

INDEX.

	PAGE
Bill of Complaint	2
Answer of Lillian Stedenfeld.....	7
Replication!	9
Substitution	9
Answer of James Lunn.....	10
Testimony	11
August Stedenfeld,	
direct examination	11
cross "	15
Albert Newschwander,	
direct examination	20
cross "	22
re-direct "	23 and 25
re-cross "	24
Exhibit P. 1.....	28
Opinion	29
Final Decree	33
Notice of Appeal	36
Petition of Appeal	37
Answer to Petition of Appeal.....	39
Will	28

INDEX

.....	101
.....	102
.....	103
.....	104
.....	105
.....	106
.....	107
.....	108
.....	109
.....	110
.....	111
.....	112
.....	113
.....	114
.....	115
.....	116
.....	117
.....	118
.....	119
.....	120
.....	121
.....	122
.....	123
.....	124
.....	125
.....	126
.....	127
.....	128
.....	129
.....	130
.....	131
.....	132
.....	133
.....	134
.....	135
.....	136
.....	137
.....	138
.....	139
.....	140
.....	141
.....	142
.....	143
.....	144
.....	145
.....	146
.....	147
.....	148
.....	149
.....	150
.....	151
.....	152
.....	153
.....	154
.....	155
.....	156
.....	157
.....	158
.....	159
.....	160
.....	161
.....	162
.....	163
.....	164
.....	165
.....	166
.....	167
.....	168
.....	169
.....	170
.....	171
.....	172
.....	173
.....	174
.....	175
.....	176
.....	177
.....	178
.....	179
.....	180
.....	181
.....	182
.....	183
.....	184
.....	185
.....	186
.....	187
.....	188
.....	189
.....	190
.....	191
.....	192
.....	193
.....	194
.....	195
.....	196
.....	197
.....	198
.....	199
.....	200

New Jersey Court of Errors and Appeals

Between

AUGUST STEDENFELD, individu-
ally, and AUGUST STEDEN-
FELD, administrator with the
Will annexed of the Estate
of ALMEDA STEDENFELD, de-
ceased, and ANNA MARIE
STEDENFELD,

Complainants,

and

LILLIAN STEDENFELD, individu-
ally, and as executrix of the
Will of WILLIAM STEDENFELD,
deceased, and JAMES LUNN,

Defendants.

*On Bill for
Construction
of Will.*

10

20

30

40

BILL OF COMPLAINT

(Filed September 18, 1918.)

In Chancery of New Jersey.

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

10

Complainants, August Stedenfeld, individually, and August Stedenfeld administrator with the will annexed of the Estate of Almeda Stedenfeld, deceased, and Anna Marie Stedenfeld, both of the City of Newark, County of Essex and State of New Jersey, respectfully show that:

20

1. On August 24, 1916, Almeda Stedenfeld, of the City of Newark, County of Essex and State of New Jersey, departed this life, having first duly executed her last will and testament which was admitted to probate by the Orphans' Court of the County of Essex on January 18, 1918. Complainant August Stedenfeld was duly appointed administrator of her estate with said will annexed by said Court on February 2, 1918, and letters of administration with the will annexed were duly issued to him by the Surrogate of the County of Essex in accordance with said appointment.

30

2. Said will so probated was in form following:

"IN THE NAME OF GOD, AMEN.

"I Almeda Stedenfeld, being of sound mind, memory and understanding, do make and publish this my last will and testament in manner following, that is to say.

"That one-half ($\frac{1}{2}$) of my estate is to go to my son William S. Stedenfeld, and if he should die before his wife, she is to get One Hundred and Fifty Dollars (\$150.00) only from this

40

Bill of Complaint

one-half ($\frac{1}{2}$) of the estate the balance to be divided equally between my stepson August Stedenfeld and my two (2) granddaughters Almeda and Anna Marie Stedenfeld.

"To my stepson August Stedenfeld I leave one-quarter ($\frac{1}{4}$) of my estate.

"The balance one-quarter ($\frac{1}{4}$) of the estate to be divided equally between my two (2) granddaughters Almeda and Anna Marie Stedenfeld and my cousin Lena Lartz, share and share alike. 10

"Any cash left by me outside of the estate, after all bills etc. are paid, to go to my son William S. Stedenfeld.

"If there should be any disagreement at the reading of this will, the party disagreeing is to receive nothing, their share to be divided equally between the others named in this will, share and share alike, with the exception of William's wife, she to receive only one hundred and fifty (\$150.00) dollars, she to receive this if she outlives her husband and should be alive when this will is read. 20

"All my household effects, furniture etc. I leave to my son William S. Stedenfeld he can sell or dispose with them the way he thinks best.

"ALMEDA STEDENFELD.

"Signed, sealed, published and declared by the said testatrix as and for her last will and testament in our presence who in her presence and at her request and in the presence of each other have hereunto subscribed our names as witnesses. 30

"EMILIE KAUTZMAN,

"LEONARD KAUTZMAN.

"I declare this to be my last will.

"Dated may 29, 1916, 210 Camden Street, Newark, N. J." 40

Bill of Complaint

3. On April 25, 1918, and before distribution or division of the estate of the said Almeda Stedenfeld, and before his share was payable, William Stedenfeld died without issue, leaving him surviving his wife, Lillian Stedenfeld, to whom he devised and bequeathed all his estate by will duly probated before the Surrogate of Essex County on May 6, 1918. Letters testamentary were issued on said day on the estate of William Stedenfeld to his said wife Lillian Stedenfeld who was designated in said will as executrix thereof.

4. The estate of Almeda Stedenfeld, deceased, at the time of the making of the said will and at the time of her death consisted of a plot of ground fifty feet in frontage by one hundred feet in depth located at Number 210 Camden street in the said City of Newark, with a blacksmith shop and wagon body manufacturing factory building thereon, of the value of about \$16,000 subject to a mortgage of \$4,000, and personal property consisting of a blacksmith and wagon body manufacturing business with the issues and profits thereof of the value of about \$2,500.00, all of which came to her as the estate of her husband August Stedenfeld, deceased, about one year before the making of her said will, besides which she had a small sum of money kept separate and apart from the funds of her said husband's estate.

5. August Stedenfeld, mentioned in said will of Almeda Stedenfeld as "stepson" is the son of testatrix's said husband August Stedenfeld, deceased, by a former wife. William Stedenfeld, deceased, was the son of said Almeda Stedenfeld, deceased, and August Stedenfeld, deceased. Almeda Lunn who was Almeda Stedenfeld before her marriage and Anna Marie Stedenfeld were the only children of Daniel Stedenfeld a deceased son of August

Bill of Complaint

Stedenfeld, deceased, by his first wife. James Lunn is the husband of Almeda Stedenfeld Lunn who died without issue on August 17, 1918, leaving her surviving her said husband, and her sister, Anna Marie Stedenfeld, her only heir at law. Said Almeda Lunn died intestate and no administrator of her estate has been appointed. Her said husband is in the active military service of the United States and his present whereabouts is unknown to complainants except that he is absent from the State of New Jersey. 10

6. Lillian Stedenfeld, widow and sole devisee and legatee of William Stedenfeld, deceased, claims that she is entitled to one-half of the estate of the said Almeda Stedenfeld, deceased, under her said will and the will of her deceased husband of which she is the sole and duly qualified executrix as aforesaid, and demands of complainant August Stedenfeld as administrator of the estate of said Almeda Stedenfeld that he pay over to her one-half of the personal estate, and she also claims to be entitled under said will to one-half of the real estate of said Almeda Stedenfeld, deceased, and a tenant in common with the other devisees under said will of Almeda Stedenfeld and entitled to occupy part of the building of said estate as such tenant and has continued so to do from the date of the death of said William Stedenfeld to the date hereof against the protest and demand of complainants. 20 30

7. Complainants contend that defendant Lillian Stedenfeld is entitled to only \$150 from the estate of Almeda Stedenfeld beside the cash left by Almeda Stedenfeld which she kept separate and apart from the estate of August Stedenfeld, deceased, which remained intact, and the household furnishings of said testatrix and that she has no claim or right in the real or personal estate of said 40

Bill of Complaint

Almeda Stedenfeld except for such cash and furnishings.

8. Complainant, August Stedenfeld, claims the right to have one-third part of the one-half of the estate mentioned in the first devise and bequest in said will, after deducting \$150 from the amount thereof, in addition to his right to have one-quarter
 10 of the estate under the second devise and bequest in said will, and complainant Anna Marie Stedenfeld claims the right to have one-third of the estate passing by the first devise in said will in her own right and one-third of the real estate passing by such first devise as heir at law of her sister Almeda Lunn, after deduction of the sum of \$150 mentioned in said devise and bequest, in addition to the interest to which she is entitled under the third devise and bequest in said will.

20 9. The amount of the personal estate to which the said James Lunn, husband of Almeda Lunn, deceased, is entitled depends on the construction of the said will.

Complainants desire a construction of said will of Almeda Stedenfeld, deceased, in so far as the same affects their rights thereunder and a declaration of the rights of the persons interested under said will and hereby apply for the same in accordance with the provisions of the statute in such case
 30 made and provided, and therefore pray:

1. That Lillian Stedenfeld individually and as executrix of the last will and testament of William Stedenfeld, and James Lunn, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made.

2. That the will of Almeda Stedenfeld, deceased, may be construed and the rights of the complainants and defendants to the real and personal

Answer of Lillian Stedenfeld

estate of said Almeda Stedenfeld under the provisions of said will declared.

3. 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.

HENRY P. BEDFORD,

Solicitor and Counsel with Complainants.

10

ANSWER OF LILLIAN STEDENFELD

(Filed October 21, 1918.)

Defendant, Lillian Stedenfeld, individually and as executrix of the last will and testament of William Stedenfeld, deceased, answering the Bill of Complaint by paragraphs, says:

20

1. That she admits Paragraph 1.

2. That she admits Paragraph 2.

3. That as to Paragraph 3, she denies that the death of William Stedenfeld occurred before his share was payable, or before the period of distribution and division of the estate of Almeda Stedenfeld, deceased, had matured, but admits all the other matters contained in Paragraph 3.

4. That as to Paragraph 4, she admits the statements thereof relative to the location of the premises therein described, and the amount of mortgage indebtedness on same, but as to the value of the said premises and of the personal property of the shop, and business, leaves complainants to their proof.

30

5. That she admits the statements of Paragraph 5 as to August Stedenfeld, William Stedenfeld, Almeda Stedenfeld, deceased, and August Stedenfeld, deceased, Almeda Lunn, and James

40

Answer of Lillian Stedenfeld

Lunn, her husband, but has no personal knowledge of the matters relating to the estate of said Almeda Lunn, deceased, or the whereabouts of said James Lunn, which she neither admits nor denies, but leaves complainants to their proof.

6. That she admits the matters of Paragraph 6, in so far as they relate to her claim as sole devisee and legatee of the last will and testament of William Stedenfeld, deceased, her said husband, to one-half of the estate of Almeda Stedenfeld, deceased, under her said will, and the will of her said husband, and as to her demands of complainant, August Stedenfeld, as administrator of the estate of said Almeda Stedenfeld, for one-half of the personal estate and one-half of the real estate therein mentioned, and her claim to be a tenant in common with the other devisees under said will of Almeda Stedenfeld, deceased, of said real estate, but denies that she has occupied part of the said building against the protest and demands of the complainants, but has occupied part of said premises relying upon her rights as tenant in common, being willing to afford just compensation to the other devisees for their one-half interest in said premises for her occupancy of same, since her said husband's death.

7. That she denies the averments of Paragraph 7, that she is entitled to only \$150 from the estate of Almeda Stedenfeld, the cash and household furnishings, therein mentioned, but not to the real or personal estate of Almeda Stedenfeld, deceased, except for furnishings.

8. That she denies the right of August Stedenfeld and the right of Anna Marie Stedenfeld as to the first devise and bequest under the said will, and the right of Anna Marie Stedenfeld in said devise

Replication

and bequest as heir at law of Almeda Lunn, deceased, as averred in Paragraph 8.

Defendant claims as executrix as aforesaid one-half of the personal estate of the estate of Almeda Stedenfeld, deceased, individually claims one-half of the real estate, of which said Almeda Stedenfeld died seized, and asks a construction of the said will of Almeda Stedenfeld, deceased.

10

FREDERICK A. HEISLEY,
Solicitor of Lillian Stedenfeld, etc.

REPLICATION

(Filed October 29, 1918.)

The complainants join issue on the Answer of the defendant, Lillian Stedenfeld, individually and as executrix of the last will of William Stedenfeld, deceased.

20

HENRY P. BEDFORD,
Solicitor of Complainants.

SUBSTITUTION

Joseph L. Smith formally substituted as solicitor of defendant, Lillian Stedenfeld.

30

ANSWER OF JAMES LUNN

(Filed November 6, 1919.)

The answer of the defendant, James Lunn.

This defendant, answering the Bill of Complaint, says that:

1. Paragraphs 1 to 8 inclusive are admitted.

10 2. As to Paragraph 9, this defendant says he claims to be entitled to the whole of the personal estate bequeathed to his wife, now deceased, who was Almeda Stedenfeld before her marriage to this defendant, and a grand-daughter of Almeda Stedenfeld, deceased, in the first bequest in the second paragraph of said will, and in the fourth paragraph of said will.

20 This defendant joins in the prayer of the complainants that the will of Almeda Stedenfeld, deceased, may be construed and the rights of the complainants and defendants to the real and personal estate of said Almeda Stedenfeld under the provisions of said will declared.

HENRY P. BEDFORD,

Solicitor and Counsel for James Lunn.

30

40

IN CHANCERY OF NEW JERSEY.

Between

AUGUST STEDENFELD, individu-
ally, and AUGUST STEDEN-
FELD, administrator with the
will annexed of the estate of
ALMEDA STEDENFELD, and
ANNA MARIE STEDENFELD,

Complainants,

and

LILLIAN STEDENFELD, individu-
ally and as executrix of the
will of WILLIAM STEDENFELD,
deceased, and JAMES LUNN,
Defendants.

On Bill, Etc. 10
Minutes of
Final Hearing

20

Chancery Chambers, Newark, N. J.

February 11th, 1920.

Before Hon. James F. Fielder, Vice-Chancellor.

Appearances:

H. P. Bedford, Esq., for the complainants.

Joseph L. Smith, Esq., for the defendant, Lillian Stedenfeld.

OPENING BY COUNSEL.

AUGUST STEDENFELD, sworn.

30

Direct examination by Mr. Bedford.

Q You are the complainant in this cause?

A Yes, sir.

Q And you are the son of August Stedenfeld,
Sr.?

A Yes, sir.

Q And your mother died long before your
father, did she not?

40

August Stedenfeld, direct

A Yes, sir.

Q And then he married Almeda Stedenfeld whose will we are attempting to have construed, is that right?

A Yes, sir.

Q And your father and mother had two children, is that right?

10 A Yes, sir.

Q Yourself and Daniel Stedenfeld?

A Yes, sir.

Q And Daniel Stedenfeld died and left Anna Marie and Almeda Stedenfeld, didn't he?

A Yes, sir.

Q And you are the August Stedenfeld mentioned in this will?

A Yes, sir.

Q And Anna Marie and Almeda Stedenfeld are
20 the children of your whole brother?

A Yes, sir.

Q Then Almeda Stedenfeld, who made this will, your father's second wife, had another son, did she not?

A Yes, sir.

Q And that was William Stedenfeld who is mentioned in this will?

A Yes, sir.

By the Vice-Chancellor.

30 Q William Stedenfeld was a son of August Stedenfeld and your half brother?

A Yes, sir.

By Mr. Bedford.

Q Now, when did your father die?

A He died in February.

Q What year?

A 1916.

Q And prior to his death was he running a business at 210 Camden street, Newark?
40

August Stedenfeld, direct

A Yes, sir.

Q A blacksmith and wagon body manufacturing business?

A Yes, sir.

Q Were you and your half brother William assisting him in the business?

A Yes, sir.

Q And when he died he left this real estate at 210 Camden street, Newark, and this business? 10

A Yes, sir.

Q Now, Almeda Stedenfeld, his wife, carried on that business through you and William Stedenfeld after your father's death?

A Yes, sir.

Q Was there any change at all in the business up to the time of Almeda's death?

A No, sir.

Q How long after your father's death did Almeda die? 20

A In August, the same year, 1916.

Q And this James Lunn was the husband of one of the grand-daughters?

A Yes, sir.

Q And Almeda, his wife, died?

A Yes, sir.

Q When did she die?

A I don't just recall the date of her death.

Q Well, she died after the death of the testatrix, didn't she? 30

A Yes, sir.

Q And Lillian Stedenfeld mentioned in the papers is the wife of William Stedenfeld, is she not?

A Yes, sir.

Q Now, you say that the business was carried on until Almeda's death?

A Yes, sir.

Q Was there any change in the bank account or in the conduct of the business from the time of 40

August Stedenfeld, direct

your father's death until the time of Almeda's death, the testatrix, the one that made this will?

A No, sir.

Q Then after your step-mother's death, as I will call her Almeda, the one that made the will, William took charge of the estate, did he not?

A Yes, sir.

10 Q And now you are in charge of the estate since March, 1918, as administrator?

A Yes, sir.

Q And as to the real estate, will you tell us, or give us an idea of the value of the real estate, as you know it, from offers you have received for it?

A Yes, \$16,000; and there is a mortgage of \$4,000 on it.

Q And the personal estate, how much does that amount to, about?

20 A \$2,000 or \$2,500; something like that.

Q Now, do you know whether your step-mother, Almeda, had any money or accounts outside of the estate that your father left?

A No, sir, I never knew that.

Q Did she in your presence ever speak of any?

A No, sir.

Q Did she have any or did she not?

A I never knew that she had any.

30 Q Do you know how she spoke of the business that was carried on after your father's death, that he had before his death?

A No, I could not answer that.

Q Now how long had you been working in your father's business?

A Oh, when I left school, I started right after school; I went to school until I was sixteen years old and it is about twenty-three or twenty-four years I have been in the business?

40 A About twenty-four years.

August Stedenfeld, cross

Q Your niece Almeda S. Lunn, one of the grand-daughters, did she ever have any children?

A No, sir.

Q She died without issue, did she?

A Yes, sir.

Q And how long had William been working in your father's business?

Q And left her husband, this James Lunn, the soldier boy? 10

A Yes, sir.

Cross examination by Mr. Smith.

Q Mr. Stedenfeld, your father died in February, 1916?

A Yes, sir.

Q He was running a wagon factory at 210 Camden street, Newark?

A Yes, sir.

Q What was that business called? 20

A Well, it consisted of wagons.

Q What was it called?

A August Stedenfeld.

Q And did you work for him?

A Yes, sir.

Q And when did you start to work for him?

A Well, twenty-six or twenty-seven years ago.

Q Did you work for him continuously from the day you went there until his death?

A No, sir. 30

Q How long did you work for your father?

A Well, out of twenty-six years I lost about two years.

Q And your mother died you say in August, 1916?

A Yes, sir.

Q About six months after your father, that is your step-mother died?

A Yes, sir, my step-mother died about six months after him. 40

August Stedenfeld, cross

Q From the date that your father died until your step-mother died, did you work in that wagon factory?

A Part of the time.

Q About how long?

A Well, three months or three and a half months.

10 Q Was your step-brother William there during that period?

A Yes, sir.

Q All of the time did he not?

A Yes, sir.

Q After your father's death under what name was the business conducted?

A August Stedenfeld.

Q And who ran it?

A I ran it until I left.

20 Q And you were there how long?

A I was there three and a half months, after father died.

Q Didn't he run it as August Stedenfeld, William Stedenfeld, proprietor?

A After my mother died, six months after.

By the Vice-Chancellor.

Q You mean after your step-mother?

A Yes, sir.

30 *By Mr. Smith.*

Q Who was the personal representative under your father's will?

A I was.

Q Under your father's will?

A Yes, sir.

Q Who was the executor of your father's will?

A There was no executor mentioned.

Q Who was the administrator?

40 A There was no administrator under father's will, it was left to mother and mother ran the busi-

August Stedenfeld, cross

ness, father never had any executor or administrator.

Q And your mother died?

A Yes, sir.

Q And after she died who ran the business?

A Oh, I ran it close to three and a half months.

Q Did you work in it?

A Yes, sir. 10

Q And your step-brother worked with you?

A Yes, sir.

Q That was in 1916?

A Yes, sir.

Q Your mother died in August, 1916?

A Yes, sir.

Q And you worked in the business and ran it until November, 1916?

A Somewheres around that time.

Q And then you left the business? 20

A Yes, sir.

Q After you left the business who ran it?

A William ran it.

Q Under what name?

A Well, I noticed the bill heads were "August Stedenfeld, William Stedenfeld, proprietor."

Q And your mother at that time had left a will that you knew of?

A Yes, sir.

Q At that time? 30

A Yes, sir.

Q That is in November, 1916?

A That I can't say.

Q Had your brother been appointed administrator of your mother's estate?

A Yes, sir.

Q And he served as administrator?

Mr. Bedford. We will admit that after the death of Almeda Stedenfeld that William Stedenfeld applied and obtained letters of ad- 40

August Stedenfeld, cross

10 ministration of the estate and acted as administrator of the estate from the death of Almeda Stedenfeld—or ten or twelve days after that—August 24th, 1916, until the appointment of August Stedenfeld, the witness, as administrator of the estate with the will annexed on February 2nd, 1918, and that August Stedenfeld was only appointed administrator with the will annexed after the will of Almeda Stedenfeld had been established as the last will in the Essex County Orphans' Court and that William Stedenfeld was in entire charge of the business as administrator and conducted it with August Stedenfeld helping for several months before August Stedenfeld was appointed.

Mr. Smith. And the reason for the substitution—

20 *The Vice-Chancellor.* The reason for what substitution?

Mr. Smith. That August Stedenfeld being appointed administrator with the will annexed after William Stedenfeld had been serving as administrator.

The Vice-Chancellor. He was administrator of the personal estate?

Mr. Bedford. Yes, sir; he just simply carried on the business—we will admit that also.

30 The complainant admits that August Stedenfeld was appointed administrator with the will annexed of the estate after a contest in the Essex County Orphans' Court, in which it appeared that William Stedenfeld was sick and unable to attend to the matters which was one of the reasons brought to the attention of the Orphans' Court, among others, which resulted in the appointment of August Stedenfeld as administrator with the will annexed.

40 *Mr. Bedford.* But William Stedenfeld was

August Stedenfeld, cross

never anything but administrator of Almeda; he never acted under the will.

Mr. Smith. The reason for that, it is admitted was on account of William's illness.

Mr. Bedford. No, we only admit that that was one of the facts.

By Mr. Smith.

Q Mr. Stedenfeld, a will of your mother's was subsequently found in 1918, was it not—a copy of a will of your mother's? 10

A I can't recall; I can't say whether it was in 1918; I can't say that.

Q Did you receive notice that your mother had executed a will?

A Yes, sir.

Q And then what did you do after obtaining that knowledge?

A I went where I could find the will or a substitute of it to Mr. Newschwander's house; the man who drew the will. 20

Mr. Bedford. I object to that question.

The Vice-Chancellor. I will overrule the objection.

Q You say the personal estate of Almeda Stedenfeld was worth approximately how much?

A \$2,000 to \$2,500.

Q And briefly what did that consist of? 30

A Machinery, wagons and material for use.

Q Has all of the personalty that you received as administrator been converted into cash?

A No, sir.

Q About how much property is there now in your hands that has not been converted into cash?

A About \$500.

Q Have you filed an inventory?

A No, sir.

Mr. Bedford. Mr. Smith can we admit that 40

Albert Newschwander, direct

William Stedenfeld never accounted and the estate has never been distributed and that August Stedenfeld has never accounted?

The Vice-Chancellor. Is it material what the reason is?

Mr. Bedford. No, sir; I have no objection.

10 *The Vice-Chancellor.* It is admitted that William Stedenfeld as administrator of the personal estate of Almeda Stedenfeld filed no inventory or any account in the Surrogate's office and has not accounted for the personal estate which came to his hands, the reason being that he was too ill to do so. It is also admitted that he died April 25th, 1918.

Mr. Smith. I want the same admission as to no account or inventory being filed by August Stedenfeld.

20 *By the Vice-Chancellor.*

Q Did you file any account of the estate with the will annexed of Almeda Stedenfeld?

A No, sir.

ALBERT NEWSCHWANDER, sworn.

Direct examination by Mr. Bedford.

Q Where do you live?

A 481 John street, Belleville, New Jersey.

30 Q How long have you lived in Belleville?

A Seventeen years.

Q Did you draw a will for Almeda Stedenfeld?

A I did, yes.

Q And that will was subsequently destroyed was it not?

A Yes, sir.

Q And in the Essex County Orphans' Court you appeared as a witness and produced a copy of it, did you not?

40 A Yes, sir.

Albert Newschwander, direct

Q I show you a paper marked P. 3, in the Orphans' Court case and ask you if that is the will that you produced in the Orphans' Court as the copy of the will of Almeda Stedenfeld?

A That is the copy.

Mr. Bedford. I ask that it be offered in evidence just the same as if it were the original except that it is a copy?

10

The Vice-Chancellor. Have you any objection, Mr. Smith?

Mr. Smith. Yes, sir; there are certain interlineations on it.

The Vice-Chancellor. The witness testified that this is the copy that he produced at the proceedings in the Orphans' Court, to prove the last will of Almeda Stedenfeld and I suppose the interlineations and everything else was on it when it was offered. The objection will be overruled and the paper will be admitted in evidence.

20

(Marked P. 1.)

Q For how long a period were you with Almeda Stedenfeld when you got directions for drawing the will; whether it was a day or two days or a week or two weeks?

A Well, it was at different intervals in the evenings.

Q How many times?

30

A I guess I went there four or five times.

Q And before the will was actually executed did she discuss with you the various conditions of it or not?

A She did.

Q Now, did you do the actual writing of the will?

A I done the actual writing, yes, sir.

Q Now, there is a clause in there "any cash left

40

Albert Newschwander, cross

by me outside of the estate after all bills are paid to go to my son, William Stedenfeld." Will you tell the court what she referred to when she gave you that direction?

10 A Well, the way she spoke; she called the estate the house, the property, and she says I have two small accounts in two different banks, and I said, what are you going to do with the money that is in the banks, and she said, I have several friends, and I says, maybe you might have some of that money over, and she says, well, put it in the will—that what she meant by that—she said, that she had several old friends that she wanted to leave \$50 or \$100 to.

Q What did she call the estate that had been left by her husband at 210 Camden street?

A Why, she called that her husband's estate.

20 Q This cash that she spoke of, anything that was left was to be given to William Stedenfeld?

A That was the cash belonging to her; I asked her how much was it and she said she could not say until I go down to the bank and the next time I heard of her she was dead.

Q And you put that clause in to cover that?

A That was her own cash outside of the estate.

By the Vice-Chancellor.

Q What do you mean by the "estate"?

30 A That is what we call the August Stedenfeld property, but the cash, that was her own.

Cross examination by Mr. Smith.

Q I understood you to say that the old lady meant by the estate the real property that her husband owned, the building up there?

A Yes, sir; the building.

Q Did she say what banks she had money in?

40 A She would not tell me; I tried to get that out of her each evening I went up there and she would not say.

Albert Newschwander, re-direct

Q Did she send for you to draw the will?

A She didn't send for me the first time; she came looking for me up in Belleville and she came to my mother-in-law's, who was a great friend of hers.

By the Vice-Chancellor.

Q You were asked just now whether Mrs. Sted- 10
enfeld referred to the real estate left by her husband when she spoke of the estate and you said "yes"; do you mean that that is all she intended to include under the term of the estate?

A When she said, "the house," that is the way she explained to me that was left by her husband.

Q What did she say about the business, if any-
thing?

A She didn't say anything about the business; 20
I didn't ask her.

By Mr. Bedford.

Q The house is the property at 210 Camden
street?

A Yes, sir.

Q And that consisted of the factory building
and some rooms in which they lived?

A Yes, sir; everything was in the one building.

Q The business, and real estate was the business, 30
and the household was in the building?

A Yes, sir; they lived on the top floor of the
building.

Q I wish you would tell the court what was re-
ferred to as the estate once more?

A Well, the estate the way I understood it was
the building—the property.

Q Now, what did she say when she told you
"give William all the money outside of the es-
tate"?

A That was her own personal property; that 40

Albert Newschwander, re-cross

was the money outside of the estate; that is what she had in two banks.

Q Well, how did she speak of the estate?

A Well, she spoke of the property left by August Stedenfeld.

By the Vice-Chancellor.

10 Q All the property left by him?

A Yes, sir.

Q And when you say "personal property" you mean "real property"?

A Yes, sir, and she made a notation in the will about the furniture.

By Mr. Smith.

Q When she spoke about the furniture and household effects didn't she say that she would give them to William and that he could do with them as
20 he pleased?

A Yes, sir; as he pleased.

Q And she didn't refer to the household effects in the estate; she meant by the estate the property that her husband left?

A Yes, sir, at 210 Camden street.

Q And her husband left a piece of property at 210 Camden street?

A Yes, sir.

Q And that is what she meant when she spoke
30 of real estate?

A Yes, sir.

By the Vice-Chancellor.

Q August Stedenfeld left a wheelwright blacksmith business, didn't he?

A Yes, sir.

Q And among the assets of the business were machinery and materials?

A Yes, sir.

40 Q Now, what did Almeda Stedenfeld say when

Albert Newschwander, re-direct

she instructed you to draw the will; did she tell you about the machinery and the material and personal property; she didn't mention that at all, did she?

A No, sir; she spoke about the house and I asked her what she thought the property was worth and she says, I can't tell you.

Q When you speak of the property, what do you mean, the real and personal property? 10

A The property—I wanted to get the value of the house.

Q Didn't she give you instructions as to the disposition of the business?

A No, sir, she did not say anything about that at all.

Q Nor the assets belonging to the business?

A No, sir.

By Mr. Bedford. 20

Q You got a direction from her that "one-half of my estate is to go to my son William S. Stedenfeld and if he should die before his wife, she is to get \$150 only from this one-half of the estate the balance to be divided equally between my step-son August Stedenfeld and my two grand-daughters Almeda and Anna Marie Stedenfeld": you got directions from her in regard to that didn't you?

A Well, that is just the—

Q Did you get instructions from her in regard to that at all; how did you get it in the will if you didn't get instructions from her? 30

By the Vice-Chancellor.

Q Mr. Bedford was asking you how that one-half of certain property was to go to August Stedenfeld; how did you get that in the will?

A She put it in; she dictated it to me.

Albert Newschwander, re-direct

By Mr. Bedford.

Q How long had you known her?

A I could not say how many years but I have known her quite some time through my mother-in-law; I have known her ten years anyhow.

Q You are not a lawyer?

A No, sir.

10 Q You had no legal education of any kind?

A No, sir.

Q You are a notary public and justice of the peace?

A Yes, sir.

Q And she called you up there and discussed the matter with you?

A Yes, sir.

Q And from that you drew the will?

20 A Yes, sir.

Q Now, what the Court wants to know and what we want to know is what she spoke of when she mentioned the estate?

A The house, that is the way she mentioned it to me; the house and the ground.

Q What did you mean when you said she called what her husband had left the business and everything that he had left; she called that the estate?

30 A She didn't say anything about what her husband left to me.

Q You are quite sure that the direction you got for this clause, any cash left by me outside of the estate, was in regard to money of her own?

A Her own money; she said she had money in two different banks separate from her husband.

By the Vice-Chancellor.

Q What did she say about that?

40 A Why, she said, "I have some money of my

Albert Newschwander, re-direct

own," that is the way she expressed; I said, have you any money Mrs. Stedenfeld, and she said yes, I have my own money in two different banks, and I said, how are you going to dispose of that and she said, I am going to divide it up among some different friends, and I said, you might have some money over, and she said, you put it in the will and I wrote—

10

By Mr. Bedford.

Q And did you write that down, "any money left over to go to William?"

A Yes, sir, that is the way she directed me to put it down.

Q That is all.

CASE CLOSED.

20

30

40

EXHIBIT P. 1 FOR COMPLAINANT

IN THE NAME OF GOD, AMEN.

I

10 BEING OF SOUND MIND, MEMORY AND
UNDERSTANDING, DO MAKE AND PUBLISH
THIS MY LAST WILL AND TESTAMENT in
manner following, that is to say:

That one-half ($\frac{1}{2}$) of my estate to go to my son
William S. Stedenfeld, and if he should die before
his wife, she to get one hundred and fifty (\$150.00)
dollars only from this one-half ($\frac{1}{2}$) of the estate
the balance to be divided equally between my step-
son August Stedenfeld and my two (2) grand-
daughters Amelda and Anna Marie Stedenfeld.

20 To my step-son August Stedenfeld I leave one-
quarter ($\frac{1}{4}$) of my estate.

The balance one-quarter ($\frac{1}{4}$) of the estate to be
divided equally between my two (2) grand-
daughters Almeda and Anna Marie Stedenfeld and
my cousin Lena Lartz, share and share alike.

Any cash left by me outside of the estate, after
all bills, etc., are paid, to go to my son William S.
Stedenfeld.

30 If there should be any disagreement at the read-
ing of this will, the party disagreeing is to receive
nothing, their share to be divided equally between
the others named in this will, share and share alike,
with the exception of William's wife, she to receive
only one hundred and fifty (\$150.00) dollars, she
to receive this if she outlives her husband, and
should be alive when this will is read.

40 All my household effects, furniture, etc., I leave
to my son William S. Stedenfeld; he can sell or
dispose with them the way he thinks best.

OPINION

(Filed March 18, 1920.)

*Between*AUGUST STEDENFELD, *et al.*,*Complainants,**and*LILLIAN STEDENFELD, *et al.*,*Defendants.**On Bill for
Construction**Memorandum
of will.*

101

Henry P. Bedford, Esq., Solicitor for complainants.

Joseph L. Smith, Solicitor for defendant, Lillian Stedenfeld.

FIELDER, V.-C.

The Bill of Complaint calls for a construction of the will of Almeda Stedenfeld, the defendants joining in the prayer of the bill. The following is a copy of the whole will, except the date and attestation: 20

"I, Almeda Stedenfeld, being of sound mind, memory and understanding, do make and publish this my last will and testament in manner following, that is to say.

"The one-half ($\frac{1}{2}$) of my estate is to go to my son William S. Stedenfeld, and if he should die before his wife, she is to get One Hundred and Fifty Dollars (\$150.00) only from this one-half ($\frac{1}{2}$) of the estate the balance to be divided equally between my step-son August Stedenfeld and my two (2) grand-daughters Almeda and Anna Marie Stedenfeld. 30

"To my step-son August Stedenfeld I leave one-quarter ($\frac{1}{4}$) of my estate.

"The balance one quarter ($\frac{1}{4}$) of the estate to be divided equally between my two (2) 40

Opinion

grand-daughters Almeda and Anna Marie Stedenfeld and my cousin Lena Lartz, share and share alike.

"Any cash left by me outside of the estate, after all bills, etc. are paid, to go to my son William S. Stedenfeld.

10 "If there should be any disagreement at the reading of this will, the party disagreeing is to receive nothing, their share to be divided equally between the others named in this will, share and share alike, with the exception of William's wife, she to receive only one hundred and fifty (\$150.00) dollars, she to receive this if she outlives her husband, and should be alive when this will is read.

20 "All my household effects, furniture, etc., I leave to my son William S. Stedenfeld; he can sell or dispose with them the way he thinks best."

All the beneficiaries named in the will survived the testatrix and her son William S. Stedenfeld died more than a year and a half after her death, leaving a will duly probated, devising and bequeathing his whole estate to his widow, the defendant Lillian Stedenfeld, who survived him.

30 The complainants claim that under the will of Almeda Stedenfeld, an absolute estate did not vest in William S. Stedenfeld, but that he took a fee subject to be divested by his death at any time before his wife, while the defendant Lillian Stedenfeld claims that the words "if he should die before his wife" refer to the husband's death in the lifetime of the testatrix and that the ordinary rule favoring the immediate vesting of estates must be applied in the construction of this will.

40 There is no provision in the will expressly defining the quantity of the estate which the several beneficiaries shall take, but under Compiled Statute,

Opinion

page 5873, section 36, they all take absolute estates in fee, except only William S. Stedenfeld should the words just quoted qualify his estate.

The mind of the testatrix was concerned with the decision and distribution of her whole estate and was naturally fixed upon the situation with reference to the objects of her bounty, as it would exist after her death. Nearly all the estate she had to dispose of, came from her deceased husband. William S. Stedenfeld was her only child but there were her husband's descendants by his first wife to consider, namely his son August and his grandchildren Almeda and Anna Marie, daughters of his deceased son Daniel. She evinces an intention to divide her whole estate equitably among those who would naturally be entitled to it, showing a not unnatural preference for her own son, by giving him half of her estate. Standing by itself, without limiting words, the gift to him is absolute without doubt. Did the testatrix by the use of the words "and if he should die before his wife" intend to refer to the estate she had given her son and qualify or limit it to the one for whom she had a natural preference, when she attached no limitation to the estates she gave to those who were not of her blood? There is nothing in the context of the will or the evidence, which discloses a reason for such intention and it is my opinion that when she used the words in question she was not referring to or limiting the devise to her son, but that she was making a gift to her daughter-in-law in case William should predecease his mother. What she had in mind was a disposition of her estate in case William should predecease her, because without this provision and a bare devise to William, he having no children, his share would lapse and pass by the statute of descent. By the lapsing of this share, William's wife would receive nothing and she wanted to be sure

Opinion

her daughter-in-law would be remembered and that if her son did not live to take, her estate would go to her step-son and step-grand-children. That the testatrix meant death in her lifetime is evidenced by the subsequent clause relative to what should happen in case of a disagreement or contest over her will, which of course refers to a disagreement immediately following her death. This clause must
 10 contemplate William being dead at that time for if he were not, then his wife could not receive the \$150 which the testatrix says shall be hers and the testatrix adds, by way of explanation, "she to receive this if she outlives her husband and should be alive when this will is read." If these events occurred in the sequence in which the testatrix named them, William must be dead when the testatrix dies and when her will is read. I cannot be-
 20 lieve that it was the intention of the testatrix that if William survived his wife by one day, his estate would be absolute, but if he predeceased her by one day, his estate should be held to be a contingent one.

The tendency of the courts is to be cautious in applying to one will the same construction of words given by one court in construing some other will, but rather to give a construction in each case to the particular form of language used and considera-
 30 tion to the circumstances which surround the testator when the particular will to be construed was made. (*Hewitt vs. Green*, 77 N. J. Eq., 345-353.) With this in mind, reference is made to the following decisions of our courts which construes somewhat similar language to mean death in the lifetime of the testator (*Herbert vs. Tuthill*, 1 N. J. Eq., 141; *Beatty vs. Montgomery*, 21 N. J. Eq., 324; *Burdge vs. Walling*, 45 N. J. Eq., 10; *Brown vs. Lippincott*, 49 N. J. Eq., 44; *Dawson vs. Schafer*,
 40 52 N. J. Eq., 341-344; *Dranow vs. Sherry*, 80 N. J.

Decree

Eq., 448). In *Fischer vs. Fischer*, 75 N. J. Eq., 74, a will containing words almost identical with the words in the present will, was construed and the rule was recognized that where a bequest or devise is made to one person with a gift over "in case of his death," or similar words, they must be held to mean in case of death before the death of the testator, unless the context shows that another point of time was intended. I conclude therefore that William S. Stedenfeld took a vested interest in one-half of what the testatrix called her "estate," which passed under his will to his widow. 10

I also find that by her "estate," the testatrix meant all the real and personal property which came to her under the will of her husband, except the household effects and that the cash left by her "outside of the estate," means such cash as she kept separate from the "estate," either in her possession or on deposit in bank. All household effects belonging to the testatrix, such as furniture and other household goods and chattels and cash in possession and in bank, she gave to William S. Stedenfeld absolutely and this personal property will also pass under his will. 20

FINAL DECREE

This cause coming on to be heard in the presence of Henry P. Bedford, of counsel with the complainants, and of defendant James Lunn, and of Joseph L. Smith, of counsel with the defendant, Lillian Stedenfeld, on the pleadings and proofs, and the arguments of the respective counsel having been heard and considered, and it appearing that the parties are entitled to a construction of the will of Almeda Stedenfeld, a construction being prayed for in both the bill and answer. 30

Decree

It is, thereupon, on this 23d day of April, 1920, ordered, adjudged and decreed as follows:

1. That by the words "all my household effects, furniture, etc., I leave to my son William S. Stedenfeld, he can sell or dispose of them the way he thinks best," testatrix Almeda Stedenfeld gave and bequeathed to her son, William S. Stedenfeld, all
10 her household effects and furniture to be his absolutely.

2. That by the words "any cash left by me outside of the estate, after bills, etc., are paid, to go to my son, William S. Stedenfeld," testatrix intended to, and did thereby give and bequeath to her son, William S. Stedenfeld, such cash in her own possession or on deposit in bank as she kept separate from all the real and personal property which came
20 to her under the will of her husband, August Stedenfeld, and that any such cash in the possession of testatrix or on deposit in bank in her name, after payment of her individual bills as distinguished from the debts of the business, became the absolute property of William S. Stedenfeld upon the decease of testatrix.

That by the words "the one-half ($\frac{1}{2}$) of my estate is to go to my son, William S. Stedenfeld, and if he should die before his wife, she is to get one hundred and fifty dollars (\$150) only from this
30 one-half ($\frac{1}{2}$) of the estate, the balance to be divided equally between my step-son, August Stedenfeld, and my two grand-daughters, Almeda and Anna Marie Stedenfeld," the testatrix intended to, and did thereby, create and the said William S. Stedenfeld did take a vested one-half ($\frac{1}{2}$) interest in fee in the realty of which his mother, Almeda Stedenfeld, was seized at the time of her death, and an absolute one-half ($\frac{1}{2}$) interest in all of the personal property of his mother, Almeda Stedenfeld,
40

Decree

except that hereinbefore mentioned as having been given absolutely to the said William S. Stedenfeld.

4. That in and by her said will testatrix intended to and did thereby give, devise and bequeath absolutely to her "step-son" August Stedenfeld, one-quarter ($\frac{1}{4}$) of all her real and personal property, except the household effects, furnishings and furniture, and the cash in her possession or on deposit in bank that she kept separate from the real and personal property which came to her under the will of her husband, August Stedenfeld. 10

5. That in and by her said will testatrix intended to and did thereby, give, devise and bequeath absolutely to her two grand-daughters, Almeda and Anna Marie Stedenfeld and her cousin Lena Lartz, to be divided equally between them a one-quarter ($\frac{1}{4}$) interest in all her real and personal property, except the household effects, furnishings and furniture and the cash in her possession or on deposit in bank that she kept separate from the real and personal property which came to her under the will of her husband, August Stedenfeld. 20

6. It is further ordered, that a counsel fee of two hundred and fifty dollars be allowed and paid to Henry P. Bedford, solicitor for and of counsel with complainants, and that a counsel fee of two hundred and fifty dollars be allowed and paid to Joseph L. Smith, solicitor for and of counsel with defendant, Lillian Stedenfeld, and that said counsel fee and the taxed costs of the complainants and defendants in this cause be paid out of the general devises and bequests of the estate of said testatrix. 30

E. R. WALKER,

Respectfully advised,

C.

JAMES F. FIELDER,

V. C.

40

*Notice of Appeal***NOTICE OF APPEAL**

(Filed April 28, 1920.)

10 The complainants hereby appeal from so much
of the final decree made in this court, in the above
stated cause, as decrees that by the words "the one-
half ($\frac{1}{2}$) of my estate is to go to my son, William
S. Stedenfeld, and if he should die before his wife,
she is to get one hundred and fifty dollars (\$150)
only from this one-half ($\frac{1}{2}$) of the estate the bal-
20 ance to be divided equally between my step-son,
August Stedenfeld, and my two grand-daughters,
Almeda and Anna Marie Stedenfeld," the testatrix
intended to, and did thereby, create and the said
William S. Stedenfeld did take a vested one-half
($\frac{1}{2}$) interest in fee in the realty of which his
mother, Almeda Stedenfeld, was seized at the time
of her death, and an absolute one-half ($\frac{1}{2}$) inter-
est in all of the personal property of his mother,
Almeda Stedenfeld, except that in the decree before
mentioned as having been given absolutely to the
said William S. Stedenfeld, and from so much
thereof as orders that a counsel fee of two hundred
and fifty dollars be allowed and paid to Joseph L.
Smith, solicitor for and of counsel with defendant,
Lillian Stedenfeld, out of the general devises and
bequests of the estate of testatrix, to the Court of
30 Errors and Appeals in the last resort in all causes.

HENRY P. BEDFORD,*Solicitor for and of Counsel for Complainant.*

Dated, April 27, 1920.

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

HENRY P. BEDFORD,*Of Counsel.*

*Petition of Appeal*NEW JERSEY COURT OF ERRORS AND
APPEALS.

PETITION OF APPEAL

(Filed May 5, 1920.)

*Between*AUGUST STEDENFELD, *et al.*, in-
dividually, and as executor
etc., and ANNA MARIE
STEDENFELD,*Complainants-Appellants,*
*and*LILLIAN STEDENFELD, *et al.*,
Defendant-Respondent.

10

To the honorable, the Court of Errors and Ap- 20
peals, in the last resort in all causes:

The petition of the above named complainants respectfully shows, that they find themselves ag-
grieved by the final decree in said cause made in the
Court of Chancery, dated April 23d, 1920, in that
in construing the will of Almeda Stedenfeld, de-
ceased, the said decree recites and adjudges that by
the words "the one-half ($\frac{1}{2}$) of my estate is to go
to my son, William S. Stedenfeld, and if he should
die before his wife, she is to get one hundred and 30
fifty dollars (\$150) only from this one-half ($\frac{1}{2}$) of
the estate the balance to be divided equally between
my step-son, August Stedenfeld, and my two grand-
daughters, Almeda and Anna Marie Stedenfeld,"
the testatrix intended to, and did thereby create and
the said William S. Stedenfeld did take a vested
one-half ($\frac{1}{2}$) interest in fee in the realty of which
his mother was seized at the time of her death, and
an absolute one-half ($\frac{1}{2}$) interest in all of the per-
sonal property of his mother, Almeda Stedenfeld, 40

Petition of Appeal

except that in the decree before mentioned as having been given absolutely to the said William S. Stedenfeld. And your petitioner appeals from the said decree on the ground that the same is erroneous, for that the said court should have construed the said will so as to decree and adjudge that by the said words the testatrix, Almeda Stedenfeld devised and bequeathed to her son, William S. Stedenfeld a one-half interest in all her estate, except that in the decree mentioned as having been given absolutely to him, which one-half interest was subject to be divested upon the happening of the death of William before the death of his wife and to thereupon be divided \$150 thereof to William Stedenfeld's wife and the balance of said one-half equally between the step-son, August Stedenfeld, and the two grand-daughters, Almeda and Anna Marie Stedenfeld.

Your petitioners therefore pray that the said decree may be reversed, rescinded, and for nothing holden, in so far as it adjudges and construes the said will by said words to mean what they are in said decree construed and adjudged to mean, and that your petitioner may have such further relief as shall be meet.

HENRY P. BEDFORD,

Solicitor and Counsel for Complainants.

*Answer to Petition of Appeal*NEW JERSEY COURT OF ERRORS AND
APPEALS.*Between*AUGUST STEDENFELD, individu-
ally, and AUGUST STEDEN-
FELD, executor, with the will
annexed of ALMEDA STEDEN-
FELD, deceased, and ANNA
MARIE STEDENFELD,*Complainants-Appellants,
and*LILLIAN STEDENFELD, individu-
ally, and as executrix of the
will of WILLIAM STEDENFELD,
deceased, and JAMES LUNN,*Defendants-Appellees.**On Appeal
from Court of
Chancery.*

10

*Answer of
the defendant-
appellee,
Lillian Steden-
feld, individu-
ally and as
executrix of
the will of
William
Stedenfeld,
deceased.*

20

The answer of the defendant-appellee, Lillian Stedenfeld, individually and as executrix of the will of William Stedenfeld, deceased, to the Petition of Appeal of the above named complainants-appellants says that:

The defendant-appellee not acknowledging all or any of the matters which in said Petition of Appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was on the twenty-third (23rd) day of April, 1920, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said Petition as is therein stated; but as to the substance and form thereof, this defendant-appellee prays to refer thereto, when the same shall be produced. And

30

40

this defendant-appellee is advised and believes, that the said decree is agreeable to equity, and she prays that same may be affirmed with costs to be adjudged to this defendant-appellee.

JOSEPH L. SMITH,

*Solicitor for and of counsel with
the defendant-appellee, Lillian
Stedenfeld.*

10

20

30

40

New Jersey Court of Errors and Appeals

Between

AUGUST STEDENFELD, individually and as administrator with the will annexed of the Estate of ALMEDA STEDENFELD, deceased, and ANNA MARIE STEDENFELD,

Complainants-Appellants,

and

LILLIAN STEDENFELD, individually and as executrix of the last will and testament of WILLIAM STEDENFELD, deceased, *et al.*,

Defendants-Respondents.

*On Bill for
Construction
of Will.
Appeal from
Court of
Chancery.*

BRIEF OF HENRY P. BEDFORD FOR APPELLANTS.

Statement of the Case.

The question involved is the proper construction of the will of Almeda Stedenfeld containing the following clause:

"The one-half ($\frac{1}{2}$) of my estate is to go to my son William S. Stedenfeld, and if he should die before his wife, she is to get one hundred and fifty dollars (\$150) only from this one-half ($\frac{1}{2}$) of the estate the balance to be divided equally between my stepson August Stedenfeld and my two (2) grand-daughters, Almeda and Anna Marie Stedenfeld."

In the will as probated the words underlined

above were underlined in red ink. (Exhibit P. 1, Case, p. 28.)

Almeda Stedenfeld, the maker of the will, died in August, 1916, leaving an estate which had come to her under the will of her husband who had died six months before.

The estate consisted of a blacksmith shop and wagon body manufacturing business and the land and building wherein the same was conducted at 210 Camden street, Newark, New Jersey. (Case, p. 12, l. 30; p. 13, ll. 10-20.)

August Stedenfeld, Sr., the father of complainant, August Stedenfeld, and of William Stedenfeld, had been assisted in the business for more than twenty-five years before his death by his said two sons, and after his death it was conducted for testatrix, for three and a half of the six months she survived him, by these sons. She made her will May 29, 1916. (Case, p. 14, l. 30; p. 15, l. 20; p. 16, l. 10.)

Complainant, August Stedenfeld, is the son of August Stedenfeld, Sr., by his first wife. Almeda and Anna Marie Stedenfeld were the grandchildren of August Stedenfeld, Sr., by his first wife and William Stedenfeld was his son by his second wife, Almeda Stedenfeld, the testatrix. (Case, p. 11, l. 30.)

Defendant Lillian Stedenfeld is the wife of William Stedenfeld. He died on April 25, 1918, after testatrix, leaving a wife but no heirs. (Case, p. 20, l. 10.)

The estate to be disposed of by the will of testatrix when she made it on May 29, 1916, consisted of the business and real estate of August Stedenfeld, Sr., at 210 Camden street, where testatrix also had her residence, the household furnishings and a small amount of cash in bank used in connection with the business, beside which the testatrix referred to some funds of her own which she kept

separate from the estate of her husband (Case, p. 23, l. 20). All the facts stated in the bill are admitted in the answer.

Specification of Grounds of Appeal.

Complainants allege the Decree to be erroneous in that it adjudges that by the words:

"The one-half ($\frac{1}{2}$) of my estate is to go to my son, William S. Stedenfeld, and if he should die before his wife, she is to get One Hundred and Fifty Dollars (\$150) only from this one-half ($\frac{1}{2}$) of the estate the balance to be divided equally between my step-son August Stedenfeld, and my two grand-daughters, Almeda and Anna Marie Stedenfeld."

William Stedenfeld got one-half of what is called the estate absolutely and in fee whereas the will should have been construed to mean that a one-half interest was devised and bequeathed to William S. Stedenfeld, which one half interest was subject to be divested upon the happening of the death of William before the death of his wife, and to thereupon be divided \$150 thereof to William Stedenfeld's wife and the balance of said one-half equally between August Stedenfeld and the two grand-daughters, Almeda and Anna Marie Stedenfeld (Case, p. 37).

POINT I.

William Stedenfeld died before his wife, and she is to get one hundred and fifty dollars only from this one-half of the estate and the balance should be divided equally between August Stedenfeld and the two grand-daughters, Almeda and Anna Marie Stedenfeld.

The language of the point is substantially the language of the will. It seems odd that we should have to come to this court as appellants asking that the will be construed to mean what it so plainly

states. Examination of the authorities in this state makes certain that the construction contended for by complainants is the only proper one to be applied in this case.

There are two clearly defined situations recognized in the cases that arise in the construction of wills where there is a bequest or devise over to another after the death of the first taker.

First. Where the will makes the provision "in case of his death" with nothing more to express contingency.

Second. Where the will makes the provision "*in case of his death—before his wife*" or "without heirs" or after certain other provisions have been carried out.

The distinction is clearly made in the cases heretofore decided by this court and wills with only the words of the first class above have uniformly been held to mean that the estate of the first taker would be divested at his death only in case such death occurred in the lifetime of the testator, while wills containing an expression of the testator as to when the death must occur to divest the estate, such as those of the second class above mentioned, have been held to mean *death before or after the testator*.

The learned Vice-Chancellor places the will before the court in the first class while *we contend that all the authorities support its inclusion in the second class*. He may perhaps have been misled by the distinctions drawn in cases importing a definite failure of issue and those where an indefinite failure is intended. These cases are not at all in point regarding the will now before the court.

The logic of all the cases cited by the learned Vice-Chancellor in his opinion, seems to be summed up in the last case which he cites, *Fischer vs. Fischer*, 75 New Jersey Equity, 74, and strange as it may seem the Vice-Chancellor apparently bases

his decision on *Fischer vs. Fischer*, although it is authority for the opposite conclusion. He seems to have erroneously accepted *Fischer vs. Fischer*, and the present case as causes in which the will contained only the words "in case of his death" and to have been looking for something in the context that would show what time the death must occur and disregarding the words "*before his wife*" concluded that death before the death of the testatrix was intended. He evidently overlooked the words "*before his wife*," in the clause "*and if he should die before his wife*" in both the *Fischer* and in the present case, and mistakenly classed these cases with those in which the words, "in case of his death" and nothing more appeared. We say this because he quotes only from the first headnote of the *Fischer* case which is not at all like the present case, and ignores the third headnote which sustains our contention.

In *Fischer vs. Fischer* the court said :

"It will be observed that testatrix by the first paragraph of her will devises an absolute estate to her son Otto and his wife. By the third paragraph two successive contingencies are introduced to the effect—first, that if the son Otto dies before his wife the property shall go to the wife and the two grandchildren, and second, if the wife thereafter remarries, the property shall go wholly to the two grandchildren. The question is therefore presented whether the death of Otto before his wife is a contingency which testatrix intended to be operative only in the event of the contingency occurring before the death of testatrix, or as a contingency to be equally operative in the event of the contingency happening after the death of testatrix. As the contingency did not occur until after the death of testatrix her intention in the respect named must be ascertained.

"The provisions of the will which are to be here construed relate to both the real and personal property of testatrix; and the contention in behalf of complainant is that the gift falls within the well-recognized rule of construction that where there is a bequest to one person and 'in case of his death' to another person, the expression 'in case of his death,' unexplained by the context of the will, will be understood as referring to the event of death happening before the death of testator. While the rule of construction referred to is in most cases applied to bequests of personal property, the same rule has by some authorities been applied to devises of real estate. The precise purpose and application of the rule should, therefore, be considered in this case.

"Conceding the rule of construction referred to as applicable to the same extent in devises of real estate as in bequests of personal property, *I am unable to reach the conclusion that the contingency of the death of Otto referred to by testatrix was intended by her to relate to the death of Otto only in the event of the death of Otto occurring before the death of testatrix.* Where a bequest is made to one person with a gift over in case of his death, courts have uniformly held that the expression, 'in case of his death' must be understood to mean in case of his death before the death of testator, or in case of his death before distribution where a period of distribution may be said to be contemplated. But the reason of that rule is apparent and well understood, and, as is the case with any general rule, *it is difficult to find justification for its retention when the reason for its application disappears.* The expression 'in case of his death' imports a contingency

in the mind of testator, and yet death is not a contingency but, on the contrary, is the most certain of all events; hence an absolute bequest to a person followed by the expression 'in case of his death' cannot be understood to mean 'at his death' or 'from his death,' because in that case the element of contingency is absent and no proper force is given to the expression 'in case of.' To give full meaning to the words 'in case of,' something that is a real contingency must be understood to have been in the mind of testator, so in order to give entire force to the expression it is necessary to connect with the death of legatee some circumstance which is not certain, but which is contingent; that circumstance is necessarily the contingency of the death of devisee before the death of the testator. Such expressions are therefore understood to mean the contingency of death of the legatee before the death of the testator. The tendency of courts to favor the vesting of estate is also thought to have had an influence in establishing the rule of construction referred to. But it seems manifest that where death is referred to in connection with some collateral event which is in itself a pure contingency, the reason for the rule is absent, so far as it seeks to determine testator's intent by giving force to all expression of the will. In the will now under consideration the contingency referred to is as follows: 'In case my son Otto Augustus Fischer should die before his wife.' *This is a pure contingency and I am aware of no logical reason that can be found for adding to this contingency the additional contingency that Otto shall also die before testatrix,* if the intention of testatrix is to be sought by giving appropriate force to all of the provisions of her will.

In consequence, in 2 Jarm. Wills, 640, the author has, with some hesitancy, it is stated, defined a second rule, as follows: 'The general rule is that where the context is silent, the words ("in case of" and similar expressions) referring to the death of the prior legatee, *in connection with some collateral event, apply to the contingency happening as well after as before the death of the testator.*' The following cases which are reviewed by the author sustain the rule as it is there defined. *Allen vs. Farthing*, 2 Mad., 310; *Child vs. Gilbert*, 3 Myl. & K., 71; *Smith vs. Stewart*, 4 De G. & S., 253."

Fischer vs. Fischer, 75 Eq., 74.

How the Vice-Chancellor can say that because the Fischer case recognizes the rule governing cases where the words "in case of his death" *and nothing more appears*, he will apply such rule to this case, where something more does appear, is more than we can understand.

A careful reading of his opinion in this case and of the decisions of this court in cases involving clauses of the same import as that in the present will, must certainly convince one that the Vice-Chancellor went astray.

Instead of being guided by the evidence and the meaning to be found within the four corners of the paper containing the will the Vice-Chancellor proceeds to draw on his own imagination of what the testatrix had in mind or what he thinks she should have done and because "There is nothing in the context of the will or the evidence, which discloses a reason for such intention it is my opinion that when she used the words in question she was not referring to or limiting the devise to her son, but that she was making a gift to her daughter-in-law in case William should predecease his mother (Case, p. 31, l. 30). In other words, because the Vice-

Chancellor can find no reason in the will for giving to the words "and if he should die before his wife" the meaning which this court has consistently held should be given to such expressed contingencies unless the context shows otherwise, he will not construe them as this court does but seeks some other construction. In the language of some of the cases herein cited he "*makes the will instead of construing it.*"

And in making the will the court throws away some of the words used and adds others. He says, "she was making a gift to her daughter-in-law in case William should *predecease his mother.*" He is adding the words "predecease his mother," of which Stevens, V.-C., said in *Rogers vs. Bailey*, affirmed by this court: "To add to this contingency another, viz., that A's death without children must occur in testator's lifetime is to remake testator's will, not to construe it." 76 Eq., 29 at 32.

To support his theory that by the words "if he should die before his wife, she is to get \$150 *only* from this one-half of the estate the balance to be divided equally between my step-son August Stedenfeld and my two grand-daughters Almeda and Anna Marie Stedenfeld the testatrix's purpose was only to make sure her daughter-in-law would be remembered," the Vice-Chancellor reads into the will the words "and should also predecease his mother" and thus defeats the very clear limitation over if William should die before his wife. And this in spite of the fact that such words have been repeatedly construed to effect such a limitation.

Having read the words "predecease his mother" into the clause making the gift, which is entirely clear without such words, the court brings to the aid of this newly constructed clause, words which it is very evident testatrix used simply and solely to make it clear that in any event William's wife

was to get "Only one hundred and fifty dollars." If William died before his wife under the first clause she was to get \$150 *only*. By the last clause if there should be a disagreement and the share of the party disagreeing divided equally "between the others named in this will" she was to receive *only* one hundred and fifty dollars, and she was not to get this \$150 unless she outlived her husband. Here again the Vice-Chancellor reads in words "predecease the testatrix" and says that because the clause "and should be alive when this will is read" follow the words limiting the amount she can receive, we must read into the will that William must be dead before the testatrix so that his wife can outlive him and yet be alive when the will is read.

And yet this strained construction is so unnecessary, for, it is quite conceivable that William could be alive after his mother's death, that his wife could outlive him, that she could be alive at the reading of the will and that if William should die before his wife she would then get the \$150 *only*. And all this could and has happened just as the testatrix had prepared for, and reading into the will an additional contingency that the death must occur in the lifetime of the testatrix is contrary to the authorities where the contingency expressed in the context of the will is "death before his wife."

The scrivener was a notary public and justice of the peace, a family acquaintance for ten years who was called to testatrix's home and there she discussed the matter with him and from that he drew the will. From the limitation in the first clause and in the last clause of what William's wife should get, to \$150, and the provision that she should get only this even if a share of some other party who disagreed, which might easily have been her husband William, was divided among the others, it is plain that the intention the testatrix impressed

on the scrivener, was that William's wife should get only \$150 and the balance should go to her husband's blood; that while William could have one-half the estate if he outlived his wife, in case he died before his wife this stranger to her husband's blood should receive only \$150 and the balance be distributed to her husband's own son and grandchildren.

This was perfectly natural. The evidence shows that William was sick and died shortly after his mother without having had any children. One of the reasons for not appointing him administrator C. T. A., was the fact that he was sick and unable to attend to administration (Case, p. 18, l. 30), and we have the right to infer that William's mother knew his condition of health and fearing that he might live only a short time after her and that one-half of her estate would go to a stranger to her husband's blood, endeavored to make sure that this result would not ensue.

We feel certain that this court will not sustain the strained interpretation of the will made by the court below and commit itself to a precedent that when testatrix said, "*if he should die before his wife*" this meant "*if he should die before me, his mother.*" If she meant this it was the easiest thing in the world for her to say.

Citation of Authorities.

Gummere, J., quoting from Chief Justice Green in *Patterson vs. Madden*, in this court, said:

"But if my said son Abraham should die having no children, then my will is, etc. There is no reference in this clause, standing alone, to the devisee's dying under twenty-one. The contingency expressed is simply the death of the devisee without children. It is insisted,

however, that the clause 'under twenty-one years of age' is fairly implied from the context, or if not from mere grammatical construction, yet that was the true meaning of the testator as collected from the whole scope of the will. *The true meaning of the passage, so far as rests upon its grammatical construction, depends entirely upon the idea with which it is set in opposition.* If the limitation over was immediately connected with the original devise the meaning of the will would then be clear, and the only contingency upon which the devisee over is expressly limited, or which can fairly be implied or supposed to exist in the mind of the testator, is the death of the devisee without children."

Patterson vs. Madden, 54 Eq., 714, at 720 E. & A., 1896.

So in the present case, as the words "before his wife" are set in opposition to the words, "in case he should die" and there is no other contingency expressed in the clause or in the will, and as the limitation is "immediately connected with the original devise," the meaning of the will is clear and the only contingency in the mind of the testator is the death of the devisee before his wife.

Patterson vs. Madden, 54 Eq., 714 at 722. E. & A., 1896.

Rogers vs. Bailey, 76 Eq., 29, at 33 Chy., 1909.

Affirmed by Court of Errors, 78 Eq., 589. 1911.

The case of *Shreve vs. Wilkins*, decided by Chancellor Walker, is on all fours with the present case, and with the abundant authority it contains, should settle the questions here in favor of the complainants' contentions. The body of the opinion states

and meets all of the contentions put forward on behalf of William's devisees here and the headnote 2, sets forth the determination concisely as follows:

"2 Testatrix bequeathed the residue of her estate to her son, and provided that, in case he died without any heir or heirs, the property should then be divided between certain others.—*Held*, that the clause could not be construed as vesting a fee-simple absolute in the son on his surviving the testatrix, on the theory that the words 'die without heir or heirs' referred to a contingency of the son dying without heirs before testatrix, *but that the provision vested in the son a fee subject to be divested on the happening of the contingency of his death without issue.*"

And in the body of the opinion, the Court says:

"If the gift is absolute in terms and not at all events limited over at the death of the first taker, but only on a certain contingency, as dying without issue living, then the title vests in the devisee or legatee absolutely, subject to be defeated on the happening of the contingency."

Shreve vs. Wilkins, 82 Eq. 18 and 22. Chy. 1913.

This case clearly falls in the second class of cases mentioned by V.-C. Stevens in *Rogers vs. Bailey*, which was unanimously affirmed by this Court. V.-C. Stevens says:

"There are two classes of cases in our reports. In the first, testator gives land to A and, if he die, to B. It is held that B does not take unless A die in testator's lifetime. The reason is this: A's death is certain, consequently, the contingency expressed by the word 'if' must necessarily be the implied con-

tingency of A's not being alive at testator's death. There can be no other.

"In the second class of cases the contingency denoted by the particle 'if' is expressed and not implied. 'I give my house and lot to A and if A die without children to B.' Here it is not necessary to imply contingency, for we find it actually expressed. The contingency is not A's dying, which is certain, but A's dying without children, which is uncertain, and may happen just as well after testator's death as before. To add to this contingency another, viz., that A's death without children must occur in testator's lifetime is to remake testator's will, not to construe it. Consequently, when nothing more appears, it has been held, quite uniformly, that the contingency must have its full effect and that it terminates only with A's death."

Rogers vs. Bailey, 76 Eq., 29, at 32. Affirmed 78 Eq., 589.

Fischer vs. Fischer, 75 Eq., 74 at 75 and 80.

Patterson vs. Madden, 54 Eq., 714 at 722.

Chetwood vs. Chetwood, 81 Eq., 296 at 298.

Shreve vs. Wilkins, 82 Eq., 18.

Dean vs. Nutley, 70 Law, 217.

One must naturally assume that it was the intention of the mother to so frame her will as to give the greatest protection and benefit to the kin of herself and husband and intended that her husband's estate should not pass to her daughter-in-law as against her husband's heirs who had established the business with him, and, in the language of *Shreve vs. Wilkins*, above cited, "as her will is couched in language which is unambiguous, according to the decisions of the courts of this state, and there are no circumstances appearing on the face of the will to show that she intended otherwise,

then, according to its legal interpretation, it must be declared that, under the bequest to her son, and in case of his death before his wife, William took a vested interest in the property, subject to be defeated upon the contingency of his death before his wife.

I have examined all the cases cited by the learned Vice-Chancellor in his determination, all the cases cited by defendant's counsel below and many others, and I find running through them all the same principle, and the same distinction between a limitation over on the happening of the death of the devisee, and a limitation over on the happening of the death of the devisee before a certain event or with certain attendant conditions expressed in the will. The law of our own state as expressed in the decisions of this court and the court of chancery is so clear, that it is impossible to believe this court will construe the will to mean "if William should die before his mother" when it says "if William should die before his wife."

The will should be held to have given to William Stedenfeld one-half of the estate, which vested in him subject to being divested on the happening of his death before the death of his wife, and in that event this one-half to go \$150 to William's wife and the balance to be divided equally between August Stedenfeld and the two granddaughters, Almeda and Anna Marie Stedenfeld.

Respectfully submitted,

HENRY P. BEDFORD,

*Solicitor and Counsel for Complainants,
and for James Lunn.*

The Evening Post Job Printing Office, Inc., 156 Fulton St., N. Y.

New Jersey Court of Errors and Appeals.

Between

AUGUST STEDENFELD, individually, and AUGUST STEDENFELD, Administrator with the Will annexed of Almeda Stedenfeld, deceased, and ANNA MARIE STEDENFELD, Complainants-Appellants,

and

LILLIAN STEDENFELD, individually, and as Executrix of the Will of William Stedenfeld, deceased, and JAMES LUNN, Defendants-Respondents.

On Bill for Construction of Will.

Appeal from Court of Chancery.

BRIEF FOR DEFENDANT-RESPONDENT, LILLIAN STEDENFELD.

I.

Statement of the Case.

August Stedenfeld, Sr., was the husband of Almeda Stedenfeld. Said August Stedenfeld, Sr., was twice married, and the children of his first marriage were the complainant August Stedenfeld, and Daniel Stedenfeld, deceased. Said

Daniel Stedenfeld, deceased, left him surviving two (2) children—Anna Marie Stedenfeld, another complainant, and Almeda Stedenfeld, who married one James Lunn, and she, the said Almeda Stedenfeld Lunn, died intestate without issue on or about August 17, 1918, leaving surviving her husband, James Lunn, one of the defendants named in this cause.

William Stedenfeld, the husband of the defendant Lillian Stedenfeld, was the only child of August Stedenfeld, born of his second wife, Almeda Stedenfeld.

The complainant August Stedenfeld was the stepson of Almeda Stedenfeld, and the half-brother of William Stedenfeld. August Stedenfeld, Sr., the father of complainant August Stedenfeld, by his first wife, and the father of William Stedenfeld, by his second wife, Almeda Stedenfeld, died on or about February 24th, 1916, leaving him surviving his said wife Almeda Stedenfeld, and, the complainant, his stepson August, and the children of his deceased son Daniel, to wit, Anna Marie Stedenfeld, and Almeda Stedenfeld Lunn, and his said son William.

August Stedenfeld, Sr., deceased, left all of his property, both real and personal, to his said wife Almeda Stedenfeld, deceased, which consisted of a factory building with living accommodations on the top floor, situated at 210 Camden Street, Newark, New Jersey, upon which said premises the said August Stedenfeld, Sr., deceased, conducted a blacksmith shop and a wagon or body manufacturing factory. The factory was fully equipped and the living quarters above it were furnished. His said son, August, was employed by his father from time to time, in this business, and his said son, William, was continuously so employed.

The value of the real estate with buildings and appurtenances thereon is about sixteen thousand

dollars (\$16,000), subject to a four thousand dollar (\$4,000) mortgage.

The personal property, consisting of a blacksmith shop and a wagon body manufacturing business, with the issues and profits thereof, together with the household furnishings, is valued at about twenty-five hundred dollars (\$2,500) and all of this property was devised and bequeathed by said August Stedenfeld, Sr., deceased, to his wife, Almeda Stedenfeld, and said property came to her about one (1) year before the making of her said Will. Almeda Stedenfeld also had two (2) small bank accounts.

Almeda Stedenfeld died on or about August 24th, 1916, leaving her surviving her son of her full blood, William, and her stepson, August, and the two (2) children of her deceased stepson, Daniel, to-wit: Almeda Stedenfeld Lunn, deceased, and Anna Marie Stedenfeld.

It appearing that said Almeda Stedenfeld died intestate, her son of the full blood, William, was appointed administrator and secured his letters of administration on or about September 1st, 1916, and acted as such administrator in addition to carrying on the business as aforesaid, in the name of "August Stedenfeld, Wm. Stedenfeld, Prop."

A paper writing purporting to be the Last Will and Testament of said Almeda Stedenfeld, deceased, was offered for probate and it was admitted as her Last Will and Testament on or about January 18th, 1918.

Said William Stedenfeld began to fail in health after his mother's death and, because of his illness, he was unable to act as administrator *cum testamento annexo*, and the complainant herein, August Stedenfeld, on or about February 15th, 1918, was appointed administrator *cum testamento annexo* of the estate of Almeda Stedenfeld, deceased. William Stedenfeld died on or about April 25th, 1918, with-

out issue, leaving all of his property by Will to his wife Lillian Stedenfeld, the defendant herein, and appointing her executrix of his said estate. Lillian Stedenfeld qualified as executrix on or about May 6th, 1918, and has had presented to her claims against her said husband's estate, but has no assets on hand to meet same. August Stedenfeld has filed no inventory or account as administrator *cum testamento annexo* of the estate of said Almeda Stedenfeld, deceased, but testified at the hearing on February 11th, 1920, that he had received an offer of sixteen thousand dollars (\$16,000) for the real estate and building thereon, and that the personalty amounted to about twenty-five hundred dollars (\$2,500).

Defendant, Lillian Stedenfeld, since the death of her said husband, William, has occupied the living quarters on the top floor of said property at 210 Camden Street aforesaid, and as a tenant in common has paid no rent, except she has consented to have all the charges on the property paid out of the personal estate in the hands of the administrator.

It was testified to at said hearing by Mr. Newschwander, who drew the Will, that the word "estate" meant the property, the house and land, which is the said Camden Street property.

It is conceded that said Lillian Stedenfeld is entitled to all cash of said Almeda Stedenfeld, deceased, left separate and apart from the estate of August Stedenfeld, Sr., deceased, which remained intact, and the household furnishings of said testatrix.

On March 3, 1920, the arguments of counsel for complainants and defendant were submitted to the Court of Chancery.

On March 17, 1920, that honorable Court filed its opinion, holding that William Stedenfeld took a vested interest in fee in one-half of what the

testatrix called her "estate", which passed under his Will to his widow, the defendant Lillian S. Stedenfeld. That Court further held that as the testatrix by the word "estate" meant all the real and personal property which came to her under the Will of her husband, except the household effects and that cash kept by her "outside of the estate" meant such cash as she kept separate from the "estate" either in her possession or on deposit in bank. That all household effects belonging to the testatrix, such as furniture and other household goods and chattels and cash in possession and in bank, she gave and bequeathed to William S. Stedenfeld, her son, absolutely, and his personal property passed under his Will to his wife Lillian Stedenfeld.

The final decree was entered on the 23rd of April, 1920.

The complainants have now appealed from such part of said final decree as is hereafter referred to.

BRIEF OF THE ARGUMENT.

POINT I.

William Stedenfeld, deceased, received by direct devise from his mother, Almeda Stedenfeld, deceased, a fee simple vested interest in one-half ($\frac{1}{2}$) of the realty of which she died seized.

We must consider the entire last will and testament in order to construe the paragraph in question, because the intention of the testatrix governs and can only be ascertained from the whole scheme of the manner in which she disposed of her estate.

The testatrix in the second (2nd) paragraph of her Will, used the following language: "That one-half ($\frac{1}{2}$) of my estate is to go to my son William S. Stedenfeld, and if he should die before his wife, she is to get one hundred and fifty dollars (\$150.00) only from this one-half ($\frac{1}{2}$) of the estate, the balance to be divided equally between my step-son, August Stedenfeld, and my two (2) grand-daughters, Almeda and Anna Marie Stedenfeld."

And in the third (3rd) paragraph of her Will, the testatrix expressed herself in the following language: "To my step-son August Stedenfeld, I leave one quarter ($\frac{1}{4}$) of my estate."

While in the fourth (4th) paragraph the testatrix used the following words: "The balance one quarter ($\frac{1}{4}$) of the estate to be divided equally between my two (2) grand-daughters, Almeda and Anna Marie Stedenfeld, and my cousin Lena Lertz, share and share alike."

Considering the second (2nd) paragraph there is a direct devise to William S. Stedenfeld, or as the testatrix termed it "To my son William S. Stedenfeld", using the words "my son", because

William was her only child of the full blood, and the only son of her marriage with August Stedenfeld, Sr., deceased, and naturally his mother, the testatrix, made him the object of one-half ($\frac{1}{2}$) of the bounty to be disposed of by her Will. Furthermore, it is undisputed that the law favors those of the whole blood in preference to those more remotely connected.

The words "That one-half ($\frac{1}{2}$) of my estate is to go to *my* son William S. Stedenfeld, and if he should die before his wife, she is to get one hundred and fifty dollars (\$150.00) only from this one-half ($\frac{1}{2}$) of the estate, the balance * * *" is to be construed to mean if her son William S. Stedenfeld died before his wife in the lifetime of the testatrix, then and in that case, the gift over would take place, but the devisee, William, surviving the testatrix, he took an absolute estate vested in fee.

It is a well-settled rule of construction and has never been contradicted that, in absence of words showing a contrary intention, the death of a child in a Will, where a bequest or devise is, in terms, to such child direct with a provision in case of decease of such child for the bounty to go to some other person or persons, refers to a death occurring during the lifetime of the testator. *In re Owens Will*, 159 N. W. 906. *Bishop vs. McClelland*, 44 N. J. Eq. 450. *Dranow vs. Sherry*, 80 N. J. Eq. 447. *Erwin vs. Waterbury*, 174 N. Y. S. 677. *Mickleys Appeal*, 92 Pa. 975. *Haigler vs. Haigler*, 80 So. 864. *Beatty's Administrators vs. Montgomery's Executors*, 21 N. J. Eq. 324. *In re Starks Estate*, 107 A. 699. *McDowell vs. Stiger*, 58 N. J. Eq. 125.

In the *Owen* case, the testators' six (6) children survived him. One of the children, Margaret H. Carroll, died and her husband claimed her share of the estate as her personal representative. The court applied the above rule and held that Mar-

garet's husband was entitled to her share of the estate.

There is also considerable New Jersey authority on this point. In the case of *Brown vs. Lippincott*, 49 N. J. Eq. 44, the Chancellor on page 46 says: "It is a well-settled rule of testamentary construction that where there is a bequest to one person, and in case of his death to another person, such and similar expressions unexplained by the context, will be held to mean death happening before the period of distribution, or payment." *Cowley vs. Knapp*, 13 Vr. 297; *Burdge vs. Walling*, 45 N. J. Eq. 11. 29 Am. & Eng. Encyc. of Law, 486, ¶ 23, also on p. 502. *Burlson vs Mays*, 66 So. 36. *Washbon et als. vs. Cope et als.*, 39 N. E. 388. *Quackenboss vs. Kingsland*, 102 N. Y. 128. *Snyder vs. Taylor*, 88 N. J. Eq. 513. *Denise vs. Denise*, 37 N. J. Eq. 163. *Yawger's Executor vs. Yawger et als.*, 37 N. J. Eq. 216.

The reason of this rule is that the expression "in case of" naturally imports a contingency which would not exist if the death contemplated is that of the first taker, generally, for his death generally is certain to happen, and also the law favors the speedily vesting of estates. In the absence of anything in the Will to otherwise fix a period of distribution or payment, the period will be considered to be the death of the testator, so that the contingency will terminate, if the first taker survives the testator. But when the Will plainly indicates that another time is intended for distribution that time, in pursuance of the cardinal rule that the testator's intention apparent upon the face of the Will is to govern its construction, must be taken."

This case is exactly in line with the instant case. If the first taker or devisee survives the testator, the contingency is terminated. William Stedenfeld outlived the testatrix, Almeda Stedenfeld, and thereupon he became vested with a one-half ($\frac{1}{2}$)

interest of all the real property, and furthermore, according to the sound rule of law as above, the contingency became terminated, consequently the complainants' claim to William's one-half ($\frac{1}{2}$) is absolutely groundless. In the case of *Fischer vs. Eggert*, Chancery of New Jersey, 64 A. 957, the court through Learning, V. C., on page 958 says: "I recognize the rule often adopted in this and other jurisdictions, that where there is a devise to one person and in case of his death to another such expression is ordinarily confined to the event of the death happening before the death of the testator. It is frequently said that the reasoning upon which the rule referred to is founded is "the inconsistency of treating as a contingent event, that which of all others is the most certain and *the leaning of the courts in favor of vesting and against a construction which will part from the absolute enjoyment and keep in doubt and suspense the nature of the interest bestowed.*"

The court in *Barrell vs. Barrell*, 38 N. J. Eq. 60, aff. 39 N. J. Eq. 603, states the well-founded rule that where there is a bequest to one person and in case of his death to another, the gift over is construed to take effect only in the event of the death of the prior legatee before the period of payment or distribution, unless an intention appear to the contrary. The court held in this case, that the intention of the testator was to give each of his children an absolute estate in the residue, subject only to be defeated by the death of the child in "testator's" lifetime. *Marvel vs. Wilmington Trust Co.*, 87 A. 1014. *Vanderzee et als. vs. Slingerland, et als.*, 106 N. Y. 47.

Some difficulty or ambiguity may arise over the words "the estate" used by the testatrix. Mr. Newschwander, a layman, who drew the will, testi-

fied before the court below at the hearing on February 11th, 1920, that the testatrix meant by "the estate", the property, the house and ground, which was the property No. 210 Camden Street, Newark, New Jersey, the only realty the testatrix was seized of at the time of her death.

Thus it is very certain that the testatrix meant to devise absolutely one-half ($\frac{1}{2}$) of her realty to her son William S. Stedenfeld as her estate meant real estate.

A reading of the provisions of the Will, makes it manifest that the one above all others she desired and intended to provide for was her son, William. She mentions him before any other legatee or devisee, devising to him first of all, even before directing the payment of her debts, "one-half ($\frac{1}{2}$) of my estate" and in other provisions of the Will it is perfectly clear that William is the sole legatee of all the personalty bequeathed. The foregoing facts evince a tendency of leaning by the testatrix to favor her only offspring—her son William S. Stedenfeld.

The words heirs and assigns are omitted in the Will, but nevertheless, an absolute estate is devised. This contention is supported by statute, *4 Comp Stat., p. 5873, Sec. 36*. Consequently, there can be no weight to the argument that a fee was not devised, as the devises to the other devisees created unquestionably a fee under the statute, though the words "heirs or assigns" are omitted, words of inheritance not being necessary to convey a fee under the statute.

To adopt the position of the complainant, we would have to hold that the son of the whole blood, William, received an estate of lesser degree than the children of the half blood, because their contention is that William only received a life estate

not subject to be increased on any condition to a fee, whereas they, the children of the half blood, would receive their shares in fee and, upon the death of William, the entire estate in fee. The intent of the testatrix was that William, if he outlived his mother, should receive one-half ($\frac{1}{2}$) of the estate or realty to do with it as he pleased, but that if he died before his mother, then, this one-half ($\frac{1}{2}$) should be divided among the other step-children, grand-children, and collateral relatives. Can it be said that William was to receive less than the others mentioned in the Will? Did he not receive all of the personalty? This clearly shows the intent of the testatrix to prefer the child of her own blood.

The one-half ($\frac{1}{2}$) interest of William in the realty vested upon the death of his mother. He was seized of an estate of inheritance which he could have disposed of in his lifetime, subject to his wife's inchoate right of dower. The other method of disposition was by Will and under his said Will, he devised this vested interest in one-half ($\frac{1}{2}$) of this realty to his said wife.

It is significant to show the intent of the testatrix was as above stated, in that there is no residuary clause in her said Will, as she intended and believed that upon her death, she had disposed of all her estate to her own child, if he survived her, and to her step-child and grand-children and cousin.

Under the sixth (6th) clause of the Will, the testatrix said that Lillian Stedenfeld, in order to receive one hundred and fifty dollars (\$150.00) under the Will, would have had to survive both her husband and the testatrix.

The above construction bears out our contention in this respect, that it was the mind and intent of the testatrix throughout and especially in the second (2nd) clause of the Will, that the words

“if he should die before his wife, she then to get one hundred and fifty dollars (\$150.00)”, meant if William should die before his wife in the lifetime of the testatrix then, and in that case only, one hundred and fifty dollars (\$150.00) to Lillian, as in the sixth (6th) clause, the testatrix said that Lillian would have to “be alive when this Will is read”, which naturally meant she would have to survive the testatrix. *Butler vs. Flint*, 101 A. 19; *Atchinson et al. vs. Francis*, 165 N. W. 587; *Foley vs. Hook*, 107 S. W. 1188; *O’Connell vs. O’Donnell*, 72 So. 81; *Smith vs. Smith, et als.*, 36 So. 616; *In re Owen’s Will, supra*.

We maintain that on the death of the testatrix, the devisee, her only son William S. Stedenfeld, became vested with an absolute fee simple interest in one-half ($\frac{1}{2}$) of all her realty. The courts favor an absolute vesting. *Williamson, et als. vs. Carnes, et als.*, 120 N. E. 585; *Wright, et als. v. Charley*, 28 N. E. 706; *Fowler vs. Duhme*, 42 N. E. 623.

It is also the well-settled rule of this court, that estates legal and equitable given by Will should always be regarded as vesting immediately, unless the testator by very clear words manifested an intention that they should be contingent on a future event. *In re Blair’s Estate*, 99 Atl. 471; *Hood vs. Maines et als.*, 99 A. 481; *Martin vs. Cook*, 98 A. 489; *In re Owen’s Will, supra*; *Brown vs. Lippincott, supra*; *Fischer vs. Eggert, supra*; *Barrell vs. Barrell, supra*; *Baldwin vs. Taylor*, 37 N. J. Eq. 78, affirmed 38 N. J. Eq. 637; *Herbert vs. Tut-hill*, 1 N. J. Eq. 141; *Van Houten vs. Pennington*, 8 N. J. Eq. 272, affirmed 8 N. J. Eq. 745; *Kimble vs. White*, 50 N. J. Eq. 28.

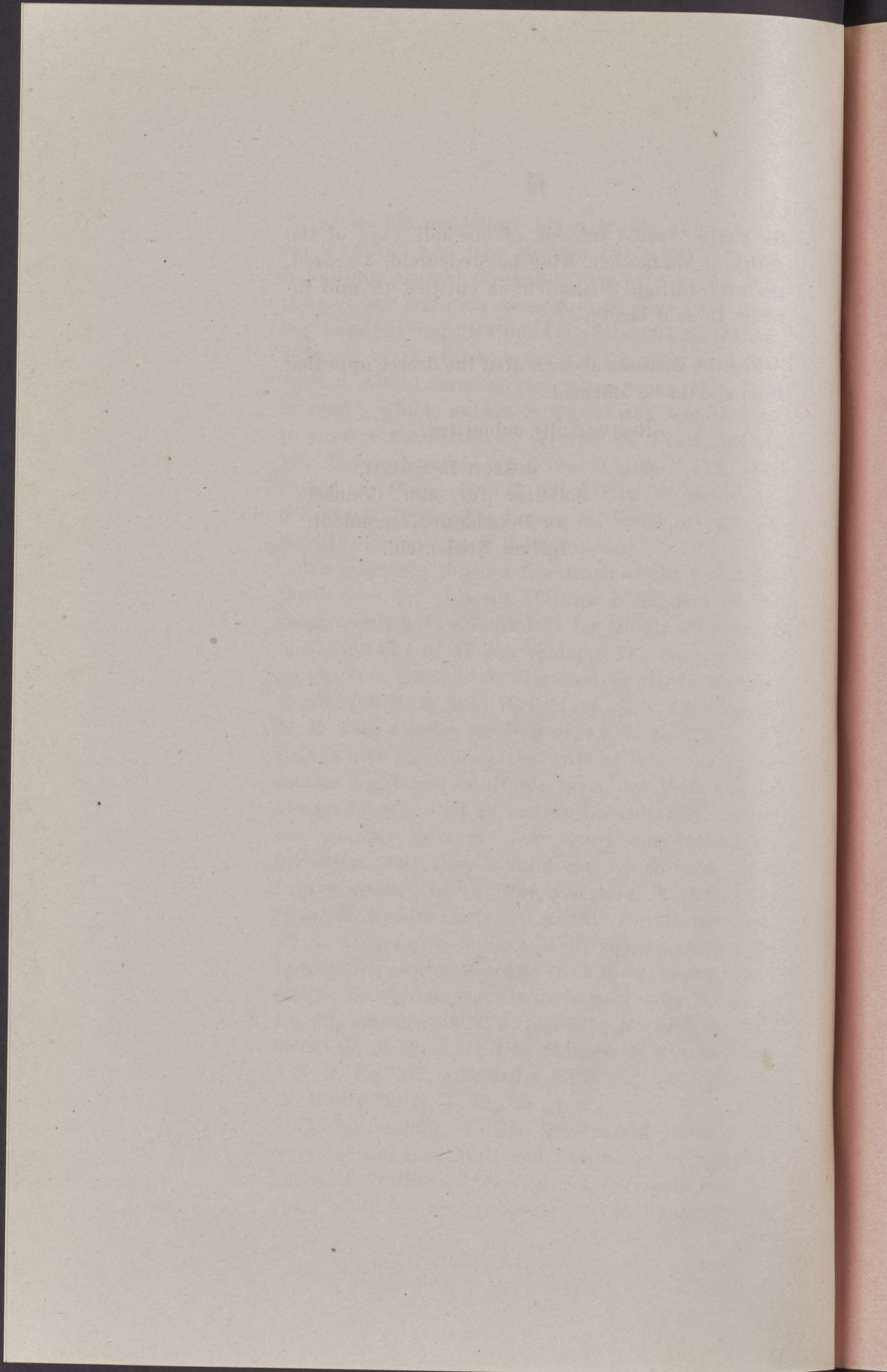
The defendant, Lillian Stedenfeld, under the terms of the Last Will and Testament of her said husband, William S. Stedenfeld, deceased, was devised of all his real property and as he received a

fee simple vested interest of one-half ($\frac{1}{2}$) of the realty of his mother, Almeda Stedenfeld, deceased, the said Lillian Stedenfeld is entitled to said interest in said realty.

For the Reasons above stated the decree appealed from should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Solicitor for and Counsel
for Defendant-Respondent,
Lillian Stedenfeld.



INDEX

Southern J

For more books visit

© 1911 by the University of Chicago Press