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Bill of Complaint.

Bill of Complaint.

Filed February 3, 1923.

In Chancery of New Jersey

*To His Honor Edwin Robert Walker, Chancellor
of the State of New Jersey:* 10

The FIDELITY UNION TRUST COMPANY (formerly Fidelity Trust Company), a corporation of the State of New Jersey, respectfully shows that:

1. Harriet Shuman, a resident of Essex County, died October 29, 1919, intestate.

2. The Surrogate of the County of Essex, on September 22, 1920, appointed the complainant administrator of the goods, chattels, rights and credits of said Harriet Shuman, deceased, and the complainant duly qualified as such administrator. 20

3. The final account of the complainant as administrator of the estate of said Harriet Shuman, deceased, was, by a decree of the Orphans' Court of the County of Essex made on October 27, 1922, allowed as stated, from which it appears that after deducting commissions granted by said Court there is still in the hands of the complainant cash and securities of the value of \$29,373.93. 30

4. The complainant holds said cash and securities of the value of \$29,373.93 in trust for the persons or corporations entitled to it by law.

5. Complainant is informed and believes that said Harriet Shuman left as next of kin Frances A. Reeve, George B. Doty, Warren E. Smith, Emma F. Smith, George A. Wilson, Anna A. Ap- 40

Bill of Complaint.

gar, Grace Smith, Ida C. Hartley, Eugene C. Doty, Paul Doty, Almira Vinis and Theodore Mills.

10 6. Complainant is informed and believes that Theodore Mills mentioned in the preceding paragraph as having survived said Harriet Shuman has since died; that his heirs, devisees or personal representatives are proper parties defendant to this bill; and that the complainants, after diligent and careful inquiry therefor, made as in the case of absent defendants, has been unable to ascertain the names and addresses of his heirs, devisees or personal representatives.

20 7. Complainant is informed and believes that said Harriet Shuman, deceased, left numerous other persons as her next of kin who are proper parties defendant to this bill; that the complainant after diligent and careful inquiry therefor, made as in the case of absent defendants, has been unable to ascertain the names and residences of her said next of kin other than those named in paragraph (5) of this bill.

30 8. Harriet Shuman, on or about April 28, 1915, entered the Bloomfield Home for Aged Men and Women, located at Bloomfield, New Jersey, where she remained an inmate until her death.

9. Said Bloomfield Home for Aged Men and Women claims that it is conducted by the same Board of Managers and the same management as the Job Haines Home for Aged People.

40 10. Upon her admission to said Bloomfield Home for Aged Men and Women, she, the said Harriet Shuman, entered into a written contract purporting to be with the Job Haines Home for Aged People (but across the top of said contract

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were written the words "Entered Stubbert Home, Bloomfield, New Jersey, May 1st, 1915") whereby she agreed, in consideration of being received as an inmate of said home (a) to pay an entrance fee of \$300; (b) to assign and set over in proper legal manner any pension or other property, real or personal, of which she might be seized or possessed, or which she might thereafter acquire, to said Job Haines Home for Aged People, and its successors, for its use forever, subject, however, to provisions of the by-laws of the Board of Managers of said corporation. A copy of which agreement is hereto attached and made a part hereof and marked Schedule "A."

10

11. The Bloomfield Home for Aged Men and Women is also known as the "Stubbert Home."

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12. The Bloomfield Home for Aged Men and Women now claims that the above-mentioned contract was intended to have been made between said Harriet Shuman and itself and that such contract should be reformed by inserting its name instead of the Job Haines Home for Aged People wherever it appears in said contract.

13. The above-named next of kin of Harriet Shuman, deceased, claim that the estate should be distributed among them according to the intestate laws of the State of New Jersey; and the Bloomfield Home for Aged Men and Women claims that it is entitled to the whole amount of said estate.

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14. That the complainant is in doubt as the manner in which and to whom said funds and securities in its custody as administrator of the

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Bill of Complaint.

estate of Harriet Shuman, deceased, should be paid or distributed.

The complainant is without adequate remedy in the courts of law and therefore prays:

10 1. That Frances Reeve, George B. Doty, Warren E. Smith, Emma F. Smith, George A. Wilson, Anna A. Apgar, Grace Smith, Ida C. Hartley, Eugene C. Doty, Paul Doty, Almira Vinis, The Job Haines Home for Aged People, Bloomfield Home for Aged Men and Women, and the unknown heirs, devisees and personal representatives of Theodore Mills, deceased, and the unknown heirs, devisees and personal representatives of Harriet Shuman, deceased, who are the defendants to this suit, may answer this bill
20 of complaint and each statement therein made.

2. That the complainant may be particularly and specifically instructed in the manner in which to distribute said funds and assets.

3. That if said funds and assets are distributable to the next of kin of said Harriet Shuman, deceased, then that the complainant may be further instructed as to the share thereof each such next of kin is entitled to receive.

30 4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

FRANCIS LAFFERTY,
Solicitor and Counsel with Complainant.

Bill of Complaint.

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

I, FRANCIS LAFFERTY, of full age, being duly sworn according to law, upon my oath depose and say that I am the solicitor of the complainant in the above cause, and as such am entrusted with the management thereof; that I am informed and believe that Theodore Mills, named as one of the surviving next of kin of Harriet Shuman, deceased, is now dead; and I am also informed and believe that Harriet Shuman, deceased, left numerous next of kin other than those named in paragraph (5) of the bill; that as agent for the complainant I have made diligent and careful inquiry as in the case of absent defendants for the heirs at law, devisees and personal representatives of Theodore Mills, deceased, and for the next of kin of Harriet Shuman, deceased, and that I have been unable to ascertain the names of the heirs at law, devisees and personal representatives of Theodore Mills, deceased, and of the next of kin of Harriet Shuman, deceased, other than those named in paragraph (5) of the bill.

FRANCIS LAFFERTY.

Sworn and subscribed to before me
 this 2nd day of Feb., 1923.

HERBERT S. JACOBUS,
 Notary Public of New Jersey.

A copy of "Schedule A" referred to in the foregoing bill of complaint is hereinafter printed as "Exhibit D. 1."

*Answer of Defendant George B. Doty.***Answer of Defendant George B. Doty.**

Filed March 6, 1923.

The answer of the defendant George B. Doty. This defendant answering the bill of complaint says that:

10

1. Paragraphs 1 to 5 inclusive are admitted.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs 6, 7, 8 and 9.

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3. Paragraph 10 is admitted as stated except this defendant further answering says that said alleged contract is merely an application for admission to said Job Haines Home for Aged People, and that such admission, support and maintenance was contingent on said Home being able to support and maintain said Harriet Shuman by reason of voluntary contributions made to its income.

4. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 11.

5. Paragraph 12 is denied.

30

6. Paragraph 13 is admitted so far as this answering defendant is concerned, he claiming an interest in the undistributed estate of Harriet Shuman, deceased, as one of the next of kin. But he denies that the Bloomfield Home for Aged Men and Women, the Job Haines Home for Aged People or the Stubbert Home is entitled to the whole amount or any amount of said estate.

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7. This defendant answering says that said claim should have been litigated and determined

Answer of Defendant George B. Doty.

before the final account of the Estate of Harriet Shuman, and that now is it too late to present and allow claims against the estate.

8. That the alleged application has never been accepted by the Job Haines Home for Aged People, nor any service rendered said Harriet Shuman by that institution. 10

9. That after the signing of the application as mentioned, by Harriet Shuman, she unexpectedly inherited the estate in question from her daughter, and if any contract exists it was never in the contemplation of the parties that such an amount should be given to the Job Haines Home for Aged People or any other institution.

10. That if the facts show a contract between Harriet Shuman and the Job Haines Home for Aged People, there was no mutuality, as the Job Haines Home was not bound to fulfil their part if they were not "supported by voluntary contributions" as alleged in the application signed by said Harriet Shuman, and consequently there was not sufficient consideration for the premises of the said Harriet Shuman and she should not be bound. 20

11. That it was not the meaning and intent of the parties to any contract, if there was one, that Harriet Shuman or her estate should pay for her support and maintenance for the space of about four years the sum of \$29,373.93, or any similar like sum, to the deprivation of lawful heirs and next of kin of the said Harriet Shuman; and it is evident from the language, subject matter and surroundings that any such sum should be paid or allowed to the said institution for the service rendered. 30

Answer of Defendant George A. Wilson.

This defendant therefore prays:

1. That the claim of the Job Haines Home for Aged People, the Bloomfield Home for Aged Men and Women, Stubbert Home, Bloomfield, N. J., or any other institution, may be decreed and declared to be too late to be considered as the final
10 account of the Estate of Harriet Shuman has been passed and allowed.

2. That it may be decreed that the alleged application and contract was not binding on Harriet Shuman or her estate because it was not binding on the Job Haines Home for Aged People or any other institution.

3. That it may be decreed that the Estate of Harriet Shuman should not pay the balance in
20 the hands of the administrator or \$29,373.93 to the before-mentioned institutions because of lack of contractual obligations on the part of said Harriet Shuman, on construction of the contract alleged; but that said balance may be decreed to be paid to the next of kin of said Harriet Shuman according to law, your answering defendant being a nephew of said decedent.

CHARLES M. DOLLIVER,
Solicitor of Defendant George B. Doty.

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Answer of Defendant George A. Wilson.

Filed March 6, 1923.

The answer of George A. Wilson was filed by Charles M. Dolliver, Esq., his solicitor. It is identical with the foregoing answer of George B. Doty.

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Answer of Defendant Grace Smith.

Answer of Defendant Grace Smith.

Filed March 22, 1923.

The answer of GRACE SMITH, residing at 160 South 11th street, in the City of Newark, Essex County, New Jersey.

1. This defendant ADMITS paragraphs 1, 2 and 3 of complainant's bill. 10

2. She ADMITS paragraph 4 so far as the same alleges that complainant holds said cash and securities to the value of \$29,373.93 in trust, and says that said fund is held in trust for the next of kin of said Harriet Shuman, this defendant being a niece of said intestate and entitled by law to one-eleventh of the estate of Harriet Shuman remaining after the payment of those sums allowed or to be allowed by law. 20

3. She ADMITS paragraph 5 except so far as Theodore Mills is included as one of the next of kin, and this defendant says that so far as she knows and as she verily believes, Theodore Mills is dead, and that the eleven persons (this defendant included) named in addition to Theodore Mills in paragraph 5 of the bill of complaint, are his next of kin. 30

4. She ADMITS paragraph 6 except as qualified by the allegations contained in the preceding paragraph of this answer.

5. She DENIES paragraph 7 and says that with the exception of Theodore Mills, whom she believes to have died unmarried and without issue, the persons named in paragraph 5 of the bill of complaint are the next of kin of Harriet Shuman, deceased. 40

Answer of Defendant Grace Smith.

10 6. This defendant has no knowledge, information or belief as to the allegations of paragraphs 8, 9, 10, 11, 12, 13 and 14, but says as to each and every of said paragraphs, that no person other than the next of kin of Harriet Shuman, as described and mentioned in paragraph 5 of the bill of complaint (Theodore Mills excepted), has any interest in or claim upon the estate of Harriet Shuman, deceased, and that any supposed contract made with The Job Haines Home for Aged People is without consideration, illegal and void.

For a further and separate defense this defendant says:

20 1. That The Bloomfield Home for Aged Men and Women was not a party to the alleged contract attached to the bill of complaint, and not intended so to be, and it has no rights and no interest in the subject matter of this action.

This defendant reserves the right at or before the hearing of this cause to move against the bill of complaint both as to its form and sufficiency in setting up a cause for equitable relief.

30 W. HOWARD DEMAREST,
Sol'r for and of Counsel with
Defendant Grace Smith.

Answer of Anna A. Apgar and Ida C. Hartley.

**Answer of Defendants Anna A. Apgar and
Ida C. Hartley.**

Filed March 31, 1923.

The answer of the defendants Anna A. Apgar and Ida C. Hartley to the bill of complaint of Fidelity Union Trust Company, the complainant in the above-entitled cause. 10

These defendants answering the said bill of complaint, say that:

1. Paragraphs 1 to 6 inclusive are admitted.
2. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 7.
3. Paragraph 8 is admitted. 20
4. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraphs 9, 10 and 11.
5. These defendants have no knowledge or information sufficient to form a belief as to the allegation in paragraph 12 as to the claims now made by said Bloomfield Home for Aged Men and Women; but defendants insist that there were no contractual relations whatever between the said Bloomfield Home for Aged Men and Women and the said decedent. 30
6. Defendants admit that they and the other next of kin of the said decedent claim that her estate should be distributed among them according to the intestate laws of the State of New Jersey; but these defendants have no knowledge or information sufficient to form a belief as to the other allegations in paragraph 13. 40

Answer of Emma F. Smith and Frances Reeve.

7. These defendants have no knowledge or information sufficient to form a belief as to the allegations in paragraph 14.

10 8. Defendants further answering say that the said Bloomfield Home for Aged Men and Women have no right, title or interest in the estate of
 20 the said decedent; that by reference to the copy of the said alleged agreement annexed to the bill of complaint herein, it appears that the same purports to be made with the Job Haines Home for Aged People and defendants insist that thereunder the said Bloomfield Home for Aged Men and Women can have no claim or rights whatsoever, and these defendants further insist that they and the other next of kin of the said decedent are entitled to receive from the complainant herein as administrator of the said decedent, the said estate in manner and form as provided by the statute of distribution of the State of New Jersey, and that the alleged contract between decedent and the Job Haines Home for Aged People is without consideration, illegal and void.

LUM, TAMBLYN & COLYER,
 Solicitors for and of Counsel with Defendants,
 Anna A. Apgar and Ida C. Hartley.

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**Answer of Defendants Emma F. Smith and
 Frances Reeve.**

Filed May 14, 1923.

The answer of Emma F. Smith and Frances Reeve was filed by Lum, Tamblyn & Colyer, Esqs., their solicitors. It is identical with the foregoing answer of Anna A. Apgar and Ida C.
 40 Hartley.

Answer of Defendant Paul Doty.

Answer of Defendant Paul Doty.

Filed May 8, 1923.

The answer of the defendant, Paul Doty, to the bill of complaint of Fidelity Union Trust Company.

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This defendant answering the said bill of complaint says that:

1. Paragraphs 1 to 5 inclusive, are admitted.

2. This defendant has not knowledge or information sufficient to form a belief as to the statements in paragraphs 6, 7, 8, 9, 10 and 11.

3. This defendant has not knowledge or information sufficient to form a belief as to the allegations in paragraph 12 as to the claims made by the Bloomfield Home for Aged Men and Women, but this defendant denies that there were contractual relations between said Harriet Shuman and said Bloomfield Home for Aged Men and Women.

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4. Answering paragraph 13, this defendant admits that he claims that the estate should be distributed among the next of kin of Harriet Shuman, deceased, according to the intestate laws of the State of New Jersey, and says that he is one of said next of kin, being the only child of William H. H. Doty, deceased, who was a brother of said Harriet Shuman. This defendant has not knowledge or information sufficient to form a belief as to the claims of the Bloomfield Home for Aged Men and Women, but insists that said institution is not entitled to the said estate, or any part thereof.

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Answer of Defendant Paul Doty.

5. This defendant has not knowledge or information sufficient to form a belief as to the allegations of paragraph 14.

6. This defendant, further answering, says that the alleged application for admission to Job Haines Home for Aged People, a copy
10 whereof is annexed to the bill and marked Schedule A, was never accepted by said Job Haines Home for Aged People, and is without consideration, illegal and void.

7. This defendant, further answering, says that at the time the alleged agreement Schedule A purports to have been signed, the decedent Harriet Shuman was of the age of seventy-nine years and upwards and was possessed of very
20 little money or property of any kind, and did not anticipate acquiring, and had no reasonable expectation of thereafter acquiring any property of any substantial amount, and she did not contemplate transferring to the Job Haines Home for Aged People, the Bloomfield Home for Aged Men and Women, or any other institution or corporation, any such substantial amount as her estate upon her death proved to be worth. Her
30 age and necessities required her to have a home which she was not able to provide for herself, and she was at a disadvantage in bargaining with the institution which was in a position to provide her with such a home. The Bloomfield Home for Aged Men and Women did not give fair and adequate consideration for the large estate alleged to be claimed for that institution, and it would be unreasonable and unconscionable to transfer said funds to it.

Answer of Defendant Paul Doty.

8. This defendant, further answering, says that said Bloomfield Home for Aged Men and Women has not commenced proceedings either at law or in equity to enforce its alleged claim within six years after the same is alleged to have accrued and action at law upon the same is barred by the provisions of the act entitled "An act for the limitation of actions," 3 N. J. C. S. 3162, and said institution is in laches in asserting it at this time. 10

9. This defendant, further answering, says that a few days before the death of said Harriet Shuman, her daughter, Laura E. Francis, died leaving a last will and testament wherein she left her residuary estate to her mother, the said Harriet Shuman. The cash and securities received by complainant from the administrator with the will annexed of said Laura F. Francis, constitute the bulk of the estate in controversy in this suit. Said Harriet Shuman was never seized or possessed of said property and did not acquire the same in her lifetime and her interest in said estate of her daughter, Laura E. Francis, was not a pension or other property, real or personal, within the purview of said alleged agreement Schedule A. 20

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WHITING & MOORE,
Solicitors for and of Counsel
with Defendant Paul Doty.

Answer and Counter-claim of Bloomfield Home, etc.

**Answer and Counter-claim of Defendants
The Bloomfield Home for Aged Men and Women
and The Job Haines Home for Aged People.**

Answer originally filed June 18, 1923.

Answer and counter claim filed May 3, 1924.

10 The answer and counter-claim of The Bloomfield Home for Aged Men and Women and the Job Haines Home for Aged People, both corporations of New Jersey:

These defendants answering the bill of complaint say that:

1. Paragraphs one to four are admitted.
2. These defendants have no knowledge or information to enable them to answer paragraphs five, six and seven.
- 20 3. Paragraphs eight, nine, ten and eleven are admitted.
4. These defendants, answering and by way of counterclaim both claim that the application for admission referred to in paragraph ten was intended to have been made by said Harriet Shuman to defendant, The Bloomfield Home for Aged Men and Women, and that it should be reformed by inserting the name of The Bloomfield Home for Aged Men and Women wherever it appears in said contract.
- 30 5. These defendants deny that the next of kin of said Harriet Shuman, whoever they may be, have any right to have the said estate distributed among them, but these defendants claim that The Bloomfield Home for Aged Men and Women is entitled to the whole amount thereof, as said estate has not yet been distributed by

Answer and Counter-claim of Bloomfield Home, etc.

the complainant which is the administrator of said estate.

6. These defendants further further say that when said application for admission was signed, The Bloomfield Home for Aged Men and Women had but lately been incorporated, that it was incorporated as a distinct corporation by those who were the trustees of the Job Haines Home for Aged People, out of deference to the will of Sarah D. Stubbert, deceased, who had bequeathed and devised the residue of her estate for the purpose of its being used by her executors as trustees to maintain a home for Protestant aged men and women. Said trustees were authorized to transfer all said trust property to a corporation when in their opinion it was for the best interest of said Home. The trustee of said estate requested the Job Haines Home for Aged People, a corporation of New Jersey, which provides for the maintenance of aged people, to take title to the said property and use it for the purpose defined in said will. While the Job Haines Home for Aged People was willing to do so, it seemed best to incorporate The Bloomfield Home for Aged Men and Women, as a separate institution. The said Home was incorporated by filing its certificate with the Secretary of State of New Jersey, on May 13, 1914. The Job Haines Home for Aged People is managed by a board of managers, all of which are women and distinct from the trustees of said Home. The board of managers attend to the detail of admitting inmates. Much confusion existed for a time among the managers who were also managers of The Bloomfield Home for Aged Men and Women, as to the distinction between the two corporations. They

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Answer and Counter-claim of Bloomfield Home, etc.

10 regarded the Stubbert Home, as they called The Bloomfield Home for Aged Men and Women, only an auxiliary of the Job Haines Home for Aged People, and therefor used the application for admission blank which had been prepared for the latter institution, simply designating by written comment across the top as in this case, if an inmate enter The Bloomfield Home for Aged Men and Women. Harriet Shuman intended to transfer all her property, which she had at the time of admission The Bloomfield Home for Aged Men and Women, and any she might thereafter acquire, to The Bloomfield Home for Aged Men and Women, and doubtless the only application blank which she signed.

20 These defendants therefor pray:

1. That said complainant and all other defendants answer without oath this counter-claim and each statement herein made.

2. That said application for admission be construed to read "The Bloomfield Home for Aged Men and Women," wherever it states or refers to the Job Haines Home for Aged People, and that if this Honorable Court deem it necessary, 30 the instrument be reformed so to read.

3. That the whole estate of said Harriet Shuman, now in the hands of said complainant, or which may hereafter come into its hands, be decreed to be paid to said defendant, The Bloomfield Home for Aged Men and Women.

CHARLES G. TITSWORTH,
Solicitor of Defendants Job Haines
Home for Aged People and The
Bloomfield Home for Aged Men and
40 Women.

IN CHANCERY OF NEW JERSEY.

Between

FIDELITY TRUST COMPANY,
Complainant,

and

FRANCES REEVE, *et al.*,
Defendants.

10

Transcript of testimony taken in the above-stated cause before VICE-CHANCELLOR JOHN H. BACKES, at Newark, New Jersey, on the seventeenth day of April, 1924.

Appearances:

20

Francis Lafferty, Esq., for the complainant.

Charles G. Titsworth, Esq., for the Job Haines Home for Aged Men and Women.

Lum, Tamblyn & Colyer (Mr. Ernest Lum) for Annie A. Apgar, Ida C. Hartley and Emma F. Smith.

W. Howard Demarest, Esq., for Grace Smith.

Ira C. Moore, Esq., for Paul Doty.

Charles M. Dolliver, Esq., for George P. Doty
and George A. Wilson. 30

Mr. Lafferty opens for complainant.

Mr. Titsworth opens for defendants.

40

Mrs. Annie Augusta Apgar, direct.

MRS. ANNIE AUGUSTA APGAR, a witness produced on behalf of the complainant, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. Lafferty.

10 Q What is your full name? A Annie Augusta Apgar.

Q And where do you live? A 160 South Eleventh street, Newark.

Q Were you related to Mrs. Schuman—Harriet Schuman? A I am Mrs. Schuman's niece.

Q Do you know whether or not Mrs. Schuman had any brothers or sisters? A Mrs. Schuman had had ten brothers and five sisters, all deceased.

20 Q Can you give their names? A I can give you at least eight of the boys and all of the girls.

Q Will you do so? A The boys are Moses, Abraham, George, Marshall, Manning, John Wesley, Aaron, William Henry Harrison—I think that's eight. Two died before their twenty-first birthday and without issue, and I don't recall their names.

30 *By the Court.*

Q How many girls? A The girls were Sarah Mills, Nancy Blake, Amanda Davenport, Caroline Smith, Harriet Schuman, Victoria Pellard.

Q Giving their names at the time of their death? A Yes.

By Mr. Lafferty.

40 Q Now, were you a daughter of a brother or a sister of Mrs. Schuman? A Daughter of a sister, Victoria Pellard.

Mrs. Annie Augusta Apgar, direct.

Q Do you know anything of Moses Schuman?

A Moses Doty?

Q Oh, her name was Doty before her marriage? A Yes, her maiden name was Doty.

Q Well, do you know anything of Moses Doty?

A He has been dead many years. I attended his funeral.

10

Q Leave any children? A Never had any children.

Q Do you know anything about Abraham Doty? A Abraham Doty died many years ago in the State of Ohio, leaving two daughters. I understand they have passed away.

Q George is the next, I think? A George Doty went to Arkansas and settled. He was on and made a visit to his family when I was fourteen years of age. That's the only time I met him. I lost all further track of him—trace of him.

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Q So that you don't know whether he is living or has children living? A I understand he had a family. I know nothing about it.

By the Court.

Q Do you know where in Arkansas? A No, I don't.

30

By Mr. Lafferty.

Q The next child to George—what's his name?

A George.

Q After George? A Manning. Manning lived in Dover, but has been dead many years.

Q Did he leave any children? A He left a daughter, but I never met her.

Q Marvin? A Marshall. Marshall went to North Carolina. I never saw him. He had a family, but I don't know them.

40

Mrs. Annie Augusta Apgar, direct.

Q John Wesley? A John Wesley lived in Newark and he has been dead many years. He has two heirs living, Mrs. Frances Reeve and George B. Doty, of Plainfield.

By the Court.

10 Q A daughter and son of the man whom you mentioned? A Yes.

By Mr. Lafferty.

Q Alvin Doty? A Aaron died before marriage.

Q William Henry Harrison? A Has been dead a number of years. Left one issue, Paul A. Doty, of Minnesota.

20 Q You mentioned Mahlon? A Oh, I guess you didn't call for Mahlon.

Q Did Mahlon leave any children? A Yes, sir, he did.

Q How many? A Eugene Doty is the only one alive. The others have passed away.

By the Court.

30 Q Passed away without being married? A No, they were married.

Q Sarah Mills? A Sarah Mills had two sons, both of whom have passed away.

Q Nancy Blake? A Nancy Blake left two children, a son and a daughter, George Wilson and Almira Vinus, both living.

Q Amanda—what was her other name? A Davenport—she had a daughter, who has been dead about twenty years.

40 Q Any other children? A No other issue.

Mrs. Annie Augusta Apgar, direct.

Q Caroline— A Caroline Smith has left two heirs, a son, Warren Smith, and a daughter, Emma Smith, both living.

Q Victoria Meller? A Kelly—left three daughters, Annie Apgar, Ida Hartley and Grace Smith.

The Court: The question of testacy may be involved, may it not, of these brothers and sisters? 10

Mr. Lafferty: Yes, it could be so if they died after Mrs. Schuman; otherwise not.

The Court: The brothers and sisters all died before Mrs. Schuman?

Mr. Lafferty: Yes, sir.

Mr. Lum: The Mills died before Mrs. Schuman? 20

Mr. Lafferty: Yes.

By the Court.

Q All of the parties to whom you have referred and who have died, died before Mrs. Schuman? A Yes, sir.

Mr. Titsworth: I understand, your Honor, that she said there were ten brothers and she gave us eight—do you understand the other two died before they came of age? 30

The Court: That's what the witness said.

The Court: Both sides rest?

Mr. Demarest: I don't think the plaintiff rests yet.

The Court: Plaintiff has rested.

Mr. Demarest: We rest also. 40

Jessie W. Fairlie, direct.

Mr. Titsworth: Your Honor, I would like to introduce some evidence on behalf of the institution.

10 JESSIE W. FAIRLIE, a witness produced on behalf of the defendant, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. Titsworth.

Q Did you know Harriet Schuman? A I didn't know her. I met her but once.

Q Upon what occasion was that? A When she came to the house to sign her bond for application for entrance to the Job Haines Home.

20 Q (Showing witness.) Will you look at this paper and tell us what it is? A It is a bond for admission to the Job Haines Home for Aged People in Bloomfield. It is a contract.

Mr. Demarest: I object.

Q You call it a bond? A It is an agreement, a bond—an agreement between the Job Haines Home people and Mrs. Schuman.

30 Q Whose signature is attached to this? A Harriet Schuman's, as the applicant; Kate Irene Fairlie, as chairman of investigation; Jessie W. Fairlie, as witness, and J. S. Wolfe, as doctor.

Q Is that your signature as witness? A It is.

Mr. Titsworth: I offer this so-called agreement or application for admission in evidence.

(Document marked Exhibit D. 1.)

Kate Irene Fairlie, direct.

Q Who was present when that was signed besides Mrs. Schuman? A Kate Irene Fairlie of the committee for admission to the Job Haines Home.

Q Are you connected with the Job Haines Home or the Bloomfield Home? A I am not.

10

No cross examination.

KATE IRENE FAIRLIE, a witness produced on behalf of the defendants, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. Titsworth.

20

Q Mrs. Fairlie, are you connected in any way with the Bloomfield Home for Aged Men and Women? A I am.

Q Were you so connected in April, 1915—on April 29, 1915? A I was.

Q Did you know Mrs. Harriet Schuman? A I did not know her previous to her application for entrance to the Home.

Q Did you meet her on that date? A I did.

30

Q (Showing witness.) Have you seen this paper before? A I have.

Q Is that your signature upon it? A Yes.

Q Did Mrs. Schuman sign that in your presence? A She did.

Q That reads: "I hereby apply for admission to Job Haines Home for Aged People." Further on it says—I will read it further— "I do agree in consideration of my being received as an inmate of said Home.

40

Kate Irene Fairlie, direct.

“First, to pay an entrance fee of Three Hundred Dollars.

“Second, to assign and set over in proper legal manner any pension or other property, real or personal, of which I may be seized or possessed or may hereafter acquire, to said Job Haines
 10 Home for Aged People and its successors, for its use forever, subject, however, to the provision of the by-laws of the Board of Managers of said corporation.

“Third, To assent and agree to, and promise compliance with the constitution and by-laws, rules and regulations of the Board of Managers of said corporation now existing (a copy of which I now have), and as the same may be hereinafter from time to time amended.

20 “Knowing that said Job Haines Home for Aged People is supported wholly by voluntary contributions which determine the accommodations furnished to the inmates thereof, I hereby agree that said Home shall be bound only to support me during my life or so long as said Home shall be supported by said voluntary contributions in the manner warranted by its income, and I expressly disclaim any lien or right to lien upon
 30 the property of said corporation if I shall become an inmate of said Home.”

Q Did Mrs. Schuman become an inmate of The Bloomfield Home for Aged People? A She became an inmate.

Mr. Demarest: I object.

The Court: Overruled.

Q She became an inmate of the Bloomfield
 40 Home for Aged People? A Yes.

Kate Irene Fairlie, direct.

Q But she signed this application for the Job Haines Home for Aged People?

Mr. Demarest: I object.

The Court: Overruled.

A The Committee of Admission served for both homes—the Job Haines Home and the Home for Aged People of Bloomfield. I was chairman of committee for both houses, you may say, both homes. We had but one form—the form you hold in your hand. In signing that it didn't mean that she entered that building, the Job Haines Home. She preferred to enter the Home for Aged People in Bloomfield. I don't know if that answers it clearly or not. 10

By the Court. 20

Q Then, what did she in fact do? A She entered the Bloomfield Home.

By Mr. Titsworth.

Q And did she remain an inmate of the Bloomfield Home until her death? A Until her death.

By the Court. 30

Q I wish you would again tell us the relation that existed between the two homes. A The two homes are under the same general management. The one committee served both the homes. The Home for Aged People in Bloomfield separately managed, I may say, was due to a provision made in a will of a woman by the name of Stubbard, who left her estate to maintain that home. 40

Kate Irene Fairlie, direct.

Q Where are the two homes? A They are both in Bloomfield.

Q How far separated are they? A About a mile.

Q Are they under the same management? A They are under the same—

10 Q The same administration? A Yes.

Q Are they under the same management? A We have two boards of managers—one that takes care of the affairs of one home and the other of the other.

Q The internal affairs? A Yes.

Q Are they separate corporations? A They are separate corporations.

20 Q And to which of these institutions did this lady apply? A The Home for Aged People in Bloomfield, not the Job Haines Home.

Q It was in the Bloomfield Home that she signed this contract? A She signed it in my home—my own house, but she signed it expecting to enter the Stubbard Home.

Q She signed it expecting to enter the Stubbard Home? A The Bloomfield Home for Aged People.

30 Q She made that application, had she? A Yes, for that home.

By Mr. Titsworth.

Q Mrs. Fairlie, the Job Haines Home was an old, established institution for the care of aged men and women? A Yes, sir.

Q And when Mrs. Stubbard died, Mrs. Sarah Stubbard, did she leave any provision for the care of aged men and women? A Yes.

40 Q Do you recall what it was?

Kate Irene Fairlie, direct.

Mr. Lum: I object, if this refers to a will.

The Court: Let us have a history of it.

Q What did Mrs. Stubbard's will provide?

A Mr. Titsworth, there is one person who knows more than I do about it.

10

By the Court.

Q At the time this lady died were the two homes in existence? A Yes.

Q The Bloomfield and the Job Haines? A Yes.

Q I mean Mrs. Stubbard? A Yes, it was in existence, the Job Haines Home. The Stubbard Home, the Bloomfield Home for Aged People was made possible by this woman's death—
Mrs. Stubbard.

20

Mr. Titsworth: Mrs. Stubbard left a provision that the residue of her property should be left for the support of aged men and women. She wanted her home, her own residence, so used, and she provided that if the executors could carry it out that they should create a home to be called the "Bloomfield Home for Aged Men and Women." The executors found they could not do it and they applied to the Job Haines Home to take it over. The managers and board of trustees of the Job Haines Home felt that it was only fair to Mrs. Stubbard that her request should be kept intact. Therefore, a new corporation was created called the "Bloomfield Home for Aged Men and Women" and established

30

40

Kate Irene Fairlie, direct.

10 in the Stubbard residence. That is the reason for there being two homes. Now, the two homes are managed by the same board of lady managers and the trustees of the Bloomfield Home are the officers of the Job Haines Home for Aged Men and Women and the two institutions are carried on as really one institution, and there is a good deal of confusion due to that fact. I think the ladies frequently did not realize there were two corporations in existence. That is the reason for the use of the one application blank.

By the Court.

20 Q Did she express her preference for the Bloomfield Home at the time? A Yes, sir.

Q Any reason for it? A Well, she had her friends up there.

By Mr. Moore.

Q The Job Haines Home for Aged People is supported by voluntary contributions, is it not?

A Yes.

30 Q Are these contributions used at all for the maintenance of the Bloomfield Home? A No.

Q Are the moneys which are set apart for the Bloomfield Home used at all for the support of the Job Haines Home? A No.

Q The two funds are kept entirely separate?

A Separate funds.

By the Court.

40 Q Is the Bloomfield Home supported by voluntary contributions or is it maintained by the

Kate Irene Fairlie, direct.

bequest of Mrs. Stubbard? A By the bequest of Mrs. Stubbard.

Q Her estate is sufficient to maintain that?
A Yes—scantily sufficient.

By Mr. Demarest.

Q Both are charitable institutions? A 10
Charitable institutions.

By Mr. Titsworth.

Q Mrs. Fairlie, do you mean to say that the Bloomfield Home for Aged Men and Women is supported entirely from Mrs. Stubbard's estate and doesn't need voluntary contributions? A No, I don't mean that. There are some few voluntary contributions, but mainly it is supported by that. 20

By the Court.

Q But not from the funds of the Job Haines Home at all? A No.

By Mr. Titsworth.

Q Is it the practice of the managers of the Bloomfield Home for Aged Men and Women to require an application for admission to be signed by all inmates? 30

Mr. Demarest: I object to that.

The Court: Objection overruled.

Q Did the Bloomfield Home require an application for admission to be signed? A Yes.

Q Does that application for admission require them to transfer their property which they 40

Kate Irene Fairlie, direct.

then have or any they may thereafter acquire to the home in consideration of their being admitted? A It does.

Q Will you tell the Court, please, Mrs. Fairlie, how it happened that the blank of the Job Haines Home was used when Mrs. Schuman, as
10 you say, applied for admission to the Bloomfield Home? A We only had the one form in use.

Mr. Lum: I want to object to this entire line of testimony as being in violation of Section Four of the Evidence Act.

The Court: Objection overruled.

Q (Repeated by stenographer.)

A We used that form equally for both homes.
20 We only had that one form. They were received into either home on that blank. The express desire of Mrs. Schuman was to enter the Bloomfield Home. She understood that when she made the application and when she signed the agreement—she knew that she was signing the application to enter the Bloomfield Home and not the Job Haines Home.

30 Mr. Lum: I would like to have that portion of the answer stricken out. It is certainly a conclusion of the witness.

The Court: Motion denied.

By the Court.

Q Did the two institutions have the same general office? A You mean my home?

Q You say the applicants to either institution made their application on one form only,
40

Kate Irene Fairlie, direct.

the Job Haines? A Yes. There was only one committee for admission for both homes.

Q Where did that committee have its headquarters? A Well, its headquarters—it was really in my own home—my own home, and all the instructions for applying for admission and also the entrance was made at my own home. 10

Q For either home? A For either house.

By Mr. Titsworth.

Q Was this paper read to you? Did she read it to you when she signed it—when this application that you have exhibited— A It was read to her by me—by myself.

Q That is, the application marked Exhibit D. 1 for admission, to which you have been referring, and which has been offered in evidence? 20
A Yes.

By the Court.

Q When this paper was read to her, what did she say? A Well, I know that she said that she understood. I have another member of my committee here.

Q I am asking you? A She said she understood it. I always ask, “Do you understand?” 30
and she said she understood. Is that what you want, your Honor? Is that what you want?

By Mr. Titsworth.

Q Did she pay the \$300? A Yes.

By the Court.

Q When you read that document to her you mentioned the Job Haines Home, did you not? 40

Kate Irene Fairlie, direct.

When you read the document to her you read the "Job Haines Home"? A Yes, I believe I did.

Q Did she make any comment about that, do you recall? A No, because it was perfectly understood between us, and that was a mere
10 technicality, if I may so speak—hardly that—but she knew that she meant the Home and I knew—I had visited with her and I knew that she meant the Bloomfield Home, so I didn't say it.

Q When did she come to you? When did you first meet her? A When she came to make her application.

Q Did you know her before that? A No, sir; I didn't know her.

20 Q When she came there what did she say? A That she had come to make her application to the Stubbard Home.

Q The Stubbard Home being— A Being the Bloomfield Home—I mean the Bloomfield Home for Aged People.

Q Tell us the conversation? A She came and said she desired to enter the Stubbard Home in Bloomfield. She did not use the name
30 "Bloomfield Home for Aged People"—she knew it just as the Stubbard Home, and that was the name she used. She talked over the terms of entrance and I drew up this form and she signed it. I cannot—really, the actual—this is going back some years for me to tell you just what she said and what I said, but it was clearly understood—her people and her friends were all up that way and that was the Home that she wanted to get into.

Kate Irene Fairlie, direct.

By the Court.

Q I think I did ask you— Was there any comment made when you read the “Job Haines Home”? A I think not, your Honor.

Q She wanted to go to the Bloomfield Home? A Yes.

Q This was a contract which you read to her of the Job Haines Home? A Job Haines Home. 10

Q And no mention was made of the change in name? A Not at the time.

Q Eh? A No.

Q How long did she stay in the Home? A She entered in 1915. She died in 1919.

Q How soon did she enter the Home after signing this paper? A Well, three or four days. I think she entered May first, and this is April twenty-eighth—several days. 20

Q At the time you read this document to her just before she signed it, did you perceive that the document was the one for the Job Haines Home? A You mean did I speak to her?

Q No, did you perceive— A Yes, I knew that it was the Job Haines form I was using.

Q Then you realized at the time that she was not making—that this agreement was not—didn't bear the name of the Bloomfield Home? A Oh, yes; I certainly did realize that. 30

Q Did you then—knowing that this lady desired to enter the Bloomfield Home, you didn't change that form by striking out the “Job Haines Home” and inserting Bloomfield Home”? A Well, we had—

Q Why didn't you do it at the time? A I was following the custom. We had received into the Stubbard Home or the Bloomfield Home perhaps fifteen people before and I was follow- 10

Kate Irene Fairlie, direct.

ing the custom of using this form for both institutions.

By Mr. Titsworth.

Q Mrs. Fairlie, do you know whether Mrs. Schuman knew of any distinction physically between one Home and the other? A Yes, I know that she knew the difference.

Q Do you know whether she knew the difference in the physical Home or do you know whether she knew of any difference in the organization? Did she know whether they were separate corporations? A Yes, she did know it. There is a more valuable witness present than I am on anything that relates to that.

20 *By Mr. Demarest.*

Q Was it, as you say, a custom that had existed for a year prior to Mrs. Schuman's application to use this same blank? A We never had but the one blank in twenty-seven years.

Q You still use it? A We still use it. The Bloomfield Home at present hasn't a separate form.

Q The Board of Governors or Managers that you spoke of, are there some men and some women in the governing bodies of these Homes? A We have a Board of Trustees for each Home—

Q For each Home? A Largely made up of the same men—the same men, largely, but there are two separate Boards of Trustees, one representing the Bloomfield Home and the other the Job Haines Home.

Q And that condition existed in April, 1915, when this application was made? A Yes.

40

Kate Irene Fairlie, direct.

By the Court.

Q And for how long before?

Mr. Demarest: Not more than a year, your Honor. It was only organized a year before.

10

By Mr. Demarest.

Q And this condition had existed during the entire life of the Bloomfield Home for Aged Men and Women or Stubbard Home? A Yes.

By the Court.

Q Let me have that again— Do I understand that the Board of Managers of the old Home, the Job Haines Home, are also the managers of the Bloomfield Home? A We have a Board of Managers and a Board of Trustees, and the Board of Trustees serve both Homes and are almost identically the same men. Then there are two Boards of Managers made up of ladies.

20

Q Are they the same? A They are the same women who are in charge of the Stubbard Home and are also members of the larger circle of managers that control the Job Haines Home.

Q But all the members of the Board of Managers of the Bloomfield Home are members of the Board of Managers of the Job Haines Home? A Yes, sir.

30

Q In other words, the Bloomfield Home is a sort of subsidiary of the Job Haines Home? A That's it—of the Job Haines Home.

By Mr. Demarest.

Q In control of the Job Haines Home, Mrs. Fairlie, is it? A Not control, but supervision.

40

Kate Irene Fairlie, direct.

Q As a matter of management merely? A Yes.

Q The Job Haines Home is the largest institution? A It is the larger.

10 Q And the Bloomfield Home is a small institution and you would be able to take care of how many people? A Oh, about ten in the small and fifty in the large.

By the Court.

Q Ten where? A In the Bloomfield Home.

By Mr. Demarest.

Q And the Bloomfield Home you call the Stubbard Home? A Yes.

20 *By Mr. Lum.*

Q You hold separate meetings of these trustees or Board of Managers, do you? A Yes.

Q And you keep separate the records for each? A Yes.

Q And you keep the funds of each entirely separate? A Yes.

Q Entirely separate accounts? A Yes.

30 Q And you don't divert any funds from the Job Haines Home to the Stubbard Home? A No. We have loaned to the Stubbard Home.

Q No, but you don't divert any of your funds except by way of loans? A No.

Q Your Board of Managers of the Job Haines Home doesn't as such control in any way the papers of the Stubbard Home, does it? A No.

40 Mr. Titsworth: I would like to offer in evidence a certified copy of the article of

Caleb Woodruff, direct.

incorporation of the Bloomfield Home for Aged Men and Women and I would ask Mr. Woodruff to take the stand.

(Document marked Exhibit D. 2.)

CALEB WOODRUFF, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath testifies as follows: 10

Direct examination by Mr. Titsworth.

Q What is your name? A Caleb Woodruff.

Q Are you connected with the Bloomfield Home for Aged Men and Women? A I am, sir. I have been the secretary of the board ever since they organized. 20

Q Will you refer to your minutes—have you your minutes there? A I have, sir.

Q Will you refer to your minutes and tell us when the by-laws of the Bloomfield Home were adopted? A Shall I read the copy of the by-laws?

Q Not yet. Just tell us when the by-laws were adopted. A They were adopted May 19, 1914. 30

By the Court.

Q Are those the by-laws? A Yes, sir.

Q And are they the minutes of the organization? A Yes, sir; the minutes are here, too.

(Minute Book of the Bloomfield Home is marked Exhibit D. 3.)

(By-laws of the Bloomfield Home is marked Exhibit D. 4.) 40

Caleb Woodruff, direct.

By Mr. Titsworth.

Q I ask you, Mr. Woodruff, if that paper that you have there is a copy of the by-laws? A This seems to be a copy of the by-laws. I have read it partly, not altogether over, and so far as I have read it is a copy.

10

The Court: Let it go, subject to correction.

The minutes are in evidence. You are handing this up as a matter of evidence?

Mr. Titsworth: Yes.

By the Court.

Q Who compose the Board of Managers? Who are the people— A The people in the Board of Managers of the Job Haines Home are selected—of the Bloomfield Home are selected from the Board of Managers of the Job Haines Home.

20

Q Is it a separate institution to look after the aged? A That's what they do. They look after people when they are admitted. They try to take care of them for the rest of their lives.

Q Is it a money-making institution? A No, not making any money. No.

30

Q Is it a commercial institution or a philanthropic institution? A Hasn't profited one dollar in any way since I have been secretary and I have been secretary for twenty-seven years. Mr. Frelinghuysen was on the Board with me for twenty-seven years.

Q They are men of standing, the men who are sponsoring this charity? A Yes, sir. It is the only Home that I know of where they take married folks, men and women married.

40

Davis W. Lusk, direct.

DAVIS W. LUSK, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. Titsworth.

Q Are you connected with the Job Haines Home for Aged Men and Women? A I am President. 10

Q Will you briefly as you can tell the Court about these two institutions and who are interested in them as Boards of Trustees and also as Managers, and how they are maintained? A Now, I can't come over all the names—

Q No, I didn't ask you that. A The President of the Job Haines Home is as I have told you. The Vice-President is Charles Titsworth and the Secretary is Caleb L. Woodruff. 20

By the Court.

Q We want the purpose of the institutions and how they are managed? A They are maintained for a public interest and maintained for charity. Both places provide comfortable homes for people that are not able to provide for themselves and are practically homeless. 30

By Mr. Titsworth.

Q How old is the Job Haines Home? A Well, I don't know. It is nearly thirty years old.

Q Will you tell the Court how the Bloomfield Home came into being? A Well, as far as I can recall this woman named Stubbard left a provision in her will that her homestead should be used for a Home. Now, there wasn't sufficient 40

Davis W. Lusk, direct.

money to organize one or conduct it, as far as I recall, and so the application was made to the Job Haines Home and we found we would have to have two separate corporations.

10 Q Application was made to the Job Haines Home for what purpose—to take over this charity? A To some way or other establish the Home, and we found that we would have to have two separate corporations and we took as a Board of Trustees the officers of the Job Haines Home and that was the Board of Trustees then for the Bloomfield Home.

20 Q How many are there? A Five, and have been from the start—one has died. I think there is only four now. The managers are the women that are the managers of the Job Haines Home. That is, the managers of the Bloomfield Home are selected from the women who are managers of the Job Haines Home—that is, the internal affairs. In both cases the trustees have charge of the real estate and everything pertaining to it.

By the Court.

30 Q Who was this lady's home left to? Who was the beneficiary—the Job Haines Home? A Mrs. Stubbard left?

Q Yes. A No, she didn't say anything about that, as I recall.

The Court: You have a copy of her will?

Mr. Titsworth: I have. It is not certified.

The Court: Oh, well, counsel will admit it.

Mrs. Jennie Morris Broughton, direct.

(Copy of will marked Exhibit D. 5.)

Mr. Demarest: I don't object, but I don't think we ought to clog up the record with a lot of things that will have to be printed.

The Court: Counsel may apply to me to have the printing limited.

10

By Mr. Titsworth.

Q Has it been possible, Dr. Lusk, to keep the two institutions separate in the minds of the trustees and managers always? A Well, it has been a little difficult sometimes, but I think they have kept them fairly separate.

No cross examination.

20

MRS. JENNIE MORRIS BROUGHTON, a witness produced on behalf of the defendants, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. Titsworth.

Q Mrs. Broughton, are you the widow of Dr. William R. Broughton? A Yes, sir; I am.

Q Were you and your husband connected with the Bloomfield Home for Aged Men and Women in any way? A We were. My husband was Vice-President until his death, and I was for fourteen years the President of the Board of Women Managers of the Job Haines Home and of the Bloomfield Home.

30

By the Court.

Q Why do you distinguish between—why do you emphasize “Chairman of the Women”— A

40

Mrs. Jennie Morris Broughton, direct.

Because the women were the Board of Managers and the gentlemen were the Board of Trustees. I was the President of the Board of Managers.

Q Of the Job Haines Home? A Of the Job Haines Home and the Bloomfield Home for Aged Men and Women, both.

10 Q Were there men connected with the Bloomfield Home and the Job Haines Home? A Certainly.

Q They were the Board of Trustees? A They were the Board of Trustees of both.

Mr. Titsworth: As I understand it, there was a Board of Trustees of each Home that had charge of the property, the ownership of real and personal property, and there was
20 in each home a Board of Managers composed solely of ladies, to liquidate the internal affairs.

By Mr. Titsworth.

Q Did this Board, the Manager's Board, have entire charge of the admission of inmates? A They did. Mrs. Fairlie was the Chairman for both Homes—for the Bloomfield and the Job
30 Haines.

By the Court.

Q For how long? A Even before my day fourteen years ago.

Q All during the time of the Bloomfield Home? A No. The last two or three years there has been another Chairman. When Mrs. Schuman entered the Home Mrs. Fairlie was
40 Chairman of both.

Mrs. Jennie Morris Broughton, direct.

Q Are the Managers of each institution the same individuals? A Until this year I have been President of the Job Haines Home and the Bloomfield Home. This year I am President of the Bloomfield Home and Mrs. Weston Baily of Glen Ridge of the Job Haines.

Q You have a larger board for the Job Haines Home than for the Bloomfield Home? A Very much. 10

Q But all the managers of the Bloomfield Home are members of the Board of Managers of the Job Haines Home? A They were until this year. We invited a few ladies to act as Managers of the Bloomfield Home.

Q Who are not Managers of the Job Haines Home? A Yes, but at the time of this contract they were all exactly identical. 20

Q At the time of this contract that you speak of the members of the Board of Managers of the Bloomfield Home were of the membership of the Board of Managers of the Job Haines Home? A Yes, they were. 20

Q Does that also apply to the Board of Trustees—the men? A That also applies to the Board of Trustees.

Q In other words, the Board of Trustees of the Bloomfield Home was made up of some of the members of the Board of Trustees of the Job Haines Home? A Yes, a small number, because being a small home we didn't need so many on the Board. 30

Q Did you know Mrs. Hattie Schuman? A Yes, I knew Mrs. Schuman for many, many years.

Q What was her occupation? A Her occupation was a trained nurse—at least, practical nurse—not what we would call a trained nurse. 40

Mrs. Jennie Morris Broughton, direct.

Q Had she had anything to do with the Bloomfield Home before she entered it? A She had not.

Q Had she served in it as a nurse? A No, she had not.

10 Q What were the circumstances under which she made application for admission? A Mrs. Schuman—

By the Court.

Q As you know—not what you have been told. A Mrs. Schuman and her daughter and Mrs. John Lawrence of Bloomfield, a home in which she had nursed many, many years, came to my home, 15 Church street, Bloomfield, knowing me, as she had nursed in our home as well, and
20 asked if she might join the Bloomfield Home for Aged Men and Women. I said: “Mrs. Schuman, do you want to enter the Job Haines Home or the Bloomfield Home?” She says: “I want to join the Bloomfield Home, because I knew Mrs. Stubbard for years and I know all the ladies who are living right about the home and who are taking charge of the Home, and I wish to join that,” and her daughter spoke up—she had
30 worked up in our Home as well, and she said: “I want to have her right near you and near the people she knows and loves and cares for,” and I told her she would have to go down to Mrs. Fairlie and make her application there as she was the Chairman of our Admission Committee, and she did so, and she lived in our Home over four years. She was a charming Christian character—perfectly wonderful. They called her
40 “The Sun-Shine of Our Home,” and we all loved her dearly, and she did not wish to enter

Mrs. Jennie Morris Broughton, direct.

any home but the Bloomfield Home. She asked for it.

Q Did she know that one of the requirements for admission to the Home was that she would transfer her estate that she then had or would have in the future— A Surely, I had some of the same applications which I read to her then and there, before Mrs. Schuman, before her daughter and before Mrs. John Lawrence. 10

Q What was that? A The same which has been read this afternoon.

Q How did that come up? A Why, simply that when anybody came to me—

Q How did that come about at that time?

Mr. Demarest: Will your Honor understand our general objections to this entire line of testimony so that we may have the benefit of that, too. I think this is in the same class. 20

Q How did it come about that you spoke of these documents? A Why, everyone who came—

Q Oh, no—how did you come to speak to her about it? A I can't understand how I can answer it unless to say that everybody who came to me about the Home I read the requirements always to them. 30

Q That was what you generally did? A I did it this day, too, there, because she would have to know it.

Q What did you say to her about it? A I said: "Mrs. Schuman, these are our requirements. When you go to Mrs. Fairlie to sign this, you will have to sign that." She said: "I am willing to do so." 40

Mrs. Jennie Morris Broughton, direct.

Q Sign what? A Sign an agreement like the one I was holding in my hand.

Q It was like the one that you read this morning? A Yes.

Q Did she accept it? A She consented.

10 *By Mr. Titsworth.*

Q Mrs. Broughton, was the devise left by Mrs. Stubbard sufficient to maintain this Bloomfield Home—has it been? A No, Mr. Titsworth, it has not.

Q And you have had— A We have had to solicit funds outside. The community gives us some and we have solicited some and friends have given us donations.

20 Q And at the time of Mrs. Schuman's admission it was essential to the maintenance of the Home that the initiation fee should be used and any moneys that could be obtained outside of Mrs. Stubbard's devise? A It was.

By Mr. Demarest.

30 Q Do you understand that under the terms of the will the home is to be conducted without charge to those who go into it? A Why, no.

Q Has it ever been conducted upon that basis? A No. Everybody has paid an admission fee who has entered the Home.

Q When was there any regulation passes requiring an initiation or entrance fee by the Trustees or Managers or other officers of the Home? A That I could not tell you.

40 Q Was there ever such a regulation or motion passed? A I don't know as there was.

Mrs. Jennie Morris Broughton, direct.

We just ran one Home exactly on the same rules as the other.

Q So that because the Job Haines Home required certain payments or certain contracts you assumed to follow that rule in the Stubbard or Bloomfield Home? A We followed exactly the same line of procedure for one Home as the other. 10

Q Do you know that the certificate of incorporation doesn't provide for the taking in of subscriptions or funds from entrants? A No, I don't know that it says anything about that in the— I have read the will many times over, and I didn't see that it said anything like that.

Q Did you find anything in the will permitting the persons having charge of the Stubbard Home to take funds from their wards? A No, not one way or the other. If there is any funds needed to run anything, why, you have got to get them in same way. 20

Q Was there any authority in the will—

The Court: The will speaks for itself.

Q Do you customarily assume the authority under the will to ask an intended entrant to the Home to pay a sum of money and assign all they possess? A We always ask them to do that. 30

Q Whether with or without authority you mean it was your custom? A It was our custom.

By Mr. Lum.

Q At the time Mrs. Schuman came to you to see about entering the home, did you ask her what property she had? A I didn't ask her because it was not up to me—it was up to the Admission Committee. 40

Mrs. Jennie Morris Broughton, direct.

The Court: In fact, she hadn't any at that time.

Mr. Lum: That is the fact. I just wanted—

10 A (Continuing.) I knew that she didn't have anything. I have known the family many, many years.

Q And at that time you knew that she had no property? A I knew she didn't have much or she wouldn't ask for entrance to the home.

By Mr. Demarest.

20 Q You know that she had an insurance policy and three hundred dollars in cash? A She had a paid-up policy of eighty dollars and some cents. That was put aside for burial.

By Mr. Lum.

Q Mrs. Broughton, you are familiar with the by-laws of both of these institutions we have discussed? A Yes.

30 Q Are the by-laws of the Job Haines Home identically similar to those of the other Home, to the Bloomfield Home? A They are just the same.

Q The by-laws of the Job Haines Home are printed in a little booklet form, are they not?

Mr. Titsworth: Pardon me, I don't think it is proper testimony.

The Court: Have you a copy of the by-laws of the Job Haines Home, Mr. Titsworth?

Mrs. Edith L. Nathies, direct.

A You can get me a copy and I will see whether they are the same.

(Mr. Titsworth offers in evidence a copy of the by-laws of the Job Haines Home.)

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MRS. EDITH L. NATHIES, a witness produced on behalf of the defendant, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. Titsworth.

Q Mrs. Nathies, are you connected with the Bloomfield Home for Aged Men and Women?

A Only that I am connected with the Job Haines Home—the managers of both Homes being the same. 20

Q Well, does that make you a manager of the other Home? A Yes.

Q Did you know Mrs. Harriet Schuman? A Only as she made application for the Home.

Q Will you tell us some of the circumstances of her making application—when did you first see her? A The day she made application at Mrs. Fairlie's home. 30

Q Were you at Mrs. Fairlie's home? A Yes.

Q What did she say then? A She came making application to the Home. Mrs. Fairlie was Chairman of the Admission Committee and I was a member of the Admission Committee.

Q Which Home? A She came making application—

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Mrs. Edith L. Nathies, direct.

Mr. Demarest: I object. What did she do?

The Court: Go right on.

10 A She came making application to the Job Haines Home expressing her desire to enter the Bloomfield Home because she knew—

Q Wasn't there a good deal of confusion in the minds of the lady managers then as to the distinction between the two Homes?

Mr. Demarest: I object to that. I think we are going too far.

The Court: Too far for you?

Mr. Demarest: Yes, too far for me.

20 Q Did I ask you the question whether Mrs. Schuman knew that she was transferring any property she had or might have? A I think I did.

The Court: No, you didn't.

A I asked her that question.

Q What did she say? A Well, she understood that perfectly.

30 Q What did she say on that question? A She said everything she had at her death would come to the Job Haines Home.

Q Come to the Job Haines Home?

The Court: That's what she said.

40 A (Continuing.) And signed an agreement to that effect to the management of the Job Haines Home and the Bloomfield Home. She left everything she had or might have.

Mrs. Edith L. Nathies, direct.

By the Court.

Q Did she say anything of that kind to you?

A She told us she really understood that anything she had—

Q What did she say? A She agreed to it when we put that question to her.

Q Can you tell us in detail just what happened at Mrs. Fairlie's home when this aged lady signed the application? A Mrs. Fairlie read over the agreement— 10

Q Something done before that? A Yes.

Q What happened before that? A She was told what the initiation was.

Q She came in— A Yes, she came in asking admission to this Home, expressing her preference for this Bloomfield Home on account of the acquaintance up there. She was told what the price of admission was and what she would have to do. 20

Q What was she told? A That her admission was three hundred dollars and burial would have to be provided unless she had a policy that would take care of that.

Q What else was she told? A She was told that anything she had outside of that three hundred dollars and the burial fee belonged to the Job Haines Home and the Bloomfield Home —being one and the same. 30

Q What did she say? A She said she understood it perfectly and agreed to it.

Q And then the assignment was read to her? A Yes, then the assignment was read to her and she agreed to it.

By Mr. Moore.

Q Did she tell you what property she had at that time? A She didn't have any. 40

Mrs. Edith L. Nathies, direct.

Q Did she tell you whether she expected to have any? A No.

Q Do you know whether she expected to have any? A I certainly did not. She appeared to have no expectations of anything.

10 *By the Court.*

Q What aged lady was she? A Well, in the neighborhood of eighty years, I think. Have to be over sixty-five to enter the home. Between seventy-eight and eighty, as I remember.

Mr. Titsworth: Seventy-nine.

By Mr. Titsworth.

20 Q Was she in good mental condition? A Yes, perfectly.

Q Perfect mental condition? A Yes.

30 Mr. Demarest: We think it may possibly be admitted on the record to save any testimony and the time in taking it that this estate came through Charles B. Zabriskie who died on October 13, 1919, and by his will, probated on November 5, 1920, recorded in Book L 6, page 158 of Wills in the Surrogate's Office, devised all his estate to his wife, Mary E. Zabriskie.

The Court: A daughter of Mrs. Schuman?

Mr. Demarest: A daughter of Mrs. Schuman. Mrs. Zabriskie died October 22nd, nine days after her husband, in the year 1919, and her will was probated November 5, 1920.

The Court: "Flu" victims?

40 Mr. Demarest: Yes, sir—and her will was probated February 5, 1920, in Book L 6 of Wills, page 160, and she by her will devised all her

Mrs. Edith L. Nathies, direct.

property to Harriet Schuman, her mother. Her mother died October 29, 1919, seven days after the daughter, so that between—

The Court: Also a "Flu" victim?

Mr. Demarest: I don't know what was the ailment of Mrs. Schuman, but between October 13th and October 29th, 1919, the whole family was wiped out. 10

Mr. Titsworth: I would like to ask if I can have those dates again. It seems to me—

Mr. Demarest: I meant to add to that statement that the estate now in the hands of the complainant was originally the property of Mr. Charles B. Zabriskie; that it came from him to his wife and from his wife to her mother.

The Court: That appears to have been the method. 20

Foregoing facts were admitted as stated by Mr. Demarest.

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Exhibit D. 1.

Exhibit D. 1.

*Entered Stubbert Home, Bloomfield, New Jersey,
May 1, 1915.*

Dated April 28th, 1915.

10 I HEREBY apply for admission to Job Haines Home for Aged People and hereby do agree in consideration of my being received as an inmate of said Home;

(1) To pay an entrance fee of Three Hundred Dollars.

20 (2) To assign and set over in proper legal manner any pension or other property, real or personal, of which I may be seized or possessed or may hereafter acquire, to said Job Haines Home for Aged People and its successors, for its use forever, subject however to the provision of the By-Laws of the Board of Managers of said corporation.

(3) To assent and agree to, and promise compliance with the constitution and by-laws, rules and regulations of the Board of Managers of said corporation now existing (a copy of which I now have) and as the same may be hereafter from time to time amended.

30 KNOWING that said Job Haines Home for Aged People is supported wholly by voluntary contributions which determine the accommodations furnished to the inmates thereof, I hereby agree that said Home shall be bound only to support me during my life or so long as said Home shall be supported by said voluntary contributions in the manner warranted by its income, and I expressly disclaim any lien or right to lien upon the property of said corporation if I shall become an inmate of said Home.

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Exhibit D. 1.

Place of birth: Dover, Morris Co., New Jersey

Date of birth: Dec. 1835 Age 79

Married.

A spinster or bachelor.

Widow or widower. Widow.

Name of husband or wife and address. Daniel Schuman 10

Father's name. Aaron Doty

Mother's Name. Phoebe Mulford.

If any children give names and addresses; One daughter, Mrs. C. B. Francis, 161 Garside St., Newark, N. J.

State church relation: Centenary Methodist Episcopal Ch.

Have you any disease, if so, state what: In good physical condition.

Reference. Dr. Ralph Erime, Mrs. Wm. H. Brown, 204 Summer Ave., Mrs. E. E. Bergen, 266 Clinton Ave. City. 20

Burial in Fairmount Cem. there is a place by the side of her husband Sec. R—Lot 21—shares the lot with Mr. Peter Stetchens.

HARRIET SHUMAN

Signature.

JESSIE W. FAIRLIE,
Witness. 30

KATE IRVINE FAIRLIE

Committee of Investigation:

Doctor D. S. Wolfe.

Policy No. 463962 is "Paid Up". It is for \$80.50 and is given in lieu of burial sum.

*Exhibit D. 4.***Exhibit D. 4.**

Excerpts from the By-Laws of Board of Managers of Job Haines Home for Aged People and Bloomfield Home for Aged Men and Women.

ARTICLE V

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Section 2. — *Admission.* —

A. — The Admission Committee shall thoroughly investigate all applications, inquiring into the character and circumstances of the applicants, and before his or her acceptance, shall distinctly set before such persons all rules relating to his or her admission. Dismissals shall also come under the head of this Committee.

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B. — At the time of admission such persons shall be required to sign an agreement by virtue of which he or she engages to observe and conform to all “rules and regulations” of the Home.

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C. — Persons admitted must be at least sixty-five (65) years of age and residents of Essex County for two years preceding application, or at some earlier period in their life. Each person must pay an admission fee of Five Hundred Dollars (\$500.) and in every case arrangements must be made for burial or One Hundred Dollars (\$100.) paid in excess of the admission fee.

D. — Such persons shall be required at time of admission to transfer to the Home all property, whether real or personal, of which he or she is, or thereafter may become, possessed, and upon which banking interest will be paid.

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E. — Each person received shall be a probationer for six months (6-mos). During this term, the applicant may leave the Home, if dissatisfied

Exhibit D. 4.

or may be dismissed by the Admission Committee if found undesirable. In either case, the Treasurer shall return to such person all property that he or she conveyed to the Home, and shall refund the admission fee excepting and retaining therefrom for board Three Dollars (\$3.) per week.

F. — If at any time a member of the family becomes, in the judgment of two physicians, seriously demented, such person must be removed by friends, or, by action of the Board, be placed in a suitable institution.

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ARTICLE VIII

RULES AND REGULATIONS.

Section 1. — The Board of Managers shall make all necessary rules and regulations for the Home *which all must respect under penalty of dismissal.*

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Section 2. — Any one dismissed because of his or her repeated violations of said rules and regulations subsequent to the probationary term shall in no case receive any part of the admission fee.

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Opinion.

Opinion.

On final hearing.

Mr. Francis Lafferty, for the complainant.

Mr. Charles G. Titsworth, Mr. Charles M. DOLLIVER, Messrs. Lum, Tamblyn & Colyer, Messrs.
 10 Whiting & Moore and Mr. W. Howard Demarest,
 for the defendants.

BACKES, V.-C.

Harriet Schuman became an inmate of the Bloomfield Home for Aged Men and Women at the age of seventy-nine and remained four years, until her death. She signed the usual form of application for admission, by which the home agreed to maintain her for life, "or so long as said home shall be supported by said voluntary contributions in the manner warranted by its income," and in which she agreed, in consideration of being received as an inmate, to pay an entrance fee of \$300, and "to assign and set over in proper legal manner any pension or other property, real or personal, of which I may be seized or possessed or may hereafter acquire." She died possessed of an estate valued at \$30,000, which, oddly, came to her shortly before her
 20 death. Sixteen days before she passed away her son-in-law, Charles P. Zabriskie, died testate, leaving his estate to his widow, who died testate a few days later, leaving it to her mother. Mrs. Schuman's next of kin are nieces. The complainant, Fidelity Union Trust Company, holds the fund and asks instructions to whom to pay it. The next of kin claim that the contract to assign does not include the mere possibility of a legacy, and that a contract to assign all future acquired property is contrary to public policy.
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Opinion.

The great weight of authority in England and this country is that a mere expectancy or possibility by inheritance or testament is not assignable at law, but is assignable in equity for a valuable consideration, and that the assignment will be enforced in equity when the expectancy or possibility has changed into a vested interest or possession. 3 Pom. Eq. Paragraphs 1271, 1287; *Warmstrey v. Tanfield*, 1 Ch. (Eng.) 29; *Bennett v. Cooper*, 9 Beav. 252; *Wilson Estate*, 2 Pa. St. 324; *Smithurst v. Edmunds*, 14 N. J. Eq. 408; *Bacon v. Bonham*, 33 N. J. Eq. 614; *Mitchell v. Winslow*, 2 Story 630; *Holroyd v. Marshall* (Eng.), 10 H. L. C. 191.

The general principle is not controverted, but it is contended that to be good in equity the subject matter of an assignment of an expectancy or possibility must be in contemplation of the parties. In other words, that the source of the possible inheritance or bequest must be apparent. In support of the proposition, cases at law are cited where specified prospects, including all future acquisitions, were assigned, and where it was held that the assignments were inoperative as to the latter, because it was found not to have been in the intention of the parties that property later accidentally acquired should thereby pass; the logic being that it would include future earned income, and one does not intentionally deprive oneself of the means of livelihood, and that the impolicy of permitting one to do so reflects the absence of such intention. *Tadman v. D'Epinenil*, 20 L. R. Ch. Div. 758; *Cook v. Conway*, 2 Cranch C. C. 99; *Munsell v. Lewis*, 4 Hill 635; reversed, 2 Den. 224; overruled, *Field v. Mayor of New York*, 61 N. Y. 179. These cases do not hold that an assignment of a possibility,

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Opinion.

unless a definite source be contemplated, is operative and non-enforceable in equity. In *Field v. Mayor of Newark, supra*, the Court of Appeals said: "Whatever doubt may have existed heretofore on the subject, the better opinion, I think, now is that courts of equity will support assignments, not only of choses in action, but of contingent interests and expectations, and things which have no present actual existence, but rest in possibility only, provided the agreements are fairly entered into, and it would not be against public policy to uphold them. Authorities may be found which seem to incline the other way, but which, upon examination, will be found to have been overruled or to have turned upon the question of public policy." In the case in hand there were possibilities but no prospects, and in the very nature of things all possibilities, whatever the source or origin, were comprehended. The contract was fairly entered into and faithfully and honestly carried out by the home, and ought in conscience to be upheld, and may be upon the principle and authority above stated, unless it is in conflict with the policy of the law.

The principles and doctrine of public policy are matters of common professional knowledge. While the term is profound, as well as panacean in legal jurisprudence, it admits of no exact definition. Its virtue and vigor lies in its flexibility of application, and while reported cases furnish guides, they rarely are compelling in precedent. I am referred to *Baltimore Humane Society v. Pierce*, 100 Md. 520; 60 Atl. Rep. 277; 70 L. R. A. 485, in which the court refused to enforce a somewhat similar contract on the ground that it offended public policy. There Pierce, the father, made a written application to the society for ad-

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mission to its home, in which he promised to obey the house rules. The society reserved to itself the right to expel him for cause. Pierce, the son, and another, covenanted with the society, that if Pierce, the applicant, should acquire any property by legacy, devise or otherwise, they would cause the same to be transferred and conveyed to the society. The son died and the father inherited from him \$3,500. The father refused to transfer, and the society brought suit for damages for breach of the covenant. The court felt that it would be contrary to the public good to lend the aid of the courts to enforce such a contract, and the reason seems to be: The inmate's term was precarious, because of the society's reserved right to expel him; he was hopeless of relief from friends, because they would not give if he was not to enjoy. He would be deprived of the beneficial use intended to give him comfort and possibly some luxuries of life in his old days. The society itself might suffer because of this reluctance of friends to give to inmates. And because of the uncertainty of the value of property that might come to the inmate and pass to the society, and thus be diverted from its natural channels. The action was at law, where, as we have seen, assignments of possibilities are not recognized, and the court was not unmindful of the different view entertained in equity and made pertinent allusion to it. The inconveniences in the case were persuasive. It seems to me, however, that the public welfare is better served by upholding contracts of this kind whereby institutions, which care for the aged and tend to relieve the public of their charge, are facilitated in their work for the poor, than to put the ban of the law on them because, perchance, some one of the

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unfortunates might quite accidentally be favored by the death of a rich relative or friend. And to them the sureness of a home in their declining years far outweighs the advent of any such remote possibility.

10 The opinion is uninfluential in this case because of the marked difference in circumstances. Mrs. Schuman's welfare is not at stake. What would be the equitable course had she survived and renounced her contract, and whether the doctrine of public policy would be applied, are interesting questions not presently involved. This dispute over her estate is between the home she intended should have it and her collateral kin who claim under the statute, and the judicial inclination and temper is not as keen, and justly so, to apply the doctrine of public policy.

20 Mrs. Schuman's contract with the home was manifestly not improvident, and the home having secured her against the poorhouse, against becoming a public charge, and the public interest being thereby protected and conserved, I fail to see any invasion of the policy of the law or any ground on that score justifying its invalidation. That the lifetime maintenance of Mrs. Schuman by the home was contingent upon its being supported by public contribution does not militate against this view. The home's utmost capacity was pledged. The contingency was intrinsic and inherent in the contract, as in all contracts. The home has performed its part of the contract in full. It maintained Mrs. Schuman four years in happy surroundings, and would, no doubt, have continued to do so had she lived many more years. For this it received initially a mere pittance, and the promise of the possibility, and was content. Vulgarly speaking, the home and the

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inmate each took a chance, and in this instance the home won. But suggestion of the spirit of gamble is unfair and offends good taste, for the home is a pure charity for the aged homeless, supported by public contributions, and unselfishly served by kindly and generous men and women. Mrs. Schuman had a fondness for the home before she sought its shelter, and gladly contributed what little she had and offered more and all, if more should come to her by any possibility, to help other unfortunate of this noble institution. The defense of public policy, in the circumstances, is an intrusion. The policy that dictates that no man shall pauperize himself and become a charge on the public also conversely teaches that charitable institutions which tend to save the public of such charges are to be encouraged.

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Just a comment: It seems strange that if the doctrine of public policy is as potent in a case of this kind, as claimed by the next of kin, it was not extended to the many cases in this State where gifts by aged persons to confidants, of all they possessed, were set aside on the ground of improvidence solely because there was no independent advice. *Slack v. Rees*, 66 N. J. Eq. 447; *Post v. Hagan*, 71 N. J. Eq. 234; *Reeves v. White*, 84 N. J. Eq. 661; *Voorhees v. Christie*, 125 Atl. Rep. 13. In those cases the danger of becoming a public charge was far more imminent than here, where only an intangible possibility is involved, and yet the doctrine was not even adverted to.

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It is further contended that the contract ought not be specifically enforced because it was not mutual, in that the home agreed to maintain the applicant for life if it was supported so long by

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voluntary contributions. Both parties were bound to its terms and the home has performed.

10 The contract was in fact made with the Bloomfield Home. As reduced to writing, it appears to have been made with the Job Haines Home. This was a mutual mistake, accidentally made and easily explained. The lady managers of the Bloomfield Home are also managers of the Job Haines Home, a related organization. Though the homes are separate corporate entities, the lady managers having charge of applications served both institutions. The Bloomfield Home had no blank forms of applications, so one of the Job Haines Home was used. They forgot, or accidentally omitted, to strike out the name "Job Haines Home" and substitute "Bloomfield Home." 20 The court will do that for them when the pleadings are properly moulded. It is claimed in this respect that a contract required by the statute of frauds to be in writing cannot be reformed and enforced. *Wirtz v. Guthrie*, 81 N. J. Eq. 281; 87 Atl. Rep. 134; *Vogt v. Mullin*, 82 N. J. Eq. 452; *Davimos v. Green*, 83 N. J. Eq. 596; 92 Atl. Rep. 96. The contract is not within the statute of frauds. It might have been performed within a year. *Eiseman v. Schneider*, 60 30 N. J. Law 291.

Another point is that the acceptance of the fund by the home is *ultra vires* the home, because the authority to do so is not embodied in its charter. If that be so, advantage can be taken only by the attorney-general. *DeCamp v. Dobbins*, 29 N. J. Eq. 36; *Stockton v. Central Railroad Co. of N. J.*, 50 N. J. Eq. 52; *Willoughby v. Chicago Junction Railway*, 50 N. J. Eq. 656. The complainant will be directed to pay the fund to the Bloomfield Home. 40

Final Decree.

Final Decree.

Filed September 23, 1924.

This cause coming on regularly to be heard in the presence of Francis Lafferty, of counsel with the complainant; Lum, Tamblyn & Colyer, of counsel with the defendants, Emma F. Smith, Anna A. Apgar, Frances Reeve and Ida C. Hartley; Whiting & Moore, of counsel with the defendant, Paul Doty; Charles M. Dolliver, of counsel with the defendants, George B. Doty and George A. Wilson; W. Howard Demarest, of counsel with Grace Smith; and Charles G. Titworth, of counsel with the defendants, Job Haines Home for Aged People and the Bloomfield Home for Aged Men and Women; and proofs having been taken in open court and arguments of counsel for the respective parties having been heard and considered, and it appearing from the pleadings and the proofs taken (a) that the bill was filed by the complainant praying to be instructed to whom the funds in its custody should be paid; (b) that a decree *pro confesso* has been taken against the non-answering defendants; (c) that said Harriet Shuman entered the Bloomfield Home for Aged Men and Women on or about April 28, 1915, and continued an inmate thereof until her death; (d) that upon said Harriet Shuman becoming an inmate of said Bloomfield Home for Aged Men and Women she entered into a written contract with it dated April 28, 1915 wherein and whereby in consideration of being received as such inmate of said home, she agreed with it to assign and set over in proper legal manner any property she might thereafter acquire; (e) that in said contract the Bloomfield Home for Aged Men and Women was

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Final Decree.

by mutual mistake designated as the Job Haines Home for Aged People; (f) that said Harriet Shuman acquired a vested estate in the funds held by the complainant after her entry into the Bloomfield Home for Aged Men and Women; (g) that the Job Haines Home for Aged People makes no claim to said fund or any part thereof; and (h) that the remaining answering defendants claim such funds as next of kin of said Harriet Shuman, deceased.

It Is, THEREUPON, on this 16th day of September, Nineteen Hundred and Twenty-four, by the Chancellor ORDERED, ADJUDGED AND DECREED:

(1) That said contract purporting to have been made between said Harriet Shuman and the Job Haines Home for Aged People bearing date of April 28, 1915, was mutually intended to be made between the said Harriet Shuman and the Bloomfield Home for Aged Men and Women, and that said contract be and the same is hereby reformed by striking out the name therein "Job Haines Home for Aged People" wherever it appears in said contract, and by inserting therein and in lieu thereof the name "Bloomfield Home for Aged Men and Women."

(2) That the Fidelity Union Trust Company as Administrator of the Estate of Harriet Shuman, deceased, pay to the Bloomfield Home for Aged Men and Women the fund so held by it with all accumulations thereon less five per cent. on income received since its accounting in the Orphans' Court, counsel fees and taxed costs herein allowed.

(3) That the Fidelity Union Trust Company, as Administrator of the Estate of Harriet Shuman, deceased, pay to Francis Lafferty, counsel for the complainant, the complainant's costs to

Final Decree.

be taxed, and a counsel fee of Two Hundred and Fifty Dollars; to Lum, Tamblyn & Colyer, counsel for defendants, Emma F. Smith, Anna A. Apgar and Frances Reeve and Ida C. Hartley, their costs to be taxed, and a counsel fee of Two Hundred and Fifty Dollars; to Whiting & Moore, counsel for the defendant, Paul Doty, their costs to be taxed, and a counsel fee of Two Hundred and Fifty Dollars; to Charles M. Dolliver, counsel for the defendants, George B. Doty and George A. Wilson, their costs to be taxed, and a counsel fee of Two Hundred and Fifty Dollars; to W. Howard Demarest, counsel for Grace Smith, her costs to be taxed, and a counsel fee of Two Hundred and Fifty Dollars; and To Charles G. Titsworth, counsel for the defendants, Job Haines Home for Aged People and the Bloomfield Home for Aged Men and Women, their costs to be taxed, and a counsel fee of Five Hundred Dollars.

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E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

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*Notice of Appeal.***Notice of Appeal.**

Filed December 31, 1924.

10 The defendants, Paul Doty, Emma F. Smith,
Grace Smith, Ida C. Hartley and Eugene C.
Doty, hereby appeal from so much of the final
decree made in this court, in the above stated
cause, as orders, adjudges and decrees that the
alleged contract purporting to have been made
between said Harriet Shuman and the Job
Haines Home for Aged People, bearing date of
April 28th, 1915, was mutually intended to be
made between the said Harriet Shuman and the
Bloomfield Home for Aged Men and Women,
and that said contract be reformed by striking
out the name therein "Job Haines Home for
20 Aged People" wherever it appears in said con-
tract, and by inserting therein and in lieu there-
of the name "Bloomfield Home for Aged Men
and Women," and from so much of said final
decree as orders, adjudges and decrees that the
Fidelity Union Trust Company as Administrator
of the Estate of Harriet Shuman, deceased, pay
to the Bloomfield Home for Aged Men and
Women the fund held by it with all accumula-
tions thereon less five per cent. on income re-
30 ceived since its accounting in the Orphans'
Court, counsel fees and taxed costs herein al-
lowed, to the Court of Errors and Appeals in the
last resort in all causes.

Dated, December 29, 1924.

WHITING & MOORE,

Solicitors for and of Counsel with
Defendants, Paul Doty, Emma F.
Smith, Grace Smith, Ida C. Hart-
ley and Eugene C. Doty.

Notice of Appeal.

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

IRA C. MOORE, JR.,
Of Counsel with Defendants, Paul
Doty, Emma F. Smith, Grace Smith,
Ida C. Hartley and Eugene C. Doty.

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Endorsed:

Service of the within Notice of Appeal is hereby acknowledged this 31st day of December, 1924.

FRANCIS LAFFERTY,
Solicitor of Complainant.

CHARLES G. TITSWORTH,
Solicitor of Defendants, The Bloom-
field Home for Aged Men and Women
and The Job Haines Home for Aged
People.

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*Petition of Appeal.***Petition of Appeal, including Grounds of Appeal.**

Filed December 31, 1924.

NEW JERSEY COURT OF ERRORS
AND APPEALS.10 *To the Court of Errors and Appeals in the last
resort in all causes:*

The petition of Paul Doty, Emma F. Smith, Grace Smith, Ida C. Hartley and Eugene C. Doty, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 16th day of September, 1924, wherein

20 the said Fidelity Union Trust Company as Administrator of the Estate of Harriet Shuman, deceased, was complainant, and one Frances Reeve and the said Paul Doty, and the said Emma F. Smith, and the said Grace Smith, and the said Ida C. Hartley, and the said Eugene C. Doty, and others were defendants, in this respect to wit,

30 that the said decree orders, adjudges and decrees that said contract purporting to have been made between said Harriet Shuman and the Job Haines Home for Aged People bearing date of April 26, 1916, was mutually intended to be made between the said Harriet Shuman and the Bloomfield Home for Aged Men and Women, and that said contract be and the same is hereby reformed by striking out the name therein "Job Haines Home for Aged People" wherever it appears in said contract, and by inserting therein and in lieu thereof the name "Bloomfield Home for Aged Men and Women"; that the Fidelity Union Trust

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Petition of Appeal.

Company as Administrator of the Estate of Harriet Shuman, deceased, pay to the Bloomfield Home for Aged Men and Women the fund so held by it with all accumulation thereon less five per cent. on income received since its accounting in the Orphans' Court, counsel fees and taxed costs herein allowed. And your petitioners humbly appeal from that part of the decree of the Chancellor which orders, adjudges and decrees as aforesaid, upon the ground that the same is erroneous for that:

1. The finding and determination of the Chancellor that the alleged contract purporting to be made between said Harriet Shuman and the Job Haines Home for Aged People, bearing date of April 28th, 1915, was mutually intended to be made between said Harriet Shuman and the Bloomfield Home for Aged Men and Women, is not sustained by the evidence.

2. At the time the said alleged contract was executed the fund now in the hands of the Fidelity Union Trust Company as Administrator of the Estate of Harriet Shuman, deceased, was not in the contemplation of the parties to said alleged contract, and said parties did not intend to contract with reference to said fund.

3. At the time the said alleged contract was executed Harriet Shuman had no rights or interest in the fund now in the hands of the Fidelity Union Trust Company as administrator as aforesaid, and had no reasonable expectation of acquiring any rights or interest in said fund, and the Bloomfield Home for Aged Men and Women acquired no rights or interest in said fund by virtue of said alleged contract.

Petition of Appeal.

4. Said alleged contract is contrary to public policy and is void.

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
 10 have such relief in the premises as to this honorable Court shall seem meet.

WHITING & MOORE,
 Solicitors of Appellants.

IRA C. MOORE, JR.,
 Of Counsel with Appellants.

Endorsed:

Service of a copy of the within Petition of Appeal is hereby acknowledged this 31st day of
 20 December 1924.

FRANCIS LAFFERTY,
 Solicitor of Complainant-Respondent.

CHARLES G. TITSWORTH,
 Solicitor of The Bloomfield Home for Aged Men and Women and The Job Haines Home for Aged People,
 Defendants-Respondents.

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*Answer to Petition of Appeal.***Answer to Petition of Appeal.**Filed January , 192~~4~~

The answer of defendants, The Bloomfield Home for Aged Men and Women and The Job Haines Home for Aged People, both corporations of the State of New Jersey, to the petition of appeal of defendants-appellants. 10

These defendants, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a final decree was, on the 16th day of September, 1924, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these defendants beg leave to refer thereto when the same shall be produced. 20

These defendants are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these defendants.

CHARLES G. TITSWORTH,
Solicitor for and Counsel with De-
fendants, The Bloomfield Home
for Aged Men and Women and
The Job Haines Home for Aged
People. 30

Endorsed:

We consent to the filing of the within Answer as of time.

WHITING & MOORE,
Solicitors of Defendants-Appellants. 40

Answer to Petition of Appeal.

Answer to Petition of Appeal.

Filed February 10, 1925.

The answer of the Fidelity Union Trust Company, as administrator of the estate of Harriet Shuman, deceased, the above-named
 10 appellee, to the petition of appeal of Paul Doty, Emma F. Smith, George Smith, Ida C. Hartley and Eugene C. Doty, the above-named appellants.

This appellee not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless, admits a decree was on September 16, 1924, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purposes
 20 in said petition mentioned and as therein set forth, but as to the substance and form of said decree this appellee begs leave to refer thereto when the same shall be produced.

The appellee is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

HOOD, LAFFERTY & CAMPBELL,
 30 Solicitors for and Counsel
 with Appellee.

We consent to the filing of the within answer as of time.

WHITING & MOORE,
 Solicitors of and Counsel with
 Appellants.

New Jersey Court of Errors and Appeals

Between

FIDELITY UNION TRUST COMPANY, as administrator of the estate of Harriet Shuman, deceased,

Complainant-Respondent,

and

FRANCES REEVE, *et als.*,

Defendants-Appellants.

On Bill, &c.

*On Appeal
from Decree
in Chancery.*

BRIEF ON BEHALF OF APPELLANTS.

Statement of Facts.

The question involved in this suit is the validity and effect of a document signed by one Harriet Shuman, whereby she purported to agree "to assign and set over in proper legal manner any pensions or other property, real or personal, of which I may be seized or possessed or may hereafter acquire, to said Job Haines Home for Aged People and its successors. * * *" (Exhibit D. 1, p. 56.)

The document is in form an application for admission to the Job Haines Home. The consideration expressed is "in consideration of my being received as an inmate of said Home."

The document further provides, "I hereby agree that said Home shall be bound only to support me during my life or so long as said Home shall be supported by said voluntary contributions in the manner warranted by its income."

The Home made no express promises whatever.

Mrs. Shuman at the time of signing the application was a widow seventy-nine years of age. She had no property and had no reasonable expectation of ever acquiring any. At that time neither she nor the officers of the Home expected or contemplated that she would ever become possessed of any property either by gift, descent, bequest or otherwise (pp. 50 and 54).

Mrs. Shuman had one child, a daughter, who was married to a Charles Zabriskie. Nine days before the death of Mrs. Shuman he died, leaving all of his property to his wife, Laura Zabriskie, who was the daughter of Mrs. Shuman. Two days later Laura Zabriskie died, leaving her property to her mother, Mrs. Shuman. Mrs. Shuman died seven days later.

The Fidelity Union Trust Company, as administrator of Mrs. Shuman's estate, has on hand about \$30,000. This money is all derived from the estate of Charles Zabriskie and passed to the administrator of Mrs. Shuman by virtue of the two wills above mentioned. Mrs. Shuman, of course, was never possessed of this money. She died before the wills of Charles Zabriskie and Laura Zabriskie could be admitted to probate. At the time of her death she had only a chose in action consisting of a right to the net proceeds of the estate of Laura Zabriskie when that estate should have been finally administered.

The question now before the Court is whether the application above referred to (Exhibit D. 1) is sufficient in equity to transfer the right to the \$30,000 now in the hands of Mrs. Shuman's administrator or whether the same should be distributed among her next of kin.

The case is further complicated by the fact that Mrs. Shuman was never received as an inmate of the Job Haines Home, but entered the Bloomfield Home for Aged Men and Women. It is the latter Home that supported her until her death. The two Homes are distinct corporations, but their management is closely allied. The contributions to each are kept as distinct funds, however. The Job Haines Home is the older and larger institution.

The Bloomfield Home and not the Job Haines Home is claiming the fund in question. The contention is that although the application is in the name of the Job Haines Home, it was the Bloomfield Home that was intended by the parties.

The Fidelity Union Trust Company, as administrator of Mrs. Shuman's estate, filed its bill of complaint in the Court of Chancery praying for instructions as to the manner in which to distribute the funds in its hands as such administrator.

In paragraph 12 of the bill of complaint (p. 3) it is alleged that "The Bloomfield Home for Aged Men and Women now claims that the above-mentioned contract was intended to have been made between said Harriet Shuman and itself and that such contract should be reformed by inserting its name instead of the Job Haines Home for Aged People wherever it appears in said contract."

Both the Job Haines Home for Aged People and the Bloomfield Home for Aged Men and Women asserted this claim in their answer, and the claim was contested by the answers of all answering defendants.

At the trial it was suggested by the Court that perhaps the Bloomfield Home should have filed a cross-bill, and by consent the case was tried as though such a cross-bill had been filed and issue joined thereon.

Thereafter the answer of the Job Haines Home for Aged People and the Bloomfield Home for Aged Men and Women was amended by including therein a counter-claim asking for reformation, as appears from the answer and counter-claim printed in the state of the case at pages 16 to 18 inclusive.

The Court of Chancery decreed that the contract should be reformed by substituting the name "Bloomfield Home for Aged Men and Women" for the name "Job Haines Home for Aged People" and ordered the Fidelity Union Trust Company, as administrator of Mrs. Shuman's estate, to pay the fund in question to the Bloomfield Home for Aged Men and Women. The appellants contend that the decree of the Court of Chancery is erroneous in that,

(1) It decrees that said contract purporting to have been made between said Harriet Shuman and the Job Haines Home for Aged People, bearing date of April 28, 1915, was mutually intended to be made between the said Harriet Shuman and Bloomfield Home for Aged Men and Women, and that said contract be and the same is hereby reformed by striking out the name therein "Job Haines Home for Aged People" wherever it appears in said contract and by inserting therein and in lieu thereof the name "Bloomfield Home for Aged Men and Women."

(2) It decrees that the Fidelity Union Trust Company, as administrator of the estate of

Harriet Shuman, deceased, pay to the Bloomfield Home for Aged Men and Women the fund so held by it, with all accumulations thereon, less five per cent. on income received since its accounting in the Orphans' Court, counsel fees and taxed costs herein allowed.

ARGUMENT.

I.

It does not appear from the testimony that Mrs. Shuman understood that her contract was with the Bloomfield Home for Aged Men and Women.

It seems to be very clear from the evidence that Mrs. Shuman desired and intended to enter the Bloomfield Home, sometimes known as the "Stubbard Home," and not the Job Haines Home. It is not at all clear, however, that she intended to assign her after-acquired property to the Bloomfield Home. In terms, the assignment is to the Job Haines Home. Such a corporation existed at the time. A separate corporation known as the Bloomfield Home for Aged Men and Women also existed. The Bloomfield Home was created by the will of a Mrs. Stubbard and was supported by her bequest, eked out by a few voluntary contributions. This bequest was scantily sufficient to maintain the Home, and in fact in order to establish the Home it was necessary to call upon the Job Haines Home for assistance (pp. 31, 41 and 48). The Job Haines Home was an old established institution; it was larger than the Bloomfield Home and apparently stronger financially (pp. 28 and 41). The two Homes were closely allied, but the finances of the two were kept entirely

separate and the funds of the Job Haines Home were not used at all for the maintenance of the Bloomfield Home (p. 30). In the assignment, Mrs. Shuman recited that she agreed "That said Home shall be bound only to support me during my life, or so long as said Home shall be supported by said voluntary contributions in the manner warranted by its income" (Exhibit D. 1, p. 56).

Mrs. Shuman knew that the two Homes were separate corporations (p. 36). In her extremity it is very possible that she would have signed any papers which she was asked to sign in order to obtain a home, but it may very well be that she understood that she could rely upon the older and stronger Job Haines Home for support, and that she would have hesitated to sign the agreement had she known that she was contracting with the weaker Bloomfield Home alone. In any event, it clearly appears from the testimony that she had every reason to believe that she was contracting with the Job Haines Home, and there is nothing in the testimony to indicate that she understood that her contract was with the Job Haines Home.

It appears from the testimony that Mrs. Shuman first went to Mrs. Jennie Morris Broughton for information as to the requirements for admission to the Bloomfield Home. What took place at that time with reference to this agreement is shown by the following testimony, which appears at pages 47 and 48 of the case:

"Q Did she know that one of the requirements for admission to the Home was that she would transfer her estate that she then had or would have in the future— A Surely, I had some of the same applications which I read to her then and there, before

Mrs. Shuman, before her daughter and before Mrs. John Lawrence.

Q What was that? A The same which has been read this afternoon. * * *

Q What did you say to her about it? A I said, 'Mrs. Shuman, these are our requirements. When you go to Mrs. Fairlie to sign this you will have to sign that.' She said, 'I am willing to do so.'

Q Sign what? A Sign an agreement like the one I was holding in my hand.

Q It was like the one that you read this morning? A Yes.

Q Did she accept it? A She consented."

The agreement referred to by Mrs. Broughton and which Mrs. Shuman expressed her willingness to sign, was the agreement with the Job Haines Home in the same form as Exhibit D. 1, page 56.

Mrs. Shuman then went to the home of Mrs. Fairlie. In the language of the witness, Mrs. Edith L. Nathies, "She came making application to the Job Haines Home, expressing her desire to enter the Bloomfield Home" (p. 52).

The testimony of that witness, showing what took place at that time, will be found at pages 52 and 53 of the case; quotations from it are as follows:

"Q Did I ask you the question whether Mrs. Shuman knew that she was transferring any property she had or might have?
A I think I did.

The Court: No, you didn't.

A I asked her that question.

Q What did she say? A Well, she understood that perfectly.

Q What did she say on that question?
A She said everything she had at her death would come to the Job Haines Home.

Q Come to the Job Haines Home?

The Court: That's what she said.

A (Continuing.) And signed an agreement to that effect to the management of the Job Haines Home and the Bloomfield Home. She left everything she had or might have.

Q Did she say anything of that kind to you? A She told us she really understood that anything she had—

Q What did she say? A She agreed to it when we put that question to her.

Q Can you tell us in detail just what happened at Mrs. Fairlie's home when this aged lady signed the application? A Mrs. Fairlie read over the agreement—

Q Something done before that? A Yes.

Q What happened before that? A She was told what the initiation was.

Q She came in— A Yes, she came in asking admission to this Home, expressing her preference for this Bloomfield Home on account of the acquaintance up there. She was told what the price of admission was and what she would have to do.

Q What was she told? A That her admission was \$300 and burial would have to be provided unless she had a policy that would take care of that.

Q What else was she told? A She was told that anything she had outside of that \$300 and the burial fee belonged to the Job Haines Home and the Bloomfield Home—being one and the same.

Q What did she say? A She said she understood it perfectly and agreed to it.

Q And then the assignment was read to her? A Yes, then the assignment was read to her."

The witness, Mrs. Kate Irene Fairlie, corroborates Mrs. Nathies. Her testimony on this point was that she read the application to her and then asked her, "Do you understand?" Mrs. Shuman replied that she understood. When the document was read the Job Haines Home was

mentioned and the Bloomfield Home was not mentioned (pp. 33 and 34). How then can it be held that Mrs. Shuman understood that she was contracting with the Bloomfield Home? Mrs. Shuman wanted to go in the Bloomfield Home, but when the contract with the Job Haines Home was read no comment was made by Mrs. Fairlie and no mention was made of the change in the name (p. 35). We respectfully submit that there is no testimony from which it can be inferred that Mrs. Shuman understood that her contract was with the Bloomfield Home.

II.

There was no contract with reference to the fund in question.

The application relied on by the Home as the basis of its claim is, of course, invalid as a will. The claim cannot be established as a gift, because there was no delivery of possession of the subject matter. The rights of the Home, if any exist, arise out of contract. The claim of the Home must necessarily rest upon the proposition that Mrs. Shuman by signing the application for admission to the Home, agreed to assign a chose in action not then in the contemplation of either party and that such agreement will be enforced in a court of equity.

To make a grant or assignment valid *at law*, the thing which is the subject of it, must have an existence, actual or potential, at the time of such grant or assignment. But the rule in equity is different. It is well settled that whenever parties by their contract intended to create a positive lien or charge upon personal property, whether it is then *in esse* or not, it attaches *in*

equity as a lien or charge upon the particular property as soon as the assignor or contractor acquires title thereto. It may be stated as a general rule that courts of equity will support assignments of contingent interests and expectancies, and also of things which have no present actual or potential existence, but rest in mere possibility only.

The leading cases are:

- Smithhurst v. Edmunds*, 14 N. J. Eq. 408;
Mitchell v. Winslow, 2 Story 630, 17 Fed. Cases 527, Case No. 9673 (Opinion by Story, Circuit Justice);
Holroyd v. Marshall (an English case), 10 H. L. C. 191.

The doctrine is founded on the maxim that equity considers that to be done which ought to be done, and is applicable only where the contract is such as under the circumstances, would be the subject of a decree for specific performance.

- Williamson v. N. J. Southern R. R. Co.*, 29 N. J. Eq. 311, at 320.

The equitable doctrine that after acquired property may be the subject of a sale or mortgage is well established as a broad general rule; but, in its application, the courts have established that the general principle not only has exceptions, but in all cases must conform to the rules governing all contracts, *Calhoun v. Memphis & P. R. Co.*, 2 Flipp, 442; 4 Fed. Cas. 1045 No. 2309. One such rule is that there must be a meeting of the minds of the contracting parties as to the subject matter of the contract and it is, therefore, necessary that at the time the contract is made, the subject matter be in contemplation of the parties and that it be of a

nature sufficiently definite to be the basis of a contract.

For example: A court of equity will enforce an assignment of a mere expectancy arising from some social or moral relation, such as the hope which an heir apparent or presumptive has of inheriting his ancestors' estate, or the hope of a bequest under the will of a living friend. In such a case the basis of the hope or expectancy is capable of contemplation because the source from which the property is expected or hoped to be derived is definite. There can, therefore, be a meeting of the minds of the contracting parties as to the subject matter of the contract. But Mr. Pomeroy has stated it as his opinion, that, "of course, the mere hope of acquiring future property without any present source from which it may be obtained, is neither an interest nor right, nor anything which has value or can be made the subject of legal relations," 3 Pomeroy Eq. Jur., page 298, Sec. 1286.

The right to assign a possibility or expectancy is also recognized in Story's Equity Jurisprudence, but the author points out that "although mere expectancies may properly pass by assignment, yet they must be of a substantial character, and not ordinarily of such a nature as to rest in the pure discretion of the party granting or withholding them from time to time at his pleasure."

3 Story's Equity Jur. Sec. 1399.

Cook v. Conway, 2 Cranch, C. C. 99. 6 Fed. Cas. No. 3154 (Dist. of Columbia 1814), is directly in point. The facts were as follows:

Daniel Muse assigned his wife's legacy after the death of R. Conway, the testator, to Cook,

but before the testator's death he had assigned to R. Edwards and S. Downing "all his estate and effects in possession, or which may accrue or become due and owing to him."

The Court was of the opinion that Cook was entitled to the legacy holding that the assignment to Edwards & Downing did not transfer a mere possibility of a legacy.

See also *Baltimore Humane Soc. v. Pierce*, 100 Md. 520; 60 Atl. 277; 75 L. R. A. 485.

And the English case *Tadman v. D'Epineuil*, L. R. 20 Ch. Div. 758 (decided in 1882).

The two cases last cited will be referred to at greater length in a subsequent part of this brief.

It may be stated as a general rule that an assignment of profits or wages to be earned in the future is void if, at the time of the assignment there is no existing contract or employment under which such profits or wages are to accrue. 5 *C. J.* 871.

There is another class of cases in which the contracting parties contemplate that the mortgagor or assignor will in the future acquire property by purchase rather than by descent or will or gift. Whether or not the property is ever acquired depends upon the action of the mortgagor or assignor himself. He is really the source from which the future property is expected to be derived. Examples of such cases are mortgages on all furniture in a hotel together with all furniture thereafter brought to the hotel or on a factory with its machinery, tools and stock in trade together with future machinery, tools and stock in trade to be put

into the factory. The leading cases cited above under this point are illustrations of such mortgages. In such cases the parties in effect contemplate a mortgage on the business or industry as a going concern including property to be acquired in the future for the purposes of the mortgaged business. But even in such cases the courts are careful to enforce the mortgage on after-acquired property only as to the property acquired in substitution of or in connection with the mortgaged property which was in existence at the time of the execution of the mortgage even though the language used purports to include all property which the mortgagor may thereafter acquire.

The case of *Calhoun v. Memphis & P. R. Co.*, 2 Flipp. 442; 4 Fed. Cas., page 1045, case No. 2309, illustrates the point. In that case it was held that a mortgage of a railroad company does not pass after-acquired lands unless they are used in connection with the actual operations of the road as part thereof.

In the course of the opinion, the Court said:

“The broad doctrine stated in *Mitchell v. Winslow* (Case No. 9673), has come to be taken as quite an accurate statement of the principle, that after-acquired property may be the subject of a sale or mortgage; but, in its application, the courts have established that the general principle not only has exceptions, but in all cases must conform to the rules governing all contracts
* * * ,”

“* * * No case that I have found gives any support to the doctrine that a grantor may convey by that description alone ‘all the lands he may subsequently acquire,’ and thereby pass every parcel of land which may afterwards become his own.
* * * No doubt a railroad company

might, by contract, agree that the mortgage should cover all lands which should be subscribed to it for stock, or to be granted to it by the government in aid of its construction, or the like description, but every such contract, if not designating by metes and bounds the lands to be acquired, should indicate with reasonable certainty the particular property, so that all persons would know what was intended to be conveyed. And I think in such cases, the power to mortgage would be limited to such lands as the Company, at the date of the instrument, *had an expectation of obtaining*, or to such lands as could be designated in the agreement itself, as those upon which it was to operate."

In *Smith v. McCullough*, 104 U. S. 25, a mortgage executed by a railroad company upon its then and thereafter to be acquired "property" contained a specific description of the different kinds of such property. It was held that certain municipal bonds, issued to aid in building the road, which were not embraced by such description, did not pass by the use of the general word "property." At pages 26, 27 and 28, the Court said:

"* * * we will consider whether the bonds issued by Sullivan County are embraced, or were intended to be embraced, by the mortgage to the Farmer's Loan and Trust Company. That question is within a very narrow compass. It must be solved so as to give effect to the intention of the parties, to be collected as well from the words of the instrument as from the circumstances attending its execution. * * *"

"It is quite true * * * that the word 'property' is sufficiently broad and comprehensive to include every kind of possession and right. In its literal acceptance it might include rights, whether legal or equitable, absolute or contingent, as the railway company acquired, under or by virtue of

the subscription made by Sullivan County, to the bonds placed in the hands of McCullough. But we are all of the opinion that such a construction of the mortgage is not imperatively demanded by the terms employed in describing the property mortgaged, nor would it, we think, be consistent with the intention of the parties."

See also *M. & E. R. R. Co. v. Sussex R. R. Co.*, 20 N. J. Eq. 542.

An assignment of a patent with future improvements passes only improvements on the particular machine secured by the patent and not unrelated inventions. An agreement to assign all future inventions is void.

22 *Am. & Eng. Encyc.* (2nd Ed.) 424;

30 *Cyc.* 944 and 945;

McFarland v. Stanton Mfg. Co., 53 N. J. Eq., at 651.

III.

The assignment in question was not an assignment of an "expectancy."

There are a great many cases in support of the proposition that a court of equity will give effect to an assignment of an expected legacy executed in a lifetime of the testator if made for a valuable consideration. The leading case in this State is *Bacon v. Bonham*, 33 N. J. Eq. 614. We do not believe that those cases are in point, however, for the reason that the assignment here in question was not made in contemplation of or with relation to any expected legacy. In the note in 33 L. R. A. 266, on this subject, the editor takes care to point out at page 267 that the note is limited to cases of sales of expectancies by a prospective heir, and

that the words "prospective heir" must be taken in their strict sense as meaning an heir apparent or an heir presumptive in the literal and restricted sense in which the terms are ordinarily used—that is, one who has a chance or possibility of inheriting an estate should he survive his ancestor.

In connection with this subject, it might be well to point out, however, that in this State the rule is that it is incumbent upon the party dealing with the heir or expectant to show affirmatively that there is no fraud and that an adequate consideration was paid. *Bacon v. Bonham*, 35 N. J. Eq., at page 617.

In determining whether or not an adequate consideration is paid, the courts consider the value of the property assigned without reference to the uncertainty of its ever being acquired or vesting.

Richey v. Richey, 189 Iowa 1300; 179 N. W. 830;

McClure v. Raven, 125 Ind. 139; 25 N. E. 179.

It will hardly be contended that the maintenance of Mrs. Shuman for the few years she was in the Bloomfield Home is adequate consideration for an estate value at \$30,000.

McKenney v. Pinkard, 2 Leigh. (Va.) 149; 21 Am. Dec. 601;

See also *Leddels, Exr. v. Starr*, 20 N. J. Eq. 274;

5 C. J. 858, 859, 860, and

Evans v. Lewelyn, 2 Bro. Ch. 150; 1 Cox Ch. 333.

IV.

The validity of the contract is determined by its general tendency at the time it is made.

The learned Vice-Chancellor who tried this case in the court below fell into the error of supposing that the validity of the contract in question is to be determined by considering its actual effect in this particular case rather than by its general tendency at the time it was executed, and the lower court's decision was perhaps to a large extent influenced by that error. This is shown by the following quotation from the opinion:

“The opinion is uninfluential in this case because of the marked difference in circumstances. Mrs. Schuman's welfare is not at stake. What would be the equitable course had she survived and renounced her contract, and whether the doctrine of public policy would be applied, are interesting questions not presently involved. This dispute over her estate is between the Home she intended should have it and her collateral kin who claim under the statute, and the judicial inclination and temper is not as keen, and justly so, to apply the doctrine of public policy.”

That the Court was in error as to the law on this point appears to be well settled. The question whether a contract is against public policy must be determined by its purpose and tendency, and not by the fact that no harm in fact results from it. In other words its validity is determined by its general tendency at the time it is made and if it is opposed to the interests of the public it will be invalid, even though the intent of the parties was good and no injury to the public would result in the particular case.

6 R. C. L. Sec. 114;

13 *Corpus Juris*, 425, and cases cited;
Polbaum v. Magulsky, 217 Mass. 306, 104
 N. E. 746;
Richardson v. Crandall, 48 N. Y. 348.

V.

The contract in question is contrary to public policy and therefore void.

A contract which contravenes the policy of some constitutional provision or statute or some well-known rule of law, is said to be against public policy and will not be enforced.

Brooks v. Cooper, 50 N. J. Eq., at 768;
Ellicott v. Chamberlain, 38 N. J. Eq., at 612.

It has been said that public policy is a variable quality but that the principles to be applied have always remained unchanged and unchangeable.

Brooks v. Cooper, 50 N. J. Eq., at 769.

The situation before the Court in the present case is, of course, very unusual, but if we consider the reasons upon which certain well-established rules of law are founded, the solution of the questions now under consideration will not be difficult. The general principle which applies to this case is stated in 2 *Pomeroy's Eq. Jur.*, Sec. 934, as follows:

“It has been the policy of the law to promote the freedom of engaging in and carrying on all kinds of business which are beneficial to the public, and to maintain fairness and honesty *towards the public* in all business transaction. * * * The common law and equity would prevent, as far as possible, all contrivances and means by which the public would be deprived of the

skill, industry, or economic and productive labor of individual citizens, or by which the public would be deceived in business dealings.”

A common application of this principle is with reference to contracts in restraint of trade or labor. It is an ancient rule of the common law that contracts in general restraint of trade are void, and in this State the law is well settled that a contract by which a person restrains himself generally without limitation as to time or place from pursuing his business or from exercising his skill or labor, is repugnant to public policy and void.

Brewer v. Marshall, 19 N. J. Eq., at 547;
Albright v. Teas, 37 N. J. Eq. 171;
Mandeville v. Harmon, 42 N. J. Eq. 185;
Sternberg v. O'Brien, 48 N. J. Eq., at 372;
Taylor Iron & Steel Company v. Nicholas,
 73 N. J. Eq. 684, at 687;

Trenton Potteries Company v. Oliver, 56
 N. J. Eq., at 707; *same case on appeal*, 58
 N. J. Eq. 507, at 513, *et seq.*

“ * * * Public policy,’ said Vice-Chancellor James, afterwards one of the lord justices of the court of appeal of England, in *Leather Cloth Co. v. Lorsout*, L. R. (9 Eq. Cas.) 345, 354, ‘require that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the state of his labor, skill or talent by any contract that he enters into.’ ‘The law,’ said Best, *C. J.*, in *Homer v. Ashford*, 3 Bing. 322, 326, ‘will not permit any one to restrain a person from doing what the public welfare and his own interest require that he should do. Any deed, therefore, by which a person binds himself not to employ his talents, his industry or his capital in any useful undertaking in the kingdom would be void, because no good reason can

be imagined for any person imposing such a restraint on himself.' ”

Sternberg v. O'Brien, 48 N. J. Eq., at 372.

The reasons underlying the established rule that contracts in general restraint of trade or labor are void are well expressed in *Alger v. Thacher*, 19 Pick. 51, at page 54.

“1. Such contracts injure the parties making them, because they diminish their means of procuring livelihoods and a competency for their families. They tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions. And they expose such person to imposition and oppression.

“2. They tend to deprive the public of the services of men in the employments and capacities in which they may be more useful to the community as well as themselves.

“3. They discourage industry and enterprise, and diminish the products of ingenuity and skill.

“4. They prevent competition and enhance prices.

“5. They expose the public to all the evils of monopoly. And this especially is applicable to wealthy companies and large corporations, who have the means, unless restrained by law, to exclude rivalry, monopolize business and engross the market. Against evils like these, wise laws protect individuals and the public, by declaring all such contracts void.”

It will be noted that the fundamental reasons for declaring contracts in general restraint of trade or labor void, apply with equal force to a contract whereby an individual transfers all of his property and all that he may afterwards acquire. If it is against public policy for a person to restrain himself generally from employing his talents, his industry or his capital, it must neces-

sarily follow that it is also against public policy for him to deprive himself of all of the fruits of his talents and industry without limitation as to time or place, for the practical result is the same in either instance; if he cannot enjoy the fruits of his labor he will not work.

The age of the assignor is not a sufficient reason for sustaining the assignment. No age limit can be set to mark a man's usefulness to his fellowmen. Many of the greatest contributions to humanity have been produced by persons well along in years. Many of our leaders of thought today are over eighty years of age. In a lesser and humbler manner many an old lady living in a charitable home today is contributing to the happiness and welfare of the community by making and selling fancy work, knitted goods and similar articles. Her incentive is the pocket money which she earns for herself, just as an important incentive of many a poor inventor, author and business man is the hope of financial reward. If the incentive to work is gone, the work will not be done and in addition to the harm to the individual, the community itself will suffer through the loss of the products of the talents which otherwise would be exercised.

The party seeking to enforce the assignment now in question is a charitable home with whose benevolent purposes one is naturally in sympathy. This fact appears to have influenced the court below (see Opinion, pp. 63, 64 and 65). But the rule of law which will be established by the decision of this case will have to be applied in the future irrespective of who the parties involved may be. Ways of misusing such assignments by persons and corporations with motives less unselfish than those of the Bloomfield Home can readily be imagined.

It seems to be well settled that an agreement to assign all future inventions is void.

22 *Am. & Eng. Encyc.* (2nd Ed.) 424;

30 *Cyc.* 944 and 945;

McFarland v. Stanton Mfg. Co., 53 N. J. Eq., at 651.

If it is contrary to public policy for an individual to assign all future property of a particular class it must follow, *a fortiori*, that it is contrary to public policy to assign all future property of every kind.

A contract very similar to the one sought to be enforced in this suit was recently under consideration by the Courts of Maryland. A suit in equity was first brought by the Home seeking to enforce the contract. Relief in that Court was denied.

Baltimore Humane Society v. Pierce, 99 Md. 352; 58 Atl. 26.

The Home then brought an action at law and again failed to succeed.

Baltimore Humane Society v. Pierce, 100 Md. 520; 60 Atl. 277; 75 L. R. A. 485.

The reasons given by the Court of Appeals of Maryland in deciding that case apply so aptly to the case now before this Court, that we take the liberty of quoting from the opinion at some length:

“* * * It can scarcely be imagined that any one would devise or bequeath property to an inmate of that institution if he knew it must be at once transferred to the corporation, and that the intended beneficiary would have no interest in it. If a testator desired such results, he would leave it directly to the corporation. He might then prescribe such terms as the inmate might profit by. Such a construction

of this clause might in some instances prevent the corporation itself from ultimately profiting by a bequest. If an inmate could have the benefit for his life, a testator might leave money or property to him which he could leave to the institution. But under the construction contended for, these unfortunate people, whose circumstances require them, in order to obtain admission to the institution, to comply with its rules and regulations, would be barred from obtaining relief from their friends who after their admission became sufficiently prosperous to be willing to help them, for it is idle to say that any one could be expected to give them property or money if it must be at once turned over to the appellant, unless it happened to be someone who wanted to help the appellant, and it is not likely he would do so in that round-about way. * * *

“* * * We are of the opinion that it would be contrary to the public good to lend the aid of the courts to enforce such a contract as this, if it must be construed according to the appellant’s contention. We are not unmindful of the fact that a court should not lightly strike down a contract on the ground that it is contrary to what is called ‘public policy.’ * * *

“* * * But when dealing with a delicate subject of this character, it gives us confidence in our conclusion when eight judges, after due deliberation, conclude, as we do, that the public good forbids the use of the process of the courts of this state to enforce a contract such as this is claimed to be. It is proper that we should say at this point that we have no doubt that the appellant is a most useful institution, and is managed by those who would not intentionally wrong any one, and there are other equally deserving institutions in the state. But to give the latitude to this contract that is contended for it might not only result in

great wrong to unfortunate people, but establish a precedent that might lead to dangerous consequences. * * *”

“* * * We would repeat that it could not be expected that the friends of an inmate would give, or leave by will, money or property to him, if it must at once become vested in the corporation, and thereby deprive him of its beneficial use, intended to give him comfort and possibly some luxuries of life in his old age. The effect of that would be to practically deprive all of the inmates of the institution of acquiring any property from the time they enter it, unless it be by mere accident. But that is not all. No human being can know or remotely conjecture how much, if anything, any of them may inherit or in some unexpected way receive. It was doubtless far from the thoughts of this old father, the son, and every one else acquainted with them, that this old man would survive his son and take his entire personal estate. If it had been \$35,000 instead of \$3,500, it would have been the same thing—without any limitation. Every dollar of it would be diverted from the channels in which it would naturally go, to an institution that had undertaken to keep the father for an agreed price—small, it is true, but agreed upon. If he had died the day after he entered, it would have had that compensation, and took those chances. It may be that such cases as this are rare, as they doubtless are; but are they not likely to be more so if the relatives of those in such institutions know the consequences of dying intestate, if some corporation, and not their relatives, must take their estate? * * *”

The English case, *Tadman v. D'Epineuil*, L. R. 20 Ch. Div. 758 (decided in 1882), is also directly in point.

One Count D'Epineuil charged "all his present and future personalty" to secure to the plaintiff any sums he might become indebted to him. Count D'Epineuil died and it was admitted that his estate was indebted to plaintiff in the sum of two hundred and twenty-eight pounds.

The Court recited at some length the holding in *Belding v. Read*, 3 Hurlst, &c. 955, distinguishing *Holroyd v. Marshall*, 10 H. L. C. 191. The Court then said:

"I shall hold, therefore, in this case that only the goods which belonged to Count D'Epineuil on the 7th of October, 1881, the date of the latter memorandum, were comprised in the charge. There are many reasons why such a charge as this should not be operative as regards undefined property not belonging to the mortgagor at the date of the execution of the deed; it would interfere with his power of maintaining himself. * * *"

See also *Cook v. Conway*, cited under Point II *supra*.

Article V, Section 2, paragraph D of the by-laws of the Home contains the following provision:

"D. Such persons shall be required at time of admission to transfer to the Home all property, whether real or personal, of which he or she is, or thereafter may become possessed, and upon which banking interest will be paid."

Exhibit D. 4, page 58.

Reference will undoubtedly be made to that provision of the by-laws in an attempt to mitigate the unconscionableness of this contract. It is not clear to us just what this by-law means, for if this contract transfers to the Home all of

Mrs. Shuman's after-acquired property, such transfer would include this banking interest as soon as paid to her. After her death, perhaps the interest would be paid to her next of kin. But in any event, the banking interest due Mrs. Shuman during her life, would not remove the objectionable features of the contract, for after all, the effect of such a contract upon the public is perhaps of even greater importance than its effect upon the individuals making the contract. As above pointed out, contracts of this kind tend to deprive the public of the benefit of the free and unrestricted efforts of persons entering into them. They discourage industry and enterprise; diminish the products of nature and skill and tend to prevent competition.

Alger v. Thacher, supra.

6 R. C. L., Sec. 196.

Such objectionable features are not eliminated by the mere payment of banking interest.

Furthermore if this by-law is to be considered as a part of the contract, who is to determine what rate of interest is meant by "banking interest"? The contract is clearly too indefinite for specific performance.

3 *Pomeroy's Eq. Jur.*, Sec. 1405.

In addition to being contrary to the well-settled principles of law as above pointed out, the contract now under consideration violates the spirit of our State Constitution. The respondent contends and the Court of Chancery has held that the practical effect of this contract was to divest Mrs. Shuman of all property and property rights both tangible and intangible which she then owned or might thereafter acquire. It took from her the right to acquire property for her own benefit and use, for in

equity this agreement automatically transferred to the Home whatever she might receive. She could never *acquire* more than the bare legal title to property and by this instrument, she divested herself of the right to *possess* any property whatever. Such a contract savors of servitude and is in violation of our fundamental law. "All men have certain natural and inalienable rights among which are those of * * * acquiring, possessing and protecting property." This declaration of public policy is in the first section of the first article of our State Constitution.

We submit that the contract in question is repugnant to it.

Respectfully submitted,

WHITING & MOORE,
Solicitors of Defendants-Appellants.

IRA C. MOORE, JR.,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

FIDELITY UNION TRUST COMPANY,
as administrator of the estate of
Harriet Shuman, deceased,
Complainant-Respondent,
and

FRANCIS REEVE, *et als.*,
Defendants-Appellants.

On Bill, &c.

*On Appeal
from Decree
in Chancery.*

BRIEF ON BEHALF OF RESPONDENTS, THE BLOOMFIELD HOME FOR AGED MEN AND WOMEN, and the JOB HAINES HOME FOR AGED PEOPLE.

The facts are fairly stated in the brief of appellants.

It may be added that the Job Haines Home is an old institution (see testimony of Dr. Lusk, page 41), and the Bloomfield Home was incorporated on May 23, 1914, (see Answer of Bloomfield Home, page 17). The application for admission was dated April 28, 1915, (see Exhibit D. 1, page 56).

I.

Answering argument of appellants that the testimony does not show that Mrs. Shuman understood her contract was with the Bloomfield Home.

The evidence is that the two Homes were closely allied; that all the managers of the Bloomfield Home were managers of the Job Haines Home; that the admission committee of each Home were the same persons (p. 27); that the Bloomfield Home had been incorporated less than a year (see the facts above), and there was much con-

fusion in the minds of the managers as to the distinction between the two institutions; that Mrs. Shuman repeatedly stated she wanted to enter the Bloomfield Home, and knew its requirements were that she should pay \$300.00 entrance fee and transfer all her property and any she might thereafter acquire to the said Home; that the Bloomfield Home was governed by the by-laws of the Job Haines Home; and that she was possessed of a copy of said by-laws.

It appears from the testimony of Mrs. Fairlie, chairman of the admission committee of both Homes, that it was the practice to use the same admission blank, as no new one had been printed for the new Home (p. 35).

It is a case where all parties ignored the words "Job Haines Home for Aged People" in the printed form, and understood it to read "Bloomfield Home for Aged Men and Women," wherever they appeared.

Mrs. Shuman paid her initiation fee to the Bloomfield Home and entered the Bloomfield Home.

It is a case of mutual mistake, and a court of equity may reform the instrument. A few of the many New Jersey cases will suffice:

Firmstone v. DeCamp, 17 N. J. Eq. 309.

McMillan v. Waterproof Paper Co., 29 N. J., Eq. 610.

Huyler v. Atwood, 11 C. E. Green, 504.

Gale v. Morris, 30 N. J. Eq. 285.

Swedesboro L. & B. Assn. v. Gans, 65 Eq. 132.

Sisson v. Donnelly, 36 L., 432.

Or the principal of novation applies, substituting one obligation for another, which may take place either by substitution of a new for an old party, or a new agreement between the parties, or by a change of parties and agreement at the same time.

Parsons Mfg. Co. v. Hamilton Ice Mfg. Co., 73 Atl., 254.

The Court will not refuse to consider the question of reformation because of the death of one of the parties.

In *Durant v. Bacot*, the grantor was dead. 13 N. J. Eq., 201. Affd. 15 N. J. Eq. 411.

In *Aller v. Croater*, the grantee had died. 64 N. J. Eq. 381.

So in *Swedesboro, etc., v. Gans*, 65 N. J. Eq. 132.

It was after the wife's death in *Hupsch v. Resch*, 45 N. J. Eq. 657. Affd. 46 N. J. Eq. 609.

How would it profit the appellants if the court should hold that the contract was made with the Job Haines Home? The estate would then be payable to the Job Haines Home and not to the next of kin.

The contract may be reformed by the insertion of the words "Bloomfield Home for Aged Men and Women" in the place of "Job Haines Home for Aged People," wherever they occur.

Equity regards that as done which should be done. This is a contract which is not under the Statute of Frauds, as it may have been performed in a year, (*Eiseman v. Schneider*, 60 N. J. Law 291.)

It may be reformed and the subject of a decree for specific performance.

II.

Answering appellants' argument that there was no contract with the fund in question.

It is well established in New Jersey that in equity, a contract is good which assigns personal property not in esse, and

"things which have no actual or potential existence but rest in possibility only."

The leading case in New Jersey is:

Smithhurst v. Edmunds, 14 Eq. 408,

which elaborately discusses the proposition. This is cited in *McFarland v. Stanton Mfg. Co.*, Court of Errors and Appeals, 53 N. J. Eq. 649.

The Court of Errors and Appeals in *Bowvier v. Balt. & O. R. R. Co.*, 67 L. 294, says, "In equity any possibility, right or expectancy may be a valuable consideration be assigned."

See also *Order of Heptasophs v. Dailey*, 61 N. J. Eq. 141, at 147.

"The question, which is the subject of a great contrariety of opinion elsewhere, viz., whether there can be a valid mortgage upon chattels which at the time of the execution of the instrument have neither an actual nor potential existence, has been regarded as settled in this state since the decision by Chancellor Green, in the case of *Smithhurst v. Edmunds*, 1 McCart., 408. It was held in that case that a mortgage on future-acquired property was valid in equity; that the lien attached as soon as the property was acquired by the mortgagor, and that the lien was superior to that of a judgment creditor, with a levy upon the same property, under a judgment against a mortgagor. This doctrine has been repeatedly recognized and acted upon. *Gevers v. Wright*, 3 C. E. Gr. 330; *Williamson v. New Jersey Southern Railroad Co.*, 2 Stew. Eq. 311."

Stoll v. Sibson, 65 N. J. Eq. 552 at 554.

"If there be any question of the status of a mortgage made by a tenant or owner of lands on after-planted crops in the view of a court of law, there is little doubt that such an agreement will be sustained in a court of equity. While the rule at law requires an actual or potential ownership, equity will support assignments of contingent interests and expectations, and of things which have no actual or potential existence and which rest in mere possibility only. *Smithhurst v. Edmunds*, 1 McCart., 418, where an assignment by way of security of articles (furniture of a hotel) yet to be purchased, was held

to be an equitable mortgage. It will be noted that in this case the articles charged were actually non-existent when the mortgage was given, and in order to bring them in relation to it, the mortgagor was obliged to purchase them and bring them upon the property. The distinction between the rule at law and in equity declaring that the equitable title to things not in actual existence may pass by assignment is elaborated by Chancellor Green in the case last cited, which is approvingly referred to by the Court of Errors in *McFarland v. Stanton Manufacturing Co.*, 8 Dick. Ch. Rep. 650."

Cumberland National Bank v. Baker, 57 N. J. Eq. 231 at 240.

Collerd v. Tully, 77 Eq. 439.

In *Lewis v. Goldner*, the New York Court of Errors and Appeals upheld a contract to restrict the use of land which defendant might purchase in a given neighborhood, 129 N. Y., 227—a somewhat analogous case.

The following is a case from the English Courts:

Hobron v. Trevor, 1 P. Wms. 191, where the assignment of an estate of a living father made by a son under the displeasure of his father and having little expectation, was upheld.

Many other cases may be cited.

See 3 Pom. Eq. paragraphs 1271, 1287.

Warmstrey v. Tanfield, 1 Ch. (Eng.) 29.

Bennett v. Cooper, 9 Beav. 252.

Wilson Estate, 2 Pa. St. 324.

Bacon v. Bonham, 33 N. J. Eq. 614.

Mitchell v. Winslow, 2 Story, 630.

Holroyd v. Marshall (Eng.) 10 H. C. L. 191.

The cases cited by appellants where they do not uphold our contention are not New Jersey cases, and will not control against the unanimity of the New Jersey decisions upholding such contracts in equity.

III.

Answering appellants' argument that the assignment in question was not an assignment of an expectancy.

As has been shown by the case cited by us under the last heading, there is no requirement in New Jersey limiting the approval of the courts as suggested.

The citations in *Bacon v. Bonham*, 33 N. J. Eq. 614, to which we are directed upholds that view. The court in that case upheld the assignment because a valuable consideration had been paid. In our case there were possibilities and a consideration faithfully paid.

See also *Field v. Mayor of New York*, 6 N. Y. 179, (not *Field v. Mayor of Newark*, 61 N. Y., 179, as printed in the opinion of Vice-Chancellor Backes in the state of this case), quoted by the learned Vice-Chancellor.

Courts of equity will not refuse to enforce contracts honestly entered into and faithfully performed because of inadequacy of consideration.

IV.

Answering the argument that the validity of the contract is determined by its general tendency at the time it is made.

One cannot find fault with this proposition. The contract in question may be judged by this standard and meet the approval of all. Is it not a wise move on the part of an elderly person who has a small property, and little or no prospect of acquiring any to transfer all she has and may thereafter acquire to a philanthropic institution, which offers her food, clothing, shelter, and all the comforts of a home for life? This may be her one way of escape from becoming a public charge. And for this latter reason, if for no higher, the public interest is benefited by such contracts.

V.

Answering the charge that the contract is contrary to public policy, and therefore void.

The argument is that a contract which deprives one of his means of livelihood is against public policy. The contract in question was made with a woman of 79 years who had passed the years when she could toil for her living. We may say further that the Home admits only those who have reached a ripe age, and upon whom the burden of self support has become oppressive.

Inmates are not deprived of all their income, but according to the by-laws (p. 58), are given banking interest on property which they transfer to the Home. This enables them to have personal spending money to nearly or quite the extent which they would have if they had not entered the Home.

The appellants argue as if the only incentive to work were the earning of money. It is our belief that freedom from anxiety for the future, the comforts of life adapted to the needs of the old and feeble, the cheery atmosphere provided by such a Home outweigh the privilege of an aged person's finding his own home and meals and continuing the struggle for existence, tend to his being more useful, and benefit society in general by relieving it of the danger of such a person becoming a public charge.

This is an executed contract faithfully and generously performed by the Home, although entered into upon the payment which the learned Vice-Chancellor terms "a pittance and the promise of a possibility."

If the appellants now so solicitous about the validity of this contract had shown themselves desirous of aiding their aged kinswoman in her lifetime, they might have secured its abrogation.

The Home doubtless would have given her over to kinsmen's care, and have waived the possibility of such

a fortune as has come. It seems rather late for appellants, after the contract has been executed on the Home's part, to seek its nullification.

If the kinsmen should be paid the whole estate, would they pay the Home a fair amount for her board and lodging? Perhaps they would say, "Gladly." But if the amount of the estate was not enough to pay such a bill, would they still be willing to pay it? We think this shows the claim of the kinsmen reduced to an absurdity.

The courts in interpreting the question of public policy will always use discretion.

While it may sometimes be contrary to public policy for an aged person to divest himself of all his property on a promise of support for the remainder of his life, consideration must be given to the reliability of the assignee. There can be no question of that in this case. It was shown that the will of Mrs. Stubbert provided scantily for the support of the Home, and that the managers were permitted to seek additional funds from those who applied for admission and from the public. All the resources of the Home were committed to the task, and Mrs. Shuman, with her daughter standing by, chose to trust it.

Appellants cite the cases of *Baltimore Humane Impartial Society v. Pierce*, 58 Atl. 27 (Md.), and 60 Atl. 277, quoting from the latter case at length. These cases differ from ours, in that the applicant for admission to the Home did not sign the contract to transfer what he might acquire to the Home. It is true that the second case (which is an action at law, and so within the well-established rule that a contract to assign future acquired property is not good *at law*), held the contract contrary to public policy on the ground that the contract was not beneficial to the Home, in that it would discourage relatives from bequeathing property to inmates, and that it was improvident for the inmate to strip himself of all possibility of acquiring property. The danger that wills will not be then made in favor of inmates is surely a long shot. Such Homes should be permitted to take the chances, if

they desire. It is not a question of public interest or policy.

Inmates of a Home are not injured as suggested. As we have already pointed out, the release from the danger of becoming a public charge is of greater interest to the public than the fact that the individual has deprived herself of her property and the possibility of a fortune coming to her.

This contract cannot be said to create servitude, as the Home exacts no duties from its inmates, but an observance of such rules as will insure their common welfare.

The case of *Order of St. Benedict of N. J. v. Steinhauer*, U. S. Sup. Ct. 234, page 640, is a decision of the highest court. The issue was the validity of the pledge entered into by a member of the religious order, that he would convey all his property "which he now or hereafter may hold," to said order. The property in question was royalties on books he had written after joining the order, property not *in esse* nor in the contemplation of either of the parties. The court held this agreement was not against public policy. In that case, provision was made for a member to withdraw, in which case, the court says, the order could not be heard to claim any property the member might subsequently acquire. In our case, there are provisions in the by-laws (D. 4, p. 58), for the dismissal and withdrawal of inmates, and no restriction on withdrawing at any time. The cases are parallel. Justice

Hughes, who wrote the opinion in the United States Supreme Court, quoted *Burt v. Oneida Community*, 137 N. Y., 346, with approval. In the Oneida Community case, members transferred all property they might acquire during membership to the Community, had the privilege of withdrawal, but upon withdrawal took no share in the Community property with him. Justice Hughes quotation was that the organization "was not prohibited by any statute or in contravention of any law regulating the possession, ownership or tenure of property." See also *State v. Amana Soc.*, 132 Iowa, 304, 8 L. R. A. (N. S.),

909 note. The note says that in none of the cases in which the affairs of societies possessing communistic features have come before the courts does the scheme of such organization seem to have been regarded as open to objection as contravening either any express statutory or constitutional provision, or public policy generally.

This case is not concerned with the possible injury to Mrs. Shuman. The question is whether distant relatives shall be favored by the fortuitous combination of circumstances, or the Home which has faithfully carried out its contract.

I respectfully submit that the opinion of the learned Vice-Chancellor should be affirmed.

CHARLES G. TITSWORTH,

Solicitor and of Counsel

with Defendants-Respondents.

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