

New Jersey Court of Errors and Appeals

RAY ESTATE CORPORATION,

Plaintiff-Respondent,

vs.

ANDREW J. STEELMAN, substituted
administrator, c. t. a. of Alexan-
der Miller, deceased,

Defendant-Appellant.

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BRIEF FOR DEFENDANT-APPELLANT.

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Alexander Miller died May 6th, 1909, domiciled in the State of New York, where, after a long contest, his will was admitted to probate.

In August, 1912, an exemplified copy of the will and probate proceedings were filed, under Section 23, Orphans' Court Act, with the Surrogate of Hudson County. Subsequently letters of administration, c. t. a., issued to Thomas G. Haight, who reduced the New Jersey assets to possession. 30

In January, 1913, our Orphans' Court made an order limiting creditors and on February 21st, 1914, entered a decree barring creditors.

Plaintiff is a New York Corporation. All of the transactions involved in this suit were had in New York and relate to New York real estate.

The plaintiff filed no claim with the New York Administrator and brought no proceedings to 40

collect, in New York. After the decree barring creditors made by the Hudson County Orphans' Court, the plaintiff offered to file its claim here but the administrator, c. t. a., declined to receive it out of time. Suit was brought and resulted in a judgment for the plaintiff.

I.

10 **The first defence is the decree barring creditors.**

On motion, the answer setting up the decree was stricken out. No opinion was filed.

The only ground urged for striking out the answer setting up the decree barring creditors is set forth by counsel on p. 17 of the case, as follows:

20 "The position I took in the matter was, that regardless of what the ultimate rule might be with respect to the distribution of the fund in the hands of the ancillary administrator, that this suit was simply for the purpose of establishing our claim and that we had the right to proceed to a judgment and to establish our claim, and if after that there was any question of our right to go against the assets in the hands of the administrator it would be controlled after judgment either by this Court or by the Orphans' Court."

30 This very fine distinction resulted in putting the defendant in a position where he could not avail himself of the defence set up, namely, that the plaintiff was barred by the decree.

The language of Section 70 of the Orphans' Court Act is:

"Any creditor who shall have neglected to bring in his debt, demand or claim within the time so limited shall by such decree be

forever barred of his or her action therefor against such executor or administrator, except as hereinafter provided."

"The decree is an absolute bar to the suit."

Ryan v. Flanagan, Administrator, 38 N. J. L., 161.

"The final decree of the Surrogate barring all claims against decedent's estate not presented within the time limited by notice, pursuant to this section, is conclusive and cannot be attacked collaterally."

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Seymour v. Goodwin, 68 N. J. Eq., 189.

See also *Ordinary v. Wolfson*, 60 N. J. L., 420.

II.

The second defence to the claim is that defendant is an ancillary administrator, c. t. a. whose duty is merely to collect the assets in New Jersey, pay the claims of resident creditors and remit the balance to the place of original probate.

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This defence was set up in an answer alleging that the plaintiff was a New York Corporation, where decedent was domiciled and where original administration was granted and that the estate in the hands of defendant was not liable in this jurisdiction.

This answer was also stricken out on motion with no opinion to guide us.

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This question is very important and in fact necessary to a settlement of the estate.

Alexander Miller died very much insolvent. Claims aggregating upwards of \$50,000 have been filed with his personal representative in New York, where the assets are less than \$2,000. About \$12,000 in claims have been filed with the Administrator, c. t. a., in New Jersey. About \$8,000 in

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claims are filed in both jurisdictions, and three claims filed in New Jersey and not in New York.

Only two claims were filed by residents of New Jersey; both were successfully contested by the administrator.

10 The result is that if the judgment is permitted to stand as entered the plaintiff will, with a few other creditors, exhaust the entire estate in New Jersey, and the creditors who have filed in the original jurisdiction will get nothing, as the assets there have been more than eaten up in the litigation establishing the will.

A creditor having a claim for \$7,500 in the form of a judgment in New York was successfully defeated by the Administrator, c. t. a., by a plea setting up the decree barring creditors.

The following claims have been filed with the administrator in both jurisdictions:

20	1. Roe & Runyon	\$909.45
	2. Lyman E. Warren (filed in New Jersey in the name of Winfield M. Burdick	5805.30
	3. M. Celia Johnson	98.00
	4. B. Albricht	177.00
	5. Blanche Yovin	1000.00
	6. Sarah Rigney	184.58
	7. Clarence I. Hamilton	467.61
	8. Mary Ella Miller, Administratrix of Jos. Rigney, deceased	658.86
	9. Clarence I. Hamilton (Louis Rupert)	90.00
30	10. Anna Irene Marsh	3799.90

The following claims have been filed with the New Jersey administrator and not filed in New York:

	1. Fifth Ave. Shop Inc.	85.00
	2. Mary Ella Miller	460.00
	3. Ray Estate Corporation	2431.01

The following claims (as shown by the Robinson petition) have been filed in New York, but not in this jurisdiction:

1.	Charles G. Lowe	\$5.35	
2.	Mollay Bros.	203.00	
3.	A. Nelson & Co.	12.09	
4.	N. Y. Athletic Club	2.00	
5.	John Rollman	33.38	
6.	Riverside Stable Co.	8.50	
7.	Hunter & Gordon	106.15	
9.	Abbott Company	11.39	
10.	Dr. Harlow Brooks	272.00	
11.	Consolidated Gas Co.	9.52	
12.	Caspian Hale	15.20	
13.	Mary Ella Miller	12,000.00	10
14.	American Surety Co.	2500.00	
15.	May E. Miller	35,000.00	
16.	Mary E. Miller (judgment)	6567.38	
17.	John T. Duane (judgment)	697.56	

The question for the consideration of the court is whether under the circumstances of this particular case, the fund in the hands of the New Jersey administrator should be distributed among the creditors who have filed their claims here, or be remitted to the New York administrator.

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Statement of Law.

It is settled in a long line of cases that the funds in question are distributable according to the laws of decedent's domicile. See in Gratan's Estate, 8 Buchanan, 225-232, and cases cited.

Sec. 23 of the Orphans' Court Act, governing the probate here of the decedent Miller's will, provides that "the person to whom such letters (c. t. a.) may be issued shall not be obliged to file an inventory or account unless the Ordinary or the Orphans' Court of the County in which probate may be granted shall so order. * * *"

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The New Jersey cases, dealing with the question of the relative rights of domiciliary and ancillary administrators, are:

Norman, Administrator, v. Grogard, 2
C. E. Gr., 425;
Pratt v. Douglas, 11 Stew., 516;

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Banta v. Moore, 2 McCart., 97;

Pisano v. Shanley Company, 37 Vr., 1.

In the Norman case the intestate died a resident of New Jersey, where the bulk of his property was. Lewis, the administrator, obtained letters both in New Jersey and Pennsylvania, where a portion of the intestate's property was. The case came up on appeal from a decree of the Hudson County Orphans' Court, requiring the administrator here to file an inventory of the whole estate and give security in the whole amount of the property.

Chancellor Green, in reversing the decree of the Hudson County Orphans' Court, stated that the usual practice was for the administrator in the place of the intestate's domicile to include in his inventory all of the property of the intestate, the securities for which come to his hands. But in strictness the grant of administration operates only within the jurisdiction where it is granted and gives no legal right to collect debts or recover property elsewhere.

In defining the status of the funds in the hands of the ancillary administrator, Chancellor Green followed the leading case of *Harvey v. Richards* (*infra*), stating the law to be as follows:

"The distribution of the funds must be regulated by the law of the domicile of the intestate, but whether that distribution shall be made by the tribunals of the several States by which the letters are granted, or whether the balance for distribution shall be transmitted by the foreign administrator to the place of the domicile, there to be distributed, depends upon circumstances and rests in the sound discretion of the tribunal before which the account of the foreign administrator is brought for settlement.

"Where parties interested in the distribution reside in the State where foreign administration is granted the fund will be retained and distributed there.

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“Where administration has been granted in the place of the domicile of the intestate and ancillary administration elsewhere, for the purpose of collecting debts, if the funds in the hands of the foreign administration are needed for the purpose of due administration in the place of the domicile, the mode of reaching it would be to require its transmission or distribution after all claims against the foreign administration have been ascertained and settled.”

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The case of *Pratt v. Douglas* throws very little light on the subject. It follows the line of cases holding that the New Jersey court in exercising jurisdiction concerning foreign testators' personal property, will be governed by the law of the testator's domicile, and states that primarily the courts of a foreign country in which personal property of a testator may be found have jurisdiction to grant only letters of probate and of actions for the recovery of the property ancillary to its administration in the courts of the testator's domicile, but under certain circumstances may entertain jurisdiction relating to the construction of the will.

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In *Pisano v. Shanley Company* the opinion is by Chief Justice Depue, who was dealing with the pleadings in an action of tort to recover damages under the death act. In stating the relative rights of domiciliary and ancillary administrators, Justice Depue said:

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“The grant of administration on the personal estate of a deceased is vested primarily in the courts of his domicile. Administration taken out in another state is ancillary to the administration in the forum of the domicile. Such an administration depends upon the fact that there is property within the foreign jurisdiction to be administered upon and debts there to be paid, or for the purpose of collecting the property of the deceased, realizing upon it and remitting the

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proceeds to the primary administrator. The grant of administration operates only within the jurisdiction where it is granted. It gives no legal right to collect debts or recover the possession of property elsewhere. When a foreign administrator is appointed in another state, his appointment is ancillary to the administration in the place of the domicile. For property which he obtains within the jurisdiction where his letters are granted, after payment of debts in that locality, he accounts to the administrator at the domicile of the deceased."

The general rule as to disposal of assets by ancillary representatives, is laid down in 13 Am. & Eng. Ency., page 935, as follows:

"The principal duty of an ancillary administrator, after collecting the assets to which his authority extends, is to pay the claims of the local creditors of the decedent out of such assets, unless it is shown that the principal estate is insolvent, in which event the payments are to be made pro rata according to the whole amount of the assets and whole amount of debts."

Though the principal duty of an ancillary administrator is to pay the claims of local creditors, and that is the main purpose for which he is appointed, it is generally held that he is not limited to the payment of local creditors, but may pay *pari passu* with them the claims of foreign creditors; though there may be some conflict of authority on this point. But of course a creditor cannot obtain payment of his claim in both jurisdictions, or by presenting it in both obtain more than his pro rata share in case the assets are not sufficient to pay all in full; and if there is any property in the country where the creditor resides which is applicable only to the claims of local creditors, he should exhaust his remedies there before seeking satisfaction in another jurisdiction (p. 937).

Harvey v. Richards.

The leading case on this subject and the one which established the principles followed in New Jersey is *Harvey v. Richards*, 1 Mason, 380. In his opinion, Judge Story reviews all the earlier American and English cases and established the doctrine contended for by Daniel Webster, who was counsel for the plaintiff. The suit was brought by a bill in equity to compel the defendant, who was Administrator c. t. a. of the Murray, late of Calcutta, to distribute the undivided estate of the testator in this country among the next of kin residing here. The executors appointed by the will resided in Calcutta, and the defendant was appointed administrator in Massachusetts for the purpose of collecting testator's effects there. The question that came up was whether the defendant should be ordered to distribute the effects in his hands among the next of kin in this country, or should send them to Calcutta to be distributed by the executors there.

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Judge Story laid down the doctrine that:

"A Court of Equity here has authority to decree distribution in cases like the present according to the *lex domicilii* upon the application of the legatees, or the next of kin, or other competent parties; that whether it will decree distribution must depend upon the circumstances of each case and that it is incumbent on those who resist the distribution to establish in the given case that it may work injustice or public mischief. This doctrine is, as I think, sustained by principles of public policy and is perfectly consistent with international comity. It stands also commended by its intrinsic equity and although the authorities are not uniformly in its favor, yet they leave the court at liberty to pronounce that judgment which if the question were entirely new it would be disposed to entertain."

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* * * *

10 “The correct result of these considerations upon principle would seem to be that whether the court here ought to decree distribution or remit the property abroad is a matter not of jurisdiction but of judicial discretion depending upon the particular circumstances of each case. That there ought to be no universal rule on the subject, that every nation is bound to lend the aid of its own tribunals for the purpose of enforcing the rights of all persons having title of the fund when such interference will not be productive of injustice or inconvenience or conflicting equities.”

* * * *

20 “I feel myself compelled therefore (very reluctantly, I confess) to admit that by the law of Massachusetts the Probate courts have no jurisdiction, either originally or by a suit on the probate bond, to compel a final settlement or distribution of the estate of a foreigner, whose assets have been collected here under what is called an ancillary or auxiliary administration. And if this were a case depending upon the local law of the State so conclusive should I deem it upon me, not only from the learning and authority of the court itself, but from the necessity of holding upon principles of public convenience and policy the judicial construction of State tribunals upon their own laws conclusive upon all other tribunals, that I should not scruple to adopt it in its whole extent, whatever might be my own doubts on the subject.”

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30 “Although a Court of Probate of that State (Massachusetts) can administer no relief in virtue of its statutable powers, it does not follow that a court of Chancery cannot, in the exercise of its equitable jurisdiction.”

In dealing with the question of what particular circumstances justified the distribution in the ancillary jurisdiction, Judge Story said:

“Cases have been already stated in which great inconveniences would attend the establishment of any rule excluding such (ancillary distribution. It may be admitted also that there are cases in which it would be highly convenient to decline the jurisdiction and to remit the parties to the forum domicilii. Where there are no creditors here and no heirs or legatees here, but all are residents abroad, there can be no doubt that a court of equity would direct the remittance of the property upon the application of any competent party.” 10

Except where governed by local law, all the cases seem to follow *Harvey v. Richards* that the question whether the court governing the ancillary administrator ought to decree distribution, or remit the property to the domiciliary administrator is not a question of jurisdiction, but of judicial discretion, depending upon the particular circumstances of each case.

The difficulty is, therefore, to determine just 20 what circumstances justify retention or remittance. The following cases may throw some light on the question as to what circumstances have been deemed sufficient to justify the courts in either retaining the funds, or remitting them to the domiciliary administrator.

New York.

The case of *James Hughes, Administrator*, 95 30 N. Y. 55 (Court of Appeals 1884) follows *Richards v. Mason* in holding that where there are two administrators of an estate, one in the place of the domicile of the testator and the other in a foreign jurisdiction, whether the courts of the latter will decree distribution of the assets collected under ancillary administration or remit them to the jurisdiction of the domicile is a question not of jurisdiction but of judicial discretion, depending upon the circumstances of the particu- 40

lar case. In that case administration was granted first in New York and afterwards in Pennsylvania, the place of the domicile. The bulk of the estate was in New York; all of the next of kin resided there. The rule of distribution in the two States was the same. Upon the accounting of the New York administration the Pennsylvania administrator intervened, claiming that there were creditors in Pennsylvania, but he produced

10 no evidence to substantiate that claim and it was proved that there was in his hand a surplus after payment of all debts and demands against the estate. It was held that it was incumbent upon the Pennsylvania administrator to show the existence, in that State, of unpaid debts of the intestate requiring that the funds should be remitted and in the absence of such proof it was presumed that there was none. The New York court decreed distribution, holding that the only

20 effect of remitting the fund to Pennsylvania would be to deplete the estate by subjecting it to double commissions and unnecessary charges.

In *Parsons v. Lyman*, 20 N. Y. 103, (Court of Appeals 1859) testator at the time of his death was resident of Connecticut, where his will was probated. Later the executors received letters from the Surrogate of New York County. The estate was solvent. The bulk of the estate was before the Probate Court in Connecticut and the

30 executors desired to remit to that jurisdiction for distribution the part which had been collected by virtue of the New York administration. Several of the legatees, who, after the testator's death, became residents of New York, insisted that distribution should be decreed in New York. It appeared that the New York Surrogate differed in opinion from the Courts of Connecticut in reference to the construction of the law. It was held that the funds should be remitted for distribution in Con-

necticut. In rendering the opinion Judge Denio relies upon *Harvey v. Richards* in saying whether the funds should be remitted or not should depend upon the special circumstances of each case.

In *Despart v. Churchill*, 53 N. Y. 192 (1873), following the same doctrine, the court directed the fund to be remitted to the place of original jurisdiction, because the disposition of the fund required by law, was contrary to the law of New York but conformable to the laws of California, **10**
the place of the domicile.

It is held in *Lawrence v. Elmendorf*, 5 Barb. 73 (N. Y. 1848) that the true principle which should govern in all cases of double administration is to so marshal the different funds under administration as to produce equality among all creditors, whether foreign or domestic. Upon this principle the courts of New York will so control the distribution of funds there, with reference to preferences obtained by creditors of an estate in another State, as to secure equality among all the creditors. **20**

Massachusetts.

The prevailing practice in Massachusetts is not to decree distribution but to remit the funds to the principal administration, but it is admitted that even here there is a discretion in the courts where the funds are found and if they *do* remit them it is merely from courtesy. **30**

In regard to the payment of resident creditors the general practice in Massachusetts seems to be to pay them fully when the estate is upon the whole clearly solvent, but if insolvent, to pay them pro rata, taking all the creditors of all the estate so far as can be ascertained into account, although this latter qualification of the rule of paying all resident creditors is by no means uniform. Each separate administration is foreign to **40**

all the others and absolutely independent of them and may do as it will, but in the principal administration the entire mass of the creditors are entitled to have their claims allowed and to share ratably in the assets, until fully paid; and the more equitable course, because the more equal, would be to have the funds in other States there collected and remitted to the principal jurisdiction. See:

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Richards v. Dutch, 8 Mass., 506;
Dawes v. Boylston, 9 Mass., 337, and,
Stevens v. Gaylord, 11 Mass., 257;
Davis v. Estey, 8 Pick., 475.

In *Fay v. Havens*, 3 Metc., 109, Letters of Administration had been taken out in Louisiana, the domicile of the deceased and also in Massachusetts, where assets were left. The Court said:

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“The administration granted in Massachusetts was merely auxiliary and the only duty devolving upon such administrator would be to collect the assets here and appropriate so much of the avails of the same to the payment of debts due our citizens as would be authorized by the general solvency or insolvency of the estate of the deceased, and remit the balance to the place of principal administration. It has been I apprehend, the uniform doctrine of this court that any other administration than that granted where the deceased had his domicile, must be considered as an

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rule seems to have been very generally auxiliary administration. * * * The rule seems to have been very generally sanctioned that as to the property in the hands of the executor or administrator acquired without the jurisdiction of the principal administration, he is to be held accountable for its proper application only to the legal tribunals of the State in which the principal administration was taken.”

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Pennsylvania.

In *Welles estate*, 161 Pa., 218 (1894) it is stated that while the general rule requires that the surplusage of personal estate shall be remitted from the ancillary to the domiciliary jurisdiction for distribution, the court of the ancillary jurisdiction will not remit such surplusage where there are parties entitled to share in such property claiming distribution in the ancillary jurisdiction and there are no domiciliary creditors. Chief Justice Stirritt, in determining the case, said:

“The court will not send the parties to seek their rights at great, unnecessary expense and delay to a foreign tribunal, but will make distribution in accordance with the law of the domicile. The situs rei and the presence of the parties are sufficient to justify the domiciliary court in its assumption of jurisdiction to distribute.”

In *Barrie's appeal*, *Foster's estate*, 88 Pa., 131 (1878), it was held that where the ancillary administrator in Pennsylvania had paid all lawful resident claimants on the fund, the balance should be paid to the administrator of the domicile, and further, that a creditor who had the same domicile as that of the decedent cannot make claim to the funds in Pennsylvania, but must resort to the jurisdiction of his domicile. Judge Sharswood was one of the judges who sat in this case.

In *Dent's appeal*, 22 Pa., 514 (1854) there were no creditors of the decedent remaining unsatisfied. Two-thirds of the distributees demanded distribution in Pennsylvania and objected to the delay and expense of remitting the fund to the administrator of the domicile. No one objected to the distribution in Pennsylvania except Mr. Dent, the administrator of the domicile, and the only reason which he urged was that he wished to charge the fund with the expense of collecting and

distributing it. The court held there was no reason why the fund should be remitted and consequently distributed it in Pennsylvania.

10 In *re Adlums estate*, 22 Penn. State 514 (1854) A, residing in the district of Columbia, died leaving a will of which B, residing there also, was administrator with the will annexed. The deceased owned property in Pennsylvania and an administrator, with the will annexed, was appointed in that State. All the legatees resided in said District. These legatees demanded their several shares of the Pennsylvania administrator. B, the principal administrator, insisted that the whole fund should be paid over to him for distribution: *held* that it was within the discretion of the court to these either mode of payment to the legatees, and it ordered payment to be made to them direct by an auxiliary administrator.

20 In *re Del Valle's estate*, 17 Weekly Notes Cases, 30, A died domiciled in Cuba; an ancillary administration was granted in Pennsylvania. Cuban creditors of B, one of the legatees, demanded that their share be sent to Cuba for distribution, but this was resisted by Pennsylvania creditors of B, *held* that the funds should be distributed in Pennsylvania.

Illinois.

30 In *Young v. Wittenmyer*, 123 Ill., 303, the plaintiff qualified as administratrix in Illinois, where deceased had his home and then qualified in Iowa, where there was a large, personal estate. She fully administered in both States and voluntarily disbursed a large fund in Iowa to the heirs. The fund paid to the heirs in Iowa was more than sufficient to have paid the debts, *held* that since the administration in Iowa was but auxiliary to the administration in Illinois it was the duty of

the administratrix, after the debts in Iowa were paid, to bring the net amount of the funds from the Iowa administration to Illinois and pay the debts before any distribution to the heirs.

Maryland.

Cassilly v. Meyer 4 Md., 1. A citizen of Ohio executed his will there and died, leaving real and personal estate in Maryland, and five children, residents of Ohio, two of whom were his executors, the other three filed a petition in the Orphans' Court of the City of Baltimore, where ancillary administration had been granted, against the executors, alleging payment of debts, legacies, &c., and praying for an account and distribution of the assets in Maryland. All of the parties interested in the assets being before the court in Maryland and no circumstances showing any particular propriety or necessity for transferring the property to Ohio being presented but by so doing further delay and expense would be incurred, distribution was made in Maryland. 10 20

See also:

Williams v. Williams, 5 Md., 467.

Vermont.

Probate Court v. Kimball, 42 Vt., 320. In this case the domicile of the testator, and the principal executor was in Canada. The other executor lived in Boston. Both were in possession of ample assets and were administering in both jurisdictions. The domicile of the prosecutors being out of the State of Vermont and there being no reason for seeking a specific administration of the assets and the payment of their legacies in that State the circumstances were held to make a case that would call upon the Probate Court of Vermont to remit the fund to the principal administration. 30 40

Churchhill v. Boyden, 17 Vt., 319, holds that it is well settled in Vermont that only local creditors are entitled to have their claims allowed and paid by the ancillary administrator. This case cites *Vaughan v. Barret*, 5 Vt., 33. *Hunt v. Fay, administrators*, 7 Vt. 120. *Porter's heirs v. Heydock*, 6 Vt., 374, which latter case says:

10 "It has never been questioned that the court of probate where the ancillary administration is, will take no notice of foreign creditors."

Prentiss v. Van Ness, 31 Vt., 95, is authority for the proposition that in cases of ancillary administration granted in Vermont upon the estate of an insolvent, deceased person, who died elsewhere, if it does not appear that he left property out of Vermont, non resident creditors may prove their claims there and share pro rata with domestic creditors in the distribution of the estate.

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Alabama.

Grayson v. Robertson, 122 Ala., 330—25 So., 229, holds that upon the appointment of an ancillary administrator of the estate of non-resident decedent the title to all personal assets in the State of his appointment vests in such appointee and he is clothed with all powers incident to the administration of such assets. His powers are exclusive, leaving to the foreign and domiciliary administrator only the right to receive the residuum of the estate on the final settlement of the ancillary administration.

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In the absence of special, equitable circumstances each administration must be settled in the jurisdiction in which it was granted; and when any surplus remains in the hands of foreign or ancillary administration, after paying all debts and charges of administration in that jurisdiction,

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the foreign court will, in a spirit of comity and as a matter of judicial discretion, not as a matter of right, order it to be paid over to the domiciliary administrator.

Wright v. Phillips, 56 Ala., 69.

Louisiana.

In *re succession of Gains*, 49 La., 324, it is held that if the legatees, creditors, and all other interested parties are before the court controlling the ancillary administration and requesting it to distribute the funds, the court may order them distributed, but if the citizens of the ancillary jurisdiction are not affected, the court should order the surplus funds in the hands of the ancillary administrator to be remitted to the administrator of the decedent domicile. **10**

Arkansas.

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Shegogg v. Perkins, 34 Ark., 117 holds that when different administrations are granted in different countries, the one at the intestate's domicile is the principal administrator. It is the duty of the ancillary administrator to collect the assets in his State and apply them to the payment of debts due citizens of his State and remit the balance to the principal administrator. He cannot allow and pay claims of non-residents claimants. **30**

Michigan.

In *Ashton v. Miles*, 49 Ia., 564, it was stated to be the duty of an ancillary administrator to proceed with the payment of local creditors without reference to the condition of the principal estate, unless it be shown that the principal estate is insolvent, and it was suggested that it would be lawful for claimants to show that fact, but that it was not the duty of the ancillary administrator to do so.

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See also:

Minor v. Ashton, 45 Iowa, 221.

California.

The paramount object of ancillary administration is to collect the assets locally situated and to pay therefrom the demands of local creditors, if there be any.

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McCully v. Cooper, 114 Cal., 258.

RANDOLPH PERKINS,
Attorney for Defendant.

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NEW JERSEY
Court of Errors and Appeals.

RAY ESTATE CORPORATION,
Plaintiff, Respondent,

vs.

ANDREW J. STEELMAN, SUBSTITUTED
ADMINISTRATOR C. T. A. OF ALEX-
ANDER MILLER, DECEASED,
Defendant, Appellant.

} On Appeal from
Supreme Court
of New Jersey.

Brief of Plaintiff, Respondent.

The grounds of appeal of the appellant all pertain to the order of Mr. Justice Minturn striking out the second and third defenses (State of Case, pp. 7, 10), and the rulings of the trial court in conformity thereto (Case, pp. 28-31). So far as the merits of the claim itself are concerned, no question is raised. If the second and third defenses are properly excluded, the claim stands undisputed (Case, p. 2).

Plaintiff's action in the Supreme Court was to recover

(1) Rent due under a lease or ground rent,
and

(2) Taxes and water rates paid by plaintiff
to prevent a sale of the property by the taxing
authorities.

The lease did not expire until November 1, 1914 (Case, p. 13), and rent accrued down to that day. The final half-year's rent became due on November 1, 1914, which is included in the present judgment, the account having been continued down to the time of trial, by agreement of counsel, so as to include in this action all the claim which could become due under the lease, and thus avoid a further suit for the balance (Case, p. 13, l. 25). The yearly rent was \$325 (Case, p. 13).

Of the taxes and water rates, \$311.69 was paid October 2, 1913, and \$2,119.32 was paid on May 6, 1914 (Case, p. 6). Further payments were made for taxes and water rates on November 18 and November 24, 1914, respectively, amounting to \$324.76 (Case, p. 14).

There is no allegation of distribution of funds and the filing of refunding bonds by the Substituted Administrator c. t. a.

It was admitted on the trial that the amount of assets in the hands of the Administrator was \$8,200.00, which was more than enough to include plaintiff's claim (Case, p. 26).

At the conclusion of the trial defendant's attorney stated to the Court that the Orphans' Court of Hudson County had that morning decided "the whole thing," and that "the matter is not so important as when we tried it." (Case, p. 42.)

I.

Appellant's first point concerns the defense of the decree barring creditors, being the second defense in the answer (Case, p. 7).

Respondent contends that, its claim having been rejected by the Administrator (Case, p. 26), it was incumbent that suit should be brought within one month or three months to establish the claim, pursuant to the provisions of the Orphans' Court Act, otherwise the statute would run against it.

3 Comp. Stat. 3835, secs. 71, 74.

It further contends that, regardless of any right that it might have to participate in assets then in the hands of the Administrator, it certainly had a right to establish its claim as against assets that might be subsequently discovered. It cannot be said that it was the intent of the statute that the right to go against subsequent assets, provided for by the *70th section* of the above-stated act, could be restricted to those discovered within three months after a claim was rejected simply by the act of an administrator or executor in rejecting a claim. This would be the result if the plaintiff in the present action be not allowed to establish its claim in this action.

Furthermore, this action is a mere transitory action, and is enforceable in any jurisdiction where service may be procured upon a proper representative of the decedent. For whatever it may be worth later on, is there any reason why plaintiff should not be permitted to reduce his claim to judgment in this jurisdiction, even though he may be barred from participating in the assets in the hands of the Administrator by the Orphans' Court? Defendant's rights in the Orphans' Court in this respect, however, cannot be interposed as a defense to plaintiff's action in merely establishing his claim; and that is what Mr. Justice Minturn ruled in striking out this defense. It is submitted that his action in striking out this defense was proper, and should be sustained.

It is further contended that there are assets in the hands of the Administrator undistributed which are more than sufficient to pay plaintiff's claim, and that it has the clear right to prove its claim as to those assets.

Orphans' Court Act, 3 Comp. Stat. 3836, secs. 72, 73.

But, aside from either of the preceding contentions, there would seem to be the undoubted right in the plaintiff to establish its claim as to so much thereof as accrued after the entry of the decree to bar creditors.

This was specifically held in *Wakeman v. Paulmier*, 39 *N. J. L.* 340; and also in *Ryan v. Flanagan*, 38 *N. J. Law* 161, 164, cited by appellant in his brief at page 3. The major portion of the claim accrued after the decree.

The parts of the Orphans' Court Act material to this discussion which are referred to herein are as follows:

Proviso to Section 70.

"* * * provided, nevertheless, that in case such creditor so failing to present his debt, demand or claim shall, after the final settlement of the account of the executor or administrator, find some other estate, not accounted for, he shall be entitled to have his debt, demand or claim paid thereout, or to a ratable proportion thereof, in case other creditors shall be barred of their debts, demands or claims."

Section 71.

"If * * * said claim, or any part thereof, is disputed, such creditor shall bring suit therefore in three months from the time of giving such notice; and in any suit not commenced within said time, said decree shall bar any recovery of the account or part so disputed as if said debt or claim had not been presented within the time so limited by said court."

Section 72.

"In all cases where any executor or administrator shall have settled the estate of any decedent, or may hereafter settle the estate of any decedent, and there has been, or shall be, upon such settlement a surplus to be distributed, it shall and may be lawful for any creditor of said estate, who may have neglected to file his claim with such executor or administrator within the time herein prescribed, to present

such claim to such executor or administrator under oath at any time before said surplus shall have been distributed or paid over according to law, by such executor or administrator, and upon such claim being so presented, it shall be the duty of such executor or administrator to pay the same, or so much thereof as there may be surplus in his hands for that purpose, in case he is satisfied that it is correct and ought to be paid, or, if he is not satisfied of the correctness of such claim, he shall notify such creditor to proceed forthwith to establish said claim by the judgment of some court of competent jurisdiction, and in such case the said executor or administrator shall not make any distribution or payment of such surplus money to or among the devisees or next of kin of said deceased without retaining in his hands a sum sufficient to pay the amount of such claim so presented by such creditor, with interest and costs, in case it shall be established by the judgment of a court, until such creditor shall have had an opportunity to establish the validity of said claim by the judgment of some competent court."

Section 73.

"If such executor or administrator shall neglect or refuse to pay such claim upon being presented in manner aforesaid, it shall and may be lawful for such creditor to bring suit against such executor or administrator for the recovery of said claim, in any court of competent jurisdiction, and the same proceedings may be had for the collection and recovery of said claim as if the same had been duly presented, before the settlement of said estate, within the time herein prescribed."

Section 74 is a further limitation upon the time of bringing suit.

Section 78 of the act provides that upon the payment of a legacy or distributive share a refunding bond shall be taken, which must be filed in the Surrogate's office, and any creditor barred by a decree of limitation may then proceed upon the bond to enforce his claim.

It would be contrary to the terms and the spirit of this act to permit a decedent's estate to escape the payment of a just debt so long as there were assets to answer the claim. "One must be just before one is generous," is the maxim applicable; and our Legislature had this in mind in enacting the legislation referred to. And even after the beneficiary has taken possession of the assets, his bond remains for the benefit of a belated creditor.

In the present case, therefore, there is nothing which does not come within the spirit and reason of these provisions, and the right of the plaintiff to establish his claim, under the circumstances presented, should be sustained.

That the decree barring creditors is conclusive, and cannot be attacked collaterally, as contended by appellant (Brief, p. 3), has been held to be conclusive simply as to the regularity of the proceedings upon which the decree is based, not that its effect is necessarily conclusive as against any action that might involve it.

Wakeman v. Paulmier, supra.

It is respectfully submitted upon this phase of the case, therefore, that the judgment under review should be affirmed.

II.

As to the third defense, we think that the most that the cases cited by appellant in his brief upon this point establish is: That it is a matter of sound judicial discretion whether the assets in the ancillary jurisdiction shall be distributed there or sent back to the original or domiciliary jurisdiction. This can hardly be said to constitute a defense to an action in which a resident of

a foreign State seeks but to establish a claim, but would be rather a matter to be submitted to the Orphans' Court upon its final action in retaining or remitting the funds. It is submitted, therefore, that there is no error in the ruling of the Supreme Court in this respect, and that the judgment should, upon this phase of the case, be affirmed.

Respectfully submitted,

VREDENBURGH, WALL, & CAREY,

Of Counsel with Plaintiff, Respondent.



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Notice of Appeal.

(Filed _____)

New Jersey Supreme Court 10

RAY ESTATE CORPORATION,

Plaintiff,

vs.

ANDREW J. STEELMAN, substituted
administrator, c. t. a., of Alex-
ander Miller, deceased,

Defendant.

Action at
Law.
Notice of
Appeal.

20

Messrs. Vredenburg, Wall & Carey,
Attorneys of Plaintiff.

Gentlemen:

TAKE NOTICE that the defendant appeals to the
Court of Errors and Appeals from the whole of
the judgment entered in this cause.

Respectfully,

RANDOLPH PERKINS, 30

Attorney of Appellant.

January 28, 1916.

Grounds of Appeal.

(Filed

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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE RAY ESTATE CORPORATION,

Plaintiff-Respondent,

10

*vs.*ANDREW J. STEELMAN, substituted
administrator, c. t. a., of Alex-
ander Miller, deceased,*Defendant-Appellant.*Action
at Law.
Grounds
of Appeal.

The appellant states the following grounds of Appeal.

- 20 1. The court struck out the second defence in the answer of the defendant.
2. The court struck out the third defence in the answer of the defendant.
3. The court excluded evidence offered by the defendant of a decree of the Hudson County Orphans' Court barring creditors.
4. The court held the defendant's claim was not barred by the decree barring creditors.
- 30 5. Evidence was excluded that the plaintiff was a corporation of the State of New York, and that the intestate, Alexander Miller, died a resident of the State of New York, and that his will was probated there.
6. The court erred in refusing to non-suit the plaintiff, on the ground that the plaintiff's claim was barred by a decree barring creditors.
7. The court erred in refusing to non-suit the plaintiff, on the ground that the plaintiff can not maintain an action against the defendant in this
- 40 jurisdiction.

8. The court erred in holding that the substituted administrator, with the will annexed, was liable in this jurisdiction to debts which arose in the jurisdiction of the testator's residence and primary probate of his will.

RANDOLPH PERKINS,
Attorney of Appellant.

Record of the Case.

10

Andrew J. Steelman, Substituted Administrator, cum testamento annexo, of Alexander Miller, deceased, the defendant in this cause, was summoned to answer unto Ray Estate Corporation in an action at law upon the following complaint:

Complaint.

(Filed

)

NEW JERSEY SUPREME COURT.

20

HUDSON COUNTY.

THE RAY ESTATE CORPORATION,

*Plaintiff,**vs.*ANDREW J. STEELMAN, substituted
administrator, c. t. a., of Alex-
ander Miller, deceased,*Defendant.*

Complaint.

30

Plaintiff, a corporation organized and existing under and by virtue of the laws of the State of New York, having an office and place of business at No. 54 Wall Street, Borough of Manhattan, City of New York, says that,

FIRST COUNT.

1. On or about March 27, 1893, NATHALIE E. BAY- 40
LIES and WILLIAM H. ROY executed a lease (under

Complaint.

seal) of the premises No. 532 West 29th Street, New York City, for a term of twenty-one years from and after May 1, 1894, at a yearly rental of \$325. payable in equal half yearly payments on the first day of May and the first day of November in each year. Thereafter the interest of said William H. Roy was transferred to ALEXANDER
 10 MILLER and by respective devolutions the interest of said Nathalie E. Baylies in said lease became and now is vested in plaintiff.

2. A half-year's rent of \$162.50, due May 1, 1913; a half-year's rent of \$162.50, due November May 1, 1913; and a half-year's rent of \$162.50, due May 1, 1914, a total of \$487.50 is unpaid.

3. Said Alexander Miller died testate on or about May 6, 1909, and letters of administration upon his estate, with the Will annexed, were
 20 issued by the Orphan's Court of the County of Hudson in the State of New Jersey, to Thomas G. Haight on or about January 2, 1913, and letters were issued to ANDREW J. STEELMAN, as substituted administrator thereof, on or about June
 19, 1914.

Plaintiff demands as damages \$487.50 and interest on \$162.50 from May 1, 1913; on \$162.50 from November 1, 1913, and on \$162.50 from May 1,
 30 1914, on the first count.

SECOND COUNT.

1. By the terms of the lease referred to in the first count, the said Alexander Miller obligated himself to pay the taxes and water rates assessed on said property during the term of said lease.

2. Taxes or water rates on said property from the year 1905 to and including the year 1913, amounting, with interest charges thereon, to the
 40 sum of \$2,431.01, were not paid by said Alexander Miller, nor by any one in his behalf.

Bill of Particulars.

3. Plaintiff, in order to prevent a sale of said premises by the said City of New York because of said unpaid taxes and water rates, was forced to, and did, pay to said City of New York for taxes and water rates assessed on said property during the term of said lease, the sum of \$311.69, on or about October 2, 1913; and the sum of \$2,119.32, on or about May 6, 1914, a total of \$2,431.01, for and to the use and on account of said Alexander Miller, or his legal representatives. 10

4. Said sum of \$2,431.01 has not been paid and is still due and owing to plaintiff by defendant.

Plaintiff demands as damages \$2,431.01 and interest on \$311.69 from October 2, 1913; and and on \$2,119.32 from May 6, 1914, on the second count.

VREDENBURGH, WALL & CAREY, 20
Attorneys for Plaintiff.

Bill of Particulars.*To the Defendant:*

PLEASE TAKE NOTICE, that the following is a bill of the particulars upon which the foregoing complaint is founded:

New York, May 22, 1914.

THE ESTATE OF ALEXANDER MILLER, 30

To the RAY ESTATE CORPORATION, Dr.,
54 Wall Street, Borough of Manhattan,
City of New York.

Rent under the ground lease of the property No. 532 West 29th Street, Borough of Manhattan, City of New York, from November 1st, 1912, to May 1st, 1914, at a yearly rental of \$325 payable in equal half-yearly payments on the 1st day of May and the 1st day of November in each year—\$487.50.

To taxes and water rates on said property paid 40
by The Ray Estate Corporation, which the lessee

Answer.

FIRST DEFENSE.

1. He denies the truth of the matters contained in the complaint.

SECOND DEFENSE:

1. That by an order made in the Orphans' Court of the County of Hudson, bearing date the twentieth of May, 1913, the plaintiff was barred **10** from any action therefor for his said claim against the defendant.

THIRD DEFENSE:

1. The plaintiff is a corporation of the State of New York.

2. That the debt set forth in the complaint was contracted in the State of New York.

3. That Alexander Miller, the deceased, died a resident of the State of New York. **20**

4. That administration on his estate was originally granted in New York.

5. That the estate of the said Alexander Miller in the hands of this defendant is not liable to answer to the debt of the plaintiff in this jurisdiction.

RANDOLPH PERKINS,
Attorney for the Defendant.

30

Reply.**NEW JERSEY SUPREME COURT.**

	THE RAY ESTATE CORPORATION,	}	
	<i>Plaintiff,</i>		
	<i>vs.</i>		
10	ANDREW J. STEELMAN, substituted administrator, c. t. a. of ALEX- ANDER MILLER, deceased,	}	Action at Law.
	<i>Defendant.</i>		

Plaintiff denies every allegation in the second defense and third defense of the Answer.

VREDENBURGH, WALL & CAREY,
Attorneys for Plaintiff.

20

OBJECTIONS AS MATTER OF LAW.

Plaintiff will object as a matter of law that the matters set forth in the Second Defense and Third Defense do not constitute a bar to plaintiff's action, and that the same should be stricken out.

VREDENBURGH, WALL & CAREY,
Attorneys of Plaintiff.

30

40

Notice to strike out.

(Filed _____).

NEW JERSEY SUPREME COURT.

THE RAY ESTATE CORPORATION,

*Plaintiff,**vs.*ANDREW J. STEELMAN, substituted
administrator, c. t. a. of ALEX-
ANDER MILLER, deceased,*Defendant.*Action **10**
at Law.RANDOLPH PERKINS, Esq.,
Attorney for Defendant.

PLEASE TAKE NOTICE, that on Saturday, Dec-
ember 5, 1914, at the hour of ten o'clock in the
forenoon, the plaintiff will move before the Hon-
orable Francis J. Swayze, Associate Justice of the
New Jersey Supreme Court, at the Court House,
in the City of Jersey City, New Jersey, to strike
out the second and third defenses in the answer
heretofore filed by said defendant in above cause,
upon the grounds:

(1) That the order of the Orphans' Court of
Hudson County referred to in the second defense,
does not bar the plaintiff of its right of action
upon its claim against defendant.

(2) That plaintiff is not precluded from main-
taining its action against defendant, because of
the facts set forth in the five paragraphs of the
third defense in said answer.

Dated, Nov. 18, 1914.

Yours respectfully,

VREDENBURGH, WALL & CAREY,

Attorneys for Plaintiff. **40**

Order striking out defenses.

(Filed).

NEW JERSEY SUPREME COURT.

THE RAY ESTATE CORPORATION,

Plaintiff,

10

*vs.*ANDREW J. STEELMAN, substituted
administrator, c. t. a. of ALEX-
ANDER MILLER, deceased,*Defendant.*Action
at Law.

20 Due notice having been given of a motion to
strike out the second and third defenses in the de-
fendant's answer heretofore filed in this cause;
and the motion coming on to be heard before me
at Chambers, on this day; and I having heard
the argument of counsel and duly considered the
same—

IT IS ORDERED that said second and third de-
fenses in said Answer be and the same hereby
are stricken out, but without costs.

Dated, January 30, 1915.

Entered February 9, 1915.

30

Let this rule be entered in the minutes.

JAMES F. MINTURN,
Justice Sup. Ct.

On motion of

VREDENBURGH, WALL & CAREY,
Attorneys for Plaintiff.

Judgment for plaintiff.

This action was tried before the Honorable William H. Speer, without a jury in the presence of the counsel of the respective parties, at the Hudson Circuit Court, on June 9th, 1915. The cause having been heard, a verdict in favor of the plaintiff was rendered, whereupon it was adjudged that the plaintiff recover from the defendant the sum of \$3,008.75, and the costs which were taxed at the sum of \$47.38, making in the whole, the sum of \$3,056.13. **10**

Judgment entered June 29, 1915.

20**30****40**

Testimony.**NEW JERSEY SUPREME COURT.**

THE RAY ESTATE CORPORATION,

vs.

ANDREW J. STEELMAN, etc.

10

Tried Wednesday, June 9, 1915, before Speer, J.
without a jury.

VREDENBURGH, WALL & CAREY,

For the Plaintiff.

RANDOLPH PERKINS,

For the Defendant.

Jury waived by consent of the parties.

20

MR. HARTPENCE: If the Court please, this is a case brought by the Ray Estate Corporation, which is a corporation of the State of New York, against Andrew J. Steelman, the substituted administrator with will annexed of Alexander Miller deceased. It grows out of a very simple set of facts. In 1893 Nathalie E. Baylies, who was then the owner of a plot of ground in New York City, No. 532 West 29th Street, executed a lease to one William H. Roy for a period of twenty-one years, and the estate of Roy afterwards by means I think of a foreclosure vested in Alexander Miller became the purchaser at a referee's sale. The interest of Nathalie E. Baylies at her death vested in her three children.

20

THE COURT: What did she have?

MR. HARTPENCE: She was the owner of this plot of ground. The lease was practically the usual ground rent instrument; she was

40

Colloquy.

the owner. She died, and by her last will and testament devised this interest which she had to the three children. Later on they conveyed their interest to the Ray Estate Corporation. The Ray Estate Corporation is the corporation of the heirs of one Cornelius Ray who owned a great deal of land in New York at one time and most of which is leased in this manner; so that the facts show at the present time that the Ray Estate Corporation is the owner of the fee and the Alexander Miller estate had the right to the leasehold estate and were obligated to pay rent for the premises. Under the terms of the lease there was payable a yearly rental of \$325, payable in half-yearly payments on the first of May and the first of November of each year. There was also a covenant to pay taxes, water rents and such other charges as might be assessed against the property by national, state or municipal laws or regulations. The allegation is that from May 1st, 1913—and by agreement of counsel the account has been continued down to the present time, regardless of when the suit was commenced—no rent has been paid, so that there is due at this time four half-yearly payments of \$162.50 each. I might say that on November 1st, 1914, which was six months before the lease expired under the terms of the lease, the property was taken over by the Ray Estate Corporation and the lease extinguished, so that it only continued down to the first day of November, 1914. In order to prevent a sale of the property by the taxing authorities of the City of New York for non-payment of taxes and water rents the Ray Estate Corporation paid on October 2nd,

Colloquy.

1913, \$311.69; on May 6, 1914, \$2,119.32. Since that time the Ray Estate Corporation has made further payments, taxes for the year 1914 of \$272.16 and water rents for 1914 of \$52.60. The interest was paid on November 18, 1914, and the water rents were paid on November 24, 1914.

10 Upon the ground in question was a house commonly called a tenement house, and Alexander Miller and the Alexander Miller estate sublet to various tenants and collected rents from them. During the term of the Alexander Miller lease there was collected from such tenants the sum of \$636.42 which was paid by the agent of the defendant to the Ray Estate Corporation and for which of course the defendant is entitled to credit. 20 The plaintiff therefore claims at this time a balance due including interest on the various amounts of \$2,990.77.

30 The estate of Alexander Miller was administered in New York. He was a resident of the State of New York and, I think, of the City of New York, and the main administration is in the city and county of New York. He had certain property in the State of New Jersey and to administer that a duly authenticated copy of the will was filed with the Surrogate of the County of Hudson and an ancillary administrator was appointed; Thos. G. Haight was named as ancillary administrator, and upon Judge Haight's appointment to the bench of the United States District Court he resigned and Andrew J. Steelman was substituted as the administrator in his place.

40 Now the contention of the plaintiff is that there can be no question that the rent is due

Colloquy.

and unpaid, that the taxes and water rents were paid by the plaintiff, which under the terms and covenants of the lease were bound to be paid by the lessee, and that the total amount claimed, making just allowance for the rent collected, is the amount that I have stated. We think, therefore, that we are entitled to a judgment on the statement of 10 those facts. It appears, however, and I presume that I might state those facts in my opening and put them all in the record that way, that an order limiting creditors was entered in the Orphans' Court of Hudson County in the administration of this estate, that a decree barring creditors was entered on February 20, 1914—is that correct, Mr. Perkins?

MR. PERKINS: Previous to that. 20

MR. PERKINS: I think it is February 20th, 1914. The Ray Estate Corporation filed no claim against the estate of Alexander Miller within the time limited by the rule. It submitted a claim to the administrator some time in May, 1914, and the administrator declined to receive it and notified the Ray Estate Corporation that it would not be received within the time limited by the rule and after the entry of the decree barring credi- 30 tors. Thereupon this suit was brought, based upon that claim, and that forms the subject matter of the present suit.

A defense was interposed by the defendant denying, first, the truth of the matters contained in the complaint, a general denial, and setting up a second defense that by an order made in Orphans' Court of the County of Hudson bearing date the 20th of May, 1913, the plaintiff was barred from any action for 40

Colloquy.

his claim against the defendant. I think that date mentioned was the date on which the order was taken limiting creditors and not the day on which the decree itself was made. Be that as it may, that will appear later by the evidence. A third defense was also set up that the plaintiff is a corporation of the State of New York, that the debt set forth in the claim was contracted in the State of New York, that Alexander Miller deceased was a resident of the State of New York, that administration on his estate was originally granted in New York, that the estate of the said Alexander Miller in the hands of the defendant is not liable to answer to the debt of the plaintiff in this jurisdiction.

A reply was filed in which the allegations were denied, and then objections as a matter of law were interposed to the second and third defenses on the ground it did not constitute a bar to the plaintiff's action. The hearing of those objections was brought on on notice to the defendant before Mr. Justice Minturn on motion day, sitting in the Supreme Court in this court, to strike out the second and third defenses of defendant's answer, and upon the hearing of that motion the court ordered that the second and third defenses in said answer be and the same hereby are stricken out. No further action was taken in that respect, so that the plaintiffs contend that the present case is triable simply upon the general denial.

THE COURT: Does Justice Minturn give any reasons?

MR. HARTPENCE: Only the reasons urged upon the argument of the motion. I might state to your Honor what the position was

Colloquy.

that I took in that matter, and that was this, that regardless of what the ultimate rule might be with respect to the distribution of the fund in the hands of the ancillary administrator, that this suit was simply for the purpose of establishing our claim, and that we had the right to proceed to a judgment and to establish our claim, and if after that there was any question as to our right to go against the assets in the hands of the administrator it would be controlled after judgment either by this court or by the Orphans' Court in which the estate is being administered. It appears on the face of the pleadings that the major portion of this account accrued after the entry of the decree barring creditors, so that as far as that portion of it is concerned it would seem that the decree is no bar to the establishment of the cause of action. 10 20

THE COURT: I suppose the decree would not be any bar to the establishment of the cause of action anyway if you could show either that you had discovered assets or that there were assets after the final order of distribution had been made.

MR. HARTPENCE: There would not be any question about that at all. We went one step farther and urged that assets might thereafter be discovered in any state of the Union, and we had a right to establish our cause of action and pursue those assets wherever we might find them after we had once established our claim; and under Mr. Justice Minturn's verbal disposition of the motion he held that we had the right at least to establish our claim, and that the question of the decree barring creditors or whether 30 40

Colloquy.

or not a corporation of the State of New York had the right to sue the ancillary administrator in New Jersey or whether or not the funds in the hands of the ancillary administrator were subject to seizure to satisfy a judgment really did not enter into this case, that that was for some future determination.

10

THE COURT: That that was for the trial judge?

MR. HARTPENCE: No, sir; he did not so say. Our position is that the second and third defenses are out of the case and the only thing that is left is the question whether or not this account is an account which is due and owing. That is our case on the facts.

20

MR. PERKINS: Now, to use the inverse order, I think that Judge Minturn did not realize the importance of the question before him when he decided it. It is true that he did strike these pleas out. Unfortunately we requested Mr. Hartpence to make a motion to strike out the pleas so that we could get some law on the subject, but they were stricken out without any law, or any decision. There were a number of cases pending and we thought if the court would establish what the law was we could try one case for the lot of them.

30

The defense in this case is that Alexander Miller died testate, domiciled in the State of New York May 6, 1909; that the plaintiff is a corporation, resident of the State of New York; that the ancillary administrator in this state is not such an administrator that they can pursue here because the object

40

of the appointment of an ancillary adminis-

Colloquy.

trator in this state is the collection of debts due to the Miller estate or the collection of assets here and the payment of local creditors, and after the payment of local creditors it is the duty of the ancillary administrator to remit the fund to the domicillary administrator; that the Ray Corporation, being a corporation of the State of New York, should file this claim there if it has a claim. 10

The second defense that we have—nothwithstanding Judge Minturn's quite close distinction between establishing a claim and collecting it, which I cannot distinguish in my mind because if they establish a claim they can collect it in the ordinary case—and furthermore, Mr. Hartpence's idea that we might establish that claim by a judgment here and then pursue in some other jurisdiction another administrator, cannot be tenable, because there is no privity between this administrator and the administrator in Ohio or Indiana or Texas, and a judgment against an administrator here would not bind an administrator there. That is perfectly plain in all of the cases. You will find the cases on that in that brief. (Referring to a brief handed to the court before trial.) So I say there can be nothing in the argument that they can come here and establish their claim and having once established it if they can find assets in another jurisdiction go there and collect those assets. The real thing they should have done was to establish a claim in the domicillary jurisdiction against the testator, because he is in privity—against the estate of the testator—and then perhaps the judgment would be good in any other jurisdiction. 30 40

Colloquy.

THE COURT: Your idea is where there are assets in any other jurisdiction other than the domicile of the testator that the courts of that State will not compel its own creditors to go outside the boundaries of the State to collect their debts when the assets here are sufficient for that purpose?

10

MR. PERKINS: This is the law.

THE COURT: And that the whole object of the administration here is simply the subjection of those assets to the benefit of the local creditors?

20

MR. PERKINS: Yes; and if there be any surplus that should be remitted. And that is borne out by the statute. For instance, this will is probated here under section 23 of the Orphans' Court Act which expressly says that the administrator C. T. A. need not account in this jurisdiction unless he is especially ordered to do so by the Orphans' or Prerogative Court. That seems to be the object of the administration. Now I have prepared a brief, which I have handed to your Honor, in which I have endeavored to take an impartial position because this matter comes up before Judge Tennant in another matter—the same suit but in a different way—but our contention is that by reason of the fact that the Ray Estate Corporation failed to file their claim within the time limit they cannot collect, because the law says they shall file it. And this estate I might say is insolvent. If there were any assets after the payment of debts they might perhaps come against those.

30

40

MR. HARTPENCE: I was going to ask if we could state in the opening what the assets are and what claims there are against it and

Colloquy.

what the proportion of New York and New Jersey creditors may be. Mr. Perkins has that proportion more in mind than I have.

THE COURT: What right do you think I have to consider these two defenses that are stricken out?

MR. PERKINS: I think you are bound by this pleading and I do not think you have, 10
but I suggest, for the benefit of the plaintiff case as well as our own, that your Honor determine it, because I do not think we really got anywhere by the determination of those pleadings. We thought we would get a determination perhaps by way of an opinion which would throw some light on the subject. Now if your Honor does not determine those questions we have got to go up and have that motion reviewed. 20

MR. HARTPENCE: We will have to go up anyway. I am ready to go up at the present term of the Court of Appeals on brief and get rid of it.

MR. PERKINS: I am not quite so hasty as that. But I am frank to say that the way the pleadings stand your Honor possibly cannot consider this evidence.

THE COURT: That is the way it appeals to me. When the Justice of the Supreme 30
Court sitting in this circuit entertains a motion and decides that motion and you have a right on the record to object to that and then raise the question in the court above, to say the least of it it would probably be lese majeste for me to jump over his head and say he did not know what he was talking about. I would not want to do that.

MR. PERKINS: We may put this defense in under the general denial. I am not sure 40

Colloquy.

it cannot go in under the general denial of the defense.

10 Now another defense: Alexander Miller died May 6, 1909. I believe all of this claim they are suing for arose subsequent to that, and our defense will be that there was no liability on the part of Alexander Miller if his heirs were in possession of this real prop-
erty; they might pursue his heirs but I do not think they could pursue his personal repre-
20 sentative. So far as I know there was no liability on the part of Alexander Miller's administrators to continue—he took this under a foreclosure and I believe the instru-
ment under which he held did not bind his estate, so that I think if his heirs are in possession his personal representative would
not be responsible for the rent or for the taxes.

MR. HARTPENCE: Can we state the assets generally?

30 MR. PERKINS: I will state those. In the the Orphans' Court I filed on behalf of the substituted administrator C. T. A. a petition for instructions, and the New York administrator came in and filed a petition asking for the fund to be sent to New York. By that petition it appears that there are filed against the estate in New York claims amounting to approximately a little over fifty thousand dollars. There was filed in New Jersey claims amounting to say twelve thousand dollars. All of the claims filed in New Jersey are filed with the administrator in New York excepting three, one of eighty-five dollars, one of forty-eight dollars and the present claim of twenty-four hundred and
40 thirty-one dollars, so that your Honor will see that here is an estate of—

Colloquy.

THE COURT (Interrupting): I was just thinking of your other point, which did not appeal to me with any great degree of force at the time you stated it, for this reason: that if that obligation was the obligation of Alexander Miller and not an obligation attached to or running with the land, and that obligation ripened, it would seem to me that the heirs would have a right to insist that the personal property should be called upon first before the land could be resorted to, and that therefore the creditors could not pursue the land until they had first exhausted their remedies against the personalty. That would be my impression about the way that would shape up in the legal aspect of it. 10

MR. PERKINS: I think the heirs were in possession. 20

THE COURT: Assuming they were—there could not be any suit against them at all unless they were in possession.

MR. PERKINS: It would be rather a strange position that after the death of a man and the heirs went into possession of his land, to hold his personal estate for all the rent that accrued, and they remain in possession.

MR. HARTPENCE: My understanding is that the administrator in New York paid rents from 1909 to 1912. 30

MR. PERKINS: That is another reason why I should urge when we come to argue the matter why they should pursue the New York administrator.

THE COURT: I can readily see the strength of the positions you are assuming with respect to those two defenses, but I do not see that I have a right to discuss it. My own impression would be that once the Supreme 40

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Court judge sitting here has determined that those defenses do not exist, then the circuit record goes to me to try the issue therein made and I cannot impart into that record any issue that is not there. I simply get my authority to try cases from the circuit record.

10 MR. PERKINS: I appreciate the difficulty we are in, so that unless I can get those defenses in under the general denial we will have to have it threshed out somewhere else.

MR. HARTPENCE: Have you stated the amount of the assets?

MR. PERKINS: The amount of the assets is approximately eight thousand dollars in New Jersey.

MR. HARTPENCE: And the proportion of New Jersey and New York claims?

20 MR. PERKINS: There are no New Jersey claims on the estate of Alexander Miller.

MR. HARTPENCE: So that all the assets in the hands of the administrator could be held to answer for New Jersey creditors if that rule which obtains in some jurisdictions were applied?

MR. PERKINS: That is right.

—•—
(RECESS.)
—•—

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MR. HARTPENCE: We offer in evidence the original lease from Nathalie E. Baylies to Wm. H. Roy, dated March 27, 1903, being the lease of the premises 532 West 29th St., New York, out of which the rent accrued, and on account of which taxes and water rents were paid represented by the account in this case. (Marked p. 1.)

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MR. HARTPENCE: I also offer in evidence a certified copy of a deed from Thomas Allison, Referee, to Alexander Miller, of the premises

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in question for the lease-hold interest of the lessee, dated July 10, 1896, and ask that that be marked as an exhibit on the part of the plaintiff. (Marked p. 2.)

MR. HARTPENCE: I also offer certified copy of the last will and testament and probate thereof of Nathalie Elizabeth Baylies, by which her interest in the premises was devised to her three children, and ask that that be marked as an exhibit. (Marked p. 3.) 10

MR. HARTPENCE: We also offer in evidence a deed of Edward L. Baylies and wife, and Cornelia Prime Lowell, widow, and Walter Cabot Baylies and wife, being the three children of Nathalie Elizabeth Baylies, of the premises in question to the Ray Estate Corporation, the plaintiff in this case, dated May 13th, 1913, and ask that that be marked as an exhibit. (Marked p-4.) 20

MR. HARTPENCE: We also offer an assignment made by Edward L. Baylies, Walter C. Baylies and Cornelia Prime Lowell, the three children of Nathalie Baylies aforesaid, to the Ray Estate Corporation, the plaintiff in this case, dated June 1, 1913, for all rent accrued from the premises involved in this case at that time and which might thereafter accrue, and ask that that be marked. (Marked p. 5.) 30

MR. HARTPENCE: We also offer in evidence the receipted bills and checks in payment therefor of the taxes and water rents which accrued upon the premises and were paid by the plaintiff in order to prevent a sale thereof by the municipal authorities, accruing during the term of Alexander Miller and the Alexander Miller estate, and amounting in the aggregate to \$2,755.77. (Marked p. 6.) 40

MR. HARTPENCE: It is admitted that no

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rent has been paid on the lease offered in evidence from November 1st, 1912, to November 1st, 1914.

10 It is also admitted on the record that the sum of \$636.42 was paid by William H. Archibald to the Ray Estate Corporation, plaintiff, for rents collected during the term of the estate of Alexander Miller—or Alexander Mil-

The interest accrued on these various items from the respective dates when the half-yearly rent was payable and from the dates when the various taxes and water rents were paid, down to the present day, amounts to \$231.42.

It is admitted that Nathalie E. Baylies died testate December 9, 1912.

20 It is admitted by plaintiff that the possession of the ground in question was taken over by the Ray Estate Corporation on February 1st, 1914, and the lease was thereupon extinguished.

It is admitted that the Ray Estate, the plaintiff, is a corporation organized and existing under the laws of the State of New York.

30 MR. PERKINS: It is admitted by the defendant that the assets in the hands of the defendant are \$8200.

THE COURT: Well, there is more than enough to pay this claim, isn't there?

MR. PERKINS: Yes; there is more than enough to pay this claim.

40 MR. HARTPENCE: It is admitted by the defendant that a proof of claim involving the present amount was submitted to Thomas G. Haight, ancillary administrator C. T. A. of the estate of Alexander Miller deceased on or about May 28, 1914, and that the said ancillary administrator declined to file the

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same and returned it to the claimant on the ground that it had not been received by the ancillary administrator until after the entry of the decree barring creditors in Hudson County Orphans' Court.

It is admitted by the defendant that Alexander Miller died testate May 6, 1909, a resident of the State of New York, and that on October 20th, 1913, Helen J. M. Robinson was appointed administratrix C. T. A. of his estate by the Surrogate of New York County, the place of the original probate of his will. **10**

It is admitted by the defendant that on January 8, 1913, Thomas G. Haight was appointed Ancillary Administrator of the estate of Alexander J. Miller by the Orphans' Court of Hudson County upon the filing in the office of the Surrogate of Hudson County of a duly authenticated copy of the last will and testament of Alexander Miller which had been theretofore probated in the County of New York and State of New York. **20**

It is admitted by the defendant on the record that on July 14, 1914, Andrew J. Steelman was appointed substituted administrator C. T. A. of said estate upon the resignation of Thomas G. Haight.

It is admitted on the record that a decree barring creditors of the estate of Alexander Miller deceased was entered in Hudson County Orphans' Court of the State of New Jersey on February 21, 1914. **30**

It is admitted by the defendant that the amount paid by plaintiff for taxes and water rents as aforesaid has not been repaid.

PLAINTIFF RESTS.

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Motion for Non-Suit and Argument.

10 MR. PERKINS: I move for a non-suit so far as the items of taxes and water rents are concerned on the ground that the plaintiff has shown no title to any claim against the estate of Alexander Miller for payment of taxes and water rents. I will state what I have in mind. The assignment which is p. 5, assigns from Edmund L. Baylies, Walter C. Baylies and Cornelia Prime Lowell to the plaintiff the ground rent due under the lease, but there is no assignment of any right to collect taxes or water rents paid by any of those persons, any of the assignors, or which might be due from the defendant's estate because of non-payment of them.

20 I move for a non-suit on the ground that it has been affirmatively proved by the plaintiff that his claim was filed out of time; and further it has been proved by the plaintiff that it is a corporation of the State of New York, that the domicile of the deceased, Alexander Miller, was New York, the original place of the probate of his will, and that this defendant is merely a substituted ancillary administrator C. T. A. and that under those circumstances the foreign creditor cannot come to this jurisdiction and collect from a substituted administrator a claim because the duty of the substituted administrator here is simply to produce assets and pay local creditors; and that the plaintiff has not established any claim against the defendant.

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Those are the grounds. I will be glad to argue them a little more at length if your Honor desires me to.

THE COURT: Well, I would like to hear the argument.

40 MR. PERKINS: The first question which I

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will take up, and which I think is the most important, is whether a foreign creditor, a creditor of the domicile of the testator can leave that jurisdiction and come to this jurisdiction and establish his claim against an ancillary administrator.

THE COURT: Now on that question I feel this way about it: This precise question has been raised before Justice Minturn in the Supreme Court on motion to strike out the second and third defenses. He has announced his decision on that point apparently on the merits of the pleading, and he has thereby enunciated necessarily a principle, which principle is that he thinks that is not a defense to the action. If I were to say now, after he has struck out two pleadings based upon the principle that it is a defense to the action, I would hear it on the theory that it was admissible under the general issue, I would then be considering a question which he has already considered and which he has determined antagonistically to the way you want me to determine it, and in that way we would have a crisscross decision on the record I holding one way with respect to the matter and Justice Minturn holding the other way. Now I confess—and I confess it of course with great deference to Justice Minturn—that if the question were open to me I should feel great doubt about it and I should think there was a great deal in your contention, because I recall, outside of the cases which are in this mighty able brief that you have here—I recall other cases which I have read elsewhere than those cited, that bear upon the question quite fully, and my impression would be quite the other way from the way he de-

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10 cided it; and I do not want to run into collision with his view on that subject, especially when he has enunciated his view in this case; so I think the thing for me to do is to apply the rule that he has adopted, assume it to be the rule that governs in this case and to follow that rule myself, not because I believe in the integrity of the rule but because I must follow the rule when he has once enunciated it in the case, and then to get it fairly on the record for decision. That would be my view of the matter.

MR. PERKINS: The way I would have to review that would be to go up on the question of the propriety of his conduct in striking out.

20 THE COURT: Yes; but I am going to say now on the record that you requested me to consider those defenses thus stricken out as admissible under the general issue, and I consider that I am bound to apply the principle applied by him in the case, to wit, that the facts as alleged by you now would not constitute a defense even if they were proven and if they were admissible under the general issue, and therefore I would make an order that I would not non-suit on that point
30 —and allow you an objection to my ruling in that respect, both to my ruling in refusing to permit you to offer the proof under the general issue and also planting upon the record the reason why I do, it being that such a thing is no defense. I want to put that right straight on the record, because that is an interesting point, a very interesting point.

40 MR. PERKINS: By reason of my answer being filed—the court above might say that my answer was not quite sufficient to set forth—

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THE COURT: I want it right on the record that I am following him, because he has announced that rule in this case and I assume that he has announced the rule upon the principle that such a thing is not a defense to an action of this kind, and I follow him; that is all.

MR. PERKINS: Then the same thing I suppose might be said with respect to the second plea. That is to say that they having proved in their case that they filed their claim out of time and Justice Minturn having stricken out my plea that the claim was out of time, that your Honor is also barred in that respect. 10

THE COURT: Yes; I will follow him on those lines. I do not see how I could do otherwise without being at least, you might call it, indecent. 20

MR. PERKINS: Then the other point that I made, the first point, was that by the assignment to the plaintiffs it does not appear that they have any right to collect the water rents and taxes which were unpaid and in arrears or which some one may have paid. Their assignment seems to be entirely of the ground rent, and my motion so far as the claim of twenty-one hundred and odd dollars is concerned is that there ought to be a non-suit because they have shown no title in them to that sum even if that sum is due from the defendant to some person. 30

MR. HARTPENCE: The deed from the three children to the Ray Estate preceded the water rent payments, the deed being dated May 13, 1913, and the first tax having been paid October 2nd, 1913, and the others subsequent to that date. 40

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THE COURT: Your claim is that the payment was compulsory upon them and that they are entitled to be reimbursed?

MR. HARTPENCE: Yes.

MR. PERKINS: This deed is a deed from the Ray Estate Corporation, just an ordinary deed with covenants and—

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MR. HARTPENCE: Yes.

MR. PERKINS: Even so, I do not see how that puts in the Ray Estate Corporation the right to collect from the tenant arrears of taxes and water rents.

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THE COURT: As I understand Mr. Hartpence's statement this deed preceded the payment of the taxes and water rents and the tenant under his obligation was obliged to make those payments. Now after the Ray Estate became the holder of the land the obligation it would seem to me arose under his lease because then the relation of landlord and tenant or attornment would lie between them and your estate; the obligation would go over to your client to pay these taxes and water rents in discharge of the land which was then owned by the Ray Estate. Now if your client did not do that the Ray Estate is obliged by reason of his neglect to do it to make the payment, or it would seem to me that the law would imply a promise from him to reimburse the Ray Estate if they did that which he should have done under his lease which he had as the occupant of these premises. I only suggest that as a matter of law. That is the way it occurs to me now.

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MR. PERKINS: My idea would be this, that their remedy would be under the deed against the grantors, and if there is any right in the

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grantors to collect this money it would be against the persons in possession. That is to say the mere possession of a property which is occupied by the tenant and the tenant was in arrears in payment of taxes would not give to the grantee the right to collect from the tenant the amount of taxes in arrears. His remedy would be on his deed **10** against the grantor and the remedy of the grantor might be against the tenant.

THE COURT: What do you say about that, Mr. Hartpence?

MR. HARTPENCE: The position of the plaintiff on that is this, that under the original lease—and the rights of the parties grow out of the original lease—it was covenanted by the lessee that these taxes and water rents and other charges would be paid— **20**

THE COURT: Well, your right to rent arises under the lease.

MR. HARTPENCE: Yes, sir.

THE COURT: How do you differentiate, Mr. Perkins, between the right that they had to receive the rent under the lease and the right that they had to receive the water rent and the taxes which they were obliged under the lease to pay, which they did not pay and which were paid by the owner? **30**

MR. PERKINS: Under the lease the lessee enters into a covenant to pay the water rent and the taxes. He does not enter into a covenant to pay them to the lessor but to the municipality of New York.

THE COURT: No; but he enters into a covenant with the lessor to pay them.

MR. PERKINS: Yes, to the municipality of New York, but the only title which the Ray Estate Corporation shows here is a right to **40**

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the ground rent which is distinguished specifically in the lease as a certain sum of money, namely \$325 a year. The payment of taxes and water rents is no part of the ground rent. The ground rent is a specific sum of money, \$325. There was an obligation upon this lessee to pay the taxes.

10 THE COURT: You think that the ground rent is an incorporeal hereditament and that it attaches to the land in favor of any person who becomes the holder of the land and that it is differentiable from the case of the land—

MR. PERKINS: That is my claim in effect.

20 MR. HARTPENCE: I would like to call your Honor's attention to the deed from the Referee to Alexander Miller, which conveyed the leasehold interest of the original lessee. You see, Alexander Miller took it by the purchase from the Referee on the foreclosure and he took it *cum onere*. That is the whole proposition now. And those covenants would inure to the benefit of the subsequent grantee. In other words, if the situation of landlord and tenant exists between the present owner of the fee and the present possessor of the lessee's interest then all the covenants in that

20 lease apply as between them. They could not take it merely subject to the covenant of the rent and be excused from the other covenants.

40 THE COURT: That is not Mr. Perkins' argument. Mr. Perkins' argument is this, that what existed between the original lessor and the lessee with respect to the taxes and water rents was a mere personal covenant, a covenant by which the lessee agreed to pay the taxes and the water rents; that that was a

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mere contractual relationship and that the mere fact of the granting of the land from the original lessor—that is the owner of it—to somebody else did not carry with it the right to the lease itself so far as the personal covenants were concerned; and then Mr. Perkins says that he hasn't any doubt but that the ground rents passed by the conveyance of the land because the ground rents were fastened to the land as an incorporeal hereditament, and that when the land went the incorporeal hereditament went with it. That I understand to be the argument that Mr. Perkins asserts with respect to that. Now I do not see that the Referee's deed can in any way change the relationship between the original lessor and lessee. Their relationship was one of contract and he cannot extend that contract by anything he seeks to convey. All he does is to take what the party whom he represents had and convey that by his deed. That is all he can convey; he does not enlarge the scope of any previous contract and he does not convey anything that his party did not have. So it seems to me that there is a wide distinction between the matter of the ground rents and the matter of the personal covenant to pay these taxes and water rents. Now I do not know—because I have not looked at it carefully; this is all new to me—but I do not know what the relationship is between the grantor and the grantee here, because it may very well be, and in fact it would be so, assuming the strength of Mr. Perkins' argument, that the lessor would have a right to recover from the original lessee provided the lessor had paid anything; but in this case it appears to be the

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fact that the original lessor has not paid anything. The payment is by the subsequent grantee and the original lessor has done nothing with respect to these taxes and water rents. And that brings us down then to consider whether or not the payment by the subsequent grantee was a voluntary or an involuntary payment. That is really what the proposition is. Now if it was a voluntary payment without any compulsion on him by reason of anything that the original lessee did that he was under obligation to this grantee to do, why manifestly he could not recover it back; but if there was a compulsion or obligation upon the subsequent lessee to pay by reason of—or to put it around the other way, to be more accurate—if there was an obligation or a duty owing to the original grantee to pay, why then of course there could be a recovery here. That is rather a nice question.

MR. PERKINS: But this deed is what we call a plain bargain and sale deed with a covenant against the grantor.

THE COURT: I do not see anything in that deed that conveys the right of the original lessor to this grantee. I do not see anything there at all. There is nothing in the deed that conveys that.

MR. HARTPENCE: I suppose our position would be simply as I have stated it, through these various devolutions the present owner of the fee and the holder of the lease stand in the same position as the original lessor and grantor did, and by these instruments that will be made to appear.

THE COURT: Let's take an example and see how that would work out. Suppose you

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are the owner of a piece of property and I rent it of you and I agree to pay the taxes and the water rent, and then suppose that you as owner convey that land to Mr. Paterson and Mr. Paterson, because I do not pay them, goes on and pays those water rents and taxes; do you think he is entitled to recover from me for those things? If so, on what theory and under what legal rule? That is precisely this case, more simply stated, that's all. That is my impression. My impression is against you now. 10

MR. PERKINS: There is just one other point on which I would like to suggest a non-suit, that there is no evidence that the estate of Alexander Miller is liable, that the estate as such is liable for these ground rents or for these water rents— 20

THE COURT: That is the point you suggested before lunch, your idea being that if there is any right to pursue it, the estate vesting in the heirs, the parties ought to go against the heirs?

MR. PERKINS: Yes; that is the point.

THE COURT: Now I am perfectly willing to have you look that up and show me further authorities, if you want. My impression now, Mr. Perkins, is against you, for this reason—and I give you my views on it so that you can answer it if you want to within the time allowed to answer on the other matter—my idea is that it is an indubitable principle of the law that the personal estate is the primary place for the payment of debts, and the heir has a right to call upon the personal estate to exonerate the real estate from any personal obligation; and this seems to be a personal obligation, so far as the evidence warrants me in believing. 30 40

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10 MR. PERKINS: If this were a lease to Alexander Miller in which he binds his administrator that I think would be the rule, but there is no binding of the administrator of Alexander Miller; he simply takes a deed from the referee and does not bind his representative. Your Honor perhaps has in mind a case where there is a bond and a mortgage on a piece of property. Where it is to satisfy a note out of a personal estate, that is all right; I think the note should be satisfied out of the personal estate; but in this case there is no liability on the part of the personal representative of Alexander Miller to stand anything at all, and if this is real estate—as it undoubtedly is—it descends to the heir, and if the heir was in possession—as 20 presumably he was—why should he take the rents, issues and profits and expect the rent that he must pay to be paid out of the personal estate?

30 THE COURT: I see the point, but my own impression is that it is a personal obligation. That is only off-hand. That is not what I may decide eventually at all, but I want to clearly indicate what I think may be the answer to that thing. I have not looked at it carefully; in fact I have not looked at it at all since you suggested it; I have merely thought it over. Now when do you want to have these two points ready for decision? I can decide very promptly as soon as you give me your views on it.

MR. PERKINS: I think in the direct case Mr. Hartpence has put in practically all the facts, and I think we can rest it on this motion.

40 MR. HARTPENCE: There is one fact which

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occurred to me on the argument of the motion, which was not stated on the record—I do not want to re-open the record except with Mr. Perkins' consent—that at the time of the payment of the \$636.42 by Mr. Armstrong, being rents collected from the sub-tenants, it was agreed between him and the Ray Estate Corporation that the taxes for 1914 and the water rent for 1914 should be paid out of that sum, which was done. 10

MR. PERKINS: I have no knowledge of what that was, but I assume Mr. Hartpence is stating a fact.

(Adjourned to Friday, June 18th, 1915, for further argument and decision.)

(Case continued June 25, 1915.)

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MR. PERKINS: Your Honor will remember we were before you on the case of *Ray Estate vs. The Miller Estate*.

THE COURT: Yes.

MR. PERKINS: Well, I have no further remarks except in reply to Mr. Hartpence. Shall I recite briefly what the matter is about?

THE COURT: Yes.

MR. PERKINS: It is a suit for ground rent and taxes and water rent paid on property in New York. The point that I raised and which your Honor permitted Mr. Hartpence to get some law on was this: As to whether they could collect for the taxes and water rents, which amounted to about \$2,100—

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THE COURT: Yes.

MR. PERKINS: —Judge Minturn having stricken out the plea. I think there is no

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question as to whether they can collect the rent. Now the question is whether they can collect the taxes and water rent.

10 Now I will briefly state just what my position is. They are holding by an assignment, and I say that assignment gives them no right whatever except in ground rents. It is limited to ground rents; and that by reason of the fact that there is no privity of contract between Miller and these present plaintiffs—

THE COURT: They are holding by what, assignment of a lease?

MR. PERKINS: No; by assignment of a claim.

MR. HARTPENCE: No; we have succeeded by deed to the title to the property.

20 MR. PERKINS: I am talking about the ground rents. Now Mr. Hartpence claims that by reason of the fact that he holds by a deed he can collect from us the water rents and taxes which we did not pay to his antecedent in title. Now, I say that the reason he cannot do that is this: The deed which he holds contains these words: It grants and releases the property. Now by a deed which grants and releases a property he cannot get
30 any claim against us for water rents which we might have been obliged to pay by the lease and which we had not paid and which he had not paid.

THE COURT: Well, why don't those obligations run with the land obligations to pay taxes and water rents, just the same as the ground rent runs?

MR. PERKINS: I think it does.

40 THE COURT: I think it does too. I looked it up some time ago and I find the authori-

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ties collected quite fully on it in the very handy little one-volume book of Tiedeman on Real Estate under the title of "Covenants;" and you will find there that he distinctly states the proposition that the obligation to pay taxes runs with the land and that the privity that fastens the obligation upon the person to pay the taxes in favor of the man who comes by devolution of title into ownership is a privity of estate and that out of the privity of estate that obligation arises. 10

MR. PERKINS: Now we are all agreed on the law. Now I say that when his ancestor in title did not pay them he has no privity of contract with us whatever, and he could only collect from us by privity of contract. If he had paid them he might collect them; if his ancestor had paid them and assigned to him the claim he might collect against us, but there being no privity of contract they cannot collect as against us. 20

THE COURT: Did the title come into the possession of his client unencumbered with the lien of these taxes and water rents?

MR. HARTPENCE: They were paid to permit the sale.

THE COURT: Paid by whom?

MR. HARTPENCE: By the present owner after the present owner got title, so that privity of estate did pass at that time. 30

THE COURT: Then the property did come into his possession encumbered by taxes and water rents and he paid them in order to absolve the estate from the lien.

MR. PERKINS: That is true.

THE COURT: You see if it runs with the land and is paid by some predecessor in title to Mr. Hartpence's client, manifestly his 40

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client could not collect it because it was a covenant broken and it was paid and he had nothing whatever to do with it; but once the land comes into his possession encumbered by these liens then if Mr. Hartpence's client in order to discharge the land from that lien pays it, why the privity of estate which exists between the party who should have paid it and Mr. Hartpence's client fastens it in favor of Mr. Hartpence's client.

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MR. PERKINS: Here is a point which goes way back of that. The deed by which Alexander Miller held his property was a deed which was a conveyance to Alexander Miller and his heirs. He died long before they came into possession of the land. There could not be any privity between Alexander Miller, who is dead, and the plaintiff in this case, because he died some five or six years before. He has been dead now some seven years. Under that paper that he held, his executors and administrators were not liable to pay any water rent or taxes. His heirs might have been in possession, but that would not make him responsible.

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THE COURT: I think I shall hold, Mr. Perkins, that those things run with the land and that the discharge of them—what did Justice Minturn hold?

MR. PERKINS: Your Honor does not need to worry about that. We have threshed that all out in the Orphans' Court and the Orphans' Court this morning has decided the whole thing. So now the matter is not so important as when we tried it. I have urged now all I think that the administrator's counsel ought to urge.

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THE COURT: And urged it very well.

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MR. PERKINS: But not successfully.

THE COURT: No; not successfully.

MR. PERKINS: If this be so, I see no reason why you should not pass judgment.

MR. HARTPENCE: The deed, Mr. Perkins, is dated May 13, 1913. The first payment was October 2, 1913, and May 6, 1914, was the second payment; and the third payment of course was subsequent to that. Here is the date of the deed, May 13, 1913. All the payments are subsequent. 10

We will ask therefore for the entry of judgment in our favor. This was on a motion for non-suit, as your Honor will recall.

THE COURT: Yes. I understand.

MR. HARTPENCE: We ask judgment for the amount of the calculation as given on the previous hearing, with interest to date. 20

(The calculation is as follows) :

Rent,	\$ 650.00	
Taxes,	2755.77	
	\$3405.77	
Credit,	636.42	
	Principal due,	\$2769.35
	Interest to June 25, 1915, ...	239.40 30
	Total,	\$3008.75

Exhibit P-1.

Lease dated March 27th, 1893.

Expiring May 1st, 1915.

Rent, Yearly \$325.

NATHALIE E. BAYLIES

to

WILLIAM H. ROY.

EDMUND L. BAYLIES,

54 Wall Street.

10

THIS INDENTURE, made this 27th day of March in the year of our Lord one thousand eight hundred and ninety-three BETWEEN Nathalie E. Baylies of the City of Taunton in the Commonwealth of Massachusetts, party of the first part, and William H. Roy, of the City, County and State of New York, party of the second part, WHEREAS Robert Ray, by indenture dated the tenth day of March, in the year eighteen hundred and

20 seventy-three did grant and demise unto Elizabeth Rankin, all that certain lot of land herein-after described, for the term of twenty-one years, from the first day of May, one thousand eight hundred and seventy-three, subject to certain rents, covenants and conditions therein reserved and expressed; and it was among other things, thereby agreed, that in case of the erection on the

30 said lot of land of a building of such description as was therein specified, the said Robert Ray, his heirs or assigns, should at the expiration of said term grant a new lease of the said lot for the further term of twenty-one years, at an annual rent to be agreed upon or ascertained as was therein mentioned, and with certain covenants, conditions and provisoes to be therein inserted; or at his or their option purchase the building erected on said lot of land at a price to be agreed

40

Exhibit P-1.

upon or ascertained as was therein mentioned; and the party of the first part hereto, being the present owner of said lot and entitled to enforce the covenants in said former lease contained for the benefit of the party of the first part thereto his heirs and assigns, having elected to grant a new lease of said premises. AND WHEREAS, the party hereto of the second part, claims to be the lawful 10 owner and holder of said lease; and that the terms and conditions thereof have been complied with, whereby the said party of the second part claims and represents himself to be entitled to a renewal of said lease for such further term of twenty-one years, at an annual rent hereinafter reserved, which said rent has been determined in the manner prescribed by said lease, payable half yearly, and subject to the covenants, provisoes and conditions hereinafter contained. Now this in- 20 denture WITNESSETH, that the said party of the first part, in consideration of the rents and covenants hereinafter reserved and contained on the part of the said party of the second part, Hath granted, demised, and to farm let, and by these presents Doth grant, demise and to farm let; unto the said party of the second part, All that certain lot of ground, situate, lying and being in the Twentieth Ward of the City of New York, distinguished on a certain Map of lands in the Twelfth, now 30 (Twentieth,) Ward, of the City of New York, belonging to the Estate of Cornelius Ray, deceased, dated 11th February, 1834, made by Edwin Smith, City Surveyor, on file in the Register's Office of the City and County of New York, by the number, four hundred (400), Bounded as follows, viz: North-eastwardly in front by Twenty-ninth Street; Southeastwardly by lot numbered 401 (four hundred and one) on the said Map; Southwestwardly by the half distance line between Twenty-Eighth 40

Exhibit P-1.

Street and the said Twenty-Ninth Street, and Northwestwardly by lot numbered 399 (three hundred and ninety-nine) on the said Map. Containing in width in front on the said Twenty-Ninth Street, and in the rear twenty-five feet, and in length on each side ninety-eight feet and nine inches, be the said measurements more or less.

- 10** AND THIS INDENTURE is given subject to all claims and demands of all persons claiming or to claim under a certain indenture bearing date April 26th, 1852, whereby Robert Ray demised to one Augustus C. Merrill the hereinabove described premises; and also of all persons claiming or to claim under the above recited indenture bearing date March 10th, 1873, whereby said Robert Ray demised to said Elizabeth Rankin the said hereinabove described premises; and further sub-
- 20** ject to all taxes, assessments and encumbrances, of what kind soever, if any, which may have been made, done, committed or suffered by the said Augustus C. Merrill or the said Elizabeth Rankin, or his or her heirs, executors, administrators or assigns, or any of them, since the date of said indentures respectively.

- 30** TO HAVE AND TO HOLD the said Lot of ground unto the said party of the second part, his executors, administrators and assigns, from the first day of May in the year one thousand eight hundred and ninety-four for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, yielding and paying for the same unto the said party of the first part, or to her heirs or assigns, the rent or sum of Three hundred and twenty-five dollars lawful money of the State of New York, yearly and every year during the said
- 40** term in equal half yearly payments; that is to say, on the first day of May, and on the first day

Exhibit P-1.

of November in each and every year during the term hereby demised, the first payment to be made on the first day of November, 1894; PROVIDED nevertheless, and these presents are granted upon the condition, that the said party of the second part is now the lawful owner and holder of said lease, and is justly entitled to the renewal of the same. And PROVIDED FURTHER, that if it shall 10 happen that the said yearly rent or any part thereof shall not be paid on any day on which the same ought to be paid as aforesaid, then and at all times thereafter, it shall be lawful for the said party of the first part, her heirs and assigns, into the said demised premises or any part thereof, in the name of the whole to re-enter and re-possess, hold and enjoy the same again, as of her or their former estate and interest therein, anything herein contained to the contrary 20 in anyway notwithstanding. And the said party of the second part Doth for himself, his executors, administrators and assigns covenant and agree to and with the said party of the first part, her heirs and assigns, by these presents, in manner following, that is to say; That he, the said party of the second part, his executors, administrators and assigns, shall and will during the term hereby demised, well and truly pay unto the said party 30 of the first part, her heirs or assigns, the said yearly rent hereby reserved, by half yearly payments, at the days and times hereinbefore limited for the payment thereof without fraud or delay: AND ALSO, that he the said party of the second part, his executors, administrators or assigns, shall and will at his or their own proper costs and charges, bear, pay, and discharge all such duties, taxes, assessments and payments, extraordinary as well as ordinary, as shall during the term hereby demised be laid, levied, assessed or imposed 40 on, or grow due or payable out of, or for, or by

Exhibit P-1.

reason of the said demised premises, or any part thereof, by virtue of any present or future law of the United States of America, or of the State of New York, or of any present or future law or ordinance of the Corporation of the City of New York. AND ALSO, that he the said party of the second part, his executors, administrators or assigns, shall and will during the term aforesaid, at his or their own proper cost and charges, well and sufficiently level and pave such part of any street or streets, on which the said lot is or may be bounded, and to the middle thereof, in such sufficient and proper manner, as the Mayor, Aldermen and Commonalty of the City of New York, shall from time to time order and direct: AND ALSO, that he the said party of the second part, his executors, administrators or assigns, or any of them, shall not nor will, at any time or times hereafter, during the term hereby granted, lease, let or demise, all or any part of the said premises hereby demised, nor assign, transfer, or make over the same, or this present lease, or any of his or their term or time therein to any person or persons whomsoever, without the consent of the said party of the first part, her heirs or assigns, in writing under her or their seal, for that purpose first had and obtained, anything hereinbefore contained to the contrary thereof, in any wise notwithstanding; AND ALSO, that he the said party of the second part, his executors, administrators or assigns, or any of them, shall not nor will, at any time hereafter, during the term hereby granted, erect, or permit to be erected upon the premises hereby demised, or upon any part thereof, any stable, nor permit, or suffer any of the buildings which shall be erected on the said premises, or any part thereof, to be used for a livery stable, slaughter house, butcher shop, meat shop, tallow

Exhibit P-1.

chandlery, brewery, distillery, sugar bakery, smith shop, forge, furnace, brass foundry, steam engine, nail or other iron factory, or for the making of glue, varnish, vitriol, ink or turpentine, or for the making or baking of any kind of eathenware, or for tanning, dressing, preparing or keeping of skins, or hides, or for the carrying on therein of any kind of manufactory, trade or business what-
 ever 10

AND ALSO, that he the said party of the second part, his executors, administrators or assigns, some or one of them, will cause the said premises hereby demised, to be enclosed with a good and sufficient fence: AND LASTLY, that he the said party of the second part, his executors, administrators or assigns, shall and will on the last day of the term hereby granted, or other sooner determination thereof, well and truly surrender and deliver
 up, the said hereby demised premises, enclosed
 by a good and sufficient fence, into the possession
 of the said party of the first part, her heirs or
 assigns, without fraud or delay: PROVIDED ALWAYS,
 that it shall be lawful for the said party of the
 first part, her heirs or assigns, when and as often
 as default shall be made in the payment of the
 said rent, or any part thereof, to distrain for
 the same, any thing herein contained to the con-
 trary notwithstanding: AND PROVIDED FURTHER, and
 this present lease is upon this express condition
 that if the said party of the second part, his
 executors, administrators or assigns, shall at any
 time during the term hereby granted, erect, or
 permit to be erected upon the said hereby demised
 premises, or any part thereof, any stable, or per-
 mit, or suffer any of the buildings which may
 be erected on the said premises, or any part
 thereof, to be used for a livery stable, slaughter
 house, butcher shop, meat shop, tallow chandlery,
 brewery, distillery, sugar bakery, smith shop, 40

Exhibit P-1.

forge furnace, brass foundry, steam engine, nail or other iron factory, or for any manufactory for the making of glue, varnish, vitriol, ink or turpentine, or for the tanning, dressing or preparing or keeping of skins, or hides, or for any kind of manufactory, trade or business, whatever, which may in any wise prove noxious or offensive to the

10 neighboring inhabitants or shall fail in the performance of any or either of the covenants, conditions or provisoes, in these presents contained, which, on the part and behalf of the said party of the second part, his executors, administrators and assigns, are, or ought to be observed, performed, fulfilled and kept; then and from thenceforth, it shall be lawful for the said party of the

20 first part, her heirs and assigns, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and to re-possess, hold and enjoy the same, as of her or their former estate and interest therein, any thing herein contained, to the contrary thereof in any wise notwithstanding.

AND it is hereby mutually agreed by and between the parties to these presents, that if the house now standing on the demised premises, or in case of its damage or destruction by fire or other casualty, a similar house well and sufficiently repaired, or rebuilt and finished, shall be

30 standing on the said premises, at the end and expiration of the said term, then the said party of the first part, her heirs or assigns, shall and will, at such the end and expiration of said term, at her or their option either grant unto the said party of the second part, his executors, administrators or assigns, at his or their expense, a new lease of the said lot of ground, for a further term of twenty-one years thence next ensuing, at such

40 reasonable annual rent, to be paid half yearly, as shall then have been agreed upon by the parties,

Exhibit P-1.

or otherwise settled and ascertained as is hereinafter provided, but not less than the rent reserved by these presents; or then pay to the said party of the second part, his executors, administrators or assigns, the just and fair value, to be ascertained as is hereinafter provided, of any dwelling house to be built and constructed in manner aforesaid, which may be then standing on the said hereby demised premises, which new lease, if the said party of the first part, her heirs or assigns shall elect to grant the same, shall contain the like covenants, agreements and conditions, as are contained in this present lease, except as to any further renewal of the said term, and as to the payment of the just and fair value of such dwelling house, which may, at the expiration of the said term, be standing on the said premises; in lieu of which, there shall be inserted and contained, a covenant on the part of the said party of the first part, her heirs and assigns, declaring and providing, that the said party of the second part, his executors, administrators or assigns, may at the end of such third term, or within twenty days thereafter, take down, remove and carry away, all such building or buildings and the materials thereof, as may then be standing on the said demised premises, fences only excepted.

AND, in order to ascertain the value of any such house as may at any time be erected on the said demised premises, in manner aforesaid, or what augmentation of rent, if any should take place, in case of granting any such new lease, it is further mutually agreed by and between the parties to these presents, that in each and every other of the cases above specified, in which by reason of the omission of the parties concerned, to agree on such value or augmentation, it shall be necessary to ascertain the sum which the said party of the first part, her heirs or assigns, ought

Exhibit P-1.

to pay to the said party of the second part, his executors, administrators or assigns, in respect to the value of any such house as is above mentioned, or the amount of rent which ought to be reserved and made payable, on any such new lease of the said hereby demised premises as is above mentioned, the value of such house and the

10 amount of such rent, shall be ascertained and determined as follows, that is to say: the said party of the first part, her heirs or assigns, shall nominate one fit and impartial person, and the said party of the second part, his executors, administrators or assigns, shall nominate one other fit and impartial person, which persons so nominated, shall themselves respectively be owners in fee simple, of one or more lots in the immediate neighborhood in which the said hereby demised

20 premises are situate, to value such house in its then actual condition, and also to determine what would be a reasonable yearly rent for said lot of land during the then next ensuing term of twenty-one years, which nominations shall be made and signified by each party to the other, at least one month before the expiration of the then current term; and in default of such nomination being made by either party for the space of fifteen days after the time above limited for the making of the

30 same, the person who shall have been so nominated by the other party, shall appoint and associate with himself one other fit and impartial person, qualified as above mentioned for the purposes aforesaid; and if the two persons to be so nominated or appointed shall differ in judgment as to either of the said subjects, they shall appoint a fit and impartial person, qualified in like manner, to be associated with them for such purposes, if they can agree on such person; or if they cannot

40 agree, then each of them shall nominate two fit and impartial persons qualified in like manner,

Exhibit P-1.

and from the names of the four persons so nominated, that of one shall be drawn by ballot, who shall be associated for the purposes aforesaid with the two persons so nominated or appointed, and the decision of any two of the three persons so to be chosen, whether as to the value of the said house or as to the amount of such rent, shall in all cases be final and conclusive; and in every case of renewal, the rent to be reserved during the further term to be thereby granted, if not settled by mutual agreement, shall be ascertained upon the principle, and in the manner following, that is to say: the said lot of ground shall be considered as vacant and unimproved, and as such, its then full and fair value, on a sale thereof in fee simple, by private contract, shall be estimated by the appraisers, and five per cent on such estimated value of the said lot shall be the annual rent to be reserved in the new lease during the further term to be thereby granted. AND it is further agreed, that the persons to be so chosen to ascertain the value of such house and to determine on the said rent for the next ensuing term, shall in all cases be sworn to act therein faithfully and impartially, and their award or decision shall be made in writing, and by duplicate, one part thereof to be delivered to the party of the first part, her heirs or assigns, and the other to the party of the second part, his executors, administrators or assigns. AND it is further mutually declared and agreed, by and between the parties to these presents, that if at the end and expiration of any or either of the said terms of twenty-one years, such dwelling house as is above described, shall not be standing on the said demised Lot of Land, the said party of the first part shall not be held, or in any manner bound, to grant any new lease of the said Lot nor to pay for any improvements thereon. AND FURTHER, that if the

Exhibit P-1.

said party of the first part, her heirs or assigns, having, before the expiration of such term, elected to pay for such dwelling house as may be then standing on the said lot shall neglect to pay, or offer to pay for the same, according to the valuation thereof, so to be made as above provided, then the said party of the second part, his execu-
 10 tors, administrators or assigns, shall and may hold and continue in the possession of the said demised premises until such payment shall be made or tendered.

IN WITNESS WHEREOF the parties to these presents have hereunto interchangeably set their hands and seals the day and year first before written.

NATHALIE E. BAYLIES (L. S.)

WILLIAM H. ROY (L. S.)

20 SEALED AND DELIVERED IN THE }
 PRESENCE OF }

Words "which" to "inhabitants" interlined between 24th and 25th lines, page 2; and all from "if the" page 2, line 30, to "house" in line 33, and from "contain" in line 45 to end of line 50, obliterated before execution.

EDMUND L. BAYLIES,
 as to both signatures.

20 STATE OF NEW YORK, }
 CITY AND COUNTY OF NEW YORK. } ss.:

On the 27th day of March, 1893, before me personally appeared Nathalie E. Baylies and on the 26th day of April, 1893, before me personally appeared William H. Roy, to me severally known, and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

40 EDMUND L. BAYLIES,
 Notary Public,
 New York County.

Exhibit P-2.

THIS INDENTURE, made the 10th day of July, 1896, between Thomas Allison, the referee duly appointed in the action hereinafter mentioned, of the first part, and Alexander Miller, of the City, County and State of New York, party of the second part;

WHEREAS, at a Special Term of the New York 10
 Supreme Court held at the County Court House in the City of New York on the 19th day of May, 1896, it was among other things ordered, adjudged and decreed by the said court in a certain action then pending in the said court between James Alexander, plaintiff, and Frances T. Miller, as administratrix, etc. William H. Roy and Isaac B. Potter, as assignee, etc. as defendants, were all and singular the mortgaged leasehold premises described in the mortgage executed by James Mil- 20
 ler in his life time, now deceased, to James Alexander, the plaintiff in the above mentioned suit, and recorded in the office of the Register of the City and County of New York on the 2nd day of July, 1887, in Liber 2198 of Mortgages, page 171, and being the same premises mentioned in the complaint in said action and in said judgment described, or any such part thereof as might be sufficient to discharge the mortgaged debt, the expenses of the sale and costs in said action, as 30
 provided by Sections 1626 and 1676 of the Code of Civil Procedure, and also any ground rent due or accrued under the leases hereinafter mentioned and which might be sold separately without material injury to the parties interested, be sold at public auction according to law and the course and practice of said Court, by or under the direction of the said party of the first part as referee thereby duly appointed for that purpose; that

Exhibit P-2.

said sale be made at the New York Real Estate sales room, No. 111 Broadway, in the City of New York; that the said referee give due public notice of the time and place of such sale according to the law and the course and practice of the said Court, and that any of the parties to the said action might become a purchaser to the said mort-
10 gaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same, and

WHEREAS, the said referee, in pursuance of the said order and judgment of the said Court, did on the 15th day of June, one thousand eight hundred and ninety-six, sell at public auction at the New York Real Estate sales room, No. 111 Broadway, New York City, the premises described in the said
20 judgment, due notice of the time and place of such sale being first given pursuant to the said judgment, at which sale the premises hereinafter described were struck off to Alexander Miller, party of the second part, for the sum of Forty-five hundred dollars, that being the highest sum bidden for the same;

NOW THIS INDENTURE WITNESSETH: That the said referee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the
30 order and judgment of the said Court, and in conformity to the statute in such case made and provided, and also in consideration of the premises and of the said sum of money so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents doth grant and convey unto the said party of
40 the second part ALL that certain lot of ground situate, lying and being in the 20th Ward of the

Exhibit P-2.

City of New York distinguished on a map of lands in the 12th (now 20th) Ward of the City of New York, belonging to the estate of Cornelius Ray, deceased, dated 11th February, one thousand eight hundred and thirty-four, made by Edwin Smith, City Surveyor, on file in the office of the Register of the City and County of New York by the number four hundred (400) and bounded as follows, 10
viz: Northeasterly in front by 29th Street, south-eastwardly by lot number four hundred and one (401) on the said map southwestwardly by the one-half distance line between 28th and 29th Streets, and northwestwardly by lot number three hundred and ninety-nine (399) on the said map, containing in width in front on the said 29th Street and in the rear twenty-five feet and in length on each side ninety-eight (98) feet, nine (9) inches, be the said measurements more or less, 20
together with all and singular the edifices, buildings, rights, privileges, members and appurtenances, and also all the estate, right, title, interest, term of years to come, and unexpired property possession claim and demand whatsoever, as well in law as in equity, of the defendants in said action, of, in and to the said demised premises and every part and parcel thereof, with the appurtenances and also the indenture of lease in said mortgage described, and the renewals therein pro- 30
vided for, and every clause, article and condition therein contained, which said indenture of lease made by Robert Ray to Elizabeth Rankin was for the term of twenty-one years from the 1st day of May, one thousand eight hundred and seventy-three, and bears date the 10th day of March, one thousand, eight hundred and seventy-three, and was recorded in the office of the Register of the City and County of New York, in Liber 1249 of Conveyances, page 219, on the 9th day of April, 40

Exhibit P-2.

1873, and which renewal of lease made by Nathalie E. Baylies to William H. Roy was for the term of twenty-one years from the 1st day of May, 1893, and bears date the 27th day of March, 1893, and was recorded in said Register's office in Section 3, Liber 18 of Conveyances, page 457, on the 26th day of April, 1893, together with all the right,
 10 title and interest and estate of each and all of the parties to said action of and to the said mortgaged leasehold premises and each and every part thereof, to have and to hold all and singular the premises above mentioned and described and hereby conveyed or intended so to be unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever.

20 IN WITNESS WHEREOF, the said Thomas Allison, referee as aforesaid, hath hereunto set his hand and seal the day and year first above written.

THOMAS ALLISON,
 Referee. (L. S.)

Sealed and delivered in }
 the presence of }
 Bernard Hahn.

30 STATE OF NEW YORK, }
 City and County of New York } ss.:

On this 10th day of July, in the year one thousand eight hundred and ninety-six, before me personally came Thomas Allison, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

BERNARD HAHN,
 Notary Public New York County.

Exhibit P-3.

LAST WILL AND TESTAMENT
OF
NATHALIE ELIZABETH BAYLIES,
Died, December 9th, 1912.

Will Dated May 8th, 1900,
Codicil Dated March 21st, 1908.

10

Admitted to Probate,

IN THE NAME OF THE FATHER, AND OF THE SON,
AND THE HOLY GHOST, AMEN.

I, NATHALIE ELIZABETH BAYLIES, widow of Edmund Lincoln Baylies, late of Taunton, in the State of Massachusetts, being mindful of the uncertainty of life, and desirous of making, while I am in good health, a suitable disposition of my worldly affairs, do make, publish and declare this my Last Will and Testament, in manner following, that is to say:

20

FIRST: I direct my Executors hereinafter nominated and appointed, to pay all my just debts and funeral expenses as soon after my decease as the same can conveniently be done.

SECOND: I give and bequeath to "The Trustees of the Estate and Property of the Diocesan Convention of New York," a corporation existing under the laws of the State of New York, the sum of Ten thousand Dollars to be taken, held and kept safely invested by the said corporation, and its successors as a trust fund, and the income only therefrom to be paid over in equal semiannual payments to the Rector, Church Wardens and Vestrymen of the Church of the Holy Apostles

40

Exhibit P-3.

in the City of New York and their successors, such income to be used as may be deemed most advisable in maintaining said church and carrying on its work.

10 I give and bequeath unto "The Trustees of Donations to the Protestant Episcopal Church", a corporation established by an act of the Legis-
lature of the State of Massachusetts, the sum of
Five thousand Dollars in Trust, nevertheless to
keep the same safely invested and the net income
or interest thereof in each year to pay over to
the persons or trustees having charge of the tem-
poral affairs of St. Thomas' Protestant Episcopal
Church at Taunton, in the County of Bristol,
State of Massachusetts, said income so paid over
to be used for the general purposes of the said
Church.

20 I give and bequeath unto the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America" for the use of the said Society the sum of
Two thousand Dollars to be taken, held and safely
kept invested by and in the name of said Society,
and the income only of said property to be used
for the purposes of said Society.

30 I give and bequeath unto the "Evangelical Educational Society of the Protestant Episcopal Church," incorporated by the Legislature of the State of Pennsylvania on or about the first day
of November, one thousand eight hundred and
sixty-nine, the sum of Two thousand five hundred
Dollars, to be taken, held and safely invested by
said Society as an endowment fund for the "Bishop
Vail Scholarship" as now established.

40 I give and bequeath unto the "Trustees of the Fund for the Relief of the Widows and Orphans

Exhibit P-3.

of Deceased Clergymen and of Aged, Infirm and Disabled Clergymen" of the Protestant Episcopal Church, whereof William Alexander Smith is at present Treasurer, the sum of Two thousand Dollars, to be taken, held and kept safely invested by the said trustees and the income thereof only to be used for the purposes of the said corporation.

I give and bequeath to the "Midnight Missions",
 a corporation created in the year one thousand eight hundred and sixty-eight under the Laws of the State of New York, or to the Treasurer thereof for the time being, for its corporate purposes, the sum of Five hundred Dollars, to be taken, held and kept safely invested by such corporation and the income therefrom only to be used for the purposes of said corporation. 10

I give and bequeath unto "The Cathedral Church of St. John the Divine in the Diocese of New York" incorporated by an act of the Legislature of the State of New York in the year eighteen hundred and seventy-three the sum of Five thousand Dollars, to be used for the purposes of said corporation. 20

I give and bequeath to my executors hereinafter named the sum of Five thousand Dollars, to be applied by them in their discretion to such public and charitable object for the use and benefit of the said City of Taunton and its Citizens as shall commend itself to the judgment of my said executors. 30

I hereby authorize my said executors when they shall have selected the object for which said sum shall be applied, which selection shall be made within three years from the time of probating my will, to apply the said Five thousand dollars outright to the object selected, or to hold the same, or to pay over the same to others to hold, as a fund 40

Exhibit P-3.

and apply the income thereof only to the object so selected.

10 **THIRD:** I give and bequeath to my executors hereinafter named, or to such of them as shall qualify, the sum of Six thousand Dollars, but this bequest shall not be deemed or taken in any way as preventing the said executors from charging
 10 my estate such commissions as are allowed by law for such services as they shall render to my said estate as such executors.

20 **FOURTH:** I direct my executors to divide all my jewelry, silver, glass, china, household furniture of every description, books, paintings, bronzes and bric-a-brac, not otherwise disposed of in the memorandum left with this will, into as many parts as nearly equal as possible, as I shall leave
 20 children, or issue of a deceased child, or children, me surviving, and to appraise the value of each of said shares and of the various articles composing the same and I give and bequeath one of such shares to each child who shall survive me, and to the issue of any deceased child of mine who shall have died before me leaving issue. I direct
 30 that any child of mine who, under the provisions of this will shall elect to take my house at Taunton shall have a preferential right to all, or such of the articles of household furniture which shall be
 30 therein at the time of my death as such child shall select. And in the same way, in case one of my children should decide to purchase my New York residence, I direct that such child shall have the same preferential right in respect to the household furniture in said residence.

40 As to all portraits, miniatures, jewelry, silver, specific pieces of furniture, or other articles mentioned in the memorandum left with this will,
 40 and directed to be treated as heirlooms, my will

Exhibit P-3.

is that each of my children or grandchildren receiving the same shall treat them as heirlooms, and have only a life interest therein, and after their respective deaths, the same shall descend to the issue of such children or grandchildren, if there be no issue, but if there be no issue then I give, and bequeath the same to the heirs at law of such child or grandchildren being of my blood, it being my desire that such heirlooms may always remain in the possession of some direct descendant of mine. 10

FIFTH: I give to my friend Sophie Huguenin an annuity of Eight hundred Dollars, to be paid to her in equal semi-annual payments during her natural life, the first of said payments to be made within three months of my decease.

I direct my executors hereinafter appointed to invest in their names in bonds secured by mortgages upon real estate or in City, County or State bonds, or in first mortgage bonds of railroads which have paid dividends on their stock for five years preceding the date of such investment, or by retaining for that purpose securities, whether stock or bonds, in which any portion of my estate shall be invested at the time of my decease, a principal sum which shall in their judgment produce the said annuity of eight hundred Dollars, and if for any cause the sum so set aside shall prove insufficient, I direct my said executors to set aside such further sum or sums as may be necessary to produce such income. Upon the death of the said Sophie Huguenin the said principal sum held to produce the said annuity together with any surplus income thereon shall fall into and become a part of my residuary estate. 20 30

I direct that my executors shall not be held responsible, or in any manner liable, for any loss 40

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or depreciation of investments made by them as provided for in this article of my will.

10 SIXTH: Being desirous that the Homestead estate, situate at Taunton, in the State of Massachusetts, and the leasehold estate in certain lands adjoining said Homestead, leased by one Job M. Godfrey unto my husband Edmund Lincoln Baylies during his life time, and which Homestead and Leasehold now belong unto myself, shall after my decease continue in the possession of some one of my children, it is my will, and I hereby direct that my son Edmund Lincoln Baylies shall have the right, if he shall desire to so do, to purchase the said Homestead estate and Leasehold estate, together with the farm-horses, live-stock, wagons carts, farming utensils and implements, hay and grain, cut or harvested, crops in the **20** ground and secured, fruit, hanging or picked, and all other produce of the soil, at such price and for such sum as in the estimation of my Executors shall be deemed a fair valuation for the same, and to be paid by him unto my Executors, within one year next after the probate of my will. Provided, however, that he shall within six months next after the probate of my will in such State in which probate shall first be had, give unto my **30** Executors written notice of his intention to take said premises and property, or if he shall not desire to take the whole of the said lands, but shall desire to purchase a portion thereof only, as hereinafter provided for, under power to said Executors to make such division thereof as to them shall be deemed best for the interest of my estate, then it is my will, and I hereby direct that he shall have the right to purchase such portion thereof as he shall desire to purchase, upon like **40** notice given unto my Executors for such pro-

Exhibit P-3.

portionate price as shall by my said Executors be fixed and determined, and whose adjudication, as to the valuations aforesaid, shall be deemed final.

I direct that said executors shall fix and determine upon such divisions of said Homestead estate and Leased lands as in their judgment shall be deemed best for the interests of my estate, and their valuations of the whole of the Homestead estate, and Leasehold estate, and of such divisions shall be fixed and determined within four months next after such Probate of my will. 10

In case my said son shall fail within said period of six months to give notice, as aforesaid unto my Executors, then, it is my will and I hereby direct, that each of my other children, namely Cornelia Prime and Walter Cabot, shall respectively, and in the order aforesaid, have the right to purchase the said premises and property, or a like portion of said lands only, for a like price, for the whole, or proportionate price for a portion, fixed and determined as aforesaid, the time for giving such written notice is however to be extended unto each one of them respectively, for the respective periods of seven and eight months next after such probate of my will. 20

Upon the payment unto my Executors by the child of mine purchasing the whole or a portion only of the said lands and leasehold premises, I authorize and direct my Executors to Execute and deliver a deed of conveyance of the premises purchased by such child of mine unto him or her, and his or her heirs forever. 30

I also authorize my said Executors to accept a mortgage of the premises sold, securing one half of the consideration for such purchase, from the child purchasing. 40

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I authorize my Executors, however, at any time within the periods given unto my said children for the exercise of such option to sell and dispose of all of such crops and personal property above named, as they in their judgment may deem are likely to perish, or depreciate in value, and to hold the proceeds from the sales thereof, as a part
10 of my general estate.

Should all of my said children decline to purchase the whole of said lands, or any portion of said lands, within the period of eight months next after such probate of my will, then I hereby direct my Executors, whenever they in their discretion shall deem it expedient so to do, to grant, bargain and sell the whole of said lands and leasehold interest and all of the aforesaid named personal property,
20 and convert the same into personal estate, and to hold the proceeds of the sales thereof as a part of the personal estate belonging to my general estate, and I authorize my said Executors to execute and deliver upon the sale of such lands, good and sufficient deeds for the conveyance of said lands to the purchaser or purchasers thereof, and his or their heirs and assigns forever.

It is my will, that whichever one of my children shall elect to take and shall take the said
30 lands, or any portion thereof, shall do so with the intention of residing upon or using the same, during the whole or a portion of the year.

It is not my intention that the rights aforesaid given to my children respectively in the aforesaid order, to purchase said premises, or any portion thereof, shall descend unto the issue of any deceased child of mine in case any of my children shall have deceased, during my lifetime, leaving issue, or shall decease after my decease, leaving issue, and
40 within the period during which the right to make the election aforesaid shall continue.

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SEVENTH: All the rest, residue and remainder of my estate both real and personal, of every kind and description, and wheresoever situated and whether acquired before or after the execution of this will, including all property over which at the time of my decease I have any power of testamentary disposition, I give, devise and bequeath unto my three children Edmund Lincoln, 10
Cornelia Prime and Walter Cabot, and to their heirs share and share alike.

If at the time of my decease any of my children shall have deceased leaving issue me surviving, I give, devise and bequeath the share which such deceased child or children would have received, if living, to his, her or their issue, *per stirpes* and not *per capita*. In case my son Edmund Lincoln should die before me without leaving issue me surviving, but leaving his wife Louisa me 20
surviving, I give, devise and bequeath to my Executors hereinafter named and to the survivor of them, and to their successors, the share of my said estate both real and personal which my said son Edmund Lincoln would have received had he survived me, to have and to hold the same upon trust nevertheless to receive the rents, issues and profits of the real estate and the income of 30
the personal estate, and to pay over the entire net income from the said trust estate after deducting all proper charges for commissions, repairs, taxes, assessments, water rates and other proper charges in connection with the said trust property in quarterly payments to the said Louisa Baylies during her life, and upon her death I give, devise and bequeath the property real and personal so held in trust to such of my two remaining children then surviving, as have issue then surviving, in fee or to the issue of any such child 40

Exhibit P-3.

of mine, who shall then have deceased, leaving issue, per stirpes and per capita, in fee.

In case my daughter Cornelia Prime shall die before me without leaving issue me surviving, but leaving her husband Francis C. Lowell me surviving, I give, devise and bequeath to my executors hereinafter named, and to the survivor
10 of them, and to their successors, the share of my said estate both real and personal which my said daughter Cornelia Prime would have received had she survived me, to have and to hold the same Upon Trust nevertheless to receive the rents, issues and profits of the real estate and the income of the personal estate, and to pay over the entire net income from the said trust, after deducting all proper charges for commissions,
20 proper charges in connection with the said trust property in quarterly payments to the said Francis C. Lowell during his life, and upon his death I give, devise and bequeath the property real and personal so held in trust to such of my two remaining children, then surviving, as have issue then surviving, in fee; or to the issue of any such child of mine, who shall then have deceased leaving issue, *per stirpes* and not *per capita*, in fee.

In case it shall become necessary to set up
30 either or both of the trusts provided for in this Article of my will, I authorize and empower the trustees of said trusts to continue to hold as constituting the principal of such trusts any securities in which my property shall be invested at the time of my decease, whether the same are such as trustees are permitted by law to hold or not and in the investment or reinvestment of the principal of the said trusts I authorize and em-
40 power my said trustees to invest in the same class

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of securities as my executors are hereinbefore authorized to invest in under the provisions of the Fifth Article of this will. I also authorize the said trustees to invest any portion of the personal property which they shall hold as such trustees in the purchase of real estate in the City of New York, or in improving real estate which they shall hold as such trustees, and I authorize **10** them as such trustees to make leases of any real estate which they may hold for terms of twenty-one years, with or without renewals, under leases containing such covenants and conditions as to my said trustees shall seem best; also to join in renewing leases made prior to my decease.

EIGHTH: I authorize and empower my Executors, or such of them as qualify, if they in their discretion shall deem it best; by an instrument or instruments under their hands and seals, **20** to appoint three persons or Commissioners in partition; to make a just and equal partition, or from time to time to make just and equal partitions of all such real estate situated in the City and County of New York, of which I shall die seized or of any part or parts thereof, between the persons entitled thereto under the Seventh Article of this my will; and to set apart in severalty on each such partition, to each of such persons such **30** parcel or share as such person shall be entitled to receive under the said Seventh Article of my will; such partition or partitions to be made by the said three persons as Commissioners in partition, or in case of their disagreement, then by any two of them. And as it may be impracticable for such Commissioners in partition to make the partition or partitions with exact equality I authorize any inequality to be made up by payment of such sums of money as may be found **40**

Exhibit P-3.

necessary to make equality, hereby authorizing said Commissioners to fix the amounts of such sums, and by whom, and to whom the same shall be paid. And I authorize such Commissioners in partition by an instrument or instruments under their hands and seals duly executed, to do and perform all acts and deeds proper and
10 necessary to ratify and confirm such partition or partitions, and to make the same final and effectual.

NINTH: In addition to the powers heretofore conferrerd, I hereby authorize and empower my executors or such of them as shall qualify, or the survivor of them, and I also authorize my said trustees or the survivor of them, or such persons as shall act as trustees of the trusts
20 created by the Seventh Article of this will, in each case in their or his discretion to sell at public or at private sale, and upon such terms as my said executors or trustees shall deem best, whether wholly for cash or partly on credit any and all real estate of which I shall die seized, wherever situated, except the real estate specifically devised as provided for in the Sixth Article of this my will.

TENTH: I hereby direct that all bequests and legacies, including the annuity given by the Fifth
30 Article of this will, shall be paid in full to the several beneficiaries mentioned and described, free from all deduction for any succession or transfer tax which may be chargeable thereon by reason of any law of any State or of the United States taxing the said bequests, it being my intention that the said bequests and that the said annuity shall be paid in full without any payment or deduction whatsoever by reason of any such tax, and I hereby direct my executors in paying said be-
40 quests, legacies and annuity to pay the same

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wholly out of the real and personal property which at the time of my decease shall be in the the State of New York, and that no property of mine being at the time of my deceased in the State of New York shall be applicable to pay such bequests, legacies and annuity until after all the property of which I shall die seized and possessed and being outside of said State of New 10
York shall have been previously exhausted.

ELEVENTH: I nominate, constitute and appoint my son Edmund Lincoln Baylies and my son Walter Cabot Baylies and my son-in-law Francis C. Lowell to be Executors of and and Trustees nured this my last will and testament and I hereby desire and direct that they and each of them shall be exempt from giving any bond or other security for acting as such executors or 20
trustees.

TWELFTH: I give unto those and such of my executors and trustees hereinbefore nominated and appointed as shall take upon themselves or himself the execution of the duties and trusts unto them given and to the survivors or survivor of them respectively, or such one of them, the same powers and authority as are given unto them collectively. In case at any time the trustees of any of the trusts created by this will shall 30
be reduced for any cause whatsoever to one in number, I direct that such single trustee shall have power by an instrument in writing under his hand and seal to designate a suitable person or trust company to act with him as trustee of the trusts created by this will, and any trustee so appointed shall have the like power of appointing another person or trust company by an instrument executed under his hand and seal, in case 40
for any cause he should at any time be sole acting trustee of any of the aforesaid trusts.

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I direct that no one of my executors or trustees shall be responsible, answerable or accountable for any loss unless it shall happen through his own wilful neglect or default, and that no one of them shall be responsible, answerable or accountable for any other or others of them but each one for his own acts, deed, receipts, neglects and
 10 defaults only.

LASTLY: I hereby revoke any and all wills and codicils by me at any time heretofore made.

IN WITNESS WHEREOF I have hereunto set my hand and seal at the City of New York on the eighth day of May in the year Nineteen hundred.

NATHALIE E. BAYLIES (L. S.)

20 The foregoing instrument pur-
 porting to be the last will and
 testament of Nathalie Elizabeth
 Baylies, the testatrix therein
 named was at the date thereof
 signed, sealed, published and
 declared by her, the said Natha-
 lie Elizabeth Baylies as and
 for the last Will and Testament
 in the presence of us and of
 each of us who in her presence,
 at her request and in the pres-
 30 ence of each other have here-
 unto subscribed our names as
 witnesses to the execution there-
 of.

JOSEPH W. WELSH, 120 East 28th St., New
 York City.

JNO. VIMONT LYLE 141 West 74th St. New York
 City.

40 WALTER F. TAYLOR, 173 West 73rd St. N. Y.
 City.

Exhibit P-3.

I, NATHALIE ELIZABETH BAYLIES, widow of Edmund Lincoln Baylies, late of Taunton, State of Massachusetts, having heretofore made published and declared my Last Will and Testament, bearing date the eighth day of May, Nineteen hundred, do now make, publish and declare this First Codicil thereto.

FIRST: I hereby increase the annuity of Eight hundred Dollars, given by the Fifth Article of my will to my friend Sophie Huguenin, to the sum of One thousand Dollars per annum, to be paid to her in equal semi-annual payments during her natural life, the first payments to be made within three months of my decease. 10

SECOND: I hereby increase the bequest to my executors contained in the Third Article of my will from the sum of Six thousand Dollars to the sum of Twelve thousand dollars, *i. e.* I hereby increase said former bequest to the extent of Six thousand Dollars. 20

THIRD: Whereas in and by the Second Article of my said Will I did give and bequeath unto the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America," for the use of said Society, the sum of Two thousand Dollars, to be taken, held and safely kept invested by in the name of said Society, and the income only of said property to be used for the purposes of said Society, I now hereby give and bequeath the said sum of Two thousand Dollars to the said Missionary Society absolutely. 30

FOURTH: Except as hereby modified, I hereby ratify and confirm in all things my last Will and Testament.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal at the City of New York, this 21st day of March, One thousand nine hundred and eight. 40

NATHALIE E. BAYLIES (L. S.)

Exhibit P-4.

10 The foregoing instrument, purport-
 ing to be a first Codicil to
 the Last Will and Testament of
 Nathalie Elizabeth Baylies, was
 on the date thereof signed, pub-
 lished and declared by her the
 said Nathalie Elizabeth Baylies
 as and for a first Codicil to
 her last Will and Testament in
 the presence of us and of each
 of us, who in her presence at
 her request and in the presence of
 each other have hereunto sub-
 scribed our names as witnesses.

WALTER F. TAYLOR 173 West 73rd St., New York
 City.

20 JOSEPH W. WELSH, 50 West 45th St., New York
 City.

JNO. VIMONT LYLE, 309 East 16th Street Brook-
 lyn, N. Y. City.

Exhibit P-4.

THIS INDENTURE made this 13th day of May,
 in the year one thousand nine hundred and thir-
 teen, between EDMUND L. BAYLIES and LOUISA V.
 R. BAYLIES, his wife, of the Borough of Man-
 30 hattan, City of New York; CORNELIA PRIME
 LOWELL, widow of Francis G. Lowell, of Boston,
 Massachusetts; and WALTER CABOT BAYLIES and
 CHARLOTTE UPHAM BAYLIES, his wife, of Taunton,
 Massachusetts, the said Edmund L. Baylies, Cor-
 nelia Prime Lowell and Walter C. Baylies being
 the three children and sole residuary devisees of
 Nathalie Elizabeth Baylies, of Taunton in the
 State of Massachusetts, who died December 9th,
 1912, parties hereto of the first part; and THE
 40 RAY ESTATE CORPORATION, a corporation organ-

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ized under the laws of the State of New York and whose principal place of business is at No. 54 Wall Street, Borough of Manhattan, City of New York, party hereto of the second part,

WITNESSETH:

That the said parties of the first part in consideration of the issue and transfer to them of certain shares of stock and of certain income bonds by the party of the second part, the receipt where-
 or by the parties hereto of the first part is hereby acknowledged, do hereby grant and release unto the said party of the second part, its successors and assigns forever, ALL the following parcels of land in the Borough of Manhattan, City of New York, bounded and described as follows:

FIRST: All those certain lots of land distinguished on a certain partition map of lands in the sixteenth (now twentieth) Ward of the City of New York belonging to the estate of Cornelius Ray, deceased, dated November 29th, 1844, made by Gardner A. Sage, City Surveyor, on file in the Register's office of the City and County of New York, which on said map are distinguished by the following numbers, viz.:

1. Two (2) lots at the southwest corner of Twenty-ninth Street and the Eleventh Avenue distinguished on said map as numbers five hundred and sixty-seven (567) and five hundred and sixty-eight (568), each of said lots being one hundred (100) feet in depth by twenty-four (24) feet, eight and one-quarter (8 1/4) inches in width on Eleventh Avenue.

2. Sixteen (16) lots on the South side of West Twenty-ninth Street distinguished on said map as numbers five hundred and seventy-seven (577), five hundred and seventy-eight (578), five hundred and seventy-nine (579), five hundred and

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eighty (580), five hundred and eighty-one (581), five hundred and eighty-two (582), five hundred and eighty-three (583), five hundred and eighty-four (584), five hundred and eighty-five (585), five hundred and eighty-six (586), five hundred and eighty-seven (587), five hundred and eighty-eight (588), five hundred and eighty-nine (589),
 10 five hundred and ninety (590), five hundred and ninety-one (591), and five hundred and ninety-two (592), each of said lots being twenty-five feet (25) in width in front on said Twenty-ninth Street and in the rear, by ninety-eight (98) feet nine (9) inches in depth.

3. Two (2) certain lots at the southeast corner of Twenty-ninth Street and Twelfth Avenue, distinguished on said map as numbers five hundred and ninety-four (594) and five hundred and
 20 ninety-five (595), each of said lots being twenty-five (25) feet four (4) inches in width on the said Twelfth Avenue, with a width of twenty-four (24) feet eight and one-quarter ($8 \frac{1}{4}$) inches each in the rear, the said lot five hundred and ninety-four (594) having a frontage on said
 30 Twenty-ninth Street of ninety-five (95) feet three (3) inches, and the said lot five hundred and ninety-five (595) having a depth on its southerly side of eighty-three (83) feet eleven (11) inches.

4. One (1) lot on the southerly side of Thirtieth Street distinguished on said map by the number five hundred and seven (507), commencing at a point one hundred (100) feet westerly from the westerly line of the Eleventh Avenue and being twenty-five (25) feet in width in front and rear by ninety-eight (98) feet nine (9) inches in depth.

5. One (1) lot on the southerly side of West
 40 Twenty-ninth Street distinguished on said map by the number four hundred (400), commencing

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at a point four hundred and fifty (450) feet westerly of the westerly line of the Tenth Avenue and being twenty-five (25) feet in width in front and rear by ninety-eight (98) feet nine (9) inches in depth.

6. One (1) lot on the southerly side of Thirtieth Street distinguished on said map by the number four hundred and sixty-three (463), commencing at a point four hundred and seventy-five (475) feet westerly of the westerly line of the Tenth Avenue and being twenty-five (25) feet in width in front and rear by ninety-eight (98) feet and nine (9) inches in depth. 10

It being understood that all of the foregoing lots are subject to ground leases expiring at different dates, some of which leases have provisions for renewals thereof.

SECOND: All those certain lots of land distinguished on a certain partition map of lands in the Twelfth (now Twentieth) Ward of the City of New York, belonging to the estate of Cornelius Ray, deceased, dated 11th of February, 1834, made by Edwin Smith, City Surveyor, on file in the Register's office of the City and County of New York, which on said map are distinguished by the following numbers, viz: 20

1. One (1) lot on the southerly side of Twenty-eighth Street between Eighth and Ninth Avenues distinguished on said map as number sixty (60), commencing at a point two hundred and fifty (250) feet westerly from the westerly line of the Eighth Avenue and being twenty-five (25) feet in width in front on said Twenty-eighth Street, and in rear, by ninety-eight (98) feet nine (9) inches in depth on each side, said lot being subject to a certain ground lease made April 22nd, 1910, by Nathalie E. Baylies to one Sarah F. Decker, 30

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expiring November 1st, 1931, the said lot of ground only being hereby conveyed, and being occupied at the present time by two houses known as numbers three hundred and twenty (320) and three hundred and twenty-two (322) West Twenty-eighth Street.

2. Five (5) lots at the northeast corner of
 10 Ninth Avenue and Twenty-eighth Street, distinguished on said map as numbers ninety-eight (98), ninety-nine (99), one hundred (100), one hundred and one (101) and one hundred and two (102); said lots together comprising a frontage of ninety-eight (98) feet and nine (9) inches on said Ninth Avenue, and one hundred and twenty-five (125) feet on the said Twenty-eighth Street, the
 20 easterly portion of the said plot of five lots being occupied by houses known as numbers three hundred and sixty-five and three hundred and sixty-seven (365 and 367) West Twenty-eighth Street, which said two last named houses are intended to be conveyed by this deed; the balance of said lots being subject to four certain ground leases with rights of renewal being made by Nathalie E. Baylies to Jonas Weil and Bernard Mayer and dated June 30th, 1893.

3. Two (2) lots on the southerly side of Twenty-ninth Street between Eighth and Ninth Avenues,
 20 distinguished on said map by the numbers one hundred and seven (107) and one hundred and eight (108), commencing at a point one hundred (100) feet easterly from the westerly side of Ninth Avenue, the said two lots having a combined frontage on Twenty-ninth Street of fifty (50) feet with a depth of ninety-eight (98) feet nine (9) inches, and the said two lots being occupied by three houses known as numbers three hundred and sixty-four (364), three hundred and sixty-six (366)
 40 and three hundred and sixty-eight (368) West

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Twenty-ninth Street, each of said houses being sixteen (16) feet eight (8) inches, or thereabouts, in width by ninety-eight (98) feet nine (9) inches in depth; it being the intention to convey not only the two lots of ground, but also all the buildings and improvements thereon, being the three houses above described, with their appurtenances.

10

4. All that plot of ground on the southerly side of Twenty-ninth Street composed of the whole of the lot distinguished as number one hundred and fifteen (115) and the westerly twelve (12) feet six (6) inches of lot number one hundred and sixteen (116) on the said partition map, said plot being thirty-seven (37) feet six (6) inches in width on the said southerly side of Twenty-ninth Street and in the rear by ninety-eight (98) feet nine (9) inches in depth on each side, and being now known as street numbers three hundred and forty-two (342) and three hundred and forty-four (344) West Twenty-ninth Street, and subject to certain ground leases with covenants or renewal, the land only being hereby conveyed without the improvements thereon.

20

5. The house and lot known as number three hundred and twenty (320) West Twenty-ninth Street, being on the southerly side of said street between Eighth and Ninth Avenues, the said lot consisting of parts of lots one hundred and twenty-four (124) and one hundred and twenty-five (125) upon the aforesaid partition map, the said lot commencing at a point two hundred and thirty-seven (237) feet six (6) inches westerly from the westerly side of the Eighth Avenue and being twenty (20) feet ten (10) inches in width in front and rear by ninety-eight (98) feet nine (9) inches in depth, the said lot comprising the westerly twelve (12) feet six (6) inches of lot num-

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ber one hundred and twenty-five (125) and the easterly eight (8) feet four (4) inches of said lot number one hundred and twenty-four (124).

6. The lot and building known as number three hundred and ninety-seven (397) Eighth Avenue, said lot comprising portions of lots numbers one hundred and ninety-six (196) and one hundred and ninety-seven (197) upon the said partition map, and being about twenty-one (21) feet in width in front and rear by seventy (70) feet in depth.

Be the said dimensions of any one of the aforesaid lots more or less.

TOGETHER with the appurtenances to each of said lots belonging or in any wise appertaining, and all the estate and rights of the parties of the first part and each of them in and to said premises hereinbefore described and every part thereof, it being the intention by the foregoing words of description to convey to the party hereto of the second part all the real estate in the said Twentieth Ward of the Borough of Manhattan aforesaid whereof the said Nathalie E. Baylies died seized.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, its successors and assigns forever.

AND the said parties of the first part do hereby covenant with the said party of the second part that the parties of the first part have not done or suffered anything whereby the said premises have been encumbered in any way whatever.

The land affected by the within conveyance is situated in Section 3, Blocks 674, 675, 700, 701, 751, 752 and 753 on the Land Map of the City of New York.

IN WITNESS WHEREOF the said parties of the

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first part have hereunto severally set their hands and seals the day and year first above written.

EDMUND L. BAYLIES (L. S.)
 LOUISA V. R. BAYLIES (L. S.)
 CORNELIA PRIME LOWELL
 WALTER C. BAYLIES (L. S.)
 WALTER CABOT BAYLIES
 CHARLOTTE UPHAM BAYLIES (L. S.) 10

In the Presence of:
 as to E. L. B.
 John R. Mackay
 as to E. L. B.
 Walter H. Merritt
 as to Louisa V. R. Baylies
 Hunson C. Coxe.

STATE OF NEW YORK, }
 County of New York. }^{SS.:} 20

On this 17th day of May, in the year one thousand nine hundred and thirteen, before me personally came EDMUND L. BAYLIES, to be known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

WALTER H. MERRITT,
 Notary Public, New York County, 30
 County Clerk's No. 2431,
 Register's No. 5024,
 Term Expires March 30, 1915.
 Certificate filed Register's Office, New York
 County.

(Seal.)

COMMONWEALTH OF MASSACHUSETTS, }
 County of Suffolk. }^{SS.:}

On this 19th day of May, in the year one thousand nine hundred and thirteen, before me personally came CORNELIA PRIME LOWELL, WALTER 40

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CABOT BAYLIES and CHARLOTTE UPHAM BAYLIES, his wife, to me personally known and known to me to be three of the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same.

10 FRANK R. FRITZ,
Notary Public.

My commission expires April 20, 1918.
(Notary Public's Seal.)

COMMONWEALTH OF MASSACHUSETTS.
Clerk's Office of Superior Court.

SUFFOLK, SS:

20 I, FRANCIS A. CAMPBELL, of Boston, in said County, duly elected, qualified and sworn as Clerk of the Superior Court, for and within said County and Commonwealth, dwelling in Boston in said County, said Court being a Court of record with a seal which is hereto affixed, the records and seal on which Court I have the custody, do herein and hereby in the performance of my duty as said Clerk, certify and attest that Frank R. Fritz, before whom the annexed affidavit, proof or acknowledgment was taken and subscribed, is a Notary Public for, within, and including the whole of said Commonwealth, doing business in
30 said County, duly appointed, commissioned, qualified, sworn and authorized by the laws of said Commonwealth to act as such; and also duly authorized by the laws of said Commonwealth to take affidavits and take and certify proofs of acknowledgment of deeds of conveyances for lands, tenements, hereditaments, lying and being in said Commonwealth; in any part thereof and to be recorded therein, wherever situated and however bounded; that he was at the time of
40 taking the affidavit, proof or acknowledgment, hereto annexed, such Notary Public that due faith

Exhibit P-4.

and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof or acknowledgment is genuine, and further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said **10**
Court at Boston, in said County and
(Seal.) Commonwealth, this 10th day of June
A. D., 1913.

FRANCIS A. CAMPBELL,
Clerk.

Form 132-12-18-'12-5000

UNITED STATES CONSULATE GENERAL, }
City of Paris, Republic of France. } ss. : **20**

On this 29th day of May in the year one thousand nine hundred and thirteen, before me, Hunson C. Coxe, United States Deputy Consul General, personally appeared LOUISA V. R. BAYLIES, to me personally known and known to me to be one of the individuals described in and who executed the foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF I have hereunto set my **30**
hand and official seal at the City of Paris, the
day and year above written.

(Seal.) American Consular Service \$2 Free
Stamp.

HUNSON C. COXE,
Deputy Consul General of the
United States of America at
Paris, France.

Recorded in the Office of the Register of the
County of New York, on the 21st day of June, **40**
A. D. 1913, at 11 o'clock 45 Min. A. M. in block

series (Conveyances) Section 3 Lib. 183 page 362 and indexed under Block Numbers 674, 675, 700, 701, 751, 752, 753 on the "Land Map of the City of New York."

Witness my hand and Official Seal, (Seal.)

MAX S. GRIFENHAGEN,
Register, County of New York.

Exhibit P-5.

10 THIS AGREEMENT, made this 1st day of June, 1913, between EDMUND L. BAYLIES, WALTER C. BAYLIES and CORNELIA PRIME LOWELL, parties of the first part, and THE RAY ESTATE CORPORATION, party of the second part;

WITNESSETH:

20 That the said parties of the first part, in consideration of the sum of One Dollar (\$1.00) in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do hereby assign and set over to the said party of the second part, its successors and assigns, all claim or claims and causes of action on account of any and all sum or sums of money due and owing to the said parties of the first part by the representatives or next of kin of Alexander Miller, deceased, for ground rent for the premises No. 532 West 29th Street, Borough of Manhattan, City of New York, which has accrued under the lease of said premises executed on March 27th, 1893, by Nathalie E. Baylies to William H. Roy, and also on account of any and all sum or sums of money to become due to the said parties of the first part from the said representatives or next of kin of the said Alexander Miller, deceased, for ground rent for the said premises, which has accrued since the 1st of May, 1913, up to the date of this instrument, and which shall become payable hereafter.

40 Dated June 1st, 1913.

EDMUND L. BAYLIES.
CORNELIA PRIME LOWELL.
WALTER C. BAYLIES.

BILL HEAD OF
 DEPARTMENT OF FINANCE
 BUREAU FOR THE COLLECTION OF ASSESSMENTS AND ARREARS—BOROUGH OF MANHATTAN
 STEWART BUILDING, 280 BROADWAY, ROOM H
 RAY ESTATE CORPORATION

To THE CITY OF NEW YORK, Borough of Manhattan, Dr.

COLLECTOR OF ASSESSMENTS AND ARREARS

For TAXES AND WATER RENTS, AS UNDER

Tax or Water Rent of	Line	New Description			Old Description		Tax	Water Rent	Interest at 7% Per Annum	TOTAL
		Section	Block	Lot	Ward	Block				
					Ward	No.				
1913	2334	3	700	52	1st half		\$135.75		\$ 9.63	
	"				2d half		135.75		4.84	
1912	"							\$36.03	2.56	
1912	2437				1st half		137.25		19.35	
	"				2d half		137.25		14.50	
1911	2343						258.37		46.87	
1909	2528						251.70		80.81	
1908	"							48.30	15.51	
1908	4376						242.11		94.62	
1907	4378						207.89		95.71	
1906	"							48.30	22.24	
1905	4379							48.30	25.68	
										\$2,119.32

Paid by Check,
 GEORGE WANAMAKER,
 Deputy Collector of Assesments and Arrears.

Exhibit P-6.

BILL HEAD OF
 DEPARTMENT OF FINANCE
 BUREAU FOR THE COLLECTION OF ASSESSMENTS AND ARREARS—BOROUGH OF MANHATTAN
 STEWART BUILDING, 280 BROADWAY, ROOM H
 ESTATE OF N. E. BAYLIES, c/o Carter, Ledyard & Milburn
 To THE CITY OF NEW YORK, Borough of Manhattan, Dr.
 COLLECTOR OF ASSESSMENTS AND ARREARS
 For TAXES AND WATER RENTS, AS UNDER

Tax or Water Rent of 1906	Line Cert. 4280	New Description Section Block Lot	Old Description Ward Block No.	Tax \$207.04	Water Rent	Interest at 7% Per Annum \$101.65	TOTAL
		3 700 52					
		Adv. Charges.		3.00			\$311.69

Paid by Check,
 GEORGE WANAMAKER,
 Deputy Collector of Assesments and Arrears.

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

BOROUGH OF MANHATTAN

RECEIPTED BILL FOR FIRST AND SECOND PAYMENT

REAL ESTATE TAXES—LEVY OF 1914

And Arrears of Water Rents (1913) or Meter Settings in the Amount stated below,
and on Property as described, said Liens being recorded in the Tax Books as indexed.

Tax Levy of 1914
Rate 1.78 Per Centum

1st half due May 1, 1914
2d half due Nov. 1, 1914

Section	Vol.	Block	Lot	Line No.	Location	Assessed Valuation	Amt. of Tax	Water Rent to June 30, '13	Meter Setting to June 30, '13	1st half of tax due May 1	Notice of Arrears	2d half of tax due May 1
3	1	700	52	2235	29th St.	\$15,000	\$267.00			\$133.50		\$133.50
Registered Book Folio						Interest on Tax				5.16		
30 114						Rebate on Tax						
						Total Amount Paid				138.66		

Name of Payor, RAY ESTATE.

Received payment, 11-18-1914

M. ISLOWITZ,

For Deputy Receiver of Taxes.

Exhibit P-6.

Exhibit P-6.

No. 51 New York, May 6, 1914

UNION TRUST COMPANY

OF NEW YORK

80 Broadway

Pay to the Order of Collector of Assessments and
Arrears Two Thousand One Hundred and Nine-
teen 32/100 Dollars.

10

THE RAY ESTATE CORPORATION,
EDMUND L. BAYLIES,
Prest.

JOHN R. MACKAY,
Treas.

\$2,119 32/100

Pay to the National City Bank of N. Y. or order
to Credit of Chamberlain in City of New York,
May 6, 1914.

DANIEL MOYNAHAN,
Collector of Assessments and Arrears.

20

No. 110 New York, Nov. 18, 1914

UNION TRUST COMPANY

OF NEW YORK

80 Broadway

Pay to the Order of Receiver of Taxes Two Hun-
dred and Seventy-Two and 16/100 Dollars.

THE RAY ESTATE CORPORATION,
EDMUND L. BAYLIES,
Prest.

JOHN R. MACKAY,
Treas.

30

\$272 16/100

Pay to the National City Bank of New York,
or order, Nov. 18, 1914.

JOHN J. McDONOUGH,
Deputy Receiver of Taxes,
Borough of Manhattan.

40

Exhibit P-6.

No. 112 New York, Nov. 24, 1914

UNION TRUST COMPANY

OF NEW YORK

80 Broadway

Pay to the Order of New York Title Insurance
Co. Fifty-Eight and 85/100 Dollars.

THE RAY ESTATE CORPORATION, .

EDMUND L. BAYLIES,

Prest.

JOHN R. MACKAY,

Treas.

\$58 85/100

Pay to the order of American Exchange Na-
tional Bank, for Agency Account, New York Title
Insurance Co.

10

No. 103 New York, Oct. 1, 1913

UNION TRUST COMPANY

OF NEW YORK

80 Broadway

Pay to the Order of Collector of Assessments
Arrears Three Hundred Eleven and 69/100
Dollars.

ESTATE OF NATHALIE E. BAYLIES,

BY EDMUND L. BAYLIES,

Executor.

\$311.69

No Protest.

Pay to the National City Bank of N. Y. or
order to Credit of Chamberlain in City of New
York, Oct. 2, 1913.

DANIEL MOYNAHAN,

Collector of Assessments and Arrears.

20

Exhibit P-6.

NEW YORK TITLE INSURANCE COMPANY
 135 Broadway
 New York, November 27, 1914

MR. EDMUND L. BAYLIES,
 54 Wall St.,
 New York City.

DEAR SIR:

10 We send you herewith two receipted water bills for the years 1913 and 1914, amounting to \$2.30 and \$50.60, respectively, covering premises No. 532 West 29th Street, New York City.

Respectfully yours,

WILLIAM COOPER,
 for the Company.

(Encs.)
 W. C. B.

BILL HEAD OF
 THE CITY OF NEW YORK

20

DEPT. OF WATER SUPPLY, GAS AND ELECTRICITY.

Frontage Rate Bill

Sec. 3, Vol. 1, Folio 69, Block 700, Lot 52, 1913

Water Rates from

January 1st, 1913, to December 31st, 1913

Premises, 532 W. 29th St.

4th Bill.

Received payment,

J. J. MOORE,
 For Water Registrar.

30

40

Exhibit P-6.

BILL HEAD OF
THE CITY OF NEW YORK

DEPT. OF WATER SUPPLY, GAS AND ELECTRICITY.

Bureau of Water Register Borough of Manhattan
Office: 13-21 Park Row (15th Floor)
Frontage Rate Bill Sec. 3, Vol. 1, Folio 69, Block 700, Lot 52, 1913
Water Rates from January 1st, 1913, to December 31st, 1913.
PREMISES: 532 W. 29th St.

Front Building	Rear Building	Closets & Urinals	Baths	Extra Families	Other Charges Description	\$	Amt.		
\$	\$	\$		\$			\$2 ..	10	
				2		30c.	.30		
Penalty 15% on \$2								.30	
								<u>\$2.30</u>	

4th Bill.

Received Payment,
J. J. MOORE,
For Water Registrar.

BILL HEAD OF
THE CITY OF NEW YORK

20

DEPT. OF WATER SUPPLY, GAS AND ELECTRICITY.

Bureau of Water Register Borough of Manhattan
Municipal Building, Centre and Chambers Streets
Frontage Rate Bill, Sec. 3, Vol. 1, Folio 69, Block 700, Lot 52, 1914.
Water Rates from January 1st, 1914, to December 31st, 1914.
PREMISES: 532 W. 29th St.

Front Building	Rear Building	Closets & Urinals	Baths	Extra Families	Other Charges Description	\$	Amt.
\$	\$	\$		\$			\$44
12	5	8		19			
April 1st, 5% Penalty							6.60
July 1st, 10% Additional. Penalty 15% on \$44							
							<u>\$50.60</u>

2nd Bill.

Received Payment, 30
J. J. MOORE,
For Water Registrar.

40

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

1889

1890

