital.

That there is no other hospital in Brooklyn aforesaid or elsewhere, so far as this defendant
40

is informed, that is referred to as the Seney Hospital. This defendant claims that the "Methodist Episcopal Hospital in the City of Brooklyn, N. Y.," the Seney Hospital and the Methodist Episcopal Hospital in the City of Brooklyn referred to herein are one and the same institution to wit: "The Methodist Episcopal Hospital in the City of Brooklyn."

2. That defendant admits paragraphs 1, 2 and 5 and each portion thereof and particularly sub-division or Section M of said paragraph 5 as designated in said bill of complaint, but with the explanations hereinafter set forth in paragraph 4.

3. This defendant has not sufficient knowledge or information except as informed by said bill of some of the facts stated or alleged in paragraphs 3 and 4, to enable this defendant to admit or deny said paragraphs and therefore neither admits nor denies them and leaves the complainant to make such proof thereof as he may be able to.

4. This defendant further answering said bill shows and says:

That in the second clause of the seventh codicil herein, dated May 3rd, 1916, it is provided as follows:

"I do hereby give and bequeath to each of the following persons and institutions or corporations the sum of five thousand ($5,000.) dollars."

This defendant is one of said legatees.

The ninth clause of said will reads as follows:

"All the rest residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively."

The eighth codicil was executed on the third day of March, 1919, and in the third clause thereof provides as follows:

"In lieu of the legacies of Five thousand ($5,000.) dollars each, provided in the second clause of the codicil of my Will bearing date the third day of May, One thousand nine hundred and sixteen and given as follows:

Churches at Asbury Park, New Jersey: "First Methodist Episcopalian" * * * "Seney Hospital in the Borough of Brooklyn, New York; Old People's Home (Methodist) in the Borough of Manhattan, New York; Old People's Home (Methodist) in the Borough of Brooklyn, New York. I give and bequeath to each of the aforenamed the sum of One thousand ($1,000.) dollars, i. e. I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000.) dollars to One thousand ($1,000.) dollars to each."

The final clause in said codicil reads as follows:

"In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand nine hundred and sixteen."

5. In relation to the prayer for relief and directions in said bill of complaint; this defendant shows and alleges:

That this defendant respectfully contends that the true construction of said will and Codicils is as follows to wit:

That the entire residuary estate was given to certain legatees mentioned in the seventh codicil in proportion to the amount of the general

legacies given therein; that no modification of this gift is made in any subsequent codicil; that it, therefore, follows that no increase or decrease in the amount given as a general legacy by a later codicil to any legatee mentioned in the seventh codicil will affect the proportion of the residuary estate passing to such legatee and that a gift in the eighth codicil of a general legacy to a party not named in the seventh codicil gives to such new beneficiary no interest in the residuary estate of the testator.

The rights, therefore, claimed by this defendant under said will and codiciles in the estate of the testator and which rights complainant has in defendant's judgment the trust and duty to enforce are as follows, to wit:

This defendant claims a legacy of One thousand ($1,000.) dollars and interest and an amount of the residuary estate in the proportion which five thousand ($5,000.) dollars bears to the total amount of general legacies given by the seventh codicil of the will of said James A. Bradley.

That as to the other questions propounded herein by the complainant the defendant has not that intimate knowledge of the affairs and intention of the testator which in its judgment would alone qualify it to definitely admit or deny them, but this defendant joins with the complainant in the prayer for the construction and interpretation of said will and the codicils thereto, set forth in the bill of complaint, and for authority and directions to complainant in relation to said estate and the distribution thereof, and that a decree may be made in this court directing payment to this defendant of the legacies and the portion of said estate to which it is or may be

entitled by and under the last will and testament and the codicils thereto of James A. Bradley, deceased, together with interest thereon and the costs and expenses in this behalf sustained, and this defendant prays that the rights and equities of this defendant in relation thereto may be protected and enforced in this honorable court.

And this defendant will ever pray, &c.

FREDERICK W. HOPE,
Solicitor for and of Counsel
with said Defendant.

Answer of The Methodist Episcopal Church Home in the City of New York.

Filed October 10, 1923.

The answer of the defendant, "The Methodist Episcopal Church Home in the City of New York," having its principal place of business at 673 Amsterdam Avenue, City and State of New York, was incorporated by an Act of the Legislature of the State of New York passed March 25th, 1879.

1. That the said defendant "The Methodist Episcopal Church Home in the City of New York," answering the Bill of Complaint of Samuel H. Gillespie, Sole Acting Executor and surviving Trustee, etc., of James A. Bradley deceased, Complainant therein; shows and says:

That this defendant is often referred to as "Old People's Home (Methodist) in the Borough of Manhattan, New York," and "Methodist Episcopal Church Home of New York City for the Aged and Infirm." This defendant claims that "The Methodist Episcopal Church

Home in the City of New York," "Old People's Home (Methodist) in the Borough of Manhattan, New York," and "Methodist Episcopal Church Home of New York City for the Aged and Infirm," are one and the same institution to wit: "The Methodist Episcopal Church Home in the City of New York."

Balance of answer same as foregoing.

FREDERICK W. HOPE,
Solicitor for and of Counsel
with said Defendant.

Answer of Brooklyn Methodist Episcopal Church Home.

Filed October 10, 1923.

The answer of the defendant, "Brooklyn Methodist Episcopal Church Home," having its principal place of business at Prospect Place and Park avenue, Brooklyn, New York, was incorporated under the Laws of the State of New York, and particularly the

1. That the said defendant "Brooklyn Methodist Episcopal Church Home," answering the Bill of Complaint of Samuel H. Gillespie, Sole Acting Executor and surviving Trustee, etc., of James A. Bradley, deceased, Complainant therein; shows and says:

That this defendant is often referred to as "Old People's Home (Methodist) in the Borough of Brooklyn, New York," and "Brooklyn Methodist Episcopal Church Home for the Aged, body corporate of the State of New York." This defendant claims that "Brooklyn Methodist Episcopal Church Home," "Old People's Home

(Methodist) in the Borough of Brooklyn, New York," and "Brooklyn Methodist Episcopal Church Home for the Aged, body corporate of the State of New York," are one and the same institution to wit: "Brooklyn Methodist Episcopal Church Home."

Balance of answer same as foregoing.

FREDERICK W. HOPE,
Solicitor for and of Counsel
with said Defendant.

Answer of Susan A. Truax.

Filed April 26, 1924.

The defendant Susan A. Truax answering the Bill of Complaint says:

1. She admits the first and second paragraphs.

2. She believes the facts set forth in the third, fourth and fifth paragraphs are true.

3. She alleges that she is bequeathed under the sixth paragraph of the seventh codicil the sum of $500.00. That she is the person unto whom the testator intended to bequeath said sum.

4. That she is the superintendent of the poor farm near Asbury Park, New Jersey, referred to in the seventh paragraph of the eighth codicil. That she is the widow of Charles Truax. That the widow of George Truax was never superintendent of said poor farm.

5. She claims the legacy of $500.00 bequeathed to her as set forth in the sixth paragraph of the seventh codicil dated May 3, 1916, and also the

share of the residuary estate mentioned in the ninth clause of said codicil.

6. She joins in the prayer that the Court may interpret and construe said will and codicil.

J. EVERETT NEWMAN,
Solicitor and of Counsel for
Defendant Susan A. Truax.

Answer of Edward Howland.

Filed April 26, 1924.

The Defendant Edward Howland, answering the Bill of Complaint says:

1. He admits the first and second paragraphs.

2. He believes the facts set forth in the third, fourth and fifth paragraphs are true.

3. He alleges that the sixth paragraph of the Eighth Codicil to said Will in so far as the same refers to him was made under a misapprehension of fact and is therefore void.

4. He claims the legacy of Five Hundred Dollars ($500.) bequeathed to him as set forth in the fifth paragraph of the seventh Codicil dated May 3, 1916, and also the share of the residuary estate mentioned in the ninth clause of said Codicil.

5. He joins in the prayer that the Court may interpret and construe said Will and Codicil.

J. EVERETT NEWMAN,
Solicitor and of Counsel for
defendant Edward Howland.

Answer of The First Presbyterian Church of Asbury Park, N. J.

Filed September 13, 1923.

The answer of the defendant The First Presbyterian Church of Asbury Park, New Jersey.

This defendant, The First Presbyterian Church of Asbury Park, New Jersey, answering the Bill of Complaint says that:

1. This defendant admits paragraphs one and two.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs three and four.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph five, excepting in so far as they relate to the matters affecting this defendant.

4. That this defendant was at the time of the making of said Will and Codicils the only Presbyterian Church in the said City of Asbury Park.

5. That by the second paragraph of the Seventh Codicil, said James A. Bradley gave to certain churches at Asbury Park, New Jersey, including this defendant, the sum of Five Thousand Dollars each.

6. That by the Ninth Paragraph of said Seventh Codicil, said James A. Bradley gave all the rest, residue and remainder of his estate to the legatees mentioned in said Codicil, including this defendant, in the proportion or on the percentage that the aforementioned legacies were given to them respectively.

7. That by the third paragraph of the Eighth Codicil, the said James A. Bradley gave to cer-

tain churches of said Asbury Park, including this defendant, the sum of One Thousand Dollars each in lieu of the said legacy of Five Thousand Dollars so given by the said second clause of the said Seventh Codicil.

8. That by the eighth paragraph of said Eighth Codicil, said James A. Bradley ratified, confirmed and republished the said Will together with the aforesaid mentioned Seventh Codicil.

9. That this defendant claims the said legacy of One Thousand Dollars, so given to it by the third paragraph of said Eighth Codicil, together with a proportion and percentage of the residue of said estate, so given to it under the ninth paragraph of said Seventh Codicil.

PATTERSON, RHOME & MORGAN,
Solicitors of Defendant, the First Presbyterian Church of Asbury Park, New Jersey.

Answer of the Ann May Memorial Hospital.

Filed September 13, 1923.

The answer of the defendant, The Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey.

This defendant, the Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey, answering the bill of complaint says that:

1. This defendant admits paragraphs one and two.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs three and four.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph five, excepting in so far as they relate to the matters affecting this defendant.

4. That this defendant is the corporation referred to in the Seventh and Eighth Codicils.

5. That by the second paragraph of the Seventh Codicil said James A. Bradley gave to certain institutions including this defendant, the sum of Five Thousand Dollars.

6. That by the ninth paragraph of said Seventh Codicil, said James A. Bradley gave all the rest, residue and remainder of his estate to the legatees mentioned in said Codicil, including this defendant, in the proportion or on the percentage that the aforementioned legacies were given to them respectively.

7. That by the third paragraph of the Eighth Codicil, the said James A. Bradley gave to certain institutions, including this defendant, the sum of One Thousand Dollars each in lieu of the said legacy of Five Thousand Dollars so given by the said second clause of the said Seventh Codicil.

8. That by the eighth paragraph of said Eighth Codicil, said James A. Bradley ratified, confirmed and republished the said Will together with the aforesaid mentioned Seventh Codicil.

9. That this defendant claims the said legacy of One Thousand Dollars, so given to it by the third paragraph of said Eighth Codicil, together with a proportion and percentage of the residue

of said estate, so given to it under the ninth paragraph of said Seventh Codicil.

PATTERSON, RHOME & MORGAN,
Solicitors of Defendant, The Ann May Memorial Homeopathic Hospital.

Answer of The Searle Memorial Seashore Non-Sectarian Home for Aged Women.

Filed September 13, 1923.

The answer of the defendant, The Searle Memorial Seashore Non-Sectarian Home for Aged Women of Asbury Park, New Jersey.

This defendant, The Searle Memorial Seashore Non-Sectarian Home for Aged Women of Asbury Park, New Jersey, answering the Bill of Complaint says that:

1. This defendant admits paragraphs one and two.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs three and four.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph five, excepting in so far as they relate to the matters affecting this defendant.

4. That this defendant was, at the time of the making of said Will and Codicils, a corporation of this State, having its Home in the said City of Asbury Park.

5. That by the second paragraph of the Seventh Codicil, said James A. Bradley gave to

New Jersey State Library

this defendant, the sum of Five Thousand Dollars.

6. That by the ninth paragraph of said Seventh Codicil, said James A. Bradley gave all the rest, residue and remainder of his estate to the legatees mentioned in said Codicil, including this defendant, in the proportion or on the percentage that the aforementioned legacies were given to them respectively.

7. That by the eighth paragraph of said Eighth Codicil, said James A. Bradley ratified, confirmed and republished the said Will together with the aforesaid mentioned Seventh Codicil.

8. That this defendant claims the said legacy of Five Thousand Dollars, so given to it by the second paragraph of said Seventh Codicil, together with a proportion and percentage of the residue of said estate, so given to it under the ninth paragraph of said Seventh Codicil.

PATTERSON, RHOME & MORGAN,
Solicitors of Defendant.

Answer of The Trustees of Second Church of Christ, Scientist.

Filed September 13, 1923.

The answer of the defendant, The Trustees of Second Church of Christ, Scientist, of Asbury Park, New Jersey.

This defendant, The Trustees of Second Church of Christ, Scientist, of Asbury Park, New Jersey, answering the Bill of Complaint says that:

1. This defendant admits paragraphs one and two.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs three and four.

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph five, excepting in so far as they relate to the matters affecting this defendant.

4. That this defendant was, at the time of the making of the Seventh Codicil, an unincorporated Society holding regualr weekly meetings in the said City of Asbury Park, and known as the said Second Church of Christ, Scientist.

5. That since the making of said Seventh Codicil this defendant has incorporated under the laws of this State under the said name of the Second Church of Christ, Scientist.

6. That by the second paragraph of the Seventh Codicil, said James A. Bradley gave to certain churches at Asbury Park, New Jersey, including this defendant, the sum of Five Thousand Dollars.

7. That by the ninth paragraph of said Seventh Codicil, said James A. Bradley gave all the rest, residue and remainder of his estate to the legatees mentioned in said Codicil, including this defendant, in the proportion or on the percentage that the aforementioned legacies were given to them respectively.

8. That by the third paragraph of the Eighth Codicil, the said James A. Bradley gave to certain churches of said Asbury Park, including this defendant, the sum of One Thousand Dollars each in lieu of the said legacy of Five Thousand Dollars so given by the said second clause of the said Seventh Codicil.

9. That by the eighth paragraph of said Eighth Codicil, said James A. Bradley ratified, confirmed and republished the said Will together with the aforesaid mentioned Seventh Codicil.

10. That this defendant claims the said legacy of One Thousand Dollars, so given to it by the third paragraph of said Eighth Codicil, together with a proportion and percentage of the residue of said estate, so given to it under the ninth paragraph of said Seventh Codicil.

PATTERSON, RHOME & MORGAN,
Solicitors of Defendant, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, N. J.

Answer of Josephine Hewitt and Others.

Filed May 27, 1924.

Defendants, Josephine Hewitt, Helen Jackson and Minnie Hueston, answering the Bill of Complaint filed in this cause, say that:

1. They admit paragraph 1 of the Bill of Complaint.

2. They admit paragraph 2 of the Bill of Complaint.

3. They have no knowledge or information as to the facts contained in paragraph 3 of the Bill of Complaint sufficient to form a belief, and leave complainant to his proof thereof.

4. They have no knowledge or information as to the facts contained in paragraph 4 of the Bill of Complaint sufficient to form a belief, and leave complainant to his proof theerof.

5. They admit paragraph 5 of the Bill of Complaint and join complainant in respectfully requesting this Honorable Court to construe the several clauses particularly enumerated in paragraph 5 of the Bill of Complaint, and as to the clauses hereinafter specifically mentioned, they submit the correct legal construction thereof to be as follows:

(a) That by the first item of the Seventh Codicil in which the testator provided as follows, "I hereby revoke any and all legacies given and bequeathed in any and all former Wills and Codicils, and do direct that the following shall be the only bequests distributed in my estate," the testator revoked all bequests and devises contained in the original Will and in the preceding Codicils, and left the bequests and devises to be determined from his Seventh and Eighth Codicils, leaving in force only the provision in the Will appointing executors.

(b) That the bequests as provided for in the Eighth Codicil and which alter the bequests contained in the Seventh Codicil govern in the distribution of the estate.

(c) That the effect of the Seventh Codicil is to revoke the original Will in its entirety except as to the provisions naming executors.

(d) That there are no trusts or duties outstanding or operative under the original Will by reason of the revocation thereof contained in the first item of the Seventh Codicil.

(g) That where the institutions, corporations and churches are specifically named and can be determined from an examination of the Will, each of such institutions, corporations and churches so specifically named shall receive the

sum of $1,000.00, the amount fixed by the Eighth Codicil; that where such institutions, corporations and churches are not specifically named and more than one such institution, corporation or church comes under the head of the denomination named, none of said institutions, corporations or churches shall receive any bequests whatsoever because of indefiniteness.

(h) Defendants repeat section (g) under paragraph 5 of this answer.

(i) That the hospital located on Asbury Avenue, in Asbury Park, New Jersey, which is bequeathed the sum of Five Thousand Dollars by the second item of the Eighth Codicil does not share in the residue as provided in the ninth item of the Seventh Codicil; that the ninth item of the Seventh Codicil fixed specifically the legatees who are to share in the residue by the use of the words, "the aforementioned legatees," referring particularly and only to the legatees named in the Seventh Codicil; that the said hospital of Asbury Park is entitled to receive the sum of Five Thousand Dollars and no more, said amount being fixed by the second item of the Eighth Codicil.

(j) That the paragraph in the sixth item of the original Will permitting Asbury Park to purchase the second and fourth parcels of land mentioned in said sixth item for the sum of one dollar is inoperative, having been revoked by the provisions of the Seventh and Eighth Codicils; and particularly by the ninth item of the Seventh Codicil providing for the distribution of the rest, residue and remainder of the estate in a manner therein outlined; said two parcels of land would be part of the rest, residue and remainder of the testator's estate.

Said defendants, Josephine Hewitt, Helen Jackson and Minnie Hueston respectfully pray that this Honorable Court may construe said clauses in the manner herein suggested, said defendants believing the construction herein suggested to be the correct construction of said clauses.

KATZENBACH & HUNT,
Solicitors for and of Counsel with the Defendants, Josephine Hewitt, Helen Jackson and Minnie Hueston.

Answer of The First Church of Christ, Scientist.

Filed September 11, 1923.

The First Church of Christ Scientist, one of the defendants in the above entitled cause, referring particularly to paragraph five, Sub-division G. of the Bill herein filed, answering says:

That under section "second" of a Codicil to the Last Will and Testament of James A. Bradley, bearing date the third day of May in the Year One Thousand Nine Hundred Sixteen the "Christian Scientist" Church of Asbury Park, New Jersey was left a legacy of $5,000.00 that said legacy read in part as follows: "I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of $5,000.00 That thereafter the 'Christian Scientist' Church of Asbury Park, New Jersey, was named.

That under a Codicil to the Last Will and Testament of James A. Bradley, bearing date

the third day of May in the year One Thousand Nine Hundred Sixteen, it was stated in section "ninth" as follows:

"All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively." That said portion of Codicil was confirmed by the only subsequent Codicil (in section 8) bearing date March 3, 1919.

That under Section "Third" of a Codicil to the Last Will and Testament of James A. Bradley, bearing date the Third day of March in the year Nineteen Hundred Nineteen the "Christian Scientist" Church of Asbury Park, New Jersey was left a legacy of $1,000.00 which was in lieu of the legacy of $5,000.00 bequeathed under the Codicil dated May 3, 1916.

That the only "Christian Scientist" Church of Asbury Park, New Jersey at the time the Codicils of May 3, 1916 and March 3, 1919 were made that could be termed a "corporation" was The First Church of Christ Scientist of Asbury Park, New Jersey, a New Jersey Corporation.

The defendant therefore claims the $1,000.00 mentioned in the Codicil of March 3, 1919 and also the proportionate share of the residue of the estate as mentioned in the above Codicil dated May 3, 1916.

ROBERT McMICHAEL,
Solicitor of the Defendant, The
First Church of Christ Scientist.

Answer of The Asbury Park Hospital.

Filed September 13, 1923.

Answer of the defendant THE ASBURY PARK HOSPITAL, body corporate of the State of New Jersey.

This defendant answering the bill of complaint says that:

1. On March 3, 1919, The Asbury Park Hospital, body corporate of the State of New Jersey, owned and was operating a hospital on Asbury Avenue, Asbury Park, New Jersey, which was the only hospital located on said Asbury Avenue in Asbury Park, New Jersey, on said date.

2. This defendant is the hospital located on Asbury Avenue, in Asbury Park, New Jersey, mentioned in the second paragraph of the eighth Codicil to the Last Will and Testament of James A. Bradley, deceased, which Codicil bears date March 3, 1919; and this defendant is entitled to the legacy of $5,000. bequeathed by said paragraph.

3. This defendant claims that the intent and effect of the second and third paragraphs of the said eighth codicil to the Will of the said James A. Bradley was to add The Asbury Park Hospital to the class of institutions and corporations to receive legacies of $5,000 as directed by the second paragraph of the seventh Codicil to said Last Will and Testament, and to reduce the legacies bequeathed to the institutions and corporations mentioned in said second paragraph of the Seventh Codicil and also in the third paragraph of the Eighth Codicil from $5,000 to $1,000 and that The Asbury Park Hospital is entitled to participate in the residue

of the estate as directed in the ninth paragraph of the Seventh Codicil, as if said hospital had been mentioned in said second paragraph of the Seventh Codicil to said Will.

WALTER TAYLOR,
Solicitor of the Defendant, The Asbury Park Hospital, body corporate of the State of New Jersey.

Amended Answer of Monmouth Memorial Hospital Association.

Filed November 2, 1923.

The amended answer of the defendant, Monmouth Memorial Hospital Association, formerly the Long Branch Hospital.

This defendant, the Monmouth Memorial Hospital Association, formerly the Long Branch Hospital, answering the bill of complaint, says that:

1. It admits the first paragraph.

2. It admits the second paragraph.

3. As to the third paragraph, it has no knowledge or information sufficient to form a belief.

4. As to the fourth paragraph, it has no knowledge or information sufficient to form a belief.

5. As to the fifth paragraph, it has no knowledge or information sufficient to form a belief.

6. This defendant, further answering, says that: the proper corporate name of the hospital at the time of its original incorporation in 1889 being "The Long Branch Hospital," which said corporate name was, at a later date, changed to "Monmouth Memorial Hospital Association,"

both names designating the same hospital, and the only hospital then or now located within the City of Long Branch, the site being on Third avenue opposite the Long Branch station of the New York and Long Branch Railroad, said hospital being now generally known as "The Long Branch Hospital."

7. The defendant says that it claims a legacy bequeathed to The Long Branch Hospital, Long Branch, New Jersey, as set forth in the Second clause in the Seventh Codicil (dated May 3, 1916) of the Will of James A. Bradley, deceased, as modified by the third clause in the Eighth Codicil of said Will, and also such share more particularly mentioned and defined of the residuary estate, mentioned in the ninth clause of the same Codicil.

This defendant contends that the true construction of said Will and Codicils, in so far as they relate to the Monmouth Memorial Hospital (The Long Branch Hospital of Long Branch, New Jersey) is as follows:

That this defendant is entitled to receive $1,000 and interest and an amount of the residuary estate in a proportion which $5,000 bears to the total amount of general legacies given by the seventh Codicil of the Will.

As to the other questions propounded therein by the complainant, this defendant has not the intimate knowledge of the affairs and intentions of the testator which in its judgment would alone qualify it to express an opinion thereon.

WILSON & SMOCK,
Solicitors of Defendant, Monmouth Memorial Hospital Association, formerly The Long Branch Hospital.

Answer of Fund for Superannuated Ministers, &c.

Filed February 19, 1924.

Defendants, Fund for Superannuated Ministers, New Jersey Annual Conference—Methodist Episcopal Church (named in bill of complaint as "Fund for Superannuated Preachers, New Jersey Conference (Methodist)," John R. Mason, Secretary in charge of Fund for Superannuated Ministers, New Jersey Annual Conference Methodist Episcopal Church (named in bill of complaint as "John R. Mason, Secretary in charge of Fund for Superannuated Preachers, New Jersey Conference") answering the bill of complaint in this cause, says that:

(1) They have no specific knowledge of the allegations of the bill of complaint sufficient to form a belief, except they admit that the copies of will and codicil annexed to bill of complaint are true copies.

(2) They join with the complainant in requesting that this Court interpret and construe said will and codicils thereto annexed, and by its decree fix the respective rights of the defendants under said will and codicils thereto annexed, and their respective rights in and to the estate of the testator, insofar as affects the rights of these answering defendants.

(3) These defendants allege that the bequest of $5,000. in codicil to said will, dated May 3, 1916, to "Fund for Superannuated Preachers, New Jersey Conference (Methodist)" is a legal bequest to "Fund for Superannuated Ministers, New Jersey Annual Conference of Methodist Episcopal Church," which is an organization

recognized by and existing under the discipline, power and authority of the "New Jersey Annual Conference of Methodist Episcopal Church," a religious organization duly incorporated, and existing under the Laws of the State of New Jersey.

(4) Defendants further allege that said bequest of five thousand dollars made in the codicil to said will, dated May 3, 1916, is a valid bequest to "Fund for Superannuated Ministers" and is in no way revoked by any subsequent codicil thereto.

AVIS & AVIS,
Solicitors for Answering Defendants.

Answer of The Church of the Holy Spirit, etc.

Filed December 13, 1923.

The defendants, The Church of the Holy Spirit, Asbury Park, Our Lady of Mt. Carmel, Asbury Park, N. J., and The Church of the Ascension, Bradley Beach, N. J., answering the bill of complaint say:

1. Admit the first paragraph.

2. Admit the second paragraph.

3. As to the third paragraph they have no knowledge or information sufficient to form a belief.

4. As to the fourth paragraph they have no knowledge or information sufficient to form a belief.

5. As to the fifth paragraph they have no knowledge or information sufficient to form a belief.

6. These defendants further answering say:

That the proper corporate names of each church corporation are as follows:

The Church of the Holy Spirit, Asbury Park.
Incorporated February 23, 1880. Certificate of Incorporation filed and recorded in the Monmouth County Clerk's Office in Book A of Corporations, page 224.

Our Lady of Mt. Carmel, Asbury Park, N. J.
Incorporated October 31, 1904. Certificate of Incorporation filed and recorded in the Monmouth County Clerk's Office in Book E of Corporations, page 84.

The Church of the Ascension, Bradley Beach, N. J.
Incorporated February 15, 1907. Certificate of Incorporation filed and recorded in the Monmouth County Clerk's Office in Book E of Corporations, page 380.

Each of said corporations being organized pursuant to the statute of this State entitled "An Act concerning religious corporations," and are all the Catholic Churches in said places.

That each of the two first-named church corporations under its corporate name; to wit, The Church of the Holy Spirit, Asbury Park, and Our Lady of Mt. Carmel, Asbury Park, N. J., maintains a Catholic Church in the City of Asbury Park, N. J.; that The Church of the Ascension, Bradley Beach, N. J., maintains a Catholic Church in the Borough of Bradley Beach.

Each of said church corporations contends and claims that by the second paragraph of the 7th codicil, testator did bequeath to each of them:

"The following persons and institutions or corporations:
Churches at Asbury Park, to wit...Catholic
Churches at Bradley Beach, to wit..Catholic

the certain legacies mentioned and specified by him in said codicil, and that testator subsequently by the third paragraph of the 8th codicil to his will affirmed the bequest of the said legacies to the same legatees, but reduced the amount of each legacy to be paid to each beneficiary.

These defendants contend that a true construction of said will and codicil so far as the same relates to them is as follows:

That each of these defendant church corporations is entitled to receive $1,000 and interest and an amount of the residuary estate in the proportion which $5,000 bears to the total amount of the general legacies bequeathed by the 7th codicil of the will.

That as to the other questions propounded by the complainant in his bill, these defendants have no interest.

PETER BACKES,
Solicitor of Defendants,
The Church of the Holy Spirit, Asbury Park.
Our Lady of Mt. Carmel, Asbury Park, N. J.
The Church of the Ascension,
Bradley Beach, N. J.

Answer of Methodist Episcopal Home, &c.

Filed May 6, 1924.

The Answer of the Methodist Episcopal Home for the Aged of New Jersey, located at Ocean Grove, in the County of Monmouth and State of New Jersey.

The Methodist Episcopal Home for the Aged of New Jersey, answering the Bill of Complaint in the above cause, says:

1. This defendant admits Paragraph One.

2. This defendant admits Paragraph Two.

3. This defendant admits Paragraph Three.

4. This defendant admits that part of Paragraph Four which says that the complainant has in hand cash approximately the sum of Four Hundred and Twenty Thousand Dollars ($420,000). It does not admit that according to the true construction the amount which passes under the will and its various codicils of specific legacies is One Hundred and Sixty-five Thousand Dollars ($165,000), but leave that to the determination by the Court. The rest of the paragraph is admitted.

5. This defendant admits the general scheme of disposing of the estate of the testator under the will dated and executed on the twenty-sixth day of June, 1896, by which he devised his real estate in twelve parcels, and devised to his executors in trust to sell and dispose and to distribute and divide the proceeds of such sales to eight persons or corporations in proportions named in the sixth item of his said will.

This defendant, however, denies that the Seventh Codicil, executed in due form on the third

day of May, 1916, created an entirely new scheme, so far as this defendant is concerned.

This Defendant says that the Fourth Clause of the Sixth Codicil of said will, executed on the 17th day of June, 1914, is still in force, and that by said Fourth Paragraph this defendant is entitled to all of the rest, residue and remainder of the real estate not devised by the Last Will and Testament or any codicil heretofore made or in the Sixth Codicil, and that all real estate not devised in the will or the codicil of the 17th day of January, 1914, or any previous codicil, was devised to the Home for the Aged, by virtue of said Fourth Paragraph of the Sixth Codicil of said will, the language of which is as follows:

> "4. All the rest, residue and remainder of my estate, not devised or bequeathed by my Last Will and Testament, or any codicil heretofore made, or this codicil, I give, devise and bequeath to the Home for the Aged, No. 63 Clark Avenue, Ocean Grove, New Jersey."

This defendant says, that the Fourth Paragraph of Codicil Number Six was not revoked by any subsequent codicil, so far as the devise of real estate is concerned, but was ratified and confirmed both by the Thirteenth Paragraph of Codicil Number 7, and by the Second Clause of Paragraph Eight of the Eighth Codicil to said Will.

Paragraph Thirteen of Codicil Seven, reads as follows:

> "13. I hereby ratify and confirm my said Will and the appointment of the executor therein named, except insofar as the same is changed by this, a codicil thereto."

The Seventh Codicil, Paragraph One, is as follows:

> "First. I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate."

It will be noted that the testator is very careful to say that he only revokes all legacies given and bequeathed in his former will and codicil, and does direct that the following shall be the only bequests distributed in his estate, and that all of the paragraphs following, including the second, third, fourth, fifth, sixth, seventh and eighth, he uses the words, "I give and bequeath," and then comes the Ninth Clause as follows:

> "Ninth: All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively."

The testator here again is dealing only with personal estate, and not with real estate, and he is giving the legacies in proportion to the percentage of the aforementioned legacies were given to the legatees respectively, and again, to show that the testator had clearly in mind only his personal estate in this codicil by the Tenth Clause, which reads as follows:

> "Tenth. I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my executor, and give him full power of sale, to sell any and all of my real estate to pay said legacies, and give

him power to execute deed or deeds therefor."

Thus showing clearly that the testator had in mind that his real estate should be disposed of by the devise of his residuary estate to the Home for the Aged, as set out in Paragraph Four of Codicil Six. And so as to make sure that his wishes would not be disturbed, in the Twelfth Paragraph of Codicil Seven, he provided that if any of his heirs, legatees, or next of kin, named or not named, should in any manner interfere with or delay the settlement of his estate, or attempt to break or change his will, or any of the codicils thereto, or to interfere or make null any provision thereof, that they should lose their interest in the estate, and makes null and void any bequest or devise to any of them, and directs that their share shall immediately revert and form part of his residuary estate. And to show that he had clearly in mind at that time the difference between bequeathing and devising, he states that both property, "devised and bequeathed" should immediately revert, and for the first time in this codicil, refers to his heirs as well as his next of kin, and says that they shall not be entitled to any other interest than given them by the will and the codicil.

The Eighth Codicil does not contain any residuary clause, and does not in any of its paragraphs revoke any of the devises heretofore made, but changes a number of legacies, and an examination of the Eighth Codicil in every paragraph will show that again the testator had clearly in mind the difference between a legacy bequeathed and a devise of real estate, and in the second clause of the Eighth Paragraph, he

expressly ratifies and re-publishes the former will and codicil as follows:

> "In all other respects, I ratify, confirm and re-publish my aforesaid Will and my aforesaid Codicil, bearing date the third day of May, in the year one thousand nine hundred and sixteen."

This was the last codicil to his will.

This defendant admits that many changes had taken place in the life of the testator from the time of the drawing of his will until the codicil of May 3rd, 1916, and says that most of the changes had taken place prior to the time of the making of the codicil of January 17th, 1914, known as the Sixth Codicil.

The testator had been interested in the Methodist Episcopal Home for the Aged of Ocean Grove from its inception and beginning, and was a strong advocate of it. That he immediately named a room for his mother, Hannah Smith, when the Home was first started, and always maintained that room liberally, and when the Home was re-built after the fire, he maintained a room named after his mother until the time of his death.

The original Home was burned on February 6th, 1916, and the President of the Home, Mrs. John H. Parker, called upon the testator, James A. Bradley, at his office in Pearl street, New York, in reference to re-building the Home, and he stated to her that she need not worry, that at that time he was property poor, but to go ahead and build the new Home, as he had made ample provision for the future of the Home, and at the same time cautioned the said President, Mrs. John H. Parker, to reserve the best room in the Home in memory of his mother.

It was shortly after this, in May, 1916, that he made the Seventh Codicil to the Will in which he did not disturb but devised to the Methodist Episcopal Home for the Aged of New Jersey all the real estate as named in the Sixth Codicil to the Will in the Fourth Paragraph.

The said testator always maintained a team of horses and a carriage for the use of the inmates of the Home, and always provided a stage for trips for the use of the inmates.

And the said testator, James A. Bradley, had been a Trustee of said Home from its beginning.

At the time of the making of the codicil on January 17th, 1914, Mrs. Bradley, wife of the testator, had become very feeble, and the testator had informed the President of said Home, Mrs. John H. Parker, that his wife had made a will disposing of her estate, and that he was doing likewise, and that he was going to give to his favorite charities.

About a year after the making of this codicil, Mrs. Bradley died, and during that time a great many of the relatives of Mr. Bradley had died. His sister, Mary Ann Dickinson, her children except one son, George Dickinson; his brother-in-law, Louis G. Gillespie; his half brother, Foster M. Smith, with whom he had been closely associated in the brush business in the City of New York, had died.

This defendant further says, that in reference to Paragraph A, the intention is clearly expressed by the testator that he devises his real estate to the defendant, the Methodist Episcopal Home for the Aged of New Jersey, and that he had clearly in mind all through his will, and particularly in the Seventh and Eighth Codicils

the difference between legacies and devises, and the difference between the method of bequeathing personal estate and devising real estate, and that the words "all legacies" does not mean anything but the personal estate where legacies are bequeathed, and the words "only bequests," as contained in the first paragraph of the said codicils refers only to personal property, and does not refer to devises.

There is no paragraph in the Will or any of the codicils in which the testator does not distinguish between the bequeathing of personal property as legacies, and the devising of real estate by devise.

The above applies to Paragraph B, of Section 5 of the Bill, and also Section C.

This defendant desires the construction requested in Section D.

This defendant admits Sections E, F, G, H, I, J, K, L, M of Section 5 of the Bill of Complaint, and requests the construction of the Court thereon.

THOMAS P. FAY,
Solicitor for and of Counsel with
Methodist Episcopal Home for
the Aged of New Jersey.

Answer and Counter-claim.

Filed November 7, 1923.

The Answer of the Society for the Prevention of Crime in the City of New York, a body corporate of the State of New York, to the bill of complaint of the complainant, alleges:

1. That this defendant, the Society for the Prevention of Crime, is a body corporate of the State of New York, organized in pursuance of an Act of the Legislature of the State of New York, passed on the Twelfth day of April, 1848, entitled, "AN ACT FOR THE INCORPORATION OF BENEVOLENT, CHARITABLE, SCIENTIFIC AND MISSIONARY SOCIETIES," and the several acts amendatory thereof. This defendant became incorporated on October 29, 1878, by filing its certificate in conformity with said Statute, which certificate was then and there approved by a Justice of the Supreme Court in the First Judicial District of the State of New York, which certificate was duly filed October 30, 1878, in the office of the Clerk of the City and County of New York; that since the filing of said certificate of incorporation, this defendant has functioned and exercised its powers as such corporation within the City of New York and State of New York and is now actively functioning as such corporation, having its office at #50 Union Square, New York City.

2. Defendant admits the allegations of Paragraphs 1, 2, 3, 4 and 5 of said bill of complaint, excepting that Sub-Division "L" of Paragraph 5 is not involved in any doubt or difficulty.

3. This defendant alleges that by the Fourth Paragraph of the Seventh Codicil of the said

Will of said Testator, the Testator did bequeath the sum of Five Thousand ($5,000.00) Dollars to the widow of Anthony Comstock for the term of her natural life and directed that the principal of said sum, upon her death, be paid to this defendant.

4. That said Testator did further by the Fifth Paragraph of the Eighth Codicil of his Will, by reason of the death of the widow of said Anthony Comstock, make null and void the bequest to her for her life, but he did not in any manner by said Codicil make null and void and cancel the bequest of Five Thousand ($5,000.00) Dollars to defendant.

5. This defendant admits that there also existed in the City of New York another corporation whose title and corporation name was "The New York Society for the Suppression of Vice," but it has no knowledge that it is claimed that the testator intended the bequest in the Fourth Paragraph of the Seventh Codicil of his Will should be for the benefit of any corporation other than this defendant and alleges that there is nothing in said codicil or the will or other codicils of said Testator to indicate any intention other than that the said Testator desired this defendant to have a legacy of Five Thousand ($5,000.00) Dollars.

6. That the said Testator was a man of large affairs, actively engaged in business and was well acquainted with this defendant corporation and also with the corporation known as the New York Society for the Suppression of Vice; that said Testator in his lifetime was personally acquainted with the Reverend S. Edward Young, the President of this defendant corporation, and

that the intention of said Testator is fully expressed in the Fourth Paragraph of the Seventh Codicil of his Will.

7. That if the New York Society for the Suppression of Vice has made any claim to the said legacy of Five Thousand ($5,000.00) Dollars, said claim is wholly unfounded and is not in any manner supported by the language if the Will and Codicils of the said Testator.

And this defendant by way of Counter-Claim as against the complaint alleges:

1. Defendant repeats the allegations of Paragraph 1 of the Answer.

2. That said James A. Bradley departed this life as alleged in Paragraph One of the bill of complaint, leaving the Will and Codicils therein mentioned in and by which he did bequeath to this defendant a legacy of Five Thousand ($5,000.00) Dollars.

3. That this defendant is ready and willing and hereby tenders to said complainant a release and refunding bond for said legacy as required by the Statute in such case made and provided.

This defendant is without adequate remedy in the Courts of Law and therefore prays that the complainant in all things may answer this Counter-Claim and each and every allegation thereof.

1. That an order may be made directing the complainant to pay to this defendant the aforesaid legacy of Five Thousand ($5,000.00) Dollars together with interest thereon.

STAMLER, STAMLER & KOESTLER,
Solicitors for and of Counsel
with the Defendant,
Society for the Prevention of Crime.

Answer and Counter-claim.

Filed December 7, 1923.

The defendant, The New York Society for the Suppression of Vice, a body corporate of the State of New York, for answer to the Bill of Complaint of the complainant, heretofore filed herein, says that:

1. Said defendant, The New York Society for the Suppression of Vice, is a body corporate of the State of New York, duly organized and existing by virtue of an Act of the Legislature of the State of New York entitled "An Act for the incorporation of Benevolent, Charitable, Scientific and Missionary Societies, and the several acts supplemental thereto and amendatory thereof," having its principal office and place of business at 215 West 22nd street, in the City, County and State of New York.

2. This defendant admits the allegations of paragraphs 1, 2, 3, 4, and 5 of the Bill of Complaint, but alleges that the name "The Society for the Prevention of Crime in the City of New York," mentioned in the 4th paragraph of the Seventh Codicil of the testator's said Will was written and mentioned through inadvertence and by mistake and that said testator intended and meant to name as beneficiary this defendant, "The New York Society for the Suppression of Vice."

3. By the fourth paragraph of the Seventh Codicil of said testator's Will, said testator gave and bequeathed to his executors therein named, the sum of $5,000.00 to be held in trust, with direction to pay the income therefrom to the widow of one Anthony Comstock, of the City of New

York, during the term of her natural life, and with further direction to pay the principal or corpus thereof, upon her death to "The Society for the Prevention of Crime in the City of New York," but this defendant alleges and prays to establish by proof that said testator intended said principal sum of $5,000.00 to be paid to this defendant, The New York Society for the Suppression of Vice, after the death of said widow of Anthony Comstock, and that the designation in said paragraph of said Codicil of said testator's Will of the name "The Society for the Prevention of Crime in the City of New York" was entirely through inadvertence, mistake and in error, and that said testator had no intention of giving said sum of $5,000.00, or any portion thereof, to said Society for the Prevention of Crime in the City of New York, upon the death of the widow of said Anthony Comstock, or at any time, but in truth and in fact intended the payment of said sum at such time to this defendant, and no other.

4. It is alleged that the revocation in and by the fifth paragraph of the Eighth Codicil of his Will contained, revoked the bequest of income only, so as aforesaid given to the widow of Anthony Comstock, and for the reason therein expressed, namely, that she was, at the time of the execution of said Codicil, then deceased, but said testator did not expressly, or by implication or in any way or manner, revoke, or cancel the said bequest of the principal sum of $5,000.00 always intended to be given and bequeathed by said testator, to this defendant.

5. The said Anthony Comstock aforementioned was a personal friend of said testator, and for many years prior to the death of said

testator, was the active head of this defendant corporation, which enjoyed the confidence and pecuniary support of said testator.

Said testator contributed liberally of his means to the support of this defendant from the year 1881 continuously up to the time of his death in the year 1921, and during all of that time, took an active interest in the welfare and success of this defendant, and in the worthy objects for which it was founded; also, in the year 1897 said testator and said testator's wife became regular contributing members of this defendant corporation, and likewise the business firm of said testator, then known as Bradley and Smith, and in the year 1915, said testator became a life member of this defendant corporation.

6. On information and belief, this defendant says that the said testator was not, in any way connected with The Society for the Prevention of Crime in the City of New York, or affiliated with any of its officers or agents.

7. This defendant alleges that said testator and said Anthony Comstock were on terms of great friendship, and the fact that said testator failed to designate, by name, the widow of Anthony Comstock, but refers always to the "widow of Anthony Comstock," indicates thereby, plainly, the intention of said testator to provide, after the death of said Anthony Comstock's widow, for the aims, works and needs of this defendant corporation, which was founded by said Anthony Comstock, and became his life work, and in which Society he was so vitally interested.

8. This defendant further alleges that said bequest of $5,000.00 stands unrevoked, and is presently payable to this defendant corporation,

The New York Society for the Suppression of Vice.

By way of counter-claim, this defendant further says that:

1. The allegations contained in the aforesaid answer are expressly made a part hereof.

2. Said legacy of $5,000.00 is now payable to this defendant, The New York Society for the Suppression of Vice.

3. This defendant is ready and willing, and does hereby tender to said complainant, a refunding bond and release for the payment of said legacy to it.

This defendant, without adequate remedy in the courts of law, therefore prays:

1. Complainant may in all things answer this counter-claim, and each and every allegation thereof.

2. That a decree may be made, directing said complainant to pay to this defendant, The New York Society for the Suppression of Vice, the said legacy of $5,000.00, together with interest thereon, and its costs of suit to be taxed.

CLIFFORD I. VOORHEES,
Solicitor and Counsel for the Defendant, The New York Society for the Suppression of Vice.

IN CHANCERY OF NEW JERSEY.

April 28, 1924.

Between

SAMUEL H. GILLESPIE, sole acting executor and surviving trustee, etc., of JAMES A. BRADLEY, deceased,

Complainant,

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, executors, etc., of LOUIS C. GLLISPI' deceased, *et als.*,

Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled matter before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers in the City of Newark, New Jersey, in the presence of

Mr. Edward K. Mills, Mr. Frederick Faulks and Mr. Walter D. Barker, for complainants.

Mr. Clifford L. Voorhees and Mr. Francis Bertram Elgas (New York Bar), for defendant, New York Society for the Suppression of Vice.

Messrs. Stamler, Stamler and Koestler (Mr. Koestler), and Mr. Samuel Marcus (New York Bar), for defendant, Society for the Prevention of Crime.

Mr. J. Newman, for defendants, Edward Howland, Susan A. Truax and William B. Wells.

Messrs. Durand, Ivins and Carton (Mr. Carton), for defendants, the City of Asbury Park, First Methodist Church of Asbury Park, Evangelical Lutheran Church of Asbury Park, Asbury Park Society for the Prevention of Cruelty to Animals, and the First Methodist Church of Bradley Beach.

Messrs. Katzenbach & Hunt (Mr. George Gildea), for defendants, Josephine Hewitt, Ellen M. Jackson and Minnie Hueston.

Mr. Frederick W. Hope, for defendants, The Methodist Episcopal Hospital in the City of Brooklyn, also known as Seney Hospital, Brooklyn Methodist Episcopal Church Home, the Methodist Episcopal Church Home in the City of New York.

Avis & Avis (Mr. John Boyd Avis), for defendant, The Fund for Superannuated Ministers, New Jersey Annual Conference of the Methodist Episcopal Church.

Messrs. Wilson & Smock (Mr. Henry D. Brinley), for defendant, Monmouth Memorial Hospital.

Messrs. McCarter & English (Mr. Egner) for defendants, Samuel H. Gillespie, John T. Gillespie, James T. Gillespie, Helen G. Sandford and Josephine G. Erskine.

Mr. Peter Backes for defendant, The Church of the Holy Spirit of Asbury Park and Our Lady of Mount Carmel Churches.

Messrs. Patterson, Rhome & Morgan, for defendants, Presbyterian Church of Asbury Park, Searle Home, Ann May Memorial Hospital and Scientist Church of Asbury Park.

[Opening by Mr. Faulks.]

The Court: We will take the statements of counsel on the record and if they are not disputed we will regard them as proved. You mean as to the death of the different people?

Mr. Faulks: Yes.

The Court: If not objected to it will be admitted. I mean the history of the case. I wonder if I should appoint counsel to represent defendants that are not here?

Mr. Faulks: I do not think there is any interest independent of some interest that is represented.

Mr. Carton: We did not answer in time. I understand there is a decree *pro confesso* entered and I would like to have that opened.

Mr. Newman: I am in the same position as Mr. Carton as to filing answers. Many of my clients did not come in until a few days ago, and I was therefore too late.

The Court: You may take an order opening the decree.

Mr. Faulks: We offer on behalf of the complainant a certified copy of the will of James A. Bradley and of the proceedings for its probate. The records offered includes the eight codicils.

Paper marked Exhibit C. 1.

The Court: Let it appear on the record that counsel's statement of the history of the case will be accepted as true and as proof of the facts unless objection is made.

Mr. Faulks: I offer certified copy of the renunciation of Charles V. Erskine as one of the executors of Mr. Bradley's will.

Paper marked Exhibit C. 2.

Mr. Faulks: I offer certified copy of the will of Helen M. Bradley, the wife of the testator, and the proceedings for its probate in the Surrogate's office in the County of Monmouth, this exhibit being primarily intended to show who takes under the provisions of the will and codicil.

Paper marked Exhibit C. 3.

Mr. Faulks: We offer copy of the Federal Estate Tax return filed by the executor for the purpose of determination of the Federal Estate Taxes payable by the testator's estate and which includes a full list of the property, real and personal, of which he died possessed or seized, and a valuation placed thereon by the executor, in each case the valuation being given as of the date of the testator's death. The purpose is to show the value.

The Court: Just an inventory?

Mr. Faulks: Practically an inventory.

Paper marked Exhibit C. 4.

Mr. Faulks: In connection with such tax estate return or inventory we also offer an appraisal of the real estate owned by Mr. Bradley made as of the date of his death by Mr. Appleby and Mr. Robins, two well-qualified real estate dealers in Asbury Park.

Paper marked Exhibit C. 5.

Mr. Faulks: Such appraisal of the real estate includes all of the real estate of which Mr. Brad-

ley died seized with the exception of a small piece of property in Brooklyn, which was independently appraised by real estate dealers over there as of a value of $1,500. That real estate is shown in the tax return or inventory, but not on the appraisal made by Messrs. Appleby & Robins.

We next offer a rather large map or tracing entitled "Outline map of the easterly section of Neptune Township, Monmouth County, New Jersey," which shows in green all of the real estate which Mr. Bradley owned at the time of his death with the exception of, first, the Brooklyn real estate just mentioned, and, second, a tract of approximately fourteen acres located in Belmar. This map extends from Shark River on the south to Deal Lake on the north and shows all of the testator's holdings within that territory.

Paper marked Exhibit C. 6.

Mr. Faulks: We offer further the contract made between Samuel A. Gillespie as the sole acting executor and surviving trustees under the last will and testament and codicils thereto of James A. Bradley, late of the City of Asbury Park and Asbury Park a body politic and corporate of the State of New Jersey, dated November 16, 1923, which has a bearing upon one of the questions which will arise.

The Court: Contract for what?

Mr. Faulks: Contract for the sale by the executor to the City of Asbury Park of the lands lying principally under the waters of Sunset Lake and Deal Lake for the consideration of one dollar, being a contract that the executor has thus entered into subject to it being approved

by the Court—in other words, subject to his power to make it.

Paper marked Exhibit C. 7.

Mr. Faulks: Now, I will state on the record some facts so that they will be thoroughly before the Court. James A. Bradley, the testator, whose will is now before the Court for construction died on June 6, 1921. His will, and the various codicils thereto, was probated on July 8, 1921. The will itself is dated June 26, 1896. The first codicil thereto, June 7, 1901, the second codicil thereto, January 12, 1906, the third codicil thereto, January 11, 1907, the fourth codicil thereto, January 16, 1907, the fifth codicil thereto, June 11, 1909, the sixth codicil thereto, January 17, 1914, the seventh codicil thereto, May 3, 1916 and the eighth codicil thereto, March 3, 1919. Helen M. Bradley, testator's wife, died February 13, 1915, leaving a last will and testament which has already been received in evidence. Louis C. Gillespie, a brother of Mrs. Bradley—brother-in-law to Mr. Bradley—and who was one of the original executors and trustees named in the will of James A. Bradley, died March 21, 1911. Alfred Walling, Jr., another of such executors and trustees, died November 2, 1897. So that it already appears that the three executors and trustees originally named, being Mrs. Bradley, Mr. Gillespie and Mr. Walling, Jr., all predeceased the testator, Minnie Illman for whom provision was made in the testator's will, died July 2, 1901, Louis C. Gillespie, Jr., for whom similar provision was made, died in 1905; Mary Ann Dickinson, the testator's only sister, died September 1, 1903; Foster M. Smith, a half-brother

of the testator, died October 1, 1908; William Dickinson, being a son of Mary Ann Dickinson, and a nephew, died February 24, 1917; the widow of Anthony Comstock, who had the benefit of a trust provision under the seventh codicil, predeceased the testator; Andrew Eckel, who was also provided for in the seventh codicil, died February 25, 1924. I will say to your Honor that we tried to locate the representatives or any beneficiaries of Mr. Eckel's estate so that suit might be revived as against them, but have been unable to find any trace of them at all. The letters have been returned unclaimed. William Wells, for whom provision was also made in the seventh codicil, died April 17, 1924. I do not know whether Mr. Wells' estate is represented today or not.

Mr. Newman: I represent Mr. Wells.

The Court: Nobody representing the Eckel people?

Mr. Faulks: There is no one. Mr. Eckel has not filed an answer.

The Court: You said he was dead.

Mr. Faulks: He died February of this year. Under the seventh codicil he was to get a legacy of $500, and a decree *pro confesso* has been taken against him, and that is the situation.

The situation with regard to the personal and real estate owned by the testator at the time of his death was as follows: First as to his personal property, he had an interest in the brush manufacturing business which was conducted, I think, entirely by him—his interest was an entire one—the business, however, having been conducted under the name of Bradley & Smith, in New York City. The value of that business and

the property relating to it at the time of his death was $45,192.25. He died possessed of mortgages, notes and cash to the value of $11,060.85. There were in existence at the time of his death contracts made by him for the sale of real estate upon which there was due or to grow due $30,527. He was interested in the estate of his wife to the extent of being then entitled to receive from that estate $11,104.49. There was due him an old account for rent $50, and he had miscellaneous personalty including personal effects of $3,706.28; so that the total value of his personal property as of the date of his death was $101,640.87. The total value of his real estate as of the same time was $1,432,215.12, which was, however, subject to mortgage encumbrances aggregating $284,958.47, so that the equity in all of the realty had a value of $1,147,256.65, according to the inventories and appraisals then made.

By the third item of his will the testator disposed of real estate of an appraised value of $2,500, which was not at the time of his death, subject to any mortgage. I think as I go along, your Honor, that I had better refer to the places where these particular parts of the testator's real estate are located. It will be of aid to you and counsel when they come to read the record. The parcel just referred to, being the one described in the third item of the testator's will, is located in Asbury Park opposite the upper end of Wesley Lake. As it appears by this item of the testator's will it constituted apparently, approximately one-half of an irregularly-shaped city block. The other one-half of the same block being owned by Mrs. Bradley: By this item the testator gave this one-half of the block which he

owned to his wife, or in case of her death before him or before the execution of the conveyance to her, to her issue other than Catharine Churchill, subject to a condition there named, which can be discussed later.

By the sixth item of his will, which is one of considerable importance, the testator gave to his trustees and to the survivors and survivor and successor of them, "all my personal estate of every kind and description, and wheresoever the same may be, all the sewers and works connected therewith owned by me at Asbury Park aforesaid known as the Asbury Park Sewer Works, and hereinafter called 'Sewer Works,' and all the following described parcels of real estate." In other words by that sixth item he gave away all—gave to these trustees all of his personal property, his sewer works and certain described real estate. As already appears the total value of the personal property of which he died possessed was $101,640.87. Prior to his death the sewer works mentioned in this item of the will had been sold by the testator, together with the Asbury Park Beach Front, to the City of Asbury Park. Now, the various parcels of real estate disposed of by this item were as follows: "First parcel was the above-mentioned New York real estate, Brooklyn real estate, at an appraised value of $1,500. The second parcel was the lands lying under the waters of Deal Lake, a small piece of land apparently already dedicated by Mr. Bradley to Asbury Park as a park, and which was located on the westerly shore of Deal Lake between Main street, and Stiner Place, and also another small piece of land at the foot of Deal Lake near the Beach Front. This property was appraised at $1,500

and was not subject to any mortgage, the appraisal apparently being made on the basis that the property was already dedicated largely, if not entirely, to public use. The third parcel described in the sixth item was all of the property which the testator owned lying within the following boundaries, north by the south line of the aforesaid second parcel, being Deal Lake, east by the center line of Ocean avenue, south by the center line of Sunset avenue and west by the center line of Main street. We have here a map which I shall be glad to show any of the interested counsel indicating not only where this parcel but all the other property disposed of by the testator in his will insofar as it remained in his ownership at the time of his death, is located. The appraised value of this portion of the testator's property namely, the third parcel of the sixth item was $386,600, which was subject to mortgages of $119,500; therefore having a net appraised value of $267,100. The fourth parcel in the sixth item consisted of the lands under Sunset Lake and the lands east of Sunset Lake, shown on the various maps as Atlantic Square. This property was appraised for $1,000 and was not subject to any mortgage encumbrance. The fifth parcel described in the sixth item consisted of all of the testator's property lying within the following boundaries, namely, north by the center line of Fifth avenue, east by the center line of Ocean avenue, south by the center line of Lake avenue and west by the center line of Main street The appraised value of such of this property as the testator owned at the time of his death was $196,950. It was subject to mortgages aggregating $42,400; therefore had an appraised net value of $154,550.

Thus far the properties that I have mentioned as disposed of by the sixth item in the will were all located in Asbury Park. The sixth parcel disposed of by this same item was the Asbury Park Beach Front, together with its improvements, all of which were disposed of by the testator during his lifetime. The seventh parcel were the lands lying under the northerly or Asbury Park side of Wesley Lake, which we all know separates Asbury Park and Ocean Grove. These lands were appraised as of no value. The eighth parcel of the sixth item of the will was all the real estate—lands under water owned by the testator in the Township of Neptune in the County of Monmouth lying within certain boundaries there mentioned. These lands are all located in what is now known as Bradley Beach. They had an appraised value of $362,165.12 and were encumbered by mortgages aggregating $36,658.47, so that the value of the equity therein as appraised was $325,506.65. The ninth parcel of the sixth item was a half a block of land situated—adjoining the North Asbury Park station in Asbury Park, lying between the station and Main street, which was appraised at $8,000, and was subject to a mortgage of $2,000. The tenth parcel of the sixth item of the will was a tract of about fourteen acres owned by the testator and located in Belmar. Its appraised value was $18,000 and it was not subject to mortgage. The eleventh parcel was all the land owned by the testator at Neptune City, formerly New Branch in Neptune Township, Monmouth County, New Jersey, lying west of Deal Lake and Squan Bridge Turnpike Road. These were appraised at $26,600 and were not encumbered by any mortgage. The twelfth and last parcel described

in such sixth item consisted of all the real estate owned by the testator in what is now called West Asbury Park, the portion of Asbury Park lying westerly of the railroad. It was appraised at $249,550. It was encumbered by mortgages aggregating $36,000 and therefore had an appraised net value of $213,550. Among the other trusts contained in such sixth item of the will was one providing that the mortgages on the testator's estate should be satisfied by sales of so much of the eighth, ninth, tenth, eleventh and twelfth parcels as was necessary for that purpose. Those parcels altogether had an appraised value of $664,315.12. They were subject to mortgage encumbrances aggregating $74,658.47; therefore, had a net appraised value of $589,656.65. The total mortgages which were to be satisfied, that is, those covering any part of the testator's real estate, amounted to $291,718.99. By the sixth item of the will in which these twelve parcels of land that I have mentioned were described, the testator provided that that property should be sold and that the proceeds thereof should be distributed as follows: "One-eighth part thereof to my said brother-in-law Louis C. Gillespie, or in case of his death either before or after my death to his legal personal representative, to be by such representative distributed as a part of the estate of my said brother-in-law in the same way as if he had died possessed thereof." It already appears that Mr. Louis C. Gillespie pre-deceased the testator. He left a last will and testament which has been admitted to probate in the Surrogate's office of Morris County and under which he appointed as his legal representative executors, his sons John T. Gillespie and Samuel H. Gillespie, both of

whom qualified as executors and are parties to this suit. Another one-eighth part of the proceeds of the sale of such property the testator gave in equal shares to "the now living children of my said brother-in-law Louis C. Gillespie, or in case of the death of any of said children either before or after my death the equal share of such deceased child to his or her legal personal representative, to be by such representative distributed as a part of the estate of such deceased child in the same way as if such child had died possessed thereof." At the date of the testator's will Louis C. Gillespie mentioned in this item had children living as follows: Samuel H. Gillespie, John T. Gillespie, James P. Gillespie, Helen G. Sandford, Josephine G. Erskine; all of whom are still living; and two other children Minnie Illman, who died July 2, 1901, leaving two children her surviving, both of whom are still living, such children being Mary G. Illman and George Fletcher Illman; and the other of the children of Louis C. Gillespie mentioned in such part of the will having been a son Louis C. Gillespie, Jr., who died intestate and unmarried in March, 1905. By the sixth item of such will the testator also gave another one-eighth part of the proceeds of sales thereunder in equal shares to "The three now living daughters of my brother-in-law Charles S. Walker, or in case of the death of any of the said daughters either before or after my death her equal share to her legal personal representative, to be by said representative distributed as a part of the estate of such deceased daughter in the same way as if she had died possesesd thereof."

On June 26, 1896, being the date of the testator's will, the following children of the said

Charles S. Walker were living: Joseph Hewitt, Mary Alice Hueston, Helen M. Jackson. These three ladies are all still living and are parties to this suit. By the sixth item the testator gave another one-eighth part of such proceeds of sale to the Methodist Episcopal Church Home in the City of New York, body corporate, now located in Tenth avenue, New York City. It is complainant's information that the proper corporate name of this institution is "Methodist Episcopal Church Home of New York City for the Aged and Infirm." That is located at No. 673 Amsterdam avenue, New York City, and has been located there for upwards of thirty-five years last past, and at the time the testator's will was made what was then known as Tenth avenue north of 59th street has been changed to Amsterdam avenue. By such sixth item another one-eighth part of such proceeds was given to the Brooklyn Methodist Episcopal Church Home, body corporate, in the City of Brooklyn, State of New York. Complainant's information is that the proper corporate name of this institution is Brooklyn Methodist Episcopal Church Home for the Aged, and that it is a corporation of the State of New York, and is located at No. 920 Park Place, Brooklyn, New York. I think these various institutions, your Honor, which I am now mentioning are all answering defendants—they are all represented.

The Court: Anyone else claim except those parties you have mentioned?

Mr. Faulks: I think not. Mr. Hope can tell you.

Mr. Hope: We took the language of the codicil, which said that the legacies and bequests in the will and former codicils were made null and

void. We have not claimed in our answer, and do not know that we have a right to—I don't know what may develope in the proof—anything excepting under the two codicils, the seventh and eighth codicils, for these three institutions, the two he has named and there is one following.

Mr. Faulks: I do not understand there is any conflict or any question as to the identity, but this is a good time to bring it up if there is.

Mr. Hope: No.

Mr. Faulks: Another one-eighth part of said proceeds to the Methodist Episcopal Hospital in the aforesaid City of Brooklyn, a corporation duly incorporated by the legislature of the State of New York by an act entitled "An act to incorporate the Methodist Episcopal Hospital in the City of Brooklyn," passed May 27, 1881. The complainant is informed that the proper name of this institution is "The Methodist Episcopal Hospital in the City of Brooklyn," and that it is located at Seventh avenue and Sixth street, Brooklyn, New York. By such sixth item another one-eighth part of such proceeds was given "to the executor of my said wife Helen M. Bradley to be by such executor distributed as part of the estate of my said wife according to the direction of her will; or, if my said wife shall die intestate, to her administrator, to be by such administrator distributed as a part of the estate of my said wife in the same way as if she had died possessed thereof, excepting only that the aforesaid Catharine Churchill shall not, nor shall any of her issue, receive any part thereof as next of kin to my said wife." It already appears in the evidence that Mrs. Bradley predeceased the testator and left a will which was admitted to probate. Samuel H. Gillespie, who was a nephew

of Mrs. Bradley, was appointed as her executor and has qualified as such, and by her will Mrs. Bradley devises and bequeaths all her property, both real and personal, to her executors, in trust, to pay the income thereof to her husband James A. Bradley for life and at his death to pay over the rest, residue and remainder of her estate to her ten nieces, three grand nieces and four institutions, all of whom are named in her will, share and share alike. The remaining one-eighth part of the proceeds of the sale of the various parcels described in the sixth item of the will was given to the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, body corporate of the Township of Neptune, in the County of Monmouth and State of New Jersey.

As already appears by the contract in evidence the complainant has contracted to sell to the City of Asbury Park, subject to the approval of the Court, the second and fourth parcels of the twelve parcels described in such sixth item of the will for the sum of one dollar. The seventh parcel described in the sixth item of the will were the lands under the northerly half of Wesley Lake. The testator provided with regard thereto that if the Ocean Grove Camp Meeting Association should within a prescribed time dedicate to the use of the public as a public lake or park the lands of the association under the waters of Wesley Lake south of the center line thereof, then his executor is to similarly dedicate this seventh parcel. No such dedication has, however, been made, and the time fixed by the will therefor has expired. The will provides that in the event of that contingency the executor may within a certain time convey such

lands to Asbury Park for the sum of one dollar. Asbury Park has not thus far— (interrupted)

The Court: Ocean Grove, you mean?

Mr. Faulks: No. If Ocean Grove dedicated theirs then this should be dedicated. Ocean Grove did not dedicate. Then the executor was to sell the land under the northerly half of Wesley Lake to Asbury Park for a dollar, if it elected to buy the same at that price within a certain time. It has not so elected, but such time has not yet expired. By the sixth item the testator further provided that in case his personal property should not be sufficient to pay his just debts other than indebtedness secured by mortgage and his funeral expenses, in case the proceeds of the sale of the eighth, ninth, tenth, eleventh and twelfth parcels of real estate described therein should not be sufficient to pay and satisfy all mortgages, he ordered and directed the deficiency in either or both cases, to be made up from the proceeds of sale and conversion of any of the personal or real property bequeathed and devised in and by such time of the will. It already appears, I think, but if not the fact is, that the testator's debts and funeral expenses other than indebtedness secured by mortgage, amounted to $70,151.81. As his personal property amounted to $101,640.87 there was no such deficiency created. The mortgage indebtedness has been satisfied out of the proceeds of sale.

The Court: You say the mortgage and general indebtedness?

Mr. Faulks: No; I say the personal property was more than sufficient to take care of the funeral indebtedness and the mortgage indebted-

ness has been taken care of out of the proceeds of sale of real estate.

By the seventh item of his will—now we have left the long sixth item—the testator gave to his aforesaid trustees and to the survivors and survivor and successor of them all the real estate owned by him in the Borough of Asbury Park, now the City of Asbury Park, lying within the following boundaries, namely, north by the center of Asbury avenue, east by the center of Main street, south by the center of Summerfield avenue and west by the New York and Long Branch Railroad, to have and to hold same as trustees or trustee in trust to and for the following uses and purposes, that is to say: "to lease the same or any part thereof at the time of my death, or to any other person or persons in case said lessees shall not desire to rent the same, for any term that shall not extend beyond ten years after my death at a rental to be agreed upon with the parties, or by arbitration in case of difference, as now provided in my leases for parts of said real estate; to collect all rents and after paying all taxes and other charges against said real estate or incident to the execution of this trust to pay out of the net income thereof the sum of $1,500 annually to my sister Mary Ann Dickinson, and the residue of such net income to pay annually to my wife, Helen M. Bradley, in both cases from my death for and during the term of ten years thereafter. And in further trust after the expiration of ten years after my death to sell and convey all of said last named parcel of real estate and out of the net proceeds pay to my said sister, Mary Ann Dickinson, the sum of $25,000 and the residue of such net proceeds to

pay to my said wife, Helen M. Bradley. If my said sister shall die before the distribution of the proceeds of sale of the last named parcel of real estate, either before or after my death it is my will and I direct that all money in this item of my will directed to be paid to her, shall after her death, be paid to her legal personal representative, to be by such representative distributed as a part of the estate of my said sister and in the same way as if she had died possessed thereof. If my said wife shall die before me or before the expiration of ten years after my death, it is my will and I direct that all money in this item of my will directed to be paid to her, shall after her death be paid to her legal personal representative, to be by such representatives distributed as part of the estate of my said wife and in the same way as if she had died possessed thereof; provided, however, that in case my said wife shall die intestate the aforesaid Catharine Churchill shall not nor shall any of her issue receive any part of said money from the representative of my said wife." Your Honor, will observe that the testator there evidently had two or three different things in mind that he wanted to accomplish. The tract of land described in this seventh item laid right in the heart of Asbury Park. He evidently wanted to secure one thing, that is that any tenant that might be in possession of that property should not be disturbed for ten years, and another thing that he wanted the proceeds of the rentals received from these tenants to be used to the extent of $1,500 for the benefit of his sister Mary Ann Dickinson, and the remainder thereof for the benefit of his wife, and then when the property was sold at the expiration of the ten years

from the date of his death his sister was to have $25,000 and his wife the balance of the proceeds, and in the event of either one or the other or both of them predeceasing him, her or their legal representative or representatives was to take the proceeds of such sale. Now, the fact is that these lands insofar as they have not been sold prior to the testator's death were appraised at $47,000 as of the date of his death, and were then encumbered by mortgages aggregating $12,500. The net value thereof, as appraised, being $34,500. Only two of the three blocks included within this parcel were ever occupied by tenants and they had been sold by the testator prior to his death. None of the property was, therefore, so occupied at the time of his death and the only building thereon was an old hall which had never been leased to anyone. This was the hall that Mr. Bradley maintained at his own expense and let the public use, which from time to time was a general meeting hall, without making any charge therefor. There was located on this same property, however, the Park Hall, which Mr. Bradley used as his own office. The sister, Mary Ann Dickinson, for whom he thus attempted to make some provision in this part of his will, as already appears, predeceased him, as did also his wife. The complainant is not informed at present as to whether or not Mary Ann Dickinson left a will.

The Court: Her bequest was superseded by the seventh codicil, was it not?

Mr. Faulks: Not this gift over of the trustees.

The Court: Wasn't it superseded by the seventh codicil?

Mr. Faulks: We think that it was revoked by the seventh codicil, yes, sir, but it may be contended that it was not. In that case it will be a matter of importance to know whether she left a will and if not who her administrator is.

In the eighth item, which I will not read at length, we have very much the same situation, where, however, the testator made provision for his half-brother, Foster N. Smith of the same kind as in the seventh item he had made for his sister, Mary Ann Dickinson. I think in all other respects this item is substantially the same. That is also land located right in the heart of Asbury Park, and is described in such eighth item as follows: "North by the center of Fifth avenue, east by the center of Main street, south by the center of Asbury avenue and west by the New York and Long Branch Railroad." Contains the same provision for ten-year leases and same disposition of the proceeds except that Foster N. Smith stands in the place—(interrupted).

The Court: There are no outstanding leases?

Mr. Faulks: Yes, there were. The facts with regard to that are as follows: This portion of the testator's property insofar as owned by him at the time of his death was appraised at $50,000, and was encumbered by mortgages aggregating $15,000; net appraised value being $35,000. Most of this property had been sold by him in his lifetime, the remaining portion at the time of his death being the block between Asbury and First avenues and the northeast corner of the block between Third and Fourth avenues. The block between Asbury and First avenues was leased as an entirety and the trustee has sold this block to such tenant to a

single tenant or to his nominee with the consent of the tenant. The remaining part of the property owned by the testator at the time of his death, namely, the portion thereof between Third and Fourth avenues, consisted entirely of vacant property from which the estate has never received any income. Foster N. Smith who was provided for in part by this item by the testator's will died on October 1, 1908. I understand his son is in court. We do not know whether he left a will or not or even who his administrator is.

The Court: Is it of importance?

Mr. Faulks: Well, if it is not revoked by the seventh codicil.

The Court: Where is the son? What information has he.

A Voice: I am the grandson.

The Court: Did your grandfather leave a will?

A Voice: He did, yes, sir.

The Court: Have you a copy?

A Voice: I haven't here.

Mr. Faulks: Who did he appoint as his executor?

A Voice: My father and I, his son and grandson.

The Court: Is your father living?

A Voice: He is.

The Court: What is his name?

A Voice: Albert.

The Court: Address?

A Voice: Boonton, N. J.

The Court: And your name?

A Voice: Albert, Jr. My address is Brooklyn, N. Y., 881 New York avenue, Brooklyn, N. Y.

The Court: Are you represented by counsel?

A Voice: No, sir.

The Court: You better send a copy of your grandfather's will to Mr. Faulks. When did your grandfather die?

Mr. Smith: October—(interrupted).

The Court: Where?

Mr. Smith: Boonton, New Jersey, October 1, 1908.

Mr. Faulks: By the tenth item of the will the testator disposed of a block located in the center of Asbury Park, but that plays no part in the case because that property during his lifetime was condemned and taken for the purpose of a postoffice. By the twelfth item of his will the testator gave, bequeathed and devised unto the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, body corporate, "all my right, title and interest of, in and to all the lands at Ocean Grove in the said Township of Neptune, lying within the following boundaries, viz: (North by the center line of Wesley Lake and the south line of my riparian lands in front of Asbury Park, N. J.) east by the Atlantic Ocean, south by Main street in Ocean Grove and west by Main street of Asbury Park on the road leading from Asbury Park to Shark River Bridge; together with all my right and interest in that part of the bridges over said Wesley Lake which lie south of the center line thereof. In this part of the will he only gave the portion of the property he had in Ocean Grove lying northerly of the Main street,

but by a later provision he gave all of the property that he owned in Ocean Grove to the Ocean Grove Camp Meeting Association. By the sixteenth item of his will, which is also an important one, the testator provided as follows: "I give and devise all the rest and residue of my real estate whatever and wheresoever to my said wife, Helen M. Bradley, and my said brother-in-law, Louis C. Gillespie, as joint tenants and not as tenants in common, and to the survivor of them in fee. While I do not subject this residuary devise to any condition or trust whatever, I feel assured that the devisee will so dispose of this residuary estate as to carry out my expressed wishes in connection therewith. If my said wife and last named brother-in-law shall die before me I do in that event give and devise the real estate in this item of my will mentioned, in fee, to such persons, other than the said Catharine Churchill or any of her issue, as would by the laws of this State inherit said real estate in case my said wife had died intestate and seized thereof, and to them in the same proportions that they would so inherit." Later on there was another disposition made of this residue of the real estate, but your Honor will notice that this is the first time that the testator dealt with that. In the sixth item he gave all his personal property and certain real estate therein described. Now, by this sixteenth item he for the first time disposed specifically and by one gift, and devise of all the rest and residue of his real estate. Now, it already appears that both Mrs. Bradley and the brother-in-law, Mr. Gillespie, predeceased the testator. We have ascertained that such real estate, that is residue of his real estate not specifically described in or devised

by his will, consisted of eighteen parcels located in the various municipalities in Monmouth County already mentioned. They had a total appraised value of $80,850, were subject to mortgage encumbrances of $20,900, therefore, had a net appraised value of $59,950. I do not believe there is any necessity of giving the details of those eighteen parcels, but will be glad to do so if desired.

The testator, both in his will and one of his codicils, provided that if any person or persons sought to be benefited by his will should contest its probate or otherwise contest the will they should forfeit the provision made for them. There has been no such contest of any kind.

The first codicil, being the one dated June 7, 1901, I think is of no importance because it merely revoked the time limit which had been placed on the sale of the beach front and sewers in Asbury Park, they having all been sold by the testator to Asbury Park in the former's lifetime.

By the second codicil, dated January 12, 1906, the testator, after referring to the fact that by his will he had devised a certain portion of his estate to the children of his brother-in-law, Charles F. Walker, said as follows: "That bequest I revoke as far as the interest of Helen M. Jackson is concerned; and I hereby give to my nephew, Samuel H. Gillespie, as trustee, the portion of said bequest that would have been given to said Helen M. Jackson and to pay to her the interest thereof during her lifetime and at her decease to divide the principal between her surviving daughters Mrs. M. E. Rossiter, and Mrs. Molly Abbott, or their heirs, Mrs. Helen M. Jackson is still living and her children, both of whom are still living are Mrs. Rossiter and Mrs. Abbott just referred to.

The Court: Is that codicil still in force? Hasn't it been superseded by the seventh?

Mr. Faulks: That is one of the questions in in the case. By the second item of this same second codicil the testator said: "I also revoke that bequest in my will (above mentioned) that would apply to the late Mrs. Minnie Illman, daughter of Louis C. Gillespie, or her heirs and bequeath such portion as would have been given to them, to my nephew, Samuel H. Gillespie, for his services as trustee to or for, Mrs. H. M. Jackson." By the third item of this same codicil the testator gave to Ocean Grove all of the lands he owned located within Ocean Grove.

By the third codicil, being the one dated January 11, 1907—Mr. Egner suggests that I read, and I think it is well that I should, the third item of the second codicil that provided as follows: "I also hereby revoke the bequest made in said will of one-eighth of a certain 'portion' to be given to the Ocean Grove Camp Meeting Association, and I hereby devise and bequeath to the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, all right, title or interest I may have in lands in Ocean Grove bounded on the north by Wesley Lake, on the east by the Atlantic Ocean, on the south by Fletcher Lake, and on the west by Main street." Your Honor will remember that by the sixth item Ocean Grove had a one-eighth interest in the proceeds that he revoked.

Now, coming to the third codicil, being dated January 11, 1907, the testator thereby confirmed his will and "All my former codicils, if there be any, so far as this codicil is consistent therewith, and do hereby appoint by nephew Samuel H. Gillespie of Morristown, New Jersey, co-

executor and trustee with my wife Helen M. Bradley and my brother-in-law Louis C. Gillespie."

The fourth codicil, being the one dated January 16, 1907, is identical with the second codicil, which was January 12, 1906.

By the first paragraph of his fifth codicil, dated June 11, 1909, the testator said: "My half-brother, Foster N. Smith, and my sister, Mary Ann Dickinson, named in my said last will and testament, having departed this life, I do hereby revoke any and all provisions made in their behalf and each of them." By the first item of such fifth codicil he said "In lieu thereof, I do give and bequeath to my nephew George Dickinson, $5,000. And I do give and bequeath to Samuel Gillespie $5,000. to hold the same in trust and pay the income thereof to my nephew William Dickinson during the time of his natural life, and on his death to pay the principal and net accumulation of interest to his issue, should he leave any surviving. And in the event of said William Dickinson dying without issue then to pay said principal and any accumulation to the surviving children of said George Dckinson, in equal shares." George Dickinson is still living and resides in Newark, New Jersey. At the present time he has a wife and one child, Grace Lockwood, of Pennington, New Jersey, by a former wife, and four children by his present or second wife, their names being as follows: Walter S. R. Dickinson, George L. Dickinson, Jr., Harold Dickinson, Edna M. Wolff, all residing in Newark, New Jersey. The William Dickinson referred to in such first item of the fifth codicil died on February 24, 1917, intestate and unmarried. By the second item of such fifth codicil

the testator provided as follows: "I do give and bequeath to my nephew Albert Smith, Sr., $5,000; and to his son Albert Smith, Jr., $5,000; and to his son, Foster Smith, $5,000; and to his son Frank Smith, $5,000; and to his son James Smith, $5,000." Said Albert Smith, Sr., is living and resides at Boonton, New Jersey. The said Albert Smith, Jr., is still living, and according to our information resides at 881 New York avenue, Brooklyn, N. Y. Said Foster Smith is still living and resides at Boonton, and the same is true with regard to said Frank Smith and James Smith. By the fourth item of such fifth codicil the testator provided as follows: "All the rest, residue and remainder of my estate not devised or bequeathed by my last will and testament, or any codicil heretofore made, or this codicil, I give, devise and bequeath to my wife, Helen M. Bradley. And in the event of my said wife predeceasing me, it is my will that my residuary estate shall form and become a part of the estate of my said wife, and be divided according to the terms of her last will and testament."

The first four paragraphs of the sixth codicil, said codicil being dated January 17, 1914, are identical with the first four paragraphs of the fifth codicil. By the last item of his sixth codicil the testator provides as follows: "All the rest, residue and remainder of my estate not devised or bequeathed by my last will and testament, or any codicil heretofore made, or this codicil, I give, devise and bequeath to the Home of the Aged, No. 63 Clark avenue, Ocean Grove, New Jersey."

The seventh codicil, being dated May 3, 1916, I have already referred to. By the first para-

graph thereof the testator provides first, "I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate." The second item is as follows: That is, the first paragraph of the second item is as follows: "I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of $5,000; Albert Smith, Sr., Albert Smith, Jr., James Smith, Frank Smith and Foster Smith, being children or grand-children of my deceased half-brother Foster Smith; my nephews and nieces Samuel Gillespie, John Gillespie, James Gillespie, Helen Sandford, Josephine Erskine, Josephine Hewitt, Helen Jackson, Minnie Huestton and George Dickinson; my employees Gustave Meyers and William Wells; Churches at Asbury Park, N. J., as follows; First Methodist, Episcopalian, Reformed Dutch, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist (Colored), Mt. Pisgah Baptist (Colored), and Episcopalian (Colored); Churches at Bradley Beach, N. J., as follows: Methodist St. James Episcopal and Catholic; Churches at Avon, N. J., as follows: Methodist and Baptist; Methodist Church at West Grove, N. J.; Methodist Home for the Aged, Ocean Grove, N. J.; Sales Non-Sectarian Home for the Aged, Asbury Park, N. J.; Young Mens Christian Association, Asbury Park, N. J.; Womens Christian Temperance Union, Asbury Park, N. J.; Asbury Park Library, Asbury Park, N. J.; Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated;

Ann May Hospital, Spring Lake, N. J.; Long Branch Hospital, Long Branch, N. J.; Seney Hospital, Borough of Brooklyn, N. Y.; Old People's Home (Methodist), Borough of Manhattan, N. Y.; Old People's Home (Methodist), Borough of Brooklyn, N. Y.; and Fund for Superannuated Preachers, New Jersey Conference, (Methodist)." We need not give the addresses of those beneficiaries.

The Court: No.

Mr. Faulks: For your Honor's information let me state that by the eighth codicil the legacies— (interrupted)

The Court: Are any of the legatees named in this codicil uncertain?

Mr. Faulks: Yes.

The Court: You may point those out.

Mr. Faulks: Before doing that I will just call your attention to the fact that by the eighth codicil the legacies of $5,000 were—

The Court: By the third paragraph of the eighth codicil.

Mr. Faulks: The legacies given to Josephine Hewitt, Helen Jackson and Minnie Heuston were increased to $15,000 each by the first paragraph of the eighth codicil. I did not mean to state that there was any question as to the identity of these individual legatees whose names I have just read, but possible question as to identity and possible controversy from now on. In the seventh codicil, the second paragraph of the second item of such codicil— (interrupted)

The Court: We have that.

Mr. Faulks: I think there is some question as to some. If you will just pardon me a moment. As far as this paragraph is concerned, there

may be a question of the identity, or controversy by reason of the following facts. There are and were at the time of the testator's death two Catholic churches in Asbury Park, and possibly two Christian Scientist churches there.

The Court: How many Episcopalians and how many Methodists?

Mr. Faulks: There was one Methodist, First Methodist; there was one Episcopalian; there was one Reformed Dutch, one white Baptist, one Lutheran, one Presbyterian and the Ballard Memorial Church.

The Court: They are all well identified.

Mr. Faulks: Those are identified. One Jewish Synagogue, one Methodist Colored, one Baptist Colored and one Episcopalian Colored.

The Court: The two Christian Scientists each to get?

Mr. Faulks: I do not think your Honor can say until you hear more with regard to the facts.

The Court: What do you allege in your bill?

Mr. Faulks: We just say— (interrupted)

The Court: There it is, eh?

Mr. Faulks: That they may both get. That is what we want to know.

The Court: All right.

Mr. Egner: May we stipulate that the Ballard Memorial Church is a Methodist church?

The Court: I would say so without further proof.

Mr. Egner: We would like to have that in.

Mr. Faulks: Now, the two Catholic churches, if your Honor please, that were located in Asbury Park at the time of Mr. Bradley's death

were as follows: The Church of the Holy Spirit, of which the Reverend A. Roach is the rector, and the other one was "Our Lady of Mount Carmel," of which the Reverend Anthony Giovarini was rector.

The Court: Now, the Christian Scientists.

Mr. Faulks: One was the "First Church of Christ Scientist," of Asbury Park, N. J., of which the president is A. Bailey Hutton; the other one is known as the "Trustee Second Church of Christ Scientist of Asbury Park, N, J.," of which the trustee and head officer is Mrs. Elizabeth Hooper. Here are the facts with regard to these Catholic and Scientist churches insofar as they are known to the complainant. Mr. Bradley gave the Church of the Holy Spirit a lot on the northwest corner of Second avenue and Bond street, in Asbury Park on which this church was erected and is still maintained. In addition he sold to it some lots in the year 1909 in order to enable it to move a double house which it owned on Second avenue east of the railroad to Third avenue west of the railroad. He never made any regular contributions to this church, but his records show that in 1911 he gave it a number of wood-bottom chairs for use in the auditorium. There are no records in the testator's books to indicate that the testator ever made this church any other gift of any kind or character. He had been in the habit of making annual contributions to Our Lady of Mount Carmel Church for a number of years prior to his death. These contributions were extended from 1907 to 1919 and varied in amount from $25 to $100 per annum. As to the Christian Scientist Church, the First Church of Christ Scientist of Asbury Park, N.

J., was incorporated several years before the seventh codicil was made. It had then erected its church building at the northwest corner of Third avenue and Emory street, Asbury Park, and had regularly conducted services therein for a number of years prior to the date of such codicil and has continued to do so up to the present time. The second of such churches, named The Trustees of the Second Church of Christ Scientist, Asbury Park, N. J., was originally organized as a separate church society during the month of April, 1916, by certain members of the First Church of Christ Scientist, who withdrew from that church and organized a separate society of their own. From the date of its organization until June 29, 1920, it was an unincorporated association. At first it conducted its services in the Metropolitan Hotel on Asbury avenue, Asbury Park, later in the State Armory on Lake avenue and thereafter in the Public Library at the corner of First avenue and Grand avenue, where it remained until it became incorporated. It was incorporated as a church on June 29, 1920, at which time it bought a house and lot on the southeast corner of Asbury avenue and Grand avenue, which it remodeled and has since then used as its place of worship.

The Court: If he gave to these churches as a class, of what period? His death or the making of the will must be the time.

Mr. Faulks: I suppose he speaks of the time of his death.

The Court: You say this last one was incorporated in 1920?

Mr. Faulks: And he died some time in 1921.

Mr. Backes: As to the two Catholic churches, the Holy Spirit of Asbury Park was incorporated February 23, 1880, and Our Lady of Mount Carmel was incorporated on the 25th of October, 1904. They are the two corporations spoken of as the Catholic Church.

The Court: Been operating ever since?

Mr. Backes: Yes, sir, conducting church services—well, there is a regular organized church congregation.

The Court: Only one Methodist; who represents that?

Mr. Carton: The Ballard is a Methodist church, but spoken of separately; the other is the First Methodist.

The Court: Episcopalian but one?

Mr. Faulks: One white Episcopalian church.

The Court: Colored, then?

Mr. Carton: Yes, colored, mentioned in the will; that same paragraph.

The Court: One Reformed?

Mr. Carton: One.

The Court: One Baptist?

Mr. Carton: One white.

The Court: Lutheran?

Mr. Carton: One.

The Court: Presbyterian?

Mr. Carton: One.

Mr. Faulks: By the third paragraph of the second item of the said codicil testator gave legacies of $1,000.

The Court: You better go back. There are churches at Avon and others. Are they all well identified?

Mr. Faulks: Yes, I am now coming to Bradley Beach. They follow Asbury Park.

The Court: You were going over to the next item.

Mr. Faulks: The second were churches in Asbury Park, and I had finished, except I omitted to state that by the seventh codicil the amount given each of said Asbury Park churches specifically was $5,000. Now, we come to— (interrupted)

The Court: Let me ask. Bradley Beach more than one Methodist?

Mr. Faulks: No, sir. There is no confusion or controversy as to the identity of the Bradley Beach churches.

The Court: Avon none?

Mr. Faulks: The same is true with regard to the churches at Avon.

The Court: Now, run down to your first controversy in the next paragraph.

Mr. Faulks: In the fifth paragraph of the second item of the seventh codicil there are a number of— (interrupted)

The Court: Start your first one where there is any criticism.

Mr. Faulks: I have to explain it in this way, which I will be very brief in. There is provision made for one Methodist church and for a number of institutions. One of such institutions is named in the will as Sales Non-Sectarian Home for the Aged, Asbury Park, New Jersey. Our information is that the correct name of the intended institution is Searles, etc.

The Court: Other than that it is recognized?

Mr. Faulks: Yes; one of the institutions that are named is Methodist Home for the Aged, Ocean Grove, N. J. Our information is that the correct corporate name of this institution is the Methodist Episcopal Home for Aged of New Jersey. I am only giving you those as regards to which there may be any question of mis-description. Another is the Society for the Prevention of Cruelty to Animals of Asbury Park, N. J. The correct name of that is the Asbury Park Society for the Prevention of Cruelty to Animals, it being an unincorporated association.

Mr. Carton: It is incorporated. The institution described here as Ann May Hospital, Spring Lake, New Jersey, is—its proper name is Ann May Memorial Homeopathic Hospital, Spring Lake, N. J. The institution named as Long Branch Hospital, Long Branch, N. J., the proper name is Monmouth Memorial Hospital Association, Long Branch, N. J.

The Court: There is only one that answers that description?

Mr. Faulks: There is only one. Can't be any question.

The Court: The one opposite the station?

Mr. Faulks: Yes. The object in pointing this out is that sometimes they have been referred to in the will by another name. Provision is also made in this paragraph for the Seney Hospital, in the Borough of Brooklyn, N. Y. Complainant's information is that there is no Brooklyn hospital of that name, but that there was at the time this codicil was made and at the time of the testator's death a hospital located there by the name of the Methodist Episcopal Hospital in the City of Brooklyn; moreover, that one John

I. Seney was active in founding such hospital some years prior to the death of the testator.

The Court: Any question as to the identity?

Mr. Faulks: We think that this Methodist Episcopal Hospital of the City of Brooklyn is the one that the testator meant when he spoke of the Seney Hospital in the Borough of Brooklyn.

The Court: Who represents the hospital?

Mr. Hope: I do, your Honor.

The Court: Has anybody questioned the identity?

Mr. Hope: The only hospital of that nature there, and it is known as the Seney Hospital pretty largely, such as we speak of the Long Branch Hospital and Spring Lake Hospital. Mr. Ingraham, member of the Bar, is interested in the hospital and is a nephew of this Seney, who is one of the founders and namesake of his. He can tell us that when it comes time.

The Court: You will have to furnish some evidence.

Mr. Hope: Yes; in its turn.

Mr. Faulks: This paragraph further makes a gift to the Old People's Home (Methodist), Borough of Manhattan, N. Y. We understand the proper corporate name of this institution to be Methodist Episcopal Church Home of New York City for the Aged and Infirm. That it is a body corporate of the State of New York and is located at 673 Amsterdam avenue, New York City, N. Y.

The Court: Who represents that?

Mr. Hope: I do.

Mr. Faulks: Provision is here also made for the Old People's Home (Methodist), Borough of

Brooklyn, N. Y. We understand that the correct corporate name of this institution is the Brooklyn Methodist Episcopal Church Home for the Aged, and it is located at 920 Park Place, Brooklyn, N. Y.

Mr. Hope: We represent that. Mr. Ingraham can tell us about that if further information is needed.

The Court: You will have to identify them. Apparently no contest, but you will have to identify them. The fund for Superannuated Preachers, that is identified?

Mr. Faulks: Yes.

Mr. Avis: I represent that fund, the New Jersey Annual Conference of the Methodist Episcopal Church. It is a fund under the control of the New Jersey Annual Conference, Inc.

The Court: Say that again, senator.

Mr. Avis: The fund for Superannuated Ministers is a fund under the control of the New Jersey Annual Conference of the Methodist Episcopal Church, which is an incorporated organization.

Mr. Faulks: By the third item of the seventh codicil the testator provides as follows: "I give and bequeath to my executor the sum of $5,000 to be held in trust, and direct him to pay the income therefrom to my nephew William Dickinson during the term of the life of said William Dickinson, and on his death to pay the principal to the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated."

The Court: That is another of Mr. Carton's clients.

Mr. Carton: Yes. We will make proof.

Mr. Faulks: William Dickinson here named died February 24, 1917, intestate and unmarried. By the fourth item of such seventh codicil the testator provides as follows: "I give and bequeath to my executor the sum of $5,000 to be held in trust, and to pay the income therefrom to the widow of Anthony Comstock of the City of New York, during the term of her natural life, and on her death to pay the principal to the Society for the Prevention of Crime in the City of New York." Here we understand there is a controversy. The widow of Anthony Comstock predeceased the testator. We understand that two societies which claim the benefit of the residuary interest under this clause of the seventh codicil, one of them being the Society for the Prevention of Crime in the City of New York, being a New York corporation located at 50 Union Square, New York City. The codicil itself uses the words Society for the Prevention of Crime in the City of New York. The other is The New York Society for the Suppression of Vice.

The Court: Is that Comstock's the last one?

Mr. Faulks: Yes, which is also a corporation of the State of New York and is located at 215 W. 22nd street, New York City. So far as the facts and circumstances bearing on this controversy are known to the complainant they are as follows: Anthony Comstock was a vice crusader. During his life he featured innumerable vice raids in New York City and caused immoral and indecent literature to be suppressed. In connection with his work he established and maintained in the City of New York a corporation known as "New York Society for the Sup-

pression of Vice," which is one of the claimants of the above legacy. Mr. Bradley was a friend—personal friend of Anthony Comstock, and for many years prior to the latter's death, had been in the habit of making money contributions to the last named corporation, being the one which Mr. Comstock had organized and maintained. As a token of his warm friendship for Mr. Comstock, Mr. Bradley dedicated one of the streets in Asbury Park in his name. The complainant does not know whether the testator had any acquaintance with Mr. Comstock's widow or not, but believes the bequest to the widow was made solely by reason of testator's warm personal friendship for her deceased husband, and as evidence of his esteem for the character of the work in which the latter was engaged during the greater part of his life. The Society for the Prevention of Crime in the City of New York, the other claimant of the legacy, was organized many years prior to the death of the testator, and although engaged in the same or similar work as was that of the Society for the Suppression of Vice which Mr. Comstock formed and helped to maintain, it was an independent corporation and there is no evidence that either Mr. Comstock or the testator was ever in anywise associated with it, nor is there any evidence that such corporation ever enjoyed the confidence and the pecuniary support of the testator.

The Court: That one meets the description?

Mr. Faulks: That one meets the description.

Mr. Koestler: I represent in connection with Mr. Marcus, counselor of the New York Bar, the Society for the Prevention of Crime, who filed an answer.

The Court: Who represents the Comstocks?

Mr. Voorhees: I represent the New York Society for the Suppression of Vice.

Mr. Koestler: The only objection I have to the statement that Mr. Faulks made is with reference to the contributions. I understand they were partially by check. If they were by check we ought to see the checks to get an idea of the manner in which they were written.

The Court: Here is a legatee which answers the exact description. Can I take evidence?

Mr. Koestler: I do not think so. I just made the remark so that I would not stand mute and have this admitted as evidence in the case.

Mr. Faulks: By the fifth item of such seventh codicil the testator gave and bequeathed to the persons within named sums of $500 each. We have for consideration under this item the following facts: Sylvester Smith, one of the legatees there named, died in the testator's lifetime and this provision here made for his benefit is expressly revoked by the sixth item of the eighth codicil.

The Court: Was he related?

Mr. Faulks: Judge Mills tells me he was not related. I also call attention to the fact that Andrew Eckel died May 25, 1924, and we have no information with regard to him.

The Court: Are either of the Eckel legacies attacked?

Mr. Faulks: No, sir. Simply the fact that the suit ought to be revived.

The Court: You can apply to the Prerogative Court for administrator.

Mr. Faulks: One of the beneficiaries here named is John Smith.

The Court: They will stand, will they, the Eckel legacies stand?

Mr. Faulks: Yes, sir.

The Court: Or are they contested?

Mr. Faulks: No; no contest.

The Court: What was the previous Eckel legacy?

Mr. Faulks: This is the first time he is mentioned. It is the first time he is mentioned in the testator's codicil. I referred to him earlier in reference to the same situation.

The Court: This is the only legacy?

Mr. Faulks: This is the only legacy.

The Court: You need not take any action as to him unless they come in because that money may be paid into our court.

Mr. Faulks: There is a beneficiary here by the name of John Smith. The complainant is informed that Mr. Bradley had for many years in his empoy a man by the name of John Schmidtt. He is still living and resides at Creedmoor, Long Island, New York. The complainant believes that was this individual that Mr. Bradley here sought to benefit.

The Court: Is John Schmidtt made a party?

Mr. Faulks: He is a party defendant but has not answered.

The Court: John Schmidtt?

Mr. Faulks: He was made a party as John Schmidtt. John Raymond herein named died subsequent to the death of the testator and Edward Raymond of No. 30 Franklin street, Newark, N. J., is the executor of his will.

The Court: The money bequest to eight under the fifth paragraph, are they all employees?

You say Schmidtt was. You have identified Schmidtt as a former employee, were they all employees?

Mr. Faulks: Mr. Barker and Judge Mills both tell me that all or practically all of them were in Mr. Bradley's employ either at Asbury Park or in connection with his brush business in New York. Homer Clayton is named here as beneficiary. Mr. Bradley for a long period of time had in his employ a man by the name of Holmes C. Clayton, who we believe was the intended beneficiary. He died subsequent to the testator, and Ira C. Clayton of 610 Sewall avenue, Asbury Park, N. J., is the executor of his will.

The Court: Has he answered?

Mr. Faulks: No answer.

Mr. Carton: I would like to be permitted to say on behalf of Mr. Holmes C. Clayton that his father was known as Homer Clayton.

Mr. Faulks: Edward Howland is also here named as a beneficiary.

Mr. Newman: If your Honor please, in reference to Howland, that is afterwards revoked in the seventh item of the eighth, saying Mr. Howland is now dead. As a matter of fact Mr. Howland is now alive.

Mr. Faulks: The fact is as counsel has just stated.

The Court: Can I revive because he is alive?

Mr. Faulks: You do not have to revive. Revoked under misapprehension.

The Court: Revocation under mistake, can I revive?

Mr. Mills: It was not a revocation.

Mr. Faulks: By the sixth item of the seventh codicil the testator provided, "Sixth: I give and

bequeath to the widow of George Truax, who formerly resided at Asbury Park, N. J., and now lives several miles west of Asbury Park, the sum of $500." By the seventh item of the eighth codicil the testaor says, "Seventh: The widow of George Truax, named in the sixth clause of the aforesaid codicil, is now the superintendent of the poor farm near Asbury Park, N. J." We are informed, your Honor, that the benefit of this legacy is claimed by the widow of one George Truax and also by the widow of one Charles Truax, and that the facts bearing on the question of the person who is entitled to this legacy are as follows: For many years prior to the death of the testaor said widow of Charles Truax was superintendent of a poor farm located at Green Grove, N. J., which is about three and a half miles west of Asbury Park, on a road leading from Asbury Park to Wayside in Ocean Township; the testator was in the habit of occasionally stopping to visit Mrs. Charles Truax when he was in the vicinity of this poor farm. As far as known however, he never made her any money contributions or gave her presents of any other kind in his lifetime, or made any such contributions or gifts to the poor house farm.

Mr. Newman: I represent Mrs. Susan A. Truax of the poor farm.

The Court: Widow of whom?

Mr. Newman: Widow of Charles. We wish to take exception to the statement that no presents have been made.

The Court: Is George's widow represented?

Mr. Newman: I do not know.

Mr. Faulks: No answer was filed. Counsel is correct. I find I was incorrect to this ex-

tent. The complainant is informed that three or four years before— (interrupted)

The Court: Counsel may produce his testimony.

Mr. Faulks: Shall I say nothing further with regard to it?

The Court: By way of correction?

Mr. Faulks: Yes; by way of correction, I should say this, that we are informed that three or four years before the testator's death he bought a horse-drawn stage at public auction and gave it to Mrs. Charles Truax for use on her poor farm. There is testimony with regard to Mr. Bradley's visits to the poor farm, but I do not think I need bring that out.

The Court: No more corrections?

Mr. Faulks: No.

RECESS.

Mr. Gildea: I move for leave to file an answer on behalf of Josephine Hewitt, Helen Jackson and Minnie Hueston.

The Court: A number of defendants against whom decrees have been taken have applied for leave to put in formal answers. I wish you would draw one comprehensive order, vacating against them.

Mr. Faulks: I suppose we ought to be given copies of those answers so that we will know who they are.

The Court: Yes.

Mr. Faulks: The other claimant to the benefit of the legacy of $500 left to the widow of George Truax is a woman who in 1870 married a Mr. George Truax and thereafter lived with

him in and near Asbury Park, from 1874 to 1891, when he, George Truax died, on July 12, 1891; thereafter and on or about May 30, 1895, she remarried a man by the name of Coward, living at Long Branch, since which time she has been known as Mrs. Coward. Her second husband, Mr. Coward, a number of years ago died and after his death his widow became, and ever since then has been, an inmate of the Searles Memorial Non-Sectarian Seashore Home for the Aged. She was never the superintendent of any poor farm or had any connection with any poor farm near Asbury Park so far as the complainant has been able to ascertain. The testator may, however, have known her slightly because her husband—her first husband, George Truax, was employed by him as a laborer, some forty years ago, but such acquaintance, if any, was a slight one.

By the seventh item of the seventh codicil the testator gave and bequeathed to George Morrow, colored, former employee, the sum of $300. George Morrow predeceased the testator, so that the legacy bequeathed to him by this item lapsed.

(Further remarks by Mr. Faulks.)

Mr. Morgan: I think it is wholly a matter of formal proof.

The Court: Who do you represent?

Mr. Morgan: Ann May Hospital at Spring Lake, Searles Memorial Home, Presbyterian Church and Scientist Church—Second Scientist Church, I have witnesses here to prove the existence of those corporations.

Mr. Faulks: I think there is no question raised, except possibly with reference—

The Court: There is no question raised as to your statement—as to the statement made by you of the associated circumstances. That being so why need there be any proof?

Mr. Faulks: I don't know except Mr. Morgan, as representing the Second Scientist Church of Asbury Park may possibly raise some question with regard to my statements or may want to amplify them. There would not seem to be necessity for doing anything with regard to the other clients that he represents—possibly to show that the Searles Memorial Home is the one that the testator referred to as Sales.

Mr. Morgan: I offer a certified copy of the original certificate of incorporation of the Sea Shore Non-Sectarian Home and a certified copy of the certificate showing the name to be Searles Non-Sectarian Home of Asbury Park, N. J.

Papers marked Exhibit D. 1 and D. 2.

BERTHA S. CONOVER, sworn for defendant.

Direct examination by Mr. Morgan.

Q Mrs. Conover, are you a member of the Board of Trustees of the Searles Non-Sectarian Home of Asbury Park, N. J.? A I am.

Q And has that corporation been in existence since the time of its incorporation? A Since 1907.

Q And is the corporation still in existence? A Yes, sir.

Q Where is the principal place of business of the corporation? A At 604 Seventh avenue, Asbury Park, N. J.

The Court: What is it?

The Witness: It is a home for aged women.

Mr. Morgan: I understand that Court does not care to have any testimony concerning the Presbyterian Church.

Mr. Faulks: I do not know of the need of any.

Mr. Morgan: I have a witness here for that purpose if the Court would like to hear it, as to the existence of the corporation.

HARRY W. SMOCK, sworn for defendant.

Direct examination by Mr. Morgan.

Mr. Morgan: I offer certified copy of the certificate of incorporation of the trustees of the First Presbyterian Church of Asbury Park, N. J., and ask that it be marked.

Paper marked Exhibit D. 3.

Q Mr. Smock, are you a member of the Board of Trustees of the Presbyterian Church of Asbury Park? A I am.

Q Has that church been in existence since its incorporation? A It has.

Q Is it still in existence? A It is.

Q Is it the only Presbyterian Church in Asbury Park? A The only one.

Q What do you call it? A First Presbyterian.

Q Where is the principal place of business or church? A Second avenue and Grand, Asbury Park.

Elizabeth Hooper, direct.

Q And it has been in existence as a church how long—how long have they conducted a church in Asbury Park? A I could not tell the number of years. I have been connected with it over thirty years.

ELIZABETH HOOPER, sworn for defendant.

Direct examination by Mr. Morgan.

Mr. Morgan: I offer certified copy of the certificate of incorporation of the trustees of the Second Church of Christ Scientist of Asbury Park, N. J., dated June 9, 1920.

Paper marked Exhibit D. 4.

Q Mrs. Hooper, are you a member of the Board of Trustees of the Second Church of Christ Scientist of Asbury Park, N. J.? A I am.

Q And when was the Second Church of Christ Scientist formed? A 1916.

Q It was not an incorporated society at that time? A No; we were incorporated later.

Q You were incorporated on June 9, 1920? A Yes, sir.

Q Has the Second Church of Christ Scientist been in existence since 1916 continuously? A Continuously, two services on Sunday and one on Wednesday. Never omitted one service.

Q And it is still in existence? A In existence; yes, sir.

Q Where is the principal place of business or place of worship? A 710 Grand avenue, cor-

ner of Asbury and Grand avenues, Asbury Park, N. J.

Q It is the only Second Scientist Church in Asbury Park? A Yes, sir; the only one.

By the Court.

Q When did it come into existence as an organization? A 1916.

Q When in 1916? A I do not just remember. I haven't got the date with me. Let me see; perhaps I have. May I look? No, I did not put the date down.

Q However, it was in 1916? A In 1916; yes, sir.

Mr. Morgan: I expected Dr. Morgan here of the Ann May Hospital, but there is no question I can offer a certified copy of the certificate. I think the Court will take judicial notice of it.

I offer a certified copy of the incorporation of the Asbury Park Hospital.

The Court: What is the title of the corporation?

Mr. Morgan: The name has been changed. The certificate of incorporation is Free Dispensary for medical and surgical relief of the deserving poor, and the certificate showing that name has been changed to the "Asbury Park Hospital."

The Court: When was that change made?

Mr. Morgan: March 7, 1913.

The Court: Where is the hospital located?

Mr. Morgan: Comstock and Asbury avenues.

The Court: On Asbury avenue?

Mr. Morgan: Yes, the only one.

Papers marked Exhibits D. 5 and D. 6.

Mr. Hope: Mr. Ingraham is here, of the New York Bar, and can prove the organization of the Methodist Episcopal Hospital of the City of Brooklyn, which has been named in some portions of the will as the Seney Hospital, and he can explain about that. He is the namesake of the founder and familiar with the enterprise from its inception.

GEORGE INGRAM, sworn for defendant.

Direct examination by Mr. Hope.

Q You are a member of the Bar of the State of New York? A I am.

Q Practicing many years? A Yes, sir.

Q Will you please state to the Court the facts in relation to this hospital which you represent in New York City in Brooklyn? A The hospital was organized by Chapter 404 of the Laws of 1881 of the State of New York. The title given to it in the charter, or in the special act is the Methodist Episcopal Hospital in the City of Brooklyn. The first incorporator was George I. Seney, who was also the first manager, both the incorporators and managers being named in the original act. My father, William M. Ingram was also one of the incorporators. He and I have been the attorneys for the hospital, one or the other of us, from its start. I went to my fathers' office about 1883 and stayed there until he died, that was in 1908, but from the time I went to the office I have done most all the work

—legal work—of the hospital. We are referred to in Brooklyn, have been, as the Seney Hospital.

Q Commonly known by that name? A Yes, sir.

Q What is the title now? A It is still the Methodist Episcopal Hospital in the City of Brooklyn.

Q Is there any Seney Hospital in Brooklyn? A No, sir; nowhere else, either.

Q Anyone that is referred to or ever been referred to, to your knowledge, as the Seney Hospital? A No, sir.

Q Have there been legacies or gifts made to this hospital by the name of the Seney Hospital? A Yes, sir.

Mr. Hope: I offer the laws in regard to it.

EDWARD A. INGRAM, sworn for defendant.

Direct examination by Mr. Hope.

Q You are a member of the Bar of New York State? A I am.

Q And have you charge of the affairs of what is known as the Brooklyn Methodist Episcopal Church Home or not—what is your relation to it? A Strictly, no, but I am a brother of the counsel and son of the previous counsel of the Home. My father, Henry C. Ingram, was the attorney who drew up the papers of incorporation, and my mother from the very beginning and at present, has been and is the recording secretary of the home. I have from my earliest

recollection been frequent visitor on all sorts of occasions. I know there is no Home in the Borough of Brooklyn or old City of Brooklyn, Methodist Home for the Aged, other than this one.

Q In the will the Old People's Home (Methodist) in the Borough of Brooklyn, is that the one you identify as your institution? A I do. I thought that was in the codicil. The will mentions, gives its corporate name as we have it except, I think, the word "aged" is left off. I wish to identify the institution mentioned in the codicil as the same one mentioned in the will.

Q Is it or not a legal corporation and legally organized and operating accordingly as a hospital? A It is.

Q In the City of Brooklyn? A In the Borough of Brooklyn, City of New York, and it has frequently received legacies under language of the same nature, not giving its corporate name but calling it the Methodist Home for the Aged in the City of Brooklyn.

Mr. Faulks: How long has it been in operation?

The Witness: Since before 1890. It think it was incorporated in 1887.

Mr. Hope: Mr. Kelly, who is the New York counsel, will make proof with reference to the home in New York and will be here later.

The Court: Which home?

Mr. Hope: The Methodist Episcopal Home in the City of New York, Borough of Manhattan. As to the location of that hospital— (interrupted)

The Witness: The wills do not attempt to locate it anywhere.

Mr. Faulks: Old People's Home, Methodist, Borough of Manhattan, New York. Now, then,following that is the Old People's Home, Borough of Brooklyn. That has been testified to. The Manhattan one has not.

Mr. Hope: Can we locate that Home in Brooklyn?

The Witness: It is located on the corner of Prospect Place and New York avenue.

The Court: You have no proof as to the one in the Borough of Manhattan?

Mr. Hope: We expect Mr. Kelly here probably between three and three-thirty. He telephoned and said he would be here.

Mr. Koestler: I desire to offer exemplified copy of the certificate of incorporation of the Society for the Prevention of Crime of New York and I would like to call Mr. Marcus to show its location and that it is actually functioning.

SAMUEL MARCUS, sworn for defendant.

Direct examination by Mr. Koestler.

Copy of certificate of incorporation marked Exhibit D. 8.

Q You are a member of the New York Bar? A Yes, sir.

Q Member of what firm? A Morse, Marcus and Wells.

Q The Society for the Prevention of Crime was incorporated in 1878? A It was.

Q And was Mr. Frank Morse connected with the Society from the inception? A He was.

Q Where is the office of the Society for the Prevention of Crime? A 50 Union Square, Borough of Manhattan, New York City.

Q And has it been operated in New York City from the time of its incorporation to the present time? A It has.

Q Still actually functioning? A It is.

Q What is the nature of its work? A Its principal work is an attempt to secure the enforcement of all laws, particularly those relating to gambling, prostitution and indecent literature; to aid those who cannot procure the enforcement of law so far as it affects them individually to obtain such relief. That covers it.

Q Do you know whether Mr. Bradley knew of your institution? Do you know whether he did? A He had no connection with our institution, but was very well acquainted—intimately so—with Reverend S. Edward Young, who was president—is now the president—was the honorary vice-president and director.

Q How long has he held those offices? A Dr. Young became a member of the society about 1909. He was honorary vice-president from 1912 to 1920; became president on November 9, 1920.

Q Has he always been actively interested—actively engaged in prosecuting the purposes of the association? A Yes, sir. Dr. Young was here this morning. He left about eleven o'clock. He had to officiate at a funeral. We did want to bring out from him his acquaintance with Mr. Bradley.

John Sumner, direct.

Cross examination by Mr. Voorhees.

Q Mr. Marcus, have you brought with you the records of membership of your society? A I have with me the minutes of the society for the last twenty years. They probably contain the records.

Q Have you a record of members of the society with you? A I think I have.

Q Will you produce it? A I think I can name them a good deal quicker than finding the record.

Q State whether or not Mr. Bradley was a contributing or other member of your society? A He was not.

Q State whether or not he made any contributions of any kind or character of any kind.

The Court: He said he did not.

Q State whether or not Mr. Bradley during his lifetime at any time made any kind or character of a contribution to your society? A He did not.

JOHN SUMNER, sworn for defendant.

Direct examination by Mr. Voorhees.

Q State your full name, age and occupation. A John S. Sumner, secretary of the New York Society for the Suppression of Vice, offices 215 W. 22nd street, New York City, Manhattan Borough.

Q How long have you been secretary of the New York Society for the Suppression of Vice? A Eight years.

Q By whom was that society organized, if you know? A It was organized through the efforts of Anthony Comstock by about fifteen business men of New York City in 1873.

Q Anthony Comstock is dead? A He is.

Q When did he die? A 1915.

Q You knew him in his lifetime? A I did.

Q Were you actively associated with him in the prosecution of that organization? A For two years.

Q Did you know Mr. James A. Bradley in his lifetime? A I did not know him personally.

Q Have you a record of the contributing and other members of your society? A Yes, sir; I have the record here.

Q Going back to what time, Mr. Sumner? A Well, going back to 1881.

Q Are you able to state from the record whether or not Mr. James A. Bradley was a contributor to your organization at any time from the year 1873 down to the date of Mr. Bradley's death in 1921?

Mr. Koestler: I object on the ground that it is irrelevant, immaterial and incompetent.

The Court: Objection overruled.

Q Yes or no? A He was.

Q Turn to your earliest record of any contribution made by Mr. Bradley to your organization. A Well, the earliest contribution I find was in 1881.

Q And for what amount? A James A. Bradley, ten dollars; Mrs. James A. Bradley, ten dollars.

John Sumner, direct.

Q What next, if any? A 1882. James A. Bradley, ten dollars; Mrs. James A. Bradley, ten dollars.

Q Proceed ? A 1883 the same, 1884 the same, 1885, James A. Bradley, fifty dollars; 1887, James A. Bradley, one hundred dollars; 1888, one hundred dollars; 1889, one hundred dollars; 1890 one hundred dollars; 1891, one hundred dollars; 1892, one hundred dollars; 1893, one hundred dollars; 1894, one hundred dollars; 1897, one hundred dollars; 1900, one hundred dollars; 1902, twenty-five dollars; 1904, one hundred dollars; 1906, Mrs. Helen M. Bradley, one hundred dollars; 1907, James A. Bradley and Helen M. Bradley, one hundred dollars; 1909, James A. Bradley, one hundred dollars; 1910, James A. Bradley, one hundred dollars; 1911, James A. Bradley, one hundred dollars; 1912, one hundred dollars; 1912, Bradley & Smith, one hundred dollars; 1912, Mrs. Helen M. Bradley, fifty dollars; 1913, Mrs. Helen M. Bradley, one hundred dollars; James Bradley, one hundred and twenty-five dollars; 1914, Mrs. Helen M. Bradley, fifty dollars; James A. Bradley, one hundred dollars; 1915, James A. Bradley, one hundred dollars; Mrs. Helen M. Bradley, fifty dollars; Bradley & Smith, twenty dollars; 1916, James A. Bradley, one hundred dollars; Bradley & Smith, twenty dollars in memory of Helen M. Bradley, fifty dollars. That is the latest.

Q Who were Bradley & Smith?

The Court: We have that.

Q Mr. Sumner, state how these contributions were made; that is to say, were they made as voluntary contributions by Mr. Bradley or other-

wise? A Why, they were voluntary contributions. Of course, they were solicited by Mr. Comstock at times and by people employed by the society for that purpose in later years, from 1913 to 1916.

Q I beg pardon? A From 1913 to 1916 there was a special man employed for that purpose, securing the contributions.

Q What is the name of your society? A The New York Society for the Suppression of Vice.

Q State whether or not Mr. Bradley at any time became a member of your society? A Mr. Bradley was elected a life member of the society in 1915.

Q And did he continue to be a life member in good standing up to the time of his death? A Yes, sir.

Q Did he know of it? A He was notified of his election and that is all there is to it, simply election and notification.

Q Did that class of membership entail any further contributions or the payment of any other moneys to the organization? A No; that did not require any further contributions to continue the standing.

Q State whether or not you knew of a close relationship existing between James A. Bradley, now deceased, and Mr. Anthony Comstock, during the lifetime of those men?

Mr. Koestler: I object on the ground that it is probably hearsay and also that it is irrelevant, incompetent and immaterial.

The Court: Probably hearsay because he says he did not know Mr. Bradley.

John Sumner, cross.

Q State whether or not you know or knew of a close relationship? A Only through hearsay; yes, sir—through conversation with Mr. Comstock only.

Q State whether or not of your own knowledge you knew that Mr. Bradley was interested in the welfare of the organization that you represent?

The Court: The money showed it.

The Witness: From the fact of his contributions.

Q Well, in any other way, Mr. Sumner, aside from the contributions?

The Court: He said he did not know him.

The Witness: Through his friendship with Mr. Comstock and Mrs. Comstock.

Mr. Voorhees: I have not here a certified copy of the charter. I presume it may be admitted though.

The Witness: I have a printed copy here if you want to put it in.

Mr. Koestler: We have no objection.

Cross examination by Mr. Koestler.

Q Mr. Bradley was elected a life member in 1915? A Yes, sir.

Q He gave nothing in 1916? A Yes, he did.

Q He did? Did he give any in 1917? A He did not.

Q And had he given from 1916 to the date of his death? A No.

Minnie Ireland, direct.

The Court: The argument will be, of course, that he gave by will.

Q When the previous gifts were made to the society were they by cash or check? A I don't know.

Re-direct examination.

Q I take it that the life members are not required to give, Mr. Sumner? A No.

The Court: When they are not members they are not required to give.

The Witness: Voluntary.

Mr. Brinley: I would like to identify the Long Branch Hospital as the Monmouth Hospital.

MINNIE IRELAND, sworn for defendant.

Direct examination by Mr. Brinley.

Q What position do you occupy in the hospital at Long Branch? A Supervising nurse.

Q How long have you been there? A About eighteen years.

Q And what is the corporate name of the institution that you now serve in? A Monmouth Memorial Hospital Association.

Q How long have you lived in Long Branch? A All my life.

Q What is the hospital known as? A Monmouth Memorial Hospital.

Q What do the people commnoly call it, Long Branch Hospital, isn't it? A Yes; both.

Susan Truax, direct.

Q Was it incorporated in the first instance as the Long Branch Hospital? A It was; yes, sir.

SUSAN TRUAX, sworn for defendant.

Direct examination by Mr. Newman.

Q Mrs. Truax, you are the widow of Charles Truax? A Yes, sir.

Q When did he die? A In the year 1898.

Q What is your present occupation? A Matron of the home.

Q What home is that? A It is my own home, but I board indigent and private people.

Q Is it commonly known as the poor farm? A Yes, sir.

Q Of Asbury Park? A Yes, sir.

Q Were you acquainted with Mr. James A. Bradley? A Well, not personally; only accidentally.

Q During his lifetime did he ever contribute to the aid of you or your farm? A Yes, sir.

Q What did he give? A He gave me a number of chairs for my home.

Q Anything else? A And he gave me a stage.

Q Did he ever make any inquiries or any inspection of your premises? A Yes, sir; he went all over it and wanted to give me—contribute horses and carriages, but I had them of my own and so he did not do it.

Q Where is this farm located? A About four miles west of Asbury Park.

Q And you are now superintendent of that farm? A Yes, sir.

George W. Rogers, direct.

Q You were superintendent of that farm in May, 1916? A Yes, sir.

Q And ever since? A Ever since. I own the farm and it is my home.

Q What was your husband's name? A Charles.

Q Was he ever known as George? A Never.

Q Is he the only husband you ever had? A Yes, sir.

Q No George? A No.

Q Do you know a George? A Yes, sir; I knew a George; that was a cousin of his and his wife was a school teacher.

Q Where does George live? A He lived in Asbury Park.

Q His wife was school teacher after she became Mrs. George? A Yes, sir; for a short time; and then at his death she married again.

Q Well, at any time did she have a poor farm? A No, sir.

Q Near Asbury Park? A Never had—didn't live on a farm.

Q Did you ever reside in Asbury Park? A A short time.

Q All the rest of the time on the farm? That is all.

GEORGE W. ROGERS, sworn for defendant.

Direct examination by Mr. Newman.

Q You were an employee of Mr. James A. Bradley? A Yes, sir.

Q How long? A Oh, about fifteen years.

Q Do you know of any interest of Mr. Bradley in Mrs. Truax in the poor farm? A Yes,

sir; he had an interest there—he was interested in the place in the farm.

Q Did you ever take him out there? A Yes, sir.

Q How many times, do you recall? A Well, I know of once. I think more times, but I do not remember. I took him out there.

Q Did you ever take any presents out there to Mrs. Truax from Mr. Bradley? A Yes, sir.

Q What was it? A Why, he bought a stage at a sale—or I did for him—and we had it around for a day or two and he said, "You go up and ask Mrs. Truax if she could use that stage," so I drove up there and asked her; and she says yes, she could use it, to carry—she carried the school children to school—and I went back and reported to Mr. Bradley, and he says, "Have a man hook it up and take it up there, and you go up there and present it to her," and I followed the man up there and I did.

Q Where is the poor farm? A It is just about two and a half or three miles out of Asbury Park, west.

Q West of Asbury Park? A Yes, sir.

Q Do you know of any other present from Mr. Bradley to Mrs. Truax? A No; I don't know of any other.

Q Did you know of any relation between Mr. Bradley and Mr. George Truax? A No.

Mr. Newman: I would like to produce Mr. Howland who is named as legatee and then the bequest was revoked in the sixth item of the eighth codicil. "As Sylvester Smith and Edward Howland named in the fifth clause of the aforesaid codicil are now deceased, I make null and void the legacies

given to them by the aforesaid codicil." We think the revocation is void and we would like to produce Mr. Howland. Mr. Howland was here this morning, but he is not here now.

The Court: The one I am concerned in is dead. Does the bill allege he is alive?

Mr. Faulks: Yes, sir; it does.

Mr. Carton: I wish to offer in evidence certified copy of the incorporation of the Asbury Park Society for the Prevention of Cruelty to Animals, dated November 1, 1923, and filed on that date.

Paper marked Exhibit D. 9.

ELIZABETH WILCOX, sworn for defendant.

Direct examination by Mr. Carton.

Q Are you an officer in the Asbury Park Society for the Prevention of Cruelty to Animals? A I am.

Q How long have you been connected with it? A Seventeen years.

Q Is the correct legal title that as indicated in this certificate to be, the Asbury Park Society for the Prevention of Cruelty to Animals? A It is.

Q Is it known sometimes as the Society for the Prevention of Cruelty of Animals of Asbury Park? A Yes, sir.

Q Known both ways? A Yes, sir.

Q How long has it been functioning? A Since 1904.

Q Have you been connected with it since then? A Yes, sir; I have.

Q What do they do? A We try to prevent cruelty in every way that we can. Mr. Bradley was very much interested and contributed almost every year. The last years of his life he gave us fifty dollars a year.

Mr. Carton: I had not thought it necessary in connection with these churches to prove their existence. I represent a number of them. There has been some proof—they have been admitted in the bill. There is no dispute in connection with them. I represent the First Methodist Church of Bradley Beach and First Methodist of Asbury, Lutheran Church—

The Court: The executor raises no question.

Mr. Backes: We have the same thing with reference to two Catholic churches that we are here representing ready to make formal proof.

The Court: You admit there were two Catholic churches in Asbury Park at the time of the execution of this will?

Mr. Faulks: Yes, sir.

The Court: And were functioning at that time?

Mr. Backes: Yes.

Mr. Koestler: May I have leave to reserve the right to produce Dr. Young who will testify as to his relationship with the testator, and also I think it might be of some information to the Court if the executors produced some or all of the checks

within the last few years before Mr. Bradley's death of his contributions to the Society for the Suppression of Vice.

Mr. Faulks: It is quite doubtful if we could find them.

The Court: I think the evidence should be here. You had your methods and you haven't availed yourself of it. Dr. Young should have remained here. Was he subpoenaed?

Mr. Koestler: No.

The Court: Counsel for the executors admit that the bequest to the Old People's Home (Methodist), Borough of Manhattan, New York, was intended for "Methodist Episcopal Church Home of New York City for the Aged and Infirm," body corporate of the State of New York, having its principal office and place of business as at 673 Amsterdam avenue, New York City, N. Y. I will ask counsel to submit briefs and then I will fix a day for argument, if I want to hear you.

Complainant's Exhibits.

Complainant's Exhibits (not printed).

C. 1. Certified copy of testator's will and codicils and proceedings for the probate thereof.

C. 2. Renunciation of Charles Wesley Erskine, as executor under such will and codicils.

C. 3. Certified copy of the last will and testament of Helen M. Bradley, deceased, and proceedings for the probate thereof.

C. 4. Copy of the Federal estate tax return filed by the executor for the purpose of determining the Federal estate taxes payable by the testator's estate.

C. 5. Appraisal of the real estate owned by the testator as of the date of his death, made by Frank Appleby and Albert Robbins, the appraisers appointed for such purpose.

C. 6. Map showing the various parcels of real estate in Monmouth County, New Jersey, owned by the testator at the time of his death.

C. 7. Contract for the sale by the executor of Mr. Bradley's estate to the City of Asbury Park of the lands lying principally under the waters of Sunset Lake and Deal Lake, for the consideration of $1, subject to the approval of the Court.

By Mr. Faulks.

It appears from Exhibits C. 4 and C. 5 that the appraised value of the testator's real and personal estate and the encumbrances upon his real estate at the time of his death were as follows:

Complainant's Exhibits.

APPRAISED VALUE OF PERSONAL PROPERTY

Brush manufacturing business conducted by Testator under name of Bradley & Smith, 251 Pearl street, New York City	$ 45,192.25	
Mortgages, notes and cash	11,060.85	
Contracts made by testator during his lifetime for sale of real estate	30,527.00	
Amount due from Mrs. Bradley's estate	11,104.49	
Old account due testator for rent	50.00	
Miscellaneous personalty, including personal effects	3,706.28	
Total of personal property		$101,640.87

APPRAISED VALUE OF REAL ESTATE INCLUDED IN THE RESPECTIVE PARCELS OF THE TESTATOR'S WILL AND CODICILS AND THE APPRAISED VALUE OF THE ENCUMBRANCES THEREON.

Item	Parcel		Appraised Value	Mortgage Encumbrances	Net Value
3			$ 2,500.00		$ 2,500.00
6	1		1,500.00		1,500.00
6	2		1,500.00		1,500.00
6	3		386,600.00	$119,500.00	267,100.00
6	4		1,000.00		1,000.00
6	5		196,950.00	42,400.00	154,550.00
6	6	(Beach front and sewers sold by testator in lifetime)			
6	7	(Wesley Lake—no value)			
6	8		362,165.12	36,658.47	325,506.65
6	9		8,000.00	2,000.00	6,000.00
6	10		18,000.00		18,000.00
6	11		26,600.00		26,000.00
6	12		249,550.00	36,000.00	213,550.00
7			47,000.00	12,500.00	34,500.00
8			50,000.00	15,000.00	35,000.00
10		(Condemned for post office during testator's lifetime)			
12		Ocean Grove—north of Main St.—no value			
16		(Residue)	80,850.00	20,900.00	59,950.00
3		Second codicil—All of lands owned by testator in Ocean Grove—no value			
		Totals	$1,432,215.12	$284,958.47	$1,147,256.65

SUMMARY

Item		Appraised Value	Mortgage Encumbrances	Net Value
3		$ 2,500.00		$ 2,500.00
6		1,251,865.12	$236,558.47	1,015,306.65
7		47,000.00	12,500.00	34,500.00
8		50,000.00	15,000.00	35,000.00
16	(Residue)	80,850.00	20,900.00	59,950.00

Total amount of the mortgage encumbrances:

(a) Total amount of principal due on mortgages on real estate of which testator died seized and which was inventoried as such		$284,958.47
(b) Principal due on mortgage on lot located at northwest corner of Sunset avenue and Emory street, Asbury Park, which testator had contracted to sell in his lifetime and which was inventoried as personal property	3,000.00	
(c) Accrued interest on all mortgages	3,760.52	
Total		$291,718.99

Exhibit D. 4.

Exhibit D. 4.

To the Clerk of the Court of Common Pleas of the County of Monmouth:

We, George B. Sexton, Elizabeth Hooper and Ella Williams, of the City of Asbury Park; James R. W. Littell and Elizabeth C. Carr, of the Town of Ocean Grove; Ada S. Bruton, of the Borough of Bradley Beach; Donald B. Kennedy, of the Borough of Belmar, and John R. Long, of Loch Arbour, all in the County of Monmouth and State of New Jersey, do certify that on the ninth day of June, nineteen hundred and twenty, at the hour of nine-fifteen P. M., the congregation of The Second Church of Christ, Scientist, of Asbury Park, New Jersey, a congregation of Christians entitled to protection in the free use of their religion by the constitution and laws of this State, assembled at their house in the said City of Asbury Park, which is their usual place of meeting for public worship, for the purpose of electing trustees for the said congregation with a view to becoming incorporated according to law; and at least ten days' notice of the time and notice of such assembling had previously been given by advertisement set up in open view at said place of meeting, the said time of assembling having been agreed upon by said congregation; and that said congregation when so assembled did then and there by plurality of voices of such of the members of said congregation who regularly contribute to the support thereof, male and female, over twenty-one years of age, as were present, elect us the said George B. Sexton, Elizabeth Hooper, Ella Williams James R. W. Littell, Elizabeth C. Carr, Ada S. Bruton, Donald B. Kennedy and John R. Long, to be

Exhibit D. 4.

trustees of said congregation, and did instruct us to take upon ourselves a name of incorporation and to certify the same under our names and seals and transmit the same to the Clerk of the Court of Common Pleas of the said County of Monmouth for record, to the end that we, the said trustees, might become incorporated pursuant to the provisions of "An Act to incorporate Trustees of Religious Societies" Revision, approved April 9, 1875, and the supplements thereto and amendments thereof.

And we further certify that pursuant to the said instructions and the provisions of said act, we have taken upon ourselves the name of "The Trustees of Second Church of Christ, Scientist, of Asbury Park, New Jersey," for a name of incorporation under said act.

Given under our hands and seals at the said City of Asbury Park, the ninth day of June, nineteen hundred and twenty.

Ella Williams	(L. S.)
Elizabeth Hooper	(L. S.)
George B. Sexton	(L. S.)
Elizabeth C. Carr	(L. S.)
Ada S. Bruton	(L. S.)
John R. Long	(L. S.)
John R. W. Littell	(L. S.)
Donald B. Kennedy	(L. S.)

Signed and sealed in the presence of

J. Otto Rhome.

(Certificate of acknowledgment before J. Otto Rhome, Master in Chancery of New Jersey.)

OPINION.

Filed November 26, 1924.

BACKES, *V.-C.*

This bill is for the construction of the last will and testament, and eight codicils thereto, of James A. Bradley, founder of Asbury Park, who died June 6, 1921, leaving an estate valued at more than a million dollars. The will bears date June 26, 1896, and bequeaths all the testator's personal estate to the trustees therein named and devises all his real estate therein described to them, except a parcel of land in Ocean Grove, devised to the Ocean Grove Camp Meeting Association. Of the lands thus devised in trust, a parcel at the head of Wesley Lake was to be conveyed to Helen M. Bradley, testator's wife, or to her heirs if she predeceased him; and three parcels, Deal Lake, Sunset Lake and the northerly half of Wesley Lake were to be conveyed to Asbury Park for public purposes, and the remaining parcels were ultimately to be sold. The proceeds of the lands to be sold, together with the proceeds of the personal property, were bequeathed to eight legatees in equal shares one being the Ocean Grove Camp Meeting Association. The rest and residue of the real estate (there was some other than that described in the will) was devised to the testator's wife and brother-in-law as joint tenants; over to the wife's heirs at law if she and the brother-in-law predeceased the testator, which they did.

By the second codicil (January 12, 1906), lands in Ocean Grove were devised to the Ocean Grove Camp Meeting Association, and the bequest in the will, to the association, was revoked.

By the fifth codicil (June 11, 1909), "all the rest, residue and remainder of my estate not devised or bequeathed by my last will and testament, or any codicil heretofore made, or this codicil," was given to the testator's wife; over to her estate and to pass by her will if she predeceased the testator.

By the sixth codicil (January 17, 1914), "All the rest, residue and remainder of my estate not devised or bequeathed by my last will and testament, or any codicil heretofore made, or this codicil," was given to the Home for the Aged, No. 63 Clark avenue, Ocean Grove, New Jersey.

Only the substance of the voluminous will and codicils necessary to the questions involved has been stated.

The seventh codicil (May 3, 1916), reads:

> "First: I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests destributed in my estate.
>
> Second: I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of Five Thousand ($5,000) dollars."

Here follows the names of fourteen relatives, three being Josephine Hewitt, Helen Jackson and Minnie Hueston; and the names of two employees; then follows:

> "Churches at Asbury Park, N. J. as follows: First Methodist, Episcopalian, Reformed Dutch, Baptist, Lutheran, Presbyterian, Ballard Memorial Church, Catholic, Christian Scientist, Jewish Synagogue, Zion Methodist, (colored), Mt. Pisgah Baptist (colored) and Episcopalian (colored);

Churches at Bradley Beach, N. J. as follows: Methodist, St. James' Episcopal and Catholic;

Churches at Avon, N. J. as follows Methodist and Baptist."

(Fifteen other institutions are named.)

"Third: I give and bequeath to my Excutor the sum of Five Thousand ($5,000) dollars to be held in trust, and direct him to pay the income therefrom to my nephew William Dickinson during the term of the life of said William Dickinson, and on his death to pay the principal to the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not, as soon after as a society for this purpose is incorporated.

Fourth: I give and bequeath to my Executor the sum of Five Thousand ($5,000.) dollars, to be held in trust, and to pay the income therefrom to the widow of Anthony Comstock of the City of New York, during the term of her natural life, and on her death to pay the principal to the Society for the Prevention of Crime in the City of New York.

Fifth: I give and bequeath to the following named persons, who are now in my employ, the following sums:"

(Eght employees are named and $500 given to each.)

"Sixth: I give and bequeath to the widow of George Truax, who formerly resided at Asbury Park, N. J. and now lives several miles west of Asbury Park, the sum of Five Hundred ($500.) dollars.

Seventh: I give and bequeath to George Morrow (colored) a former employee, the sum of Three Hundred ($300.) dollars.

Ninth: All the rest, residue and remainder of my estate I give and bequeath to the aforenamed legatees in the proportion or on

the percentage that the aforementioned legacies are given to them respectively.

Tenth: I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my Executor, and give him full power of sale, to sell any and all of my real estate to pay said legacies, and give him power to execute deed or deeds therefor.

Twelfth: For the purpose of making this codicil and my said will final, effectual and conclusive upon all my heirs, legatees and next-of-kin, I do hereby declare that if any of my heirs, legatees or next-of-kin named or not named herein shall directly or indirectly, or in any manner, interfere with or delay the settlement of my estate, or attempt to break or change my said will or this or any other codicils thereto, or to interfere with or make null any provisions thereof, such act shall ipso facto operate and be effectual as a release of all estate, right, title, interest or claim of such heir, legatee, or next-of-kin to any of my estate. Any provision of my said will or of this or any codicil thereto in favor of such party, I hereby abrogate, make null and void, and the property bequeathed or devised to such person, institution or corporation shall immediately revert and form a part of my residuary estate; and I further declare that my heirs, next-of-kin and legatees shall under no circumstances be entitled to any other or greater interest in my estate than is given in my will and this or any other codicil thereto.

Thirteenth: I hereby ratify and confirm my said will and the appointment of the Executor therein named, except insofar as the same is changed by this, a codicil thereto."

The eighth codicil (March 3, 1919), provides:

"First: In lieu of the legacies of Five Thousand ($5,000.) dollars each to Josephine Hewitt, Helen Jackson and Minnie

Hueston, I give and bequeath to said Josephine Hewitt, Helen Jackson and Minnie Hueston the sum of Fifteen Thousand ($15,000.) dollars to each.

Second: I give and bequeath to the hospital located on Asbury Avenue, in Asbury Park, N. J., the sum of Five Thousand ($5,000.) dollars.

Third: In lieu of the legacies of Five Thousand ($5,000.) dollars each, provided in the second clause of the codicil to my will bearing date the third day of May, One thousand nine hundred and sixteen, and given as follows:"

The churches and institutions, except three institutions, are designated precisely, and in the order, as they appear in the second clause of the seventh codicil, and then is added:

"I give and bequeath to each of the aforenamed the sum of One Thousand ($1,000.) dollars, i. e. I reduce the aforesaid legacies as originally provided for in the aforesaid codicil from Five Thousand ($5,000.) dollars

"Fourth: As William Dickinson is now deceased, I make null and void the legacy of Five Thousand ($5,000.) dollars given and bequeathed to my Executor in trust for him by the third clause of the aforesaid codicil.

"Fifth: As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five Thousand ($5,000.) dollars given and bequeathed to my Executor in trust for her by the fourth clause of the aforesaid codicil.

"Sixth: As Sylvester Smith and Edward Howland named in the fifth clause of the aforesaid codicil, are now deceased, I make null and void the legacies given to them by the aforesaid codicil.

"Seventh: The widow of George Truax, named in the sixth clause of the aforesaid

codicil, is now the Superintendent of the Poor Farm near Asbury Park, New Jersey.

"Eighth: * * * In all other respects I ratify, confirm and republish my aforesaid will and my aforesaid codicil bearing date the third day of May, in the year One thousand, nine hundred and sixteen."

The final testamentary scheme is obvious. Lands in Ocean Grove were devised to the Ocean Grove Camp Meeting Association. All other lands described in the will were devised to the trustee to convey the lot at the head of Wesley Lake to the heirs at law, except one, of testator's wife, deceased; to convey Deal Lake and Sunset Lake and the northerly half of Wesley Lake, to Asbury Park for public use; and to sell and convert into personalty remaining described lands. The residue of the real estate was devised to the heirs at law, except one, of testator's wife, deceased. The personal estate was bequeathed to the trustees, which together with the proceeds of the real estate, was to be paid to the persons and institutions named in the seventh and eighth codicils in sums therein stated and the residue to them proportionately, with a single exception, to be hereafter noted.

1. The direction to the trustees to sell the real estate devised to them, other than the parcels held in naked trust to convey, amounts to an equitable conversion into personal property, appropriatable to the payment of legacies. Tripplett *v.* Ivins, 93 N. J. Eq. 202, and cases cited.

2. The first general residuary clause appears in the fifth codicil (June 11, 1909), in favor of the testator's wife, or of her estate, according to her will, if she predeceased the testator, and the second, in the sixth codicil (January 17, 1914),

in favor of the Home for the Aged, No. 63 Clark avenue, Ocean Grove, N. J. Mrs. Bradley died February 13, 1915. These clauses operated on one-eighth of the personal estate bequeathed by the will to the Ocean Grove Camp Meeting Association, which had been revoked by the second codicil (January 12, 1906), and had not previously been disposed of. It is not necessary to decide whether the later revoked the earlier clause for, as to personal property, they were both revoked by the later and ninth item of the seventh codicil, and neither was ever operative as to real estate, as they included only the estate "not devised or bequeathed by my last will and testament, or any codicil heretofore made, or this codicil," and the residuary of the real estate had previously been devised to the testator's wife and brother-in-law; over to the wife's heirs at law, if both predeceased him.

3. The seventh codicil revoked legacies only. It plainly says so; its language is not open to construction. Moreover, the ensuing gifts of legacies only; the gift of the residue in language strictly and technically referable to gifts of personal property "I give and bequeath"; the ratification and confirmation of the will and the penalty upon heirs, legatees and next-of-kin who "attempt to break or change my said will or this or any other codicil thereto" imposed "for the purpose of making this codicil and my said will final, effectual and conclusive upon them," all emphasize the limitation, and the intention that the will and codicils, insofar as they devise real estate, remained intact. The re-ratification of the will by the eighth codicil is further confirmation.

Opinion.

4. The residuary personal estate, only, passed under the ninth clause of the seventh codicil "To the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively," viz.: the fifty and more individuals and institutions to whom had been bequeathed $5,000. each; eight employees $500 each, and one $300, and a Mrs. Truax $500. By the eighth codicil four of the legacies to individuals were revoked; three to individuals were increased from $5,000 to $15,000; those to the institutions, except three, were decreased from $5,000 to $1,000, and one was added—five thousand dollars to Asbury Park Hospital, and the question propounded is, is the residuary estate to be distributed among the legatees in proportion to the amount of their pecuniary legacies fixed by the seventh codicil, or as modified by the eighth codicil? It would seem upon reading the will and operating codicils, and visualizing the testamentary scheme, that the manifest intention of the testator was, to apportion the residue according to the last table of pecuniary legacies. That is one's first and enduring impression. By the seventh codicil the testator put his relatives and friends on a par with the institutions; all were to pro-rate in the distribution of the residue on the basis of $5,000 bequests to each. For reasons of his own, as to which there need be no speculation, he concluded to prefer his relatives and friends, and by the eighth codicil gave "In lieu of" the legacies given by the seventh codicil, legacies of other amounts, indicating, by the substitution of amounts, an intention to introduce a new division in the apportionment of the residue and that it was to be distributed according to the new sched-

ule. Evidence of the testator's trend of mind is, that after he had in plain and unmistakable language substituted the $1,000 legacies for the $5,000 legacies to the institutions he added "i. e. I reduce the aforesaid legacies as originally provided for in the aforesaid codicil from Five Thousand ($5,000.) dollars to One Thousand ($1,000.) dollars to each"; intimating that the original legacies, in reduced amounts, were to be the measure of participation in the residuary estate. Another and persuasive circumstance that the testator intended the division to be on the basis of the substituted legacies is, that, in effect, the eighth codicil adds to the residuary fund approximately one hundred thousand dollars, and, if the division be on the basis of the seventh codicil, the several institutions would receive more of the residuary estate than they would have if the eighth codicil had not been made. Surely the testator did not intend by the same stroke of the pen to decrease and increase their lot.

It is argued that to give greater effect to the eighth codicil than to cut down the primary bequests would violate the established rule of construction of wills, not to permit a codicil to disturb the disposition of wills more than is necessary to give effect to the codicil. The rule has been observed, in its true sense, by giving effect to the testator's intention as fairly disclosed by the codicil. In this connection it is suggested that the value of the rule is lessened if not entirely lost when applied, as here, to a codicil that modified a prior codicil to a will. If this be sound then, if the two codicils are read together as one, their combined office being to vary or add to the will, less difficulty is experi-

enced in determining the testator's intention to be as already indicated than if the provision of the seventh codicil had been in the will instead of a codicil.

The problem here involved has not been before our Courts for decision. In Hayes *v.* Hayes, 21 N. J. Eq. 265, the bequests aggregated $70,000, and the will directed that if the net proceeds of the estate should amount to more or less than that sum the bequests should each be increased or diminished as the case might be, and in proportion to such bequests, and thus made to absorb the residuary estate, and it was held that a pecuniary legatee, whose legacy was cut down by codicil, shared in the residue, according to the reduced amount, on the theory that the pecuniary and residuary legacies constituted but one legacy to each legatee. That does not touch the point under discussion, for here the pecuniary and residuary legacies are clearly several.

Two cases in other jurisdictions in which the question was squarely presented are in re *Courtauld,* 47 L. T. (N. S. Eng.) 647, and Hard *v.* Ashley, 117 N. Y. 606, in each of which it was held that the division of the residuary estate must be in the proportions of the substituted legacies.

It is claimed that a contrary view is held in Colt *v.* Colt, 32 Conn. 422; Colt *v.* Colt, 19 Blatch. 399; Wetmore *v.* Parker, 52 N. Y. 450, and Pendergast *v.* Tibbetts, 164 Mass. 270. That is not so. In the Colt case the testator gave 500 shares of stock in a corporation to his brother for life, remainder to his brother's children, and a number of shares to others, and by another clause the balance of his shares to the legatees propor-

tionately. By codicil he revoked the bequest of 500 shares to his brother. The Court held, upon established rules of construction, and attending circumstances, that the revocation of the primary bequest did not evince an intention to do more than to cancel that bequest. Judge Blatchford (19 Blatch. 399) approved the judgment. A conspicuous distinction between that case and the one in hand is, that there there was a naked revocation of the primary bequest which seemingly confined the operation of the codicil to the primary bequest, whereas here there is a substitution of the primary bequests, evidencing an intention to revoke the residuary legacies *pro tanto*. In Wetmore *v.* Parker, the testatrix gave to a church and an academy each the sum of $10,000 and legacies to other persons, and the residue of her estate to the legatees proportionately. The primary legacy to the church, it was stated, was to help pay the expenses of building its edifice, that to the academy to be used in rebuilding its academy, and if it should be completed before the bequest became effective it was to be used in the improvement of the lot and the purchase of furniture, etc. Later the testatrix gave to the academy $3,000, and by codicil revoked the bequest to the extent of $3,000 and gave instead $7,000. By another codicil she revoked the gift to the church because, as stated, she had concluded to give $3,000 to help defray the debt incurred in building the church, and that it appeared probable that the purpose of her legacy would soon be accomplished. It was held, as apparent upon the face of the will and codicils, that the residuary bequests were not intended to be affected, Chief Justice Church saying: "They are for different purposes; one

for particular, the other for general purposes. We are justified in inferring that the testatrix had two objects in view; one to aid in completing and furnishing the building, the other to contribute toward a fund for permanent support. The first bequest would necessarily be expended at once; the latter might, and ordinarily would be, permanently invested." In Pendergast *v.* Tibbetts, there were various pecuniary legacies and the residue of the estate was given to the legatees, proportionately. Three nieces were given $10,000 each. By a codicil their legacies were revoked and in place they were given $5,000 each, and $5,000 each was given to the three other nieces who were not named in the will. The Court held that the three nieces whose bequests were reduced were entitled to share in the residue in proportion to their original bequests, because, as it appeared, it was the intent of the testator to give to each of the three nieces not mentioned in the will $5,000 by taking it from the three mentioned in the will; that no change was made in the total amount of the specific bequests and that the amount of the residue was therefore not affected, saying that "The testator well may have been content that the sums named in the will should stand, notwithstanding the reduction by the codicil, as the basis for the distribution of the rest and residue. At any rate, that is the way the will reads, and, in the absence of anything in the codicil plainly indicating a contrary intention, we must take the will as it stands."

"These decisions (Colt *v.* Colt, Wetmore *v.* Parker, and it applies to Pendergast *v.* Tibbetts) proceeded upon the plain principle that where a devise is made of an estate, a revocation will

not be implied, unless no other construction can be placed upon the language." Hard *v.* Ashley, *supra.* In the Colt case the rule was strictly applied. In the other two they lent themselves easily to the construction adopted.

5. "The hospital located on Asbury avenue in Asbury Park, New Jersey" (Asbury Park Hospital), is not entitled to participate in the distribution of the residue of the personal property. The residuary estate was given to "The aforenamed legatees" named in the seventh codicil. The hospital was not one of them. The legacy to the hospital is contained in the eighth codicil and was a particular gift of a specific amount of money. The testator may have intended to include the hospital as one of the residuary legatees, but he did not so express himself in his will, and his intention can be gathered only from that document. Hall *v.* Severne, 9 Simons 515; Sias *v.* Chase, 207 Mass. 372; Pendergast *v.* Tibbetts, *supra.*

6. By the seventh codicil Edward Howland, an employee, was given $500, and by the eighth codicil it was revoked because, as it is there stated, he was deceased. He is still living. When a testator by a codicil revokes a devise or bequest through a mistake appearing from the face of the instrument the revocation does not take effect. 1 Schouler on Wills (5th Ed.), Sec. 410; 1 Jarmen on Wills *147; Campbell *v.* French, 3 Vesey Jr. 321; Hayes *v.* Hayes, *supra;* Strong's Appeal, 79 Conn. 123.

7. Five hundred dollars was given to "The widow of George Truax, who formerly resided at Asbury Park, N. J., and now lives several miles west of Asbury Park." For further identi-

fication it is stated in the eighth codicil that "The widow of George Truax named in the sixth clause of the aforesaid codicil is now the Superintendent of the Poor Farm near Asbury Park, New Jersey." Susan A. Truax was the widow of Charles Truax, who was the Superintendent of a Poor Farm located about three and a half miles west of Asbury Park. The testator had taken some interest in her Poor Farm and helped her by some minor gifts. Jane Amanda Coward married one George Truax in 1870 and lived with him in Asbury Park until his death in 1891. In 1895 she married one Coward, of Long Branch, since which time she has been known as Mrs. Coward. Since Coward's death she has been an inmate of a Home for the Aged at Asbury Park. She was not, nor was her husband, ever the superintendent of any poor farm or had any connection with a poor farm near Asbury Park. The seventh and eighth codicils were made long after she became known as Mrs. Coward. The testator evidently had some doubt as to whether he had properly identified Susan, and hence the explanation in the eighth codicil. The proof is satisfying that the testator intended to give the legacy to Susan A. Truax, the widow of Charles Truax. Proof is admissible to identify the legatee. Moore's Executor *v.* Moore, 50 N. J. Eq. 554; The German-Pioneer Verein *v.* Meyer, 70 N. J. Eq. 192, aff. 72 N. J. Eq. 954.

8. Other beneficiaries were incorrectly designated in the codicils and their identity has been established by satisfactory proof.

9. By the third item of the seventh codicil five thousand dollars was bequeathed to the executor, in trust, to pay the income to William

Dickinson, and upon his death the principal to the Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., and by the fourth item five thousand dollars was given to the executor, in trust, to pay the income to the widow of Anthony Comstock, and upon her death to pay the principal to the Society for the Prevention of Crime in the City of New York. The eighth codicil provides:

> "Fourth: As William Dickinson is now deceased, I make null and void the legacy of Five Thousand ($5,000.) Dollars given and bequeathed to my Executor in trust for him by the third clause of the aforesaid codicil.
>
> "Fifth: As the widow of Anthony Comstock is now deceased, I make null and void the legacy of Five Thousand ($5,000.) Dollars given and bequeathed to my Executor in trust for her by the fourth clause of the aforesaid codicil."

The gifts of the life interests and the gifts of the principals are separate and independent. The revocations were only of so much of the gifts as were given "in trust for him" and "in trust for her." The limitation is plainly stated in the revocations. *In re.* Whitehorn *v.* Best, 2 Ch. (1906) 121; Green *v.* Tribe, 27 W. R. 39; Atl. *v.* Gregory, 8 DeG. M. & G. 221; May's Estate, 259 Pa. 115. The testator evidently intended to give the principal of the life interest given to the widow of Anthony Comstock, to the Society for the Suppression of Vice of New York, with which he was associated for many years. He erroneously styled the beneficiary as the Society for the Prevention of Crime in the

City of New York. There is such a society. The two societies are allies, engaged in the same activities, and have stipulated that the legacy be paid to the beneficiary named in the codicil.

10. In bequests of $5,000 to institutions classified as "Churches at Asbury Park," the testator designated "Catholic." There are two Roman Catholic churches in Asbury Park, Holy Spirit and Our Lady of Mount Carmel, and each claim a legacy and a proportionate share of the residuary estate, as independent legatees. Both churches were in existence many years before the bequests were made. The testator undoubtedly had in mind organized units of the Catholic faith having church edifices in Asbury Park. To reconstruct the language of the gifts, if each had been separately stated, it would read, "I give and bequeath to each of the Catholic churches at Asbury Park five thousand dollars." The argument is strained that by "Catholic" the testator meant the universal Roman Catholic Church organization, with churches at Asbury Park, and that applying the doctrine of *cy pres,* or something akin to it, a single pecuniary bequest and a proportionate share of the residue should be divided between the two churches. That is neither what the testator said or intended.

11. Under the same general classification and designation, The First Church of Christ, Scientist, of Asbury Park, and The Second Church of Christ, Scientist, of Asbury Park, each claims to be an independent beneficiary of a pecuniary bequest, and share in the residue. There is no question that the First Church is one of the legatees. It had a church and functioned in Asbury Park some years before the seventh codicil was

executed, which was well known to the testator. As to the Second Church: It was only within a month before the seventh codicil was made that some of the members of the First Church withdrew therefrom and associated themselves as the Second Church. They met for worship at various convenient places, at first in the Metropolitan Hotel, then in the State Armory and later at the Public Library, Asbury Park, until 1920, when they incorporated and settled in a church of their own. The existence of the association of members was not generally known. It does not appear to have been known to the testator. The bequests do not, and the testator did not intend to include in the group of beneficiaries, religious organizations except those having that most prominent characteristic of organized religion—church edifices. The circumstance and fact that before the death of the testator the Second Church of Christ, Scientist, acquired a church and came within the general description of beneficiaries under the seventh codicil, does not entitle it to participate as a legatee. The codicil, in this respect, must be read as of the date it was executed and the testator's intention determined as of that time, and not by what happened afterward. Gray *v.* Hattersley, 50 N. J. E. 206; Henderson *v.* Henderson, 77 N. J. Eq. 317; Webb *v.* Webb, 111 Ark. 54; Hoffman's Will, 201 N. Y. 247.

Decree will be settled on notice and service of a copy of the form of defendant's counsel.

Final Decree.

FINAL DECREE.

Filed December 16, 1924.

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL H. GILLESPIE, sole acting executor and surviving trustee under the last will and testament and codicils thereto of James A. Bradley, deceased,

Complainant,

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, executors of the last will and testament of Louis C. Gillespie, deceased, *et al.*,

Defendants.

On Bill, etc.

Final Decree.

Dated & Filed Dec. 16, 1924.

This cause coming on to be heard in the presence of counsel for parties therein as follows: EDWARD K. MILLS, ESQ., FREDERICK J. FAULKS, ESQ., and WALTER D. BARKER, ESQ., for the complainant; Messrs. MCCARTER & ENGLISH, for the defendants John T. Gillespie and Samuel H. Gillespie, Executors of the last will and testament of Louis C. Gillespie, deceased, Samuel H. Gillespie, Executor of the last will and testament of Helen M. Bradley, deceased, John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine R. Erskine, Helen G. Sanford, Mary G. Illman and George Fletcher Illman;

Messrs. Katzenbach & Hunt, for the defendants Josephine Hewitt, Helen M. Jackson and Minnie Hueston; Frederick W. Hope, Esq., and George S. Ingraham, Esq. (of the New York Bar), for the defendant The Methodist Episcopal Hospital in the City of Brooklyn; Frederick W. Hope, Esq., and Henry A. Ingraham, Esq. (of the New York Bar), for the defendant Brooklyn Methodist Episcopal Church Home for the Aged; Frederick W. Hope, Esq., and Richard Kelly, Esq., (of the New York Bar), for the defendant The Methodist Episcopal Church Home of the City of New York; Messrs. Wilson & Smock, for the defendant The Monmouth Memorial Hospital Association of Long Branch, N. J.; H. H. Snedeker, Esq., for the defendants Albert P. Smith, Sr., Albert P. Smith, Jr., Foster N. Smith, Frank R. Smith, James A. Smith, George L. Dickinson, John Smith and Martin Sther; J. Everett Newman, Esq., for the defendants William S. Wells, Edward Howland and Susan A. Truax; Messrs. Durand, Ivins & Carton, for the defendants The City of Asbury Park, a body politic, Asbury Park Society for the Prevention of Cruelty to Animals, First Methodist Episcopal Church of Asbury Park, N. J., and Evangelical Lutheran Church of the Atonement of Asbury Park, N. J.; Messrs. Patterson, Rhome & Morgan, for the defendants First Presbyterian Church of Asbury Park, New Jersey, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, Searle Memorial Non-Sectarian Seashore Home for the Aged of New Jersey, and Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey; Peter Backes, Esq., for the defendants The Church of the Holy Spirit of Asbury Park, New Jersey, Our Lady

of Mt. Carmel Church of Asbury Park, New Jersey, and The Church of the Ascension, Bradley Beach, New Jersey; ROBERT MCMICHAEL, ESQ., for the defendant The First Church of Christ, Scientist, of Asbury Park, New Jersey; JOSEPH R. MEGILL, ESQ., for the defendant First Methodist Episcopal Church of Bradley Beach, New Jersey; THOMAS P. FAY, ESQ., for the defendant Methodist Episcopal Home for the Aged of New Jersey; Messrs. AVIS & AVIS, for the defendant The Fund for Superannuated Preachers New Jersey Conference (Methodist); WALTER TAYLOR, ESQ., for the defendant Asbury Park Hospital; Messrs. STAMLER, STAMLER & KOESTLER, and SAMUEL MARCUS, ESQ., (of the New York Bar), for the defendant The Society for the Prevention of Crime of the City of New York; and CLIFFORD I. VOORHEES, ESQ., and FRANCIS BERTRAM ELGAS, ESQ. (of the New York Bar), for the defendant New York Society for the Suppression of Vice;

And the pleadings and proofs having been read and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments; and it duly appearing that James A. Bradley, late of the City of Asbury Park, Monmouth County, New Jersey, departed this life on June 6, 1921, leaving a last will and testament bearing date June 26, 1896, and eight codicils thereto as follows: A First Codicil dated June 7, 1901; a Second Codicil dated January 12, 1906; a Third Codicil dated January 11, 1907; a Fourth Codicil dated January 16, 1907; a Fifth Codicil dated June 11, 1909; a Sixth Codicil dated January 17, 1914; a Seventh Codicil dated May 3, 1916; and an Eighth Codicil dated March 3, 1919; that said last will and testament and

codicils thereto were duly admitted to probate by the Surrogate of Monmouth County, in the State of New Jersey, on the eighth day of July, 1921; that Letters Testamentary were on such last mentioned date issued thereon to the complainant as the surviving executor named in the Third Codicil to said will, and that the complainant is the sole executor of such will and codicils and the sole surviving trustee thereunder:

And the Court being of opinion that the complainant is entitled to have the said last will and testament and codicils thereto of the said James A. Bradley, deceased, construed by this Court, and the rights of the several persons making claims thereunder ascertained, and the powers, rights and duties of the complainant as executor in the administration of the estate of the said testator and as trustee under the said will and codicils ascertained and defined, and the complainant given directions as to the meaning of the said last will and testament and codicils thereto, and as to his duties in the administration of the said estate and of the trusts created in and by said will and codicils;

It is thereupon on this 16th day of December, 1924, on motion of Edward K. Mills, Esq., solicitor of the complainant, by Edwin Robert Walker, Esq., 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 as follows:

1. The direction to the executors and trustees of the testator to sell the real estate described as the first, third, fifth, sixth, eighth, ninth, tenth, eleventh and twelfth parcels in the sixth item of said will and in the seventh item, the eighth item,

and the tenth item thereof, amounts to an equitable conversion of the lands therein described into personal property appropriable to the payment of legacies.

2. Neither the residuary clause contained in the fourth item of the said fifth codicil in favor of the testator's wife Helen M. Bradley, or in the event of her predeceasing him in favor of her estate to be divided according to her will, nor the residuary clause contained in the fourth item of the said sixth codicil in favor of the Home for the Aged, No. 63 Clark Avenue, Ocean Grove, New Jersey, operated as a revocation of the devise contained in the sixteenth item of the said will, and the beneficiaries of such devise are entitled to the same benefit under the sixteenth item of the said will as if the said fourth item of the said fifth and sixth codicils respectively had not been included therein.

3. The said seventh codicil revoked all of the pecuniary bequests included in the said will and the said first six codicils thereto. It did not revoke or in any wise affect any of the following devises contained in said will, and each thereof remained in full force and effect at the time of the testator's death:

(a) The devise contained in the third item thereof in favor of the testator's wife Helen M. Bradley, or in case of her predeceasing him in favor of her heirs at law (other than Catharine Churchill or any of her issue).

(b) The devise of the "second parcel" and the "fourth parcel" of real estate described in the sixth item thereof to the trustees thereunder with directions to permit the Borough of Asbury Park (now the City

of Asbury Park) to purchase and acquire the same at the nominal prices and upon the conditions there named.

(c) The devise to such trustees of the "seventh parcel" of the real estate described in the sixth item thereof in trust to dedicate the same to the use of the public within the time and upon the terms there mentioned.

(d) The devise to the "Ocean Grove Camp Meeting Association of the Methodist Episcopal Church" of the lands in Ocean Grove by the twelfth item of the said will and the second codicil thereto.

(e) The devise of the residue of the testator's real estate covered by the sixteenth item of the said will.

4. The changes made by the testator in the said eighth codicil in the amounts of certain of the primary bequests contained in the said seventh codicil, changed the proportions in which, by the provisions of the said seventh codicil, the beneficiaries named therein were entitled to share in the residue of the testator's personal estate, and said residue should be distributed among the individuals, churches, charitable associations and other institutions mentioned in the said seventh codicil as "the aforenamed legatees" in the proportions or percentages that the primary bequests therein given them, stand as changed by the said eighth codicil.

5. Under the second item of the said eighth codicil the Asbury Park Hospital named therein as "the Hospital located on Asbury Avenue in Asbury Park, New Jersey," is entitled to a legacy of $5,000., but it is not entitled to par-

ticipate in the distribution of the residue of the testator's estate.

6. The bequest of $500. given Edward Howland by the fifth item of the said seventh codicil and the share in the testator's residuary estate given him by the ninth item of such codicil as changed by the said eighth codicil was revoked by the testator through a mistake of fact appearing upon the face of the said eighth codicil. Such revocation did not take effect and the said Edward Howland is entitled to the same benefit under the said codicils as if the sixth item of the said eighth codicil had not been included therein.

7. Susan A. Truax, of Green Grove, Neptune Township, New Jersey, is entitled to the pecuniary bequests given to "the widow of George Truax" by the said seventh and eighth codicils.

8. The following beneficiaries named in the said seventh or eighth codicils have been properly identified and proved to be as follows:

(a) "Methodist Home for Aged, Ocean Grove, N. J.," as The Methodist Episcopal Home for the Aged of New Jersey, located at Ocean Grove, New Jersey.

(b) "Sales Non-Sectarian Home for the Aged, Asbury Park, N. J.," as Searle Memorial Non-Sectarian Sea Shore Home for Aged Women, which is located at Asbury Park, New Jersey.

(c) "Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J., if incorporated; if not as soon after a society for this purpose is incorporated," as Asbury Park Society for the Prevention of Cruelty to Animals, an incorporated association located at Asbury Park, New Jersey.

(d) "Ann May Hospital, Spring Lake, N. J.," as Ann May Memorial Homeopathic Hospital located at Spring Lake, New Jersey.

(e) "Long Branch Hospital, Long Branch, N. J.," as Monmouth Memorial Hospital Association, located at Long Branch, New Jersey.

(f) "Seney Hospital, Borough of Brooklyn, N. Y.," as The Methodist Episcopal Hospital in the City of Brooklyn, a corporation of the State of New York, and located in the Borough of Brooklyn in the City of New York.

(g) "Old People's Home (Methodist) Borough of Manhattan, N. Y.," as Methodist Episcopal Church Home of New York City for the Aged and Infirm, a corporation of the State of New York.

(h) "Old People's Home (Methodist) Borough of Brooklyn, N. Y.," as Brooklyn Methodist Episcopal Church Home for the Aged, a corporation of the State of New York, located in the Borough of Brooklyn, in the City of New York.

(i) "Fund for Superannuated Preachers, New Jersey Conference (Methodist)," as The New Jersey Annual Conference, Inc., of the Methodist Episcopal Church.

(j) "John Smith," as John Schmidtt, of Creedmore, Long Island, New York.

(k) "Homer Clayton," as Holmes C. Clayton, of Asbury Park, New Jersey.

9. The revocations contained in the fourth and fifth items of the said eighth codicil did not revoke the remainders of the two trusts given by the third and fourth items of the said seventh codicil to the Society for the Prevention of Cruelty to Animals and the Society for the Prevention of Crime in the City of New York respectively, and the said societies are entitled to the corpus of the said trusts given them respectively by the said third and fourth items of the said seventh codicil.

10. The Church of the Holy Spirit of Asbury Park, New Jersey, and the Church of Our Lady of Mt. Carmel of Asbury Park, New Jersey, are each respectively entitled to the pecuniary bequests given to "Churches at Asbury Park, N. J., as follows: * * * Catholic * * *" by the said seventh and eighth codicils.

11. The First Church of Christ, Scientist, of Asbury Park, New Jersey, is entitled to the pecuniary bequests given to "Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *" by the said seventh and eighth codicils, but The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, is not entitled to any bequest under the legacy given to "Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *," by the said seventh and eighth codicils, and is not entitled to receive any share or portion of the testator's estate.

12. That the complainant, as the sole surviving executor of and trustee under said last will and testament and codicils thereto, continue to discharge his duties as such executor and trustee and to complete the administration and distribution of the testator's estate in the following manner:

(a) By conveying the lands and premises described in the third item of said last will and testament to the heirs-at-law of Helen M. Bradley, deceased (other than Catharine Churchill or any of her issue) in accordance with the directions and upon the terms and conditions provided in and by said will.

(b) By conveying to the City of Asbury Park the lands and premises described in the

second, fourth and seventh parcels of the sixth item of said last will and testament in accordance with the directions and upon the terms and conditions provided in and by said will.

(c) By selling and converting into money all of the testator's personal property and all of the real estate of which the testator died seized, mentioned and described as the first, third, fifth, sixth, eighth, ninth, tenth, eleven and twelfth parcels of the sixth item of said will and in the seventh item, the eighth item and the tenth item thereof, in accordance with the directions and powers and upon the terms and conditions provided in said will and codicils for the sale thereof, not heretofore sold and converted by him, and by first paying from the proceeds of any and all such sales and conversions heretofore or hereafter made by him, all debts of the testator and all taxes of any nature payable by the testator's estate as well as any and all commissions, counsel fees, and other expenses incidental to the administration of said estate including this suit and of the trusts created by his said will and testament and the codicils thereto, and then paying over, dividing and distributing the remainder thereof to the following named beneficiaries in the following manner:

1. To William C. Baspian and Joseph B. Smith, Executors of the last will and testament of Albert P. Smith, Sr., deceased, designated in the said Seventh Codicil as "Albert Smith, Sr.," the primary legacy of $5,000 bequeathed to him by said codicil.

2. To Albert P. Smith, Jr., of Brooklyn, New York, designated in said Seventh Codicil as "Albert Smith, Jr.," the primary legacy of $5,000. bequeathed to him by said codicil.

3. To James A. Smith, of Boonton, New Jersey, designated in the said Seventh Codicil as "James Smith," the primary legacy of $5,000. bequeathed to him by said codicil.

4. To Frank R. Smith, of Boonton, New Jersey, designated in the said Seventh Codicil as "Frank Smith," the primary legacy of $5,000. bequeathed to him by said codicil.

5. To Foster N. Smith, of Boonton, New Jersey, designated in the said Seventh Codicil as "Foster Smith," the primary legacy of $5,000. bequeathed to him by said codicil.

6. To Samuel H. Gillespie, of Morristown, New Jersey, designated in the said Seventh Codicil as "Samuel Gillespie," the primary legacy of $5,000. bequeathed to him by said codicil.

7. To John T. Gillespie, of Morristown, New Jersey, designated in the said Seventh Codicil as "John Gillespie," the primary legacy of $5,000. bequeathed to him by said codicil.

8. To James P. Gillespie, of White Plains, New York, designated in the said Seventh Codicil as "James Gillespie," the primary legacy of $5,000. bequeathed to him by said codicil.

9. To Helen G. Sanford, of Morristown, New Jersey, designated in the said Seventh Codicil as "Helen Sanford," the primary legacy of $5,000. bequeathed to her by said codicil.

10. To Josephine G. Erskine, of New York City, New York, designated in the said Seventh Codicil as "Josephine Erskine," the primary legacy of $5,000. bequeathed to her by said codicil.

11. To Josephine Hewitt, of Trenton, New Jersey, designated in the said Eighth Codicil as "Josephine Hewitt," the primary legacy of $15,000. bequeathed to her by said codicil.

12. To Helen M. Jackson, of Belmar, New Jersey, designated in the said Eighth Codicil as "Helen Jackson," the primary legacy of $15,000. bequeathed to her by said codicil .

13. To Mary Alice Hueston, of Brooklyn, New York, designated in the said Eighth Codicil as "Minnie Hueston," the primary legacy of $15,000. bequeathed to her by said codicil.

14. To George L. Dickinson, of Newark, New Jersey, designated in the said Seventh Codicil as "George Dickinson," the primary legacy of $5,000. bequeathed to him by said codicil.

15. To Gustave Meyers, of Westwood, New Jersey, designated in the said Seventh Codicil as "Gustave Meyers," the primary legacy of $5,000. bequeathed to him by said codicil.

16. To The Asbury Park and Ocean Grove Bank and Elizabeth Wells, Executors of the last will and testament of William S. Wells, deceased, designated in the said Seventh Codicil as "William Wells," the primary legacy of $5,000. bequeathed to him by said codicil.

17. To the First Methodist Episcopal Church of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: First Methodist * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

18. To The Rector, Warden and Vestry of Trinity Church, Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Episcopalian, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

19. To The Grand Avenue Reformed Church of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Reformed Church, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

20. To the First Baptist Church of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Baptist, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

21. To the Evangelical Lutheran Church of the Atonement of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Lutheran, * * *," the primary legacy of $1,000 bequeathed to it by said codicil.

22. To The First Presbyterian Church of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Presbyterian, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

23. To the Ballard Memorial Methodist Episcopal Church of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Ballard Memorial Church, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

24. To The Church of the Holy Spirit of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Catholic, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

25. To the Church of Our Lady of Mt. Carmel, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Catholic, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

26. To the First Church of Christ, Scientist, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Christian Scientist, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

27. To the Congregation, Sons of Israel, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Jewish Synagogue, * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

28. To the Saint Stephen's A. M. E. Zion Church, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Zion Methodist (colored) * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

29. To the Mt. Pisgah Baptist Temple, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Mt. Pisgah Baptist (colored) * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

30. To the Rector, Church Wardens and Vestrymen of St. Augustine Church, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Churches at Asbury Park, N. J., as follows: * * * Episcopalian (colored) * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

31. To the First Methodist Episcopal Church, of Bradley Beach, New Jersey, designated in the said Eighth Codicil as "Churches at Bradley Beach, N. J., as follows: Methodist * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

32. To St. James' Mission, of Bradley Beach, New Jersey, designated in the said Eighth Codicil as "Churches at Bradley Beach, N. J., as follows: * * * St. James' Episcopal * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

33. To The Church of the Ascension, of Bradley Beach, New Jersey, designated in the said Eighth Codicil as "Churches at Bradley Beach, N. J., as follows: * * * Catholic," the primary legacy of $1,000. bequeathed to it by said codicil.

34. To the Avon-by-the-Sea Methodist Protestant Church, of Avon, New Jersey, designated in the said Eighth Codicil as "Churches at Avon, N. J., as follows: Methodist * * *," the primary legacy of $1,000. bequeathed to it by said codicil.

35. To the First Baptist Church of Key East, Avon, New Jersey, designated in the said Eighth Codicil as "Churches at Avon, N. J., as follows: * * * Baptist," the primary legacy of $1,000. bequeathed to it by said codicil.

36. To the West Grove Methodist Episcopal Church of West Grove, New Jersey, designated in the said Eighth Codicil as "Methodist Church at West Grove, N. J.," the primary legacy of $1,000. bequeathed to it by said codicil.

37. To The Methodist Episcopal Home for the Aged of New Jersey, of Ocean Grove, New Jersey, designated in the said Seventh Codicil as "Methodist Home for the Aged, Ocean Grove, N. J.," the primary legacy of $5,000. bequeathed to it by said codicil.

38. To the Searle Memorial Non-Sectarian Seashore Home for Aged Women, of Asbury Park, New Jersey, designated in the said Seventh Codicil as "Sales Non-Sectarian Home for the Aged, Asbury Park, N. J.," the primary legacy of $5,000. bequeathed to it by said codicil.

39. To the Young Men's Christian Association of Asbury Park and Ocean Grove, New Jersey, designated in the said Eighth Codicil as "Young Men's Christian Association, Asbury Park, N. J.," the primary legacy of $1,000. bequeathed to it by said codicil.

40. To the Women's Christian Temperance Union of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Women's Christian Temperance Union, Asbury Park, N. J.," the primary legacy of $1,000. bequeathed to it by said codicil.

41. To the Asbury Park Free Public Library, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "Asbury Park Library, Asbury Park, N. J., the primary legacy of $1,000. bequeathed to it by said codicil.

42. To the Asbury Park Society for the Prevention of Cruelty to Animals, of Asbury Park, New Jersey, designated in the said Seventh and

Eighth Codicils as "Society for the Prevention of Cruelty to Animals, at Asbury Park, N. J.," the primary legacy of $1,000. bequeathed to it by the third item of said Eighth Codicil and the primary legacy of $5,000. bequeathed to it by the third item of said Seventh Codicil.

43. To the Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey, designated in the said Eighth Codicil as "Ann May Hospital, Spring Lake, N. J.," the primary legacy of $1,000. bequeathed to it by said codicil.

44. To the Monmouth Memorial Hospital Association, of Long Branch, New Jersey, designated in the said Eighth Codicil as "Long Branch Hospital, Long Branch, N. J.," the primary legacy of $1,000. bequeathed to it by said codicil.

45. To The Methodist Episcopal Hospital in the City of Brooklyn, designated in the said Eighth Codicil as "Seney Hospital in the Borough of Brooklyn, N. Y.," the primary legacy of $1,000. bequeathed to it by said codicil.

46. To the Methodist Episcopal Church Home of New York City for the Aged and Infirm, of New York City, New York, designated in the said Eighth Codicil as "Old People's Home (Methodist), Borough of Manhattan, N. Y.," the primary legacy of $1,000. bequeathed to it by said codicil.

47. To the Brooklyn Methodist Episcopal Church Home for the Aged, of Brooklyn, New York, designated in the said Eighth Codicil as "Old People's Home (Methodist), Borough of Brooklyn, N. Y.," the primary legacy of $1,000. bequeathed to it by said codicil.

48. To The New Jersey Annual Conference, Inc., of the Methodist Episcopal Church, of Moorestown, New Jersey, designated in the said Seventh Codicil as "Fund for Superannuated Preachers, New Jersey Conference (Methodist)," the primary legacy of $5,000. bequeathed to it by said codicil.

49. To the Society for the Prevention of Crime in the City of New York, designated in the said Seventh Codicil as "Society for the Prevention of Crime in the City of New York," the primary legacy of $5,000. bequeathed to it by said codicil.

50. To Andrew Eckel, of Brooklyn, New York, designated in the said Seventh Codicil as "Andrew Eckel," the primary legacy of $500. bequeathed to him by said codicil.

51. To Frederick Thorne, of Westwood, New Jersey, designated in the said Seventh Codicil as "Frederick Thorne," the primary legacy of $500. bequeathed to him by said codicil.

52. To John Schmidtt, of Creedmore, Long Island, New York, designated in the said Seventh Codicil as "John Smith," the primary legacy of $500. bequeathed to him by said codicil.

53. To Martin Sther, of Rockville Center, Long Island, New York, designated in the said Seventh Codicil as "Martin Sther," the primary legacy of $500. bequeathed to him by said codicil."

54. To Holmes C. Clayton and Ira A. Clayton, executors of the last will and testament of Holmes C. Clayton, deceased, designated in the said Seventh Codicil as "Homer Clayton," the primary legacy of $500. bequeathed to him by said codicil.

55. To Edward Howland, of Asbury Park, New Jersey, designated in the said Seventh Codicil as "Edward Howland," the primary legacy of $500. bequeathed to him by said codicil.

56. To Susan A. Truax of Green Grove, New Jersey, designated in the said Seventh Codicil as "the widow of George Truax, who formerly resided at Asbury Park, N. J., and now lives several miles west of Asbury Park," the primary legacy of $500. bequeathed to her by said codicil.

57. To the Asbury Park Hospital, of Asbury Park, New Jersey, designated in the said Eighth Codicil as "the Hospital located on Asbury Ave-

nue, in Asbury Park, New Jersey," the primary legacy of $5,000. bequeathed to it by said codicil.

In the case of each such payment there shall also be included interest upon the sum so designated at the rate of six per cent. per annum from one year after the date of the death of the said testator.

(d) By thereafter paying over, dividing and distributing to each of the fifty-seven aforenamed legatees with the exception of the said Asbury Park Hospital the remainder of said proceeds in the proportions which the primary legacy hereinbefore directed to be paid to each such legatee respectively bears to the sum of $167,500., being the total amount of the said primary legacies so directed to be paid after deducting the sum of $5,000. directed to be paid to the said Asbury Park Hospital, as aforesaid.

(e) That nothing herein contained shall relieve the complainant, from accounting, as such executor and trustee, as required by law and by the said will and codicils.

E. R. WALKER,
Chancellor.

Respectfully advised,

JOHN H. BACKES,
V.-C.

NOTICE OF APPEAL.

Filed January 24, 1925.

The defendants, The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York, hereby appeal from the final decree in this cause made on the 16th day of December, 1924, and from paragraph 4 thereof reading as follows:

> "The changes made by the testator in the said eighth codicil in the amounts of certain of the primary bequests contained in the said seventh codicil, changed the proportions in which, by the provisions of the said seventh codicil, the beneficiaries named therein were entitled to share in the residue of the testator's personal estate, and said residue should be distributed among the individuals, churches, charitable associations and other institutions mentioned in the said seventh codicil as 'the aforenamed legatees' in the proportions or percentages that the primary bequests therein given them, stand as changed by the said eighth codicil."

and from paragraph 12, subdivision (d) thereof, reading as follows:

> "By thereafter paying over, dividing and distributing to each of the fifty-seven aforenamed legatees with the exception of the said Asbury Park Hospital the remainder of said proceeds in the proportions which the primary legacy hereinbefore directed to be paid to each such legatee respectively bears to the sum of $167,500., being the total amount of the said primary legacies so directed to be paid after deducting the sum of $5,000. di-

rected to be paid to the said Asbury Park Hospital, as aforesaid."

to the Court of Errors and Appeals in the last resort in all causes.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Defendants, The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York.

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

EDWARD O. STANLEY, JR.,
Of Counsel with Defendants-Appellants Above Named.

PETITION OF APPEAL.

Filed January 24, 1925.

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

The petition of The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York, the appellants in the above entitled cause, respectfully shows:

1. That your petitioners find themselves aggrieved by a decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 16, 1924, in a cause wherein Samuel H. Gillespie, sole acting executor and surviving trustee, &c., of James A. Bradley, deceased, was complainant, and John T. Gillespie and others were defendants, in this respect, to wit:

That the said decree adjudges and decrees that the changes made by the testator in the said eighth codicil in the amounts of certain of the primary bequests contained in the said seventh codicil, changed the proportions in which, by the provisions of the said seventh codicil, the beneficiaries named therein were entitled to share in the residue of the testator's personal estate, and said residue should be distributed among the individuals, churches, charitable associations and other institutions mentioned in the said seventh codicil as "the aforenamed legatees" in the proportions or percentages that the primary be-

quests therein given them, stand as changed by the said eighth codicil; and

That the said decree adjudges and decrees that the complainant, as the sole surviving executor of and trustee under said last will and testament and codicils thereto, continue to discharge his duties as such executor and trustee and to complete the administration and distribution of the testator's estate by paying over, dividing and distributing to each of the fifty-seven legatees named in the said decree with the exception of the said Asbury Park Hospital the remainder of the proceeds of the testator's personal property and real estate as in said decree mentioned in the proportions which the primary legacy in said decree directed to be paid to each such legatee respectively bears to the sum of $167,500, being the total amount of the said primary legacies so directed to be paid after deducting the sum of $5,000 directed to be paid to the said Asbury Park Hospital as aforesaid, in so far as the part of such decree last mentioned adjudges and decrees the proportion of said remainder to be paid to your petitioners The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York.

2. And your petitioners humbly appeal from those parts of the decree of the Chancellor which decree as aforesaid on the ground that the same are erroneous for that the proportion of your petitioners in the residue of the testator's personal estate should be as directed by the provisions of the seventh codicil to the will

of the said James A. Bradley, deceased, unchanged by the eighth codicil thereof, and said residue should be distributed to your petitioners among the other legatees named in said seventh and eighth codicils in the said proportions named in the said seventh codicil, viz., the proportions in which the primary legacies to your petitioners in said seventh codicil directed to be paid to your petitioners respectively bear to the total amount of the primary legacies so directed to be paid in said seventh codicil.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Defendants - Appellants, The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York.

NOTICE OF APPEAL.

Filed January 30, 1925.

The defendants, First Presbyterian Church of Asbury Park, New Jersey, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey, hereby appeal from the final decree in this cause made on the 16th day of December, 1924, and from Paragraph 4 thereof, reading as follows:

> "4. The changes made by the testator in the said eighth codicil in the amounts of certain of the primary bequests contained in the said seventh codicil, changed the proportions in which, by the provisions of the said seventh codicil, the beneficiaries named therein were entitled to share in the residue of the testator's personal estate, and said residue should be distributed among the individuals, churches, charitable associations and other institutions mentioned in the said seventh codicil as 'the aforenamed legatees' in the proportions or percentages that the primary bequests therein given them, stand as changed by the said eighth codicil."

and from Paragraph 11, reading as follows:

> "11. The First Church of Christ, Scientist, of Asbury Park, New Jersey, is entitled to the pecuniary bequests given to 'Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *' by the said seventh and eighth codicils, but The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, is not entitled to any bequest under the legacy given to 'Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *,' by the said seventh and eighth codicils, and

is not entitled to receive any share or portion of the testator's estate."

and from Paragraph 12, sub-division (d) thereof, reading as follows:

"(d) By thereafter paying over, dividing and distributing to each of the fifty-seven aforenamed legatees with the exception of the said Asbury Park Hospital the remainder of said proceeds in the proportions which the primary legacy hereinbefore directed to be paid to each such legatee respectively bears to the sum of $167,500., being the total amount of the said primary legacies so directed to be paid after deducting the sum of $5,000. directed to be paid to the said Asbury Park Hospital, as aforesaid."

to the Court of Errors and Appeals in the last resort in all causes.

PATTERSON, RHOME & MORGAN,
Solicitors for and of Counsel
for the Above Named Defendants.

I conveice there is a good cause for appeal of the above stated cause.

KAYS R. MORGAN,
Of Counsel with
Defendants-Appellants Above Named.

PETITION OF APPEAL.

Filed January 30, 1925.

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

The petition of First Presbyterian Church of Asbury Park, New Jersey, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey, the appellants in the above-entitled cause, respectfully shows:

1. That your petitioners find themselves aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 16, 1924, in a cause wherein Samuel H. Gillespie, sole acting executor and surviving trustee, etc., of James A. Bradley, deceased, was complainant, and John T. Gillespie and others were defendants, in this respect, to wit:

That the said decree adjudges and decrees that the changes made by the testator in the said eighth codicil in the amounts of certain of the primary bequests contained in the said seventh codicil, changed the proportions in which, by the provisions of the said seventh codicil, the beneficiaries named therein were entitled to share in the residue of the testator's personal estate, and said residue should be distributed among the individuals, churches, charitable associations and other institutions mentioned in the said seventh codicil as "the aforenamed legatees" in the proportions or percentages that the primary bequests therein given them, stand as changed by the said eighth codicil.

That the said decree adjudges and decrees that the said defendant, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, is not entitled to any bequest under the legacy given to, "Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *," by the said seventh and eighth codicils, and is not entitled to receive any share or portion of the testator's estate..

That the said decree adjudges and decrees that the complainant, as the sole surviving executor of and trustee under the last will and testament and codicils thereto, continue to discharge his duties as such executor and trustee, and to complete the administration and distribution of the testator's estate by paying over, dividing and distributing to each of the fifty-seven legatees named in the said decree with the exception of the said Asbury Park Hospital the remainder of the proceeds of the testator's personal property and real estate as in said decree mentioned in the proportions which the primary legacy in said decree directed to be paid to each such legatee respectively bears to the sum of $167,500 being the total amount of the said primary legacies so directed to be paid after deducting the sum of $5,000 directed to be paid to the said Asbury Park Hospital as aforesaid.

2. And your petitioners humbly appeal from those parts of the decree of the Chancellor which decrees as aforesaid on the ground that the same are erroneous for that the proportion of your petitioners in the residue of the testator's personal estate should be as directed by the provisions of the seventh codicil to the will of the said James A. Bradley, deceased, unchanged by

the eighth codicil thereof, and said residue should be distributed to your petitioners among the other legatees named in said seventh and eighth codicils in the said proportions named in the said seventh codicil, viz., the proportions in which the primary legacies to your petitioners in said seventh codicil directed to be paid to your petitioners respectively bear to the total amount of the primary legacies so directed to be paid in said seventh codicil, and also for that your petitioner, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, should be entitled to the pecuniary bequest under the legacy given to "Churches at Asbury Park, N. J., as follows: * * * Christian Scientist * * *," by the seventh and eighth codicils and should be entitled to receive its share or portion of the testator's estate.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

PATTERSON, RHOME and MORGAN,
Solicitors for and of Counsel with Defendants-Appellants, First Presbyterian Church, of Asbury Park, New Jersey, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey.

KAYS R. MORGAN,
Of Counsel.

Formal answers to petitions of appeal filed by:

January 30, 1925.

Samuel H. Gillespie, sole acting executor and surviving trustee of the last will and testament and codicils thereto of James A. Bradley, deceased, complainant-respondent, by

EDWARD K. MILLS,
Solicitor.

January 28, 1925.

John T. Gillespie and Samuel H. Gillespie, executors of the Last Will and Testament of Louis C. Gillespie, deceased; John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine G. Erskine, Helen G. Sanford, Mary G. Illman and George Fletcher Illman, defendants-respondents, by

McCARTER & ENGLISH,
Solicitors.

George L. Dickinson, Estate of Albert P. Smith, Sr.; Albert P. Smith, Jr.; Foster N. Smith, Frank R. Smith, James A. Smith, John Smith and Martin Sther, defendants-respondents, by

H. H. SNEDEKER,
Solicitor.

February 6, 1925.

Society for the Prevention of Crime in the City of New York, defendant-respondent, by

STAMLER, STAMLER & KOESTLER,
Solicitors.

Answers to Petitions of Appeal.

February 11, 1925.

Fund for Superannuated Ministers, New Jersey Annual Conference—Methodist Episcopal Church, defendant-respondent, by

AVIS & AVIS,
Solicitors.

February 10, 1925.

Formal answer to the petition of appeal of Trustees of the Second Church of Christ, Scientist, of Asbury Park, filed by Methodist Episcopal Hospital in the City of Brooklyn, Methodist Episcopal Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York, by

PITNEY, HARDIN & SKINNER,
Solicitors.

Formal answers to the petition of appeal of First Presbyterian Church of Asbury Park, New Jersey, Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey, filed as follows:

February 3, 1925.

Samuel H. Gillespie, sole acting executor and surviving trustee of the last will and testament and codicils of James A. Bradley, deceased, by

EDWARD K. MILLS,
Solicitor.

Answers to Petitions of Appeal.

February 6, 1925.

Society for the Prevention of Crime in the City of New York, by

STAMLER, STAMLER & KOESTLER,
Solicitors.

February 11, 1925.

Fund for Superannuated Ministers New Jersey Annual Conference Methodist Episcopal Church.

AVIS & AVIS,
Solicitors.

February 2, 1925.

John T. Gillespie and Samuel H. Gillespie, executors of the last will and testament of Louis C. Gillespie, deceased, John T. Gillespie, James P. Gillespie, Samuel H. Gillespie, Josephine G. Erskine, Helen G. Sanford, Mary G. Illman and George Fletcher Illman, by

McCARTER & ENGLISH,
Solicitors.

45 MAR.T.1925

47 MAR.T.1925

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, &c., of JAMES A. BRADLEY, deceased,
Complainant-Respondent,

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, &c., of LOUIS C. GILLESPIE, *et als.*,
Defendants-Respondents.

No. 47.

On Appeal from Chancery.

Brief.

BRIEF.

This appeal is the appeal of the First Presbyterian Church of Asbury Park, New Jersey, the Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital of Spring Lake, New Jersey.

This brief is on behalf of the Methodist Episcopal Hospital in the City of Brooklyn, the Methodist Episcopal Church Home in New York City for the Aged and Infirm of New York, and the Brooklyn Methodist Episcopal Church Home of Brooklyn, New York, respondents to the above appeal.

The questions arising on this appeal are the same as those presented in No. 45 bearing the same title as this cause, with the exception of

New Jersey State Library

the contention raised by the Trustees of the Second Church of Christ Scientist. These points have been fully discussed in the brief filed by us on behalf of the respondents we represent in their appeal, and we respectfully refer the Court to our brief filed on that appeal, and submit the same as our brief on behalf of the respondents we represent in this appeal.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Methodist Episcopal Hospital in the City of Brooklyn, Methodist Episcopal Church Home in New York City for the Aged and Infirm of New York, and Brooklyn Methodist Episcopal Church Home of Brooklyn, New York.

EDWARD O. STANLEY, JR.,
Of Counsel.

45 MAR.T.1925 47 MAR.T.1925

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

New Jersey Court of Errors and Appeals.

Between

SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, &c. of James A. Bradley, deceased,
Complainant-respondent,

AND

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, &c. of Louis C. Gillespie, *et als.*,
Defendants-respondents.

On Appeal from Chancery.

BRIEF.

This brief is submitted on behalf of The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home, of Brooklyn, New York, three of the defendants in the above entitled cause who have appealed from the final decree in Chancery.

Statement of Case.

This is an appeal from the final decree of the Chancery Court entered December 16, 1924, construing the Will of the decedent, James A. Bradley, founder of Asbury Park.

The Will was executed June 26, 1896 (p. 101, l. 13).

The Seventh Codicil was executed May 3, 1916 (p. 101, l. 20).

The Eighth Codicil was executed March 3, 1919 (p. 101, l. 21).

The testator died June 6, 1921 (p. 101, l. 11).

He left personal property appraised at a little more than $100,000 (p. 103, l. 17), and an equity in real property appraised at almost $1,150,000 (p. 103, ll. 19 and 20; p. 164).

The Will is a very long document. We do not analyze the same for the reason that the Seventh Codicil thereto in the main revoked the original Will and its first six codicils.

From the record it will be seen that many questions as to the construction of said will and codicils arose herein. This appeal concerns only one and that is in relation to the meaning of certain clauses of the Seventh and Eighth Codicils. The clauses of the Seventh Codicil bearing on the point at issue are as follows (p. 44, l. 24):

> "I, James A. Bradley, do make, publish and declare this to be a codicil to my Last Will and Testament.
>
> First: I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate.
>
> Second: I do hereby give and bequeath to each of the following persons and institutions or corporations, the sum of Five thousand ($5000) dollars: Albert Smith, Sr." * * *

Then follows in this second clause a list of sixteen individuals and over thirty charitable institutions, including said three appellants,—each individual and institution receiving a gift of $5,000.

The ninth and tenth clauses of the Seventh Codicil read as follows (p. 46, l. 39):

> "Ninth: All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively.

> Tenth: I direct that the legacies herein provided for shall be a charge on my real estate, and I direct my Executor, and give him full power of sale to sell any and all of my real estate to pay said legacies, and give him power to execute deed or deeds therefor."

It will thus be seen that by this codicil each appellant receives two independent legacies. The first is a legacy of $5,000 and the second an interest in the residuary estate in the proportion that $5,000 bears to the sum of all the legacies given. This last sum is approximately $255,000. In other words each appellant receives as its second gift approximately 5000/255,000ths of the residuary estate.

The Eighth Codicil provides (p. 48, l. 25):

> "First: In lieu of the legacies of Five thousand ($5,000) dollars each to Josephine Hewitt, Helen Jackson and Minnie Hueston, I give and bequeath to said Josephine Hewitt, Helen Jackson and Minnie Hueston, the sum of Fifteen thousand ($15,000) dollars to each."

> "Third: In lieu of the legacies of Five thousand ($5,000) dollars each, provided in the Second clause of the Codicil to my Will bearing date the third day of May, One thousand nine hundred and sixteen, and given as follows: Churches at Asbury Park", etc.

Here follows a list of said institutions, excepting three, in the order as they appear in the second clause of the Seventh Codicil, and then is added (p. 49, l. 26):

> "I give and bequeath to each of the aforenamed the sum of One thousand ($1,000) dollars *i. e.*, I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each."

After the eighth clause of the Eighth Codicil appears the following (p. 50, l. 22):

> "In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid codicil bearing date the third day of May, in the year One thousand, nine hundred and sixteen."

By the Seventh Codicil as already stated the specific legacies amount to approximately $255,000, and by the Eighth Codicil to approximately $174,000. The question for determination on this appeal is, does each appellant take as its second gift 5000/255,000ths of the residuary estate or 1000/174,000ths thereof?

The proportion or percentage of the interest in the residuary estate of each of the institutions represented by the undersigned was fixed by the Seventh Codicil and not in any way affected expressly or by implication by the Eighth Codicil.

(A) *The above construction seems in accord with the intent of the testator.*

There are considerations other than the independent form of the bequests and the absence of any express change of proportions in the residuary which indicate this. As may be seen by the will and codicils, Mr. Bradley in 1896 left one-half of the bulk of his estate to charitable institutions, including the three appellants herein, and twenty years later by his Seventh Codicil left almost two thirds of his entire estate to religious or charitable institutions. The Eighth Codicil was made less than three years after the Seventh. There is nothing in the record, unless in the language of the Eighth Codicil, to suggest any change of attitude during this short period on the part of the testator

toward the appellants or toward religious or charitable institutions in general. That interpretation of the Eighth Codicil will be presumed which will give full expression to such codicil with least disturbance to the will and earlier codicils. The Court of Chancery has decided that the legatees, whose legacies were increased or decreased by the Eighth Codicil shall share in the residuary in the proportions that their legacies respectively under the Eighth Codicil bear to the total of the legacies, whereas the appellants contend that the ratios of the legacies under the Seventh Codicil to the total legacies under such codicil are the proper measures of distribution. Which of the two constructions will disturb the will and earlier codicils the less?

From the figures given at the hearing before Vice Chancellor John H. Backes on April 28, 1924, and disregarding expenses of administration, the following computation will show the net estate at the testator's death of which distribution was directed by the Seventh and Eighth Codicils.

Personal property (p. 103, l. 16)	$101,640.87	
Debts (p. 112, l. 31)	70,151.81	$31,489.06
Equity of real property (p. 103, l. 20)	$1,147,256.65	
Unrevoked devises (p. 103, l. 26; p. 104, l. 40; p. 105, l. 28; p. 120, l. 9)	64,950.00	1,082,306.65
Total		$1,113,795.71

Since $1,108,356.22 the figure found by the Complainant in its brief in the Court of Chancery (p. 29) is near enough to the above total for purposes of illustration we have thought best in the following computations to adopt such figure.

If under the Seventh Codicil, we consider the two bequests (p. 45, l. 36; p. 46, l. 9) of $5,000 each to natural individuals for life with remainders to

institutions as going one-half to natural individuals and one-half to institutions, then the aggregate of legacies of specific amounts under such codicil to natural individuals would be $89,800 and to churches and institutions, $165,000; the aggregate of legacies of specified amounts would be $254,800, leaving a residue of $853,556.22. Under this Codicil almost two-thirds of the entire estate was left to churches and institutions.

If under the Eighth Codicil, the said two life beneficiaries having died (p. 134, ll. 5 and 15) we consider the said two bequests as going entirely to institutions, then the aggregate of legacies of specified amounts under such codicil to natural individuals would be $114.300, and to churches and institutions $59,000; the aggregate of legacies of specified amounts would be $173,300, leaving a residue of $935,056.22.

Distribution to three nieces.

If no Eighth Codicil had been executed and distribution were now made under the Seventh Codicil, each of the three nieces given $15,000 under the Eighth Codicil (p. 48, l. 26) would receive,—

Legacy	$5,000.00	
5000/254,800 of $853,556.22.....	16,749.53	$21,749.53

If, however, distribution were now made under the Eighth Codicil, and according to appellants' construction each of said nieces would receive,—

Legacy	$15,000.00	
5000/254,800 of $935,056.22.....	18,348.83	$33,348.83

If under the Eighth Codicil, but according to the construction of the Court of Chancery—

Legacy	$15,000.00	
15000/168,300 of $935,056.22.....	83,338.34	$98,338.34

(Since the Asbury Park Hospital was given a $5,000 bequest by the Eighth Codicil (p. 48, l. 32) but is not (p. 189, l. 40) entitled to share in the residuary, the amount of such legacy was deducted from the total of legacies under such codicil in arriving at $168,300 as the denominator.)

Distribution to individual legatees of $5,000.

If no Eighth Codicil had been executed and distribution were now made under the Seventh Codicil each of the natural individuals other than the above nieces to whom $5,000 had been bequeathed would receive,—

Legacy	$5,000.00	
5000/254,800 of $853,556.22.....	16,749.53	$21,749.53

If, however, distribution were now made under the Eighth Codicil, and according to appellants' construction each of said individuals would receive—

Legacy	$5,000.00	
5000/254,800 of $935,056.22.....	18,348.83	$23,348.83

If under the Eighth Codicil but according to the construction of the Court of Chancery,—

Legacy	$5,000.00	
5000/168,300 of $935,056.22.....	27,779.45	$32,779.35

Distribution to Churches and Institutions including Appellants.

If no Eighth Codicil had been executed and distribution were now made under the Seventh Codicil, each of the churches and institutions (other than Asbury Park Hospital) would receive,—

Legacy	$5,000.00	
5000/254,800 of $853,556.22.....	16,749.53	$21,749.53

If, however, distribution were now made under the Eighth Codicil, and according to appellants' construction,—

Legacy	$1,000.00	
5000/254,800 of $935,056.22.....	18,348.83	$19,348.83

If under the Eighth Codicil, but according to the construction of the Court of Chancery,—

Legacy	$1,000.00	
1000/168,300 of $935,056.22.....	5,555.89	$6,555.89

It is evident, then, that the construction asked for by the appellants disturbs the earlier testamentary provisions far less than the construction favored by the Court of Chancery. Under the former each of the three nieces receives an increase of about $11,600, or about 50%; under the latter an increase of more than $76,500, or over 350%. Under the former each other $5,000 individual legacy is increased only about $1,600, but under the latter more than $11,000. Under the former each church and institution (other than Asbury Park Hospital) is decreased only about $2,400, but under the latter is decreased more than $15,000 or considerably over two-thirds. The mere change of primary legacies would not greatly alter the previous general scheme of distribution, since the bulk of the estate consisted of the residuary. Under the construction of the Court of Chancery, however (p. 189, l. 21) the testator is declared in 1919 to have intended that certain nieces who in 1916 would each have received equal legacies with each of the appellants should receive fifteen times as much and certain other legatees likewise in 1916 sharing equally with appellants should receive five times as much.

It has been shown that under the Will one-half of the bulk of the estate was to go to charities, and that under the Seventh Codicil two-thirds of the entire estate was to go to churches and institu-

tions. A computation will reveal that under the Eighth Codicil under the Court's construction less than one-third of the estate would go to churches and institutions, whereas under the appellants' construction approximately three-fifths would go to such legatees. The figures are:

According to the construction of the Court—

To Churches and Charities under Seventh Codicil	$717,734.60
To Churches and Charities under Eighth Codicil	359,018.04

According to Appellants' construction—

To Churches and Charities under Seventh Codicil	$717,734.60
To Churches and Charities under Eighth Codicil	664,511.29

The action of the testator in altering the amounts of primary legacies without changing the proportions in the residuary may be looked on as natural. In 1896 the bulk of the testator's estate consisting of real property was described in the Sixth Item of the Will. In 1919, twenty-three years later, when the Eighth Codicil was made, he still had most of such real property (p. 164). By his Seventh Codicil he had specified money legacies of the total of about $255,000. We have seen that after deducting for debts the testator left in 1921 little more than $30,000 (p. 112, l. 31) of personalty. There is no reason to think that in 1919 the amount of his personal property was materially different. Necessarily the legacies would be paid out of the proceeds of real property. That fact and the consideration that it might be a long time before his executors could dispose to advantage of real property which he had held for over twenty years probably influenced the testator to change the primary legacies. He was not intending a change in the general scheme. He had set his heart on cer-

tain of his kindred, connections and employees receiving certain minimum amounts and concluded that, if the cash should be slow in coming to hand and the Executors should make payments on account of the legacies, such payments would go more largely to the living persons who were legatees, if he should increase certain of their primary legacies and decrease the legacies to institutions. Such solicitude for the prompt payment of certain specified sums to living persons does not at all militate against the view that as to the residuary he wished the institutions to take proportions as under the earlier instrument.

It may be said further on this point that the Seventh Codicil to Mr. Bradley's Will clearly contemplated two gifts to each beneficiary, to wit: a legacy of a specific amount, payment of which was charged on his real estate (p. 47, l. 4) and a proportionate share of the residue, if any, of his personal estate. It is a vital distinction, if assets prove insufficient, whether what is given to a particular beneficiary is merely a proportionate share in the residuary estate, or is a legacy of definite amount, plus a proportionate share in the residuary estate. In the first case, the legacies given to beneficiaries entitled to share in the residue, being mere proportionate shares in that residue, abate, whereas legacies to beneficiaries not entitled to share in the residue are paid in full. But under a Will such as was made by Mr. Bradley there is no provision under which the legacies are to be abated, since they are not mere shares in the residue, and therefore the deficiency would be borne equally by all legatees, both those entitled to share in the residue, if there had been any, and those not so entitled.

Moreover, the testator clearly regarded the two provisions as distinct, not only because he made them in separate paragraphs of the Seventh Codicil, but also because by paragraph Tenth, he directed

that the "legacies" should be a charge on his real estate (p. 47, l. 4).

He clearly intended to charge on his real estate not equitably converted only the specific amounts previously bequeathed, thereby separating those "legacies" from any share of the residue in which the same beneficiaries would share under the Ninth paragraph of the Codicil.

(B) *The Appellants' construction of the Seventh and Eighth Codicils is supported by the authorities.*

Quincy v. *Rogers,* 9 Cush. (Mass.) 291:

The bequests are independent and distinct. One is measured by a sum of money and the other is measured by a proportion of the residuary estate. The law recognizes that there is a distinction between pecuniary legacies and shares in the residuary estate. As Chief Justice Shaw said in the above case at page 297:

> "Now, in common parlance, as well as in a more precise use of language, a 'legacy' is distinguishable from the gift of a residue, or share in a residue."

This language is quoted with approval in *White* v. *Ditson,* 140 Mass. 351-359, 4 N. E. 606, 612, and also in *Sias* v. *Chase,* 207 Mass. 372, 93 N. E. 802, 804. The assumption made in the briefs of complainant and some of the respondents that the two bequests made in the second and ninth items are substantially one, is therefore unfounded and contrary both to the testator's intention in separating them in different parts of his Will, as well as to the law relating thereto. Vice Chancellor Backes, in deciding this case, evidently did not believe them to be one bequest as he says (p. 176, l. 22) that "here the pecuniary and residuary legacies are clearly several". The assumption of other counsel that the legacies and the gifts of the residuary es-

tate are dependent and not independent begs the question to be decided.

The court should note that the testator specifically refers in the substitution to the legacies *"provided in the second clause"* of the Seventh Codicil. The language is (p. 48, l. 36) "In lieu of the legacies of $5,000 each *provided in the second clause* of the codicil to my will bearing date the third day of May, One Thousand Nine Hundred and Sixteen, and given as follows:" (Italics ours.) To each such legatee he gives in place of $5,000 only $1,000. It is highly significant that the testator refers specifically to the "second clause" and does not mention any change in the provisions of the *ninth clause.*

Hall v. *Severne,* 9 Sim. 515:

This case was decided in 1839 and is cited as an authority in various editions of Jarman on Wills. From the syllabus it appears:

> "Testator, by his will, gave pecuniary legacies to several persons and directed his residue to be divided amongst his beforementioned legatees in proportion to their several legacies thereinbefore given. By a Codicil, which he directed to be taken as part of his Will, he gave several pecuniary legacies to persons some of whom were legatees under his Will, and declared that the several legacies mentioned in the Codicil, were given to the thereinmentioned legatees, in addition to what he had given to them or any of them by his Will."

The opinion is concise. We quote as follows:

> "Declared that the legatees under the Will are entitled to distributive shares of the clear residue of the testator's estate rateably and in proportion to the amounts of their respective legacies under the Will. And declared that the legatees under the Codicil are not, nor are or is any or either of them, entitled, in respect of their legacies under the Codicil, to any distributive shares or share of the said residue."

This case supports the view that neither of the three nieces whose legacies were increased by Mr. Bradley is for that reason to receive an increase in her proportion in the residuary. If an increase of legacy does not result in an increased proportion in the residue, neither does a decrease or revocation of legacy affect the proportion.

Gibson's Trusts, 2 J. & H. 656, 70 Eng. Reprint 1222:

In this case although the conclusion led to the necessity of finding a partial intestacy, it was held that the codicil affected the pecuniary legacies and not the shares of the residue.

Colt v. *Colt,* 32 Conn. 422 (1865);
Colt v. *Colt,* 33 Conn. 270 (1866);
Colt v. *Colt,* 48 Fed. 385 (1881).

Of this case it may be remarked that a very large amount was involved, that leaders of the bar participated in the conduct thereof and that the opinions are of an unusually thorough-going character. In the Federal Court, Justice Blatchford comments at length on the arguments of the lawyers both *pro* and *con* and discusses many cases, American and English.

The syllabus of 48 Fed. 385 reads in part as follows:

> "A Will gave to each of several legatees a specified number of shares of stock in a manufacturing company including a bequest of 500 shares to testator's brother for life, and then provided that the residue of such stock owned by the testator at the time of his death 'shall be divided among the several persons and parties to whom I have hereinbefore given legacies of stock, in the ratio and proportion in which said legacies of stock are hereinbefore given, * * * meaning that my residuary estate in said stock shall be shared by the same persons to whom I have given specified legacies in stock, and in precisely the same ratable proportions.' By a codicil testator provided that 'I

> also revoke and cancel, for reasons growing out of his late unbrotherly conduct towards me, the legacy of 500 shares of the stock * * * given in the aforesaid will' to his brother. HELD, that the proportional part of the residuary stock which would fall to the brother by virtue of the specific legacy was separate and independent from it, and hence was not revoked by the revocation of the latter."

Beginning at page 405 Justice Blatchford says:

> "That the bequest of the residuary shares was in a different clause of the will from the bequest of the first 500 shares to James B. and had no reference to the first clause, except for the purpose of describing the legatees; that James B. was as well specified to be a legatee of residuary stock by describing him as already a legatee as if the bequest had been of a given number of shares of residuary stock to him by name in the residuary clause; and that the revocation in regard to James B. was specific, and not in general terms, as in the second codicil, in respect to the children of James B., revoking all legacies before made to them, or for their use. The respondents in that case urged that the will and the codicil ought to be read as of the date of the codicil, and that, therefore, after the codicil was executed, James B. was no longer a legatee of the 500 shares, and so the bequest of the residuary shares would not apply to him. To this the court replied that reading the will as of the date of the codicil would not strike out of the will the clause containing the legacy of 500 shares, but would have the effect merely to insert the codicil as the last clause in the will, and the bequest of the residue, to be divided among those 'to whom I have hereinbefore given legacies of stock' would still have the construction which the court had given to it. The respondents in that case also urged that the bequest of residuary stock was auxiliary to the previous bequest, and that with the revocation of the earlier one the later one fell. To this the court replied that the rule had no application

to these bequests; that there was no connection between different shares of stock, and no common use of them, and they could be held with equal convenience separately or together; that no case could be found where it had been held that a revocation of one devise operates as a revocation of another devise of merely the same kind of property; that there would be no propriety in such a rule, and no reason for its adoption; and that the implication of a revocation of one legacy from the express specific revocation of another arises solely from the dependence of the former on the latter." * * * "The court then alluded to the argument that there was virtually but one legacy to James B., because the testator had determined to divide all of the stock among certain persons in certain proportions, and, not being certain how much there would be at his death, gave certain specified amounts to the legatees, in the proportion in which he intended to divide the whole, and then gave, as a part of the same bequest, the indefinite residue in the same proportions, adopting this course in lieu of bequeathing the whole at once, in proportion to certain numbers. To this argument the court replied that the most that could be said of it with any certainty was 'that this may have been his intention'; that the claim was not corroborated by anything in the will or codicils, unless it might be the unfriendly feeling exhibited by the testator towards James B.; and that, on the other hand, the facts that the bequests are in form separate, that the bequest of stock to James B. is conditional, while the bequest of residuary stock is not, that the revocation names specifically the first bequest, and that it was improbable the testator would neglect to make any bequest to a brother, were particulars, all of which were calculated to favor a different construction. The court added that, it being settled that a second legacy will never be presumed to be a dependent legacy but that, on the contrary, every legacy independent in its terms will be presumed to be independent, and to make it otherwise a

> clear intention must appear on the face of the will, or will and codicil, it followed that the second legacy to James B. must be regarded as an independent legacy, and, consequently, not affected by the revocation."

That Justice Blatchford fully agreed with the views of the Connecticut Court which he has thus set forth is shown on page 408, where he says:

> "This view" (that the residuary proportions were affected by a change in the primary bequests) "of the proper construction of the will does not appear to be the proper one. The reasons assigned by the Connecticut Court for regarding the primary bequests and the residuary bequests as independent of each other, and not united, seem to be unanswerable. If independent, the conclusion arrived at as to James B. was inevitable."

We regard this case as on all fours with the *Bradley* case and later will show why we believe no distinction in principle can be made on the ground that in the one case a bequest was revoked *in toto* and in the other case the bequest was decreased.

Pendergast v. *Tibbetts,* 164 Mass. 270, 41 N. E. 294 (1895):

Here also there was a codicil in which the testator revoked certain pecuniary legacies, substituting smaller amounts and closing his codicil with a clause ratifying and confirming the will in all other respects, the will having contained a clause disposing of the residue in almost the same language as that here present. The court after announcing the rule that the codicil shall change the will so far only as the intent is manifest, especially when in all other respects the will is in terms ratified and confirmed, holds that the codicil did not purport to deal with the residue; that it would be going too far to infer that the testator

intended to change the distribution of the residue, and closes its opinion by saying:

> "The testator well may have been content that the sums named in the will should stand, notwithstanding the reduction by the codicil, as the basis for the distribution of the rest and residue. At any rate, that is the way the will reads, and, in the absence of anything in the codicil plainly indicating a contrary intention, we must take the will as it stands."

It says that this construction is in accordance with the cases except perhaps *in re Courtauld's Estate,* cited in Vice Chancellor Backes' opinion.

Sias v. *Chase,* 207 Mass. 372, 93 N. E. 802:

In this case Chief Justice Knowlton, speaking for the court in a case where the codicil made certain changes, said:

> "The term 'foregoing legacy' in the clause in question, refers to the legacies in the preceding part of the will, and does not include any additional legacies under the codicils increasing the amounts given to some of the legatees."

Wetmore v. *Parker,* 52 N. Y. 450 (1873):

In this last case the testatrix in her will made a number of pecuniary bequests, one of which was the sum of $10,000 to the Reformed Dutch Church in the City of Utica, and another the sum of $10,000 to the Utica Female Academy. In the first gift the money was directed to be expended in the erection of their church edifice or in paying any debt incurred in such erection. If, however, the money was not required for such purpose it was to be expended for the use of the church in such manner as should seem best. In the second gift the money was directed to be expended in erecting a new academy building or in payment of the debt incurred thereby or if the money were not required for such purposes it might be used very generally.

The first thought was to have the bequests used for the church or academy building. The gifts however were made for general purposes if not needed for the erection of the building. The residuary estate was left to the several persons, corporations and societies to whom thereinbefore she had made bequests in proportion to the amounts bequeathed to them respectively with one exception. Later by codicils she reduced the legacy to the Female Acadamy from $10,000 to $7,000 and revoked *in toto* the legacy to the Reformed Dutch Church, stating her reasons for so doing. It was held that each legatee was entitled to the proportion in the residuary estate which it would have been entitled to if no codicils had been executed. In this case the designation of the decedent's purposes gave added reason for holding the general bequests and the bequests of residuary to be independent of each other. There is no ground for the view, however, that the court would have held them to be not independent if such designation had not been made. The court said (p. 462):

> "The two bequests are not dependent. The reference to the first, in the last, designates the legatee and the amount but as legacies they are independent." And later "If she had intended to affect the other bequest, we are to presume that she would have said so."

And again on same page:

> "By the terms of the will the Female Academy was designated as a residuary legatee for an amount made certain by mere arithmetical calculation, as effectually as if the name and amount were written out. This is confessedly the legal construction and effect of the will. Was it changed by the testatrix? I think not."

The Court concludes by saying (p. 466):

> "I think it quite clear both on principle and authority that the codicils do not affect the residuary bequests."

In *40 Cyc. 1571,* after examination of many authorities including *Hard* v. *Ashley,* the general rule is stated:

> "A change made by codicil in legacies to certain beneficiaries does not affect their shares under the residuary clause."

In *Schouler on Wills,* 6th Ed., Sec. 1160, we read:

> "Where the residuary clause in a Will gives in proportion to legacies, the proportions are not changed by the additional legacies in a Codicil."

(C) *Other cases cited in the opinion of the Court of Chancery may be distinguished from the Bradley case.*

Hayes' Executors v. *Hayes,* 21 N. J. Eq. 265:

We do not differ from the Vice Chancellor as to this case. It was however stressed in opposing briefs as a relevant New Jersey case in their favor. We agree with the Vice Chancellor (p. 176, l. 8) that—

> "The problem here involved has not been before our (New Jersey) courts for decision—That (*Hayes' Executors* v. *Hayes*) does not touch the point under discussion, for here (in the *Bradley* case) the pecuniary and residuary legacies are clearly several."

In the *Hayes* case in the residuary clause it was stated that the bequests of specified sums amounted to $70,000 and that if the estate amounted to more or less than that sum, the bequests were to be increased or diminished in proportion, so as to absorb the whole estate. The will did not as in Mr. Bradley's will or in the authorities cited above first give legacies of specified amounts and later separately proportionate shares in the residue. In the *Hayes*

case every bequest was a residuary bequest so as together to absorb the whole estate, or from another standpoint there were no residuary bequests, since after distribution of legacies there could be no estate remaining. There was just one thing given to each legatee, namely: a proportionate share in the entire estate how large or small soever that might be. In each case therefore where a sum of money was specified there necessarily went with it a *pro rata* portion of any amount by which the estate might exceed the total of the specified amounts. These *pro rata* portions were dependent; were really parts of the main legacies. So when by codicil bequests to the amount of $7,000 were revoked it meant a revocation of corresponding *pro rata* portions, and when such $7,000 was directed to be apportioned among certain remaining legatees, not only was the $7,000 thus redistributed, but such corresponding *pro rata* portions were likewise redistributed. In the *Hayes* case the testator anticipated that his estate might amount to more or *less* than the total of the amounts he had specied. In either event each legatee would have a certain proportion of the whole. In the *Bradley* case the testator looks forward to a residuary estate and provides separately as to it.

It is said in *Colt* v. *Colt,* 48 Fed. Rep. 385, at page 412:

> "The court then referred to the case of *Hayes* v. *Hayes,* 21 N. J. Eq. 265, which is cited by the plaintiffs here, *and distinguished it.* The will made bequests to various persons. In the residuary clause it was stated that the specific bequests amounted to $70,000, and that, if the estate amounted to more or less than that sum, they were to be increased or diminished in proportion so as to absorb the whole estate. In a codicil the testator revoked partially and entirely, bequests to the amount of $7,000, and directed that this sum should be apportioned among certain remaining legatees. It was held

that the residue must be divided among the legatees in proportion to the amount to each, after the addition or deduction of the $7,000, according to the terms of the codicil. This was upon the ground that the specific and residuary legacies constituted but one legacy to each legatee, and were dependent." (Italics ours.)

In *Wetmore* v. *Parker, supra,* at page 465, it is said:

"The case of *Hayes* v. *Hayes* (21 N. J. Eq. R., 265), relied upon by the appellants, *is distinguishable* from this. There the testator made bequests to various persons. In the residuary clause he stated that his specific bequests amounted to $70,000, and if his estate amounted to more or less than that sum, they were to be increased or diminished in proportion to the amount of each, so as to absorb his whole estate. In a codicil he revoked partially and entirely, bequests to the amount of $7,000, and directed that this sum should be apportioned among certain remaining legatees. The court held that the residue must be divided among the legatees in proportion to the amount to each, after the addition or deduction of the $7,000, according to the terms of the codicil. In that case, the specific and residuary legacies constituted but one legacy to each legatee. They were dependent. The $70,000 was to be increased or diminished according as the estate should overun or fall short, in whose hands soever it might be. When he took $5,000 from one legatee and gave it to another, its relation to the residuary clause remained unchanged. It drew from the surplus the same amount as it would if it had remained, but it fell into other hands. If the original legatee was also allowed to use it to secure its share of the residue, it would perform a double service, contrary to the express terms of the Will and Codicil. It is evident that the testator intended to divide his whole estate in certain proportions, and the codicil only changed the proportion. I think it quite clear, both on principle and authority, that the codicils do not affect the residuary bequests." (Italics ours.)

In re Courtauld, 47 Law Times Rep. N. S. 647 (sometimes cited as *Courtauld* v. *Cawston*), is cited against us.

In the opinion in *Pendergast* v. *Tibbetts* (*supra*) is this comment:

> "We think that this construction is in accordance with the cases, except perhaps *Courtauld* v. *Cawston,* W. N. (1882) 185, which stands on its own facts, *and does not appear to have been followed.*" (Italics ours.)

In the *Courtauld* case certain legacies were revoked and in place therefor larger legacies substituted. The will contained a provision for the residuary estate to be divided *pro rata* among the legatees. Judge Kay, after reciting the provision of the codicil that the substituted legacy was "subject, nevertheless, to such trusts and provisions as are declared in my will respecting the said revoked legacy", continued at page 650: "And then come words which are in my mind very material, *'and in the same manner as if they were repeated.'*" (Italics ours.)

The court apparently considered that this language quoted from the codicil in effect repeated in the codicil the residuary clause of the will, directing the distribution thereof in proportion to the legacies. Of course such a provision in the codicil would cause the legacies of the codicil where they differed from those in the will to determine the proportions in the residue. The Eighth Codicil of Mr. Bradley contained no corresponding language.

Hard v. *Ashley,* 117 N. Y. 606:

Here the will gave the use of a farm to the widow during her life, with remainder to her children. There were various other bequests. The residuary estate was left to the various legatees in the ratios and proportions of their respective be-

quests. For the purpose of apportionment the value of the farm was fixed at $15,000. It is evident that if no change had been made the widow would have been entitled to the use for life of the farm and of such part of the residuary estate as $15,000 would bear to the total bequests. Also that the children would at her death become entitled to the farm and to the same share in the residuary of which the widow had had the life use. A codicil revoked the bequest of the farm both to the widow and children and in lieu thereof made to the widow an absolute gift of $8,000. No provision was substituted for the children. The main question before both General Term and the Court of Appeals was whether the change of provision for the widow had revoked *all* her rights in the residuary estate. Before both courts such authorities as *Quincy* v. *Rogers* (*supra*), *Colt* v. *Colt* (*supra*) and *Wetmore* v. *Parker* (*supra*) were cited as against a total revocation. The General Term decided, however, the change of bequests had worked a revocation of *all* her rights in the residuary estate. That court sought to show this to be not contrary to the ruling in *Wetmore* v. *Parker* as to the gift to the female academy, describing the change by the testatrix in the latter case as a mere change in the time and mode of payment (53 Hun, 112, at p. 117). The Court of Appeals, however, on the question as to whether the widow had lost *all* rights in the residuary estate declared *Wetmore* v. *Parker* and *Colt* v. *Colt* to be in point (117 N. Y. 606, at p. 615) and reversed the General Term. It is strange that after thus citing these cases with approval the court when it came to declare what proportion of the residuary the widow was entitled to should, without indicating any distinction in the cases, have disregarded said authorities and have decided her share to be in proportion to the legacy in the codicil. A careful examination of the briefs

submitted to the Court of Appeals in this case, reveals that they contain no discussion as to what proportion of residuary, if any, the widow would be entitled to and it seems that the court having decided the main question discussed before it in accordance with the authorities had overlooked the scope of those authorities in making its decision as to the proportions.

(D) *Reply to various arguments in opinion of Court of Chancery.*

The Court and briefs of opposing counsel state that the *Bradley* case may be distinguished from *Colt* v. *Colt* (*supra*) for the reason that in the first case there was by the codicil a substitution of primary legacies, and in the second a naked revocation of the primary bequest. It should be pointed out that in *Colt* v. *Colt,* immediately after the clause of revocation follows a bequest "in lieu thereof". Even though such latter provision were absent, however, we believe the distinction claimed above would not bear analysis.

The language in the *Bradley* case is (p. 48, l. 35):

> "in lieu of the legacies of Five thousand ($5,000) dollars each, provided in the second clause of the codicil to my Will bearing date the third day of May, One thousand, nine hundred and sixteen, and given as follows:" (Here follow names of legatees including the three appellants herein) "I give and bequeath to each of the aforenamed the sum of One thousand ($1,000) dollars, *i. e.,* I reduce the aforesaid legacies as originally provided for in the aforesaid codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each."

The language in *Colt* v. *Colt* at p. 387 is:

> "I also revoke and cancel, for reasons growing out of his late unbrotherly conduct towards

> me, the legacy of 500 shares of the stock of Colt's Patent Fire-Arms Manufacturing Company, given in the aforesaid will to James B. Colt for life, remainder to his children; and, in lieu thereof, I give and bequeath said 500 shares of stock to the trustees named in said will, for founding a school for practical mechanics and engineers, subject to the uses and trusts created in said will for that purpose."

The Vice Chancellor does not appear to disapprove of the decision in *Colt* v. *Colt.* He says (p. 176, l. 32):

> "It is claimed that a contrary view is held in *Colt* v. *Colt,* 32 Conn. 422; *Colt* v. *Colt,* 19 Blatchford 399" * * *. "That is not so." * * * (p. 177, l. 2.) "The Court held *upon established rules of construction,* and attending circumstances that the revocation of the primary bequest did not evince an intention to do more than to cancel that bequest. * * * A conspicuous distinction between that case and the one in hand is, that there there was a naked revocation of the primary bequest which seemingly confined the operation of the codicil to the primary bequest, whereas here there is a substitution of the primary bequests, evidencing an intention to revoke the residuary legacies *pro tanto.*" (Italics ours.)

How did the "naked revocation of the primary bequest" in the one case "seemingly confine the operation of the codicil to the primary bequest" more than did the reduction of the primary legacies from $5,000 to $1,000 in the other case? To the extent of $4,000 there was a "naked revocation" in the case of the legacy to each appellant herein. Both codicils were equally silent as to the residuary. And why in the *Bradley* case does the "substitution" of legacies of $1,000 for those of $5,000 evince "an intention to revoke the residuary lega-

cies" more than does the substitutionary clause in the codicil in *Colt* v. *Colt?* Both codicils use the words "in lieu". In the latter case, where there was a total revocation of a legacy the Vice Chancellor appears to approve of the decision that the proportion of the legatee in the residuary is not affected. In the case at bar where the legacy is revoked to the extent of four-fifths thereof, the Vice Chancellor decides the proportion of the legatee in the residue shall be reduced *pro rata.* The distinction alleged might lead to strange results. Suppose a testator in a will leave $5,000 each to A, B, C and D, and provide that his residue shall go to each legatee in proportion to the primary legacy to each legatee, and suppose by codicil he leave to A the original $5,000, and provide for B in lieu of $5,000 only $1,000, and for C only $50—and cancel and revoke entirely the $5,000 legacy to D. According to the Vice Chancellor's distinction, A would share in the residue in proportion to $5,000, B in proportion to $1,000, C in proportion to $50—but D whose entire primary legacy had been swept away would share in the residuary equally with A and more than B and C.

How far does this new doctrine go? If the decedent Bradley had reduced a legacy of $5,000 to the proverbial one dollar, would the share of the legatee in the residuary estate be practically wiped out, whereas the same would have remained unimpaired if the legacy had been wholly revoked?

Let us observe also the distinction made in the Opinion between the case in hand and *Pendergast* v. *Tibbetts* (*supra*). In the latter case various pecuniary legacies were left to relatives including three legacies of $10,000 each to each of three nieces. The residuary was to be divided among the legatees in proportion to their primary legacies. A codicil revoked the legacies of $10,000 each to the three nieces and "in place thereof" be-

queathed only $5,000 to each, but added legacies of $5,000 to each of three nieces not mentioned in the will. In all other respects the will was ratified. The language of the Vice Chancellor is as follows (p. 178, l. 19):

> "The court (in *Pendergast* v. *Tibbetts*) held that the three nieces whose bequests were reduced were entitled to share in the residue in proportion to their original bequests, because, as it appeared, it was the intent of the testator to give to each of the three nieces not mentioned in the Will $5,000 by taking it from the three mentioned in the Will; that no change was made in the total amount of the specific bequests and that the amount of the residue was therefore not affected, saying that 'The testator well may have been content that the sums named in the Will should stand, notwithstanding the reduction by the codicil, as the basis for the distribution of the rest and residue. At any rate, that is the way the Will reads, and, in the absence of anything in the codicil plainly indicating a contrary intention, we must take the Will as it stands.'"

We approve of his quotation from *Pendergast* v. *Tibbetts,* but insist that it is strongly in our favor. We would incidentally point out that here is a case where there was not a total revocation, but a reduction of the primary legacy as in the *Bradley* case. The Opinion points out that the change by codicil did not change the amount of the total "specific" bequests, as though this were a distinction and explanation. Suppose in the *Bradley* case as in *Pendergast* v. *Tibbetts* the testator had not only reduced the bequests to the appellants and other parties from $5,000 to $1,000, but had bequeathed the difference of $4,000 in each case to new legatees, so that the total of the "specific" legacies had remained as before,—would the court have made a different decision awarding to each appellant the proportion in the residuary to which

it was entitled under the Seventh Codicil? And in *Pendergast* v. *Tibbetts,* if the amounts given the new legatees had been $4,500 or $5,500 instead of exactly $5,000, would the proportions of the residuary legatees have been affected?

The cases of *Colt* v. *Colt,* and *Pendergast* v. *Tibbetts* were not decided by reason of any distinctions argued in the Opinion of the Vice Chancellor, but rather upon sound general principles of construction which he has himself quoted or enunciated and which are equally applicable to the *Bradley* case. For instance (p. 178, l. 39):

> "the plain principle that where a devise is made of an estate, a revocation will not be implied, unless no other construction can be placed upon the language."

The principle applies equally in the case of a bequest. The Seventh Codicil made bequests of the residuary in certain proportions. No revocation wholly or in part is to be implied unless no other construction can be placed on the language. The especial words in the Seventh Codicil seized on by our opponents are "in lieu of". But the real question is "in lieu of" what? "In lieu of" means merely "in place of". Our construction involves no implication and is that the testator intended what he said, $1,000 to be the primary legacy "in lieu of" $5,000 with no intention further, which would be an exact use of English. Therefore on the above principle "a revocation" or change as to the residuary bequests "will not be implied".

The following language of the Opinion (p. 175, l. 14) should not be passed over without comment:

> "Another and persuasive circumstance that the testator intended the division to be on the basis of the substituted legacies is, that, in effect, the eighth codicil adds to the residuary fund approximately one hundred thousand dollars, and, if the division be on the basis

> of the seventh codicil, the several institutions would receive more of the residuary estate than they would have if the eighth codicil had not been made. Surely the testator did not intend by the same stroke of the pen to decrease and increase their lot."

According to our computation the increase in the residuary estate would be about $80,000. In this increase under both constructions legatees generally, whether institutions or otherwise, would share. We have already suggested that because of his solicitude in regard to the payment of the primary legacies to relatives, friends and employees, the testator naturally reduced the primary legacies to the institutions. He did not do this for the purpose of increasing the residuary estate. Such increase was a result merely incidental to the carrying out of his plan. The language "Surely the testator did not intend by the same stroke of the pen to decrease and increase their lot" reveals a misapprehension of the situation. As a matter of fact the primary legacies to churches and institutions were reduced by the Eighth Codicil in the amount of $106,000. Under appellants' construction the total increase out of the residuary estate to the same churches and institutions would be less than $53,000. Therefore, under such construction, the total amount going to such legatees would be decreased by the Eighth Codicil by about $53,000.

It is evident that the Vice Chancellor had some misgivings in reaching a decision which apparently permits a codicil to disturb the disposition of a will more than is necessary to give effect to the codicil. In this connection he says (p. 175, l. 40):

> "less difficulty is experienced in determining the testator's intention to be as already indicated than if the provision of the Seventh Codicil had been in the will instead of a codicil."

If then the primary legacies had been in the Will of 1896 there would have been "difficulty" in avoiding the above rule.

So far as legacies of personal property are concerned, the Seventh Codicil should be looked on as the original will and the Eighth Codicil as the one and only codicil thereto. The Seventh Codicil declares the legacies therein "to be the only bequests distributed in my estate". The Eighth Codicil, except for the modifications made therein, ratifies, confirms and republishes "my aforesaid codicil bearing date the third day of May, in the year One thousand nine hundred and sixteen". It also ratifies the "Will" but the "Will" had lost all merit except as an instrument appointing executors and trustees and disposing of devises valued at some $60,000.

When the *Colt* case was in the highest court in Connecticut, six rules for the construction of Wills were laid down. Of these Justice Blatchford says in *Colt* v. *Colt*, 48 Fed. 385, at page 405:

> "Nowhere are the true rules for interpreting a Will and a Codicil, with a view to ascertain the intention of the testator, more appositely or more tersely stated."

We quote the last four of these rules (p. 405) and attempt to show how the decision below violates each of said rules:

> 3. "The intention is to be inferred from the language used by the testator, explained, if necessary, by parol proof of such extrinsic circumstances as will throw light upon the meaning of the words used."

In the *Bradley* case there has been absolutely no parol proof of extrinsic circumstances indicating that any words of the testator were intended to

change the provisions of the Seventh Codicil as to the residuary.

> 4. "The court is not at liberty to indulge in conjecture as to what the testator would have done if a particular subject had been brought to his attention, or as to what he may have supposed he had done by the language used in his Will."

We believe the court overlooked this rule in indulging in conjecture as to what Mr. Bradley supposed he had done by his Eighth Codicil. The court states (p. 175, l. 1):

> "Evidence of the testator's trend of mind is, that after he had in plain and unmistakable language substituted the $1,000 legacies for the $5,000 legacies to the institutions he added '*i. e.* I reduce the aforesaid legacies as originally provided for in the aforesaid codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars to each'; intimating that the original legacies in reduced amounts, were to be the measure of participation in the residuary estate."

To us the testator's language seems a mere restatement or recapitulation of the lengthier previous directions as to the reduction of the primary legacies and it seems to us the court was indulging in a conjecture of the sort forbidden by the last mentioned rule.

> "5. The different parts of a Will, or of a Will and Codicil, should be reconciled, if possible."

It seems clear that the Court might have reconciled the Eighth Codicil with that part of the Seventh Codicil giving approximately 5000/255,000ths of the residuary estate to each of these appellants, but has failed to do so.

> "6. Where a bequest has been once made, it should not be considered as revoked, unless no other construction can be fairly put upon the language used by the testator."

This rule seems to us absolutely conclusive in limiting the construction to that of a mere reduction of the primary legacies. A bequest of a certain proportion of the residuary to each legatee had been made. Such bequest should not be considered as revoked, unless no other construction can be fairly put upon the Eighth Codicil. It is obvious that the literal, direct, natural interpretation is one that does not involve a revocation or alteration as to the residuary estate and therefore no such revocation or alteration should be considered as having taken place.

In many other decisions and in many authorities the same insistence on a strict interpretation of language which varies a will is expressed. A few instances are the following:

In *Quincy* v. *Rogers, supra,* at page 295, Chief Justice Shaw said:

> "The codicil shall change the will so far only as the intent is manifest, especially where in all other respects the will is in terms ratified and confirmed."

In *Goodwin* v. *Coddington* (154 N. Y. 283, at p. 286, 48 N. E. 729), the court said:

> "Where an estate is devised by a will, as it was in this case to the children of Jefferson Coddington, such a provision cannot be regarded as revoked by subsequent language, capable of other reasonable construction, or less clear and certain than the language of the devise or bequest. Whenever the will begins with an absolute gift, in order to cut it down, the latter part of the will must show as clear an intention in that direction as the prior part does to make it. A codicil will not operate to revoke a previous devise or bequest beyond the clear import of the language used. * * * An estate once devised, or an interest intended to be given, will not be sacrificed on the ground of repugnancy, when it is possible

> to reconcile the provisions supposed to be in conflict. * * * Where the language is not clear, or where the meaning is doubtful, the courts will not favor an interpretation that revokes a devise once given, or disinherits an heir, or divests a remainder in fee once vested, or excludes issue from a remainder originally limited upon the life estate of a parent, or prevents the issue of a deceased child from participation in the distribution of the estate."

In *Wetmore* v. *Parker* (*supra,* at p. 462):

> "It is a general rule that a codicil will not operate as a revocation beyond the clear import of its language. Another rule is that an expressed intention to make an alteration in a will in one particular, negatives, by implication, an intention to alter it in any other respect."

This is another way of saying that if the testator had intended to alter his provisions as to the proportions of his residuary he would not have failed to say so. Especially is this so where the residuary was the bulk of the estate as in our case.

In *Pendergast* v. *Tibbetts* (*supra,* at p. 466) it is said:

> "In the absence of anything in the codicil plainly indicating a contrary intention, we must take the will as it stands."

In *40 Cyc.,* pages 1182 to 1183, occurs the following:

> "EXTENT AND EFFECT OF REVOCATION. The intention of the testator is the test in determining how far the revocation of a will is effected by a codicil, as it is in all other cases of testamentary construction, and such intention should be given its proper effect, neither enlarged nor restricted. Therefore the rule is well established that a codicil will not operate as a revocation of previous testamentary provisions beyond the clear import of its language,

> especially where in all other respects, the will is in terms ratified and confirmed; and an expressed intention to make a change in a will in one particular negatives, by implication, an intention to alter it in any other respect. Furthermore it is an invariable rule that a codicil will not disturb or alter the dispositions of the will further than is absolutely necessary for the purpose of giving effect to the codicil. And where by the terms of a will a devise or bequest is clearly given, a codicil will not operate to revoke such bequest or devise, unless the intention that it shall so operate appears with equal clearness."

In *Viele* v. *Keeler,* 129 N. Y. 190, at page 198, after stating rules similar to those just quoted from "Cyc", the court shows its reasoning in the application of the rules.

> "There is no irreconcilable conflict and no inconsistency between the language of the codicil and the provision of the Will which it is claimed is thereby revoked. Both can stand without doing violence to the language used by the testator."

The object in construing wills and codicils is always to ascertain the intent of the testator. Where, however, the question is as to what extent if at all a codicil alters a will, courts are not allowed the same latitude of decision as in ordinary civil cases. Even where the private opinion of the judge may be that the testator desired or proposed by certain words to direct an alteration, unless the language used was such as to show unmistakably such purpose, the decision must be that no such alteration has occurred. The judge is not in a position to make a decision when he has merely arrived at the view that the testator intended a change; he must decide in addition whether the testator has used language which legally effectuated such change, and the language is not effective

for such change when as in the *Bradley* case a construction may fairly be placed thereon not involving any alteration as to the residuary proportions.

In *Brown* v. *Quintard,* 177 N. Y. 75, at page 84, after stating what might probably have been the testator's intention, the court said:

> "These circumstances give rise to surmise, conjecture and argument, but they prove nothing except the fact that if the testator intended to give three-fourths of the residue to his sons, Mortimer, Alfred and Oscar, he utterly failed to do so. If we were dealing with this case alone, and not with the law relating to wills, we might, in the interests of justice, permit probabilities to outweigh proofs, but the law must be upheld."

In *Schouler on Wills,* 6th Ed., Sec. 862, it is said:

> "The court cannot make a Will by construction and the court cannot make a new will for the testator on the conjecture that he may have inadventently failed to understand the force of his language used."

Then too in *Davids' New York Law of Wills,* at page 618, *Hard* v. *Ashley* with other decisions is cited as authority for the following:

> "Accordingly a Codicil is held not to revoke a previous devise or bequest beyond the clear import of the language used."

If this is conceded, the *Hard* case is an authority for our interpretation of the Bradley Will.

To us it seems significant that the Vice Chancellor cites neither textbook nor encyclopedia in support of his decision.

In conclusion we submit that the fulfillment of the probable intent of the testator, well settled rules of law as to the interpretations of wills and

authorities on the specific question involved herein, all call for a reversal of the decree below.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Defendants-Appellants.
The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm of New York City, New York, and The Brooklyn Methodist Episcopal Church Home of Brooklyn, New York.

EDWARD O. STANLEY, JR.,
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45 MAR.T.1925

47 MAR.T.1925

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, &c., of JAMES A. BRADLEY, deceased,
Complainant-Respondent,

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, &c., of LOUIS C. GILLESPIE, deceased, *et als.*,
Defendants-Respondents.

On Appeal from Chancery.

BRIEF.

This brief is on behalf of George L. Dickinson, Estate of Albert P. Smith, Sr.; Albert P. Smith, Jr.; Foster N. Smith, Frank R. Smith, James A. Smith, John Smith and Martin Sther.

Statement of Case.

This appeal is from parts of the final decree of the Court of Chancery entered December 16, 1924, construing the will of James A. Bradley, deceased.

The testator made and executed a will with eight codicils. The first six codicils have no effect on matters in this appeal.

The will gave small devises which are not questioned. The first clause of the seventh codicil, dated May 3, 1916, is:

> "I hereby revoke any and all legacies given and bequeathed in any and all former wills and codicils, and do direct that the following shall be the only bequests distributed in my estate."

Then follows numerous bequests to individuals and institutions and the tenth clause is:

> "All the rest, residue and remainder of my estate, I give and bequeath to the aforesaid named legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively."

The eighth codicil, dated March 3, 1919, changes the amounts of many of the legacies and a portion of the eighth clause is:

> "In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand nine hundred and sixteen."

Intention of Testator.

All the appellants claim, and properly, that the intention of the testator should govern.

Stokes v. *Tilly,* 9 N. J. Eq. 130.

> "The primary object of construing wills is to ascertain and carry out the intention of the testator."

Wiggins v. *Wiggins,* 65 N. J. Eq. 417;
Stout v. *Cook,* 77 N. J. Eq. 153;
Howell v. *Steelman,* 76 N. J. Eq. 423,

are to the same effect.

Thomas v. *Schieble,* 111 Atl. (N. J.) 519;
Rogers v. *Rogers,* 49 N. J. Eq. 98;
Marshall v. *Hadley,* 50 N. J. Eq. 547;
Brearley v. *Brearley,* 9 N. J. Eq. 21.

The will and codicils are, of course, to be construed together, and effect given, if possible, to every part. The words used are not necessarily to be construed technically, but the intent of the testator is to be ascertained and given effect in so far as legal or moral principles are not thereby contravened.

The testator by the seventh and eighth codicils did not revoke devises by his will; he dealt only with bequests. By the seventh codicil he enumerated the persons and institutions and the amounts of the bequests and if the estate were not sufficient to pay them in full they would be abated proportionately and he provided for proportionate increase if the estate should be, as it was, more than sufficient to pay the total amounts. By the eighth codicil he did nothing more than change some of the amounts; of course he intended that these amounts, as changed, should be decreased or increased according to what his estate should be. The intention is manifest and as obvious as if he had said "divide my residuary estate in the proportions that I have finally fixed the amounts of the legacies." The writer of this brief was also the draftsman of the seventh and eighth codicils and possibly he reflects what he personally knows was the intention of the testator, but we submit that this is fully and plainly expressed in the language used.

Substitution of Amounts.

The eighth codicil distinctly states that the amounts therein are "*in lieu*" of those expressed in the seventh codicil.

Cooper & ors. v. *Day & ors.*, 3 Merivale, 154.

Where a bequest of £4,000 was by codicil increased to £5,000 and by a second codicil increased to £6,000, Sir William Grant, Master of the Rolls, held that this was not a revocation, but substitution, in each instance.

Fisher v. *Brierley* (No. 2), 30 Beavan 267.

Where testatrix by a codicil recited that by her will she had given certain legacies, which she specified, and that she had considered that her estate might not be sufficient for the payment of her debts and the whole of the legacies bequeathed by her will and being desirous to increase some of the legacies and to reduce several of the others, and to make further alterations in her will, she thereby revoked and made void several legacies given by her will, and gave to the same persons, in some instances larger sums, and in others smaller sums, and she altered her residuary legatees; Sir John Romilly, Master of the Holls, held:

> "I am of opinion that the legacies given by the codicil are merely substitutionary for those bequeathed by the will."

Thoob Wills (4th Ed.), 125.

> "A gift in addition to or in lieu of a previous gift to the same legatee, is subject to the same conditions as the previous gift, with respect to vesting, separate estate, the fund out of which it is payable, freedom from legacy duty and provisions against lapsing."

Lyons v. *Clawson,* 56 N. J. Eq. 642.

Affirmed on opinion below in 58 N. J. Eq. 584, *V.-C.* Reed.

> "The use of the words 'revoke' or 'annul' has no special force whenever the object of the revocation is to make a substitutionary

gift. The use of these words does not prevent the substituted legacy from having the incidents of the original one."

Hayes Exrs. v. *Hayes,* 21 N. J. Eq. 265.

Where a specific legacy of $15,000 was reduced to $10,000 and other legacies were reduced $7,000, and the legatees were to share in the residue of the estate, Chancellor Zabriskie said:

"As to the disposition of the residue after payment of these legacies, it must be divided among them in proportion to the amount of each after this disposition of the $7,000. added to them by the codicil. The proportion of the $7,000. and of the residue of the estate paid to John C. Hayes must be calculated upon $10,000. that being the amount to which his legacy is reduced by the codicil."

Hard v. *Ashley,* 117 N. Y. 606.

Where testator made various bequests of money and of different kinds of property including a devise of a farm specifically stated to be valued at $15,000 and gave his residuary estate "to the same parties, in the same ratio and proportion as are given and specified in the foregoing bequests" and by a codicil revoked the devise of the farm "and in lieu and instead of said bequests I do hereby give the said Zipporah E. Wilcox and her heirs eight thousand dollars, payable as soon as conveniently may be after my death, but not until the same and the other legacies by the said will, not herein revoked, can be paid by avails of the sale and disposition of my real estate without sacrifice in the sale thereof," Gray, *J.,* writing for the Court, said:

"The codicil in question does not in terms revoke anything but the bequest of the farm; but it substitutes for that which is thus revoked a gift of a sum of money. The language 'in lieu and instead of said bequests' seems to me to be entitled to con-

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siderable significance, and to warrant our reading the original will without other change in that regard than the mere substitution of the gift of $8,000. in money for the gift of the farm * * * The disposition of the residuary estate by the testator was its division among those certain persons to whom legacies had been previously given, and in that proportion to each which the stated value of his or her legacy bore to the aggregate value of all of those legacies. The subsequent execution of a codicil only affected that disposition by lessening the amount of the legacy of Mrs. Wilcox from $15,000. to $8,000. That did not strike her out as one of the persons denominated by the residuary clause as a residuary legatee. It left her in; but in lieu of the farm gave her a sum of money representing less in value than the farm was valued at. This change, effected by the codicil, operated to introduce a new devisor in the distribution of the residuary estate. In other words, in reading the will we take in the codicil, and, in place of the gift in the second clause of a farm valued at $15,000., we read a substituted gift of $8,000. and the disposition of the residuary estate proceeds upon precisely the same principle. I think in that way, the clear and obvious purpose of the testator is given effect."

Cortlauld v. *Cawston,* 47 Law Times 647.

Where testator gave £70,000 in trust for a daughter £80,000 in trust for another daughter, gave several specific legacies and gave his residuary personal estate to his trustees to pay debts, legacies, annuities, &c., and subject thereto to divide it "among the said residuary legatees *pro rata* in proportion to the amounts of the legacies thereinbefore bequeathed to the said residuary legatees" and by a codicil increased the £70,000 trust to £80,000 and the £80,000 to £140,000 upon the same trust and confirmed his will in other

respects, Judge Kay, in writing the opinion, said:

> "Now the scheme of the will was obviously this, to give certain pecuniary legacies to different legatees, and then to divide what might be left of his personal estate among the legatees in those proportions which the amounts of their pecuniary legacies had determined. The question is whether, having by this codicil revoked two of these legacies and having substituted another legacy which is to be held, as I have already determined, upon the same trusts as the former legacies in all respects which he has given to the same trustees, and is to be held upon the same trusts, and in the same manner as if they were here repeated—whether that is a substitution for the previous legacy, not merely so far as relates to the trusts of and incident to that legacy, but also so as to occasion a different division of the residue from that which would have been made if this revocation of the legacy had not taken place at all. * * * I am bound to give to the word 'substitution' its largest meaning, and to read the will and codicil as one is bound to do, as one document, and to treat the words of the testator as if he had said: I direct that these increased legacies shall be read as if they were inserted in the will for all purposes; in which case the residue must be divided amongst the legatees as if their original legacies had been the amounts mentioned in the codicil, and not in the will."

Second Church of Christ, Scientist.

The evidence is that this church was not incorporated when the last codicil was executed.

Henderson v. *Henderson,* 77 N. J. Eq. 317.

A will speaks from the date of death of testator when it applies to ascertaining what prop-

erty passes by it, but this rule does not apply to the construction of the will.

Gold v. *Judson,* 21 Conn. 616, 622.

"Whenever testator refers to an actually existing state of things his language should be held as referring to the date of the will and not to his death."

Equitable Conversion.

It seems to be admitted by all the parties that there was equitable conversion of the real estate not specifically devised.

Triplett v. *Ivins,* 93 N. J. Eq. 202.

This seems to be the latest authority on this subject.

It is respectfully submitted that the decree below should be affirmed.

H. H. SNEDEKER,
Solicitor for and of Counsel with Defendants - Respondents, George L. Dickinson, Estate of Albert P. Smith, Sr.; Albert P. Smith, Jr.; Foster N. Smith, Frank R. Smith, James A. Smith, John Smith and Martin Sther.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

SAMUEL H. GILLESPIE, Sole Acting Executor and Surviving Trustee, etc., of James A. Bradley, deceased.

Complainant-Respondent.

and

JOHN T. GILLESPIE and SAMUEL H. GILLESPIE, Executors, etc. of Louis C. Gillespie, deceased, et als.

Defendants.

On Appeal

Brief for Society for the Prevention of Crime in the City of New York and the New York Society for the Suppression of Vice.

The present case before this Court involves two appeals from a Final Decree made by the Court of Chancery on December 16, 1924, construing the last Will and Testament and the Codicils thereto of James A. Bradley, deceased. The first appeal is by The Methodist Episcopal Hospital in the City of Brooklyn, The Methodist Episcopal Church Home of New York City for the Aged and Infirm

of New York City, New York, and The Brooklyn Methodist Episcopal Church Home for the Aged of Brooklyn, New York, and the second by First Presbyterian Church of Asbury Park, New Jersey, The Trustees of the Second Church of Christ, Scientist, of Asbury Park, New Jersey, and Ann May Memorial Homeopathic Hospital, of Spring Lake, New Jersey.

James A. Bradley departed this life leaving a last Will and Testament which was executed by him on June 26, 1896, together with eight Codicils thereto. The Codicils in their order being dated as follows:

First Codicil—June 7, 1901. (Case, page 40).

Second Codicil—January 12, 1906. (Case page 40).

Third Codicil—January 11, 1907. (Case, page 41).

Fourth Codicil—January 16, 1907. (Case, page 42).

Fifth Codicil—June 11, 1909. (Case, page 42).

Sixth Codicil—January 17, 1914. (Case, page 44).

Seventh Codicil—May 3, 1916. (Case, page 44).

Eighth Codicil—March 3, 1919. (Case, page 48).

Mr. Bradley died on June 6, 1921.

The petitions of appeal merely question the decree of the Court of Chancery insofar as the Court has construed the Will and Codicils to mean that the appellants participate in the residuary estate of the decedent in the proportion as the legacy given to them by the Eighth Clause bears to the entire

amount of the legacies bequeathed and these appellants claim that the Court of Chancery was in error in so holding and should have determined that those legatees should have participated in the residuary estate in the proportion to the legacies given to the said appellants by the Seventh Codicil.

It is, therefore, necessary only to consider portions of the Seventh and Eighth Codicils.

Mr. Bradley by the second clause of the Seventh Codicil bequeathed legacies of $5000.00 to each of said named persons, corporations and organizations, the appellants being designated in said clause among such beneficiaries, and by the ninth clause of the said Seventh Codicil he provides as follows:

> "All the rest, residue and remainder of my estate, I give and bequeath to the aforenamed legatees in the proportion or on the percentage that the aforementioned legacies are given to them respectively." (Case, pages 46 and 47.)

By the thirteenth clause of the Seventh Codicil, Mr. Bradley said:

> "I hereby ratify and confirm my said Will and the appointment of the Executor therein named, except in so far as the same is changed by this, a Codicil thereto." (Case, page 48.)

By his Eighth Codicil and the third clause thereof he mentioned the legacies of $5000.00 provided by the second clause of the Codicil to his Will dated May 3, 1916 (the Seventh Codicil) and gives as follows, naming certain of said beneficiaries specifically (including the appellants) and says:

> "I give and bequeath to each of the aforenamed the sum of One Thousand ($1,000) dollars, i.e. I reduce the aforesaid legacies as originally provided for in the aforesaid Codicil from Five thousand ($5,000) dollars to One thousand ($1,000) dollars each." (Case, page 49.)

And in the concluding paragraph of said Eighth Codicil says:

> "In all other respects I ratify, confirm and republish my aforesaid Will and my aforesaid Codicil bearing date the third day of May, in the year One thousand nine hundred and sixteen." (Case, page 50).

DOES THE EIGHTH CODICIL CHANGE THE PROPORTION OF THE DISTRIBUTION OF THE RESIDUARY ESTATE?

The correct answer to this question, it seems to us, will solve the problem brought before this Court by the appellants. The Court of Chancery decided this question in the affirmative and based its opinion, not only upon the facts in this particular case as evidenced by the Will, but upon the determination and reasoning found in the cases of

> In re Courtauld, 47 L. T. (N.S.Eng) 647.
> Hard vs. Ashley, 117 N. Y. 606.

The cases which seem to introduce a contrary view are:

> Colt vs. Colt, 32 Conn. 422.
> Colt vs. Colt, 19 Blatch, 399.
> Wetmore vs. Parker, 52 N. Y. 450.
> Pendergast vs. Tibbetts, 164 Mass. 270.

The learned Vice Chancellor readily distinguished those cases and we think properly so.

In the instance case we have the distinguishing feature of a Codicil to a Codicil and the fact that Mr. Bradley in his Eighth Codicil not only affirms his Will but republishes his Seventh Codicil so that in effect by the Eighth Codicil he not only amended or supplemented what he had prevously done but he reincorporated into this Eighth Codicil the entire Seventh Codicil, excepting in so far as he had expressly changed it by the Eighth Codicil and thus what Mr. Bradley said by his Eighth Codicil on March 3, 1919, was that he wanted these appellants, as well as others expressly named, to have a primary legacy of $1,000.00 and that the residuary estate should be divided among his legatees in proportion to the legacies given to them..

It will be observed that in none of the other reported cases dealing with the principal herein involved, was there in the Codicil an express republication of the prior testamentary instrument although there may have been a ratification of such prior instrument.

There can be no question that what Mr. Bradley intended to do by his Eighth Codicil was, in some measure at least, to reduce the benefits which he intended to bestow upon the appellants and others and that he likewise wanted to increase the gifts to members of his family. So if on the one hand he should take away from each of the appellants $4,000.00 of the original $5,000.00 legacy bequeathed to them and this $4,000.00 then formed a part of the residuary estate, necessarily the appellants would in some measure share in such residue. Actual computation shows that the primary or specific gifts bequeathed by the Eighth Codicil are $85,500.00 less than those given by the Seventh Codicil. After making deductions for lapsed leg-

acies the amount actually given in specific legacies as shown by the Final Decree is $167,500.00. The amount which would have been given under the Seventh Codicil would be $253,000.00 so that using $85,500.00 as a quota and $253,000.00 as a divisor we find mathematically that of this $85,500.00 which is placed in the residue, the various legatees would receive 33½ cents plus on every dollar they received in specific legacies amounting to $253,000.00 but on the other hand, using $167,500.00 as the divisor, on every dollar received in the specific legacies, they would receive 51 cents plus. In other words, if the appellants received their shares in the residue based upon the primary legacy of $1,000.00, they would each get approximately $510.00 of the residue but if their share in the residue is based upon the revoked legacy of $5,000.00 they would approximately get $1,666.00 of the residue, based not upon the entire residue but upon the $85,500.00 which is added to the residue by reason of the revoked legacies.

The computations are adverted to in order to demonstrate that while the testator expressly stated his desire to reduce the primary legacies, he nevertheless, intended those legatees to share in the residue of his estate and it is apparent that no matter what his intention was, the way it works out in practice is that those legatees belonging to the same class as the appellants, will immediately be reinvested with at least one-eighth of the $4,000.00 which is expressly revoked and if the construction contended for by the appellants is sustained those appellants would immediately be reinvested with more than three-eights of the revoked $4,000.00.

Thus it is apparent that what the testator really intended to do was to reduce the amounts of money to be given to that class of legatees, of which the ap-

pellants form a part, and as pointed out in this connection, to adopt the construction for which said appellants contend, would not carry out such intention at all but would in effect reinvest those legatees immediately with what the testator intended to take away from them.

It seems to us that ordinarily, in the making of a Codicil to a Will, the Codicil is tacked on to it and relates back to the Will so that when the testator dies it is read as one instrument. In this case the testator did something more. He brought into the Eighth Codicil the express provision of the Seventh Codicil in reference to the devise and apportionment of his residuary estate and he in effect said, in plain English:

> "After the reduction of my specified legacies, I desire that my estate shall be divided in accordance with the terms and amounts of such legacies."

It is true that the general rule of construction to be followed is that as is clearly laid down in 40 Cyc. 1182 as follows:

> "EXTENT AND EFFECT OF REVOCATION. The intention of the testator is the test in determining how far the revocation of a will is effected by a codicil, as it is in all other cases of testamentary construction, and such intention should be given its proper effect, neither enlarged nor restricted. Therefore the rule is well established that a codicil will not operate as a revocation of previous testamentary provisions beyond the clear import of its language, especially where, in all other respects, the will is in terms ratified and con-

> firmed; and an express intention to make a change in a Will in one particular negatives, by implication, an intention to alter it in any other respect. Furthermore it is an invariable rule that a codicil will not disturb or alter the dispositions of the will further than is absolutely necessary for the purpose of giving effect to the codicil. And where by the terms of a will a devise or bequest is clearly given, a codicil will not operate to revoke such bequest or devise, unless the intention that it shall so operate appears with equal clearness."

In this case we have the express language in the Will indicating what the testator wanted to do, because as above stated, he incorporated into his Eighth Codicil and republished as a part thereof, the terms of his Seventh Codicil and by making a practicable application as to the actual distribution of the estate, it shows that the principle contended for by the appellants will not in fact reduce the legacies of said appellants but will immediately reinvest them with the right to share, at least, partially in the specified sum of money which the testator expressly said they should not receive.

The learned Vice Chancellor, in his opinion, has clearly distinguished all of the cases which relate to this matter and as we have above stated, the present case has a feature which is not in any of the reported cases and that is that the testator by his Eighth Codicil expressly republishes the Seventh Codicil and the residuary clause therein so that what the testator in effect says is:

> "I want to reduce these $5,000.00 legacies to $1,000.00 and then I want to divide all of my estate devised in proportion to the spe-

cified or primary legacies given to the beneficiaries under my Will."

The Eighth Codicil contains the last expression of the testator and is the one which must be followed.

It is therefore respectfully urged that the decree of the Court of Chancery be in all things affirmed.

Respectfully submitted,

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