

I N D E X

	PAGE
Bill of Complaint	1
Answer	10
Replication	16
Order of Reference	17
Order of Designation	18
Notice of Final Hearing.....	20
Order for Continuance	21
Addition to Bill by Way of Supplement.....	23
Answer of Albert E. Scheffen, Administrator C. T. A. of George W. Fulmer, Deceased..	26
Answer of George H. Jacobs, Executor of Anna B. Fulmer, Deceased, Samuel P. Conard and Mae A. Jaggard to the Addition by Way of Supplement to the Original Bill...	29
Reply to Answer of George H. Jacobs, Exr., Etc., Samuel P. Conard and Mae A. Jaggard	31
Reply to Answer of Albert E. Schefflin, Admin- istrator C. T. A. of the Estate of George W. Fulmer, Deceased	32

	PAGE
TESTIMONY:	
George H. Jacobs, Esq.—Direct.....	37
Recalled—Direct	52
Steven M. Grzeczowski—Direct	49
Cross	50
Mary J. Morgan—Direct	57
Anna Kleaver—Direct	59
Cross	61
Conclusions	64
Will of George W. Fullmer.....	67
Will of Annie B. Fullmer.....	69
Inventory and Appraisement of George W. Fullmer, Deceased	72
Inventory and Appraisement of Anna B. Full- mer, Deceased	75
Stipulation	83
Final Decree	85
Notice of Appeal	89
Petition of Appeal	91

BILL OF COMPLAINT.

(Filed April 17th, 1928.)

IN CHANCERY OF NEW JERSEY.

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

The complainants, Anna B. Kleaver and Mary
Jane Morgan, of the City and County of Camden
and State of New Jersey, respectfully show that:

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1. George W. Fullmer, late of the City and
County of Camden and State of New Jersey, died
on the 18th day of November, 1920, leaving a last
will and testament which was, on December 15th,
1920, duly admitted to probate by the Surrogate of
the said County of Camden, and letters testamen-
tary thereon issued to his widow, Anna B. Fullmer,
the executrix therein named, who thereupon took
upon herself the burden of administering said
estate. A true copy of said will is hereunto annexed
and made a part hereof.

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2. In and by said will, the said George W. Fullmer
provided as follows:

“I give, bequeath and devise to my wife here-
inafter named all the rest and residue of my
estate wheresoever the same may be found or
of whatsoever nature the same may consist to
my wife Anna B. Fulmer and to have the net
income from my estate, and her to sell any or
all of my estate at public or private sale and
reinvest the same in such securities as she may
deem best.

30

Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath one half to — daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan.”

10 3. Thereafter, to wit: on the 9th day of June, 1927, said Anna B. Fulmer died while temporarily living in the Borough of Collingswood, in the County of Camden and State of New Jersey, leaving a last will and testament, which last will and testament was, on the 24th day of June, 1927, duly admitted to probate by the Surrogate of the said County of Camden, and letters testamentary thereon issued to George H. Jacobs, one of the solicitors of this court, and the executor therein named, who took upon himself, the burden of administering said estate. A copy of said will is hereunto annexed and made a part hereof.

20

4. Upon the death of the said Anna B. Fulmer as aforesaid, no administrator C. T. A. was appointed by the said Surrogate of the County of Camden, nor has any such administrator been yet appointed. The said George H. Jacobs, as executor of the estate of Anna B. Fulmer, has also taken upon himself the duties of completing the administration in connection with the estate of George W. Fulmer, deceased.

30

5. In and by the terms of the second paragraph of the will of George W. Fulmer, deceased, the said decedent, George W. Fulmer, left his estate in the hands of the executrix, giving his wife, the said executrix, a life interest in all of his property and upon the death of the said wife, Anna B. Fulmer,

the second paragraph of the will of George W. Fulmer provided that the balance of the estate should then be equally divided between your complainants-appellants.

6. The said George H. Jacobs, executor of the estate of Anna B. Fulmer as aforesaid, and also acting on behalf of the estate of George W. Fulmer, deceased, claims that your complainants, under the will of George W. Fulmer, are not entitled to any part of said estate, but that the only interest which complainants may have in the property in question is by reason of the third paragraph of Anna B. Fulmer's will, which reads as follows:

"I give, devise and bequeath all my interest in and to Tug Shares or Participation Certificates to my two step-daughters, Mary Jane Morgan and Annie B. Kleaver, in accordance with the will of their late father, George W. Fulmer."

10
20

Said George H. Jacobs further claims that with the exception of the Tug Shares or Participation Certificates referred to in said paragraph, the entire property under the will of Anna B. Fulmer belongs to the nephew and niece of Anna B. Fulmer; namely, Samuel P. Conard and Mae A. Jaggard, under the residuary clause of Anna B. Fulmer's will.

7. At the time of the death of Anna B. Fulmer, as aforesaid, the said Anna B. Fulmer owned no property whatsoever other than that property which came to her by reason of the will of George W. Fulmer, which, under the second paragraph of the will of George W. Fulmer, she was holding as executrix of said estate. Said property is now in

30

the hands of George H. Jacobs as executor of the estate of Anna B. Fulmer, deceased.

8. Complainants are without adequate remedy in the courts of law and therefore pray that:

10 1. George H. Jacobs, executor of the last will and testament of Anna B. Fulmer, deceased, and acting in behalf of said decedent as executrix under the will of George W. Fulmer, deceased, and Samuel P. Conard and Mae A. Jaggard, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That this Court may construe the said last will and testament of George W. Fulmer, deceased, and declare the rights of complainants thereunder and the rights of the defendants, if any such rights exist.

20 3. That a writ of subpoena may issue, commanding said defendants and each of them to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

WALTER S. KEOWN,
*Solicitor for and of Counsel
with Complainants.*

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

ANNA B. KLEAVER and MARY JANE MORGAN, of full age, being severally sworn according to law, on their respective oaths, depose and say:

That they are the persons named as complainants in the foregoing bill of complaint; that they have read the contents of said bill of complaint and that said contents are true to the best of the knowledge, information and belief of these deponents. 10

ANNA B. KLEAVER.
MARY JANE MORGAN.

Sworn to and subscribed before me this 11th day of April, 1928.

WM. C. KRAMER,
Notary Public of N. J.

20

BE IT REMEMBERED.

That, I George W. Fulmer, being of sound and disposing mind, memory, and understanding, and considering the uncertainty of life, do therefore make, ordain, publish and declare this to be my last Will and Testament, in manner and form following, that is to say: 30

Imprimis: First: I direct that all my just debts and funeral expenses be paid as soon as the same conveniently may be after my decease.

SECOND: I give, bequeath and devise to my wife hereinafter named all the rest and residue of my estate wheresoever the same may be found or

of whatsoever nature the same may consist to my wife Anna B. Fulmer and to have the net income from my estate, and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best.

Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath one half to daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan.

10 And lastly, I do make, constitute and appoint my wife, to be executrix of this my last will and testament, hereby revoking all former wills by me at any time heretofore made, and declaring these presents only to be and contain my last will and testament.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal the sixteenth day of April in the year in our Lord one thousand nine hundred and eight.

Geo. W. Fulmer.

20

Signed, sealed, published and declared by the testator above named, as and for his last will and testament, in the presence of us, who hath hereunto, at his request subscribed our names in his presence, and in the presence of each other, as witnesses hereto.

Walter A. Kruck. #929 Broadway, Camden, N. J.
Edmund J. Alff. 511 Pine St. Camden, N. J.

30

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, GEORGE W. WHYTE, Surrogate of the County of Camden, do hereby certify that the fore-

going is a true copy of the last will and testament of George W. Fullmer, deceased, late of the County of Camden and State of New Jersey, upon which Letters Testamentary were granted on December 15th, A. D., 1920, unto Anna B. Fullmer, the executrix named therein. The said Will was filed December 15th, A. D. 1920, and recorded in the Surrogate's Office of the County of Camden, in Book 53 of Wills, page 326, &c.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this thirty-first day of March A. D. 1928.

GEORGE W. WHYTE.

By C. M. POWELL QUICKSALL

Deputy Surrogate.

Surrogate Seal of
the County of Camden.

20

I, ANNIE B. FULMER, a resident of the County of Bucks, in the State of Pennsylvania, but temporarily sojourning in the Borough of Collingswood, County of Camden and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this writing as and for my last will and testament, hereby revoking and making void any and all wills by me at any time heretofore made.

FIRST. It is my will and I do order and direct that all my just debts and funeral expenses be paid and satisfied by my Executor hereinafter named, as soon as conveniently may be after my decease.

SECOND. I give and bequeath unto the West Jersey Homeopathic Hospital in the City of Camden, the sum of Five Hundred Dollars, absolutely.

THIRD. I give, devise and bequeath all my interest in and to Tug Shares or Participation Certificates to my two step-daughters, Mary Jane Morgan and Annie B. Kleaver, in accordance with the will of their late father, George W. Fulmer.

FOURTH. I give, devise and bequeath all my right, title, interest and estate in and to lot No. 223 Highland Lawn to George W. Kleaver, (The deed to said lot being in the joint names of George W. Kleaver and myself).

10 FIFTH. All the rest, residue and remainder of my estate, of whatsoever kind and description and wheresoever situate, I give, devise and bequeath unto my Executor hereinafter named, IN TRUST, for the following uses and purposes:

(a) To sell at public or private sale for the best price or prices obtainable in his judgment, all my property, real, personal and mixed, of whatsoever kind and description and wheresoever situate, and to execute the necessary and proper deed or deeds therefor, without any liability on the part of the purchaser or purchasers to see to the application, misapplication or non-application of the purchase money, and to do all other lawful things to carry out this, my last will and testament.

20 (b) Out of the proceeds of such sale or sales, after the payment of all just debts, expenses, commissions on sales, etc., in connection with the administration of my estate, to pay over the same in equal shares to my nephew, Samuel P. Conard, and my niece, Mae A. Jaggard. In the event that my said nephew or niece predeceasing me, then and in such case, the share of such decedent or decedents is to be paid to his or her heirs at law.

30 LASTLY. I hereby nominate, constitute and appoint George H. Jacobs, Esquire, a member of the New Jersey Bar, Executor of this my last will and

testament, and I do order and direct that my said Executor be not required to give bonds or other securities as such Executor in the State of Pennsylvania or any other jurisdiction wherein proceedings may be required to be taken in connection with this, my will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twentieth day of May, Nineteen Hundred and twenty-five.

ANNIE B. FULMER (SEAL) 10

Signed, sealed, published and declared by the said Annie B. Fulmer, as and for her last will and testament, in the presence of us, who, at the same time, in her presence, in the presence of each other and at her request, have hereunto subscribed our names as witnesses.

Sadie Herman, 212 S. Broad St.,
Woodbury, N. J.
Herbert F. Oehlers, 20
520 Jessamine Ave.,
W. Collingswood, N. J.
Anna C. Derrick,
54 W. Chestnut Ave.,
Merchantville, N. J.

A true copy.

THOMAS BARBER,
Clerk.

ANSWER.

(Filed May 18th, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

ANNA B. KLEAVER, *et als.*,
Complainants,

and

GEORGE H. JACOBS, ex-
ecutor of ANNA B.
FULMER, deceased, *et*
als.,*Defendants.*On Bill, etc.
Answer.

20

Defendants George H. Jacobs, executor of Anna B. Fulmer, deceased, Samuel P. Conard and Mae A. Jaggard, answering the bill of complaint exhibited against them in the above-stated cause, say that:

- 30
1. They admit the first paragraph of the bill.
 2. They admit the second paragraph of the bill.
 3. They admit the third paragraph of the bill.
 4. They admit the fourth paragraph of the bill; except that allegation thereof which charges that

the defendant George H. Jacobs, as executor of Anna B. Fulmer, deceased, has also taken upon himself the duties of completing the administration of the estate of George W. Fulmer, deceased; said allegation is denied; and these defendants say that the said George H. Jacobs has not acted or undertaken to act in any capacity except that of executor of Anna B. Fulmer, deceased.

5. They deny the fifth paragraph of the bill. 10

6. They admit the sixth paragraph of the bill, except that allegation thereof which charges that the defendant, George H. Jacobs, executor of Anna B. Fulmer, deceased, is acting on behalf of the estate of George W. Fulmer, deceased; this particular allegation is denied; and these defendants say that the said George H. Jacobs, executor of Anna B. Fulmer, deceased, has never acted or undertaken to act on behalf of the estate of George W. Fulmer, deceased. 20

7. They deny that the said Anna B. Fulmer at the time of her death owned no property whatsoever other than that which came to her by reason of the will of George W. Fulmer, her deceased husband. Annexed hereto and made part hereof is a copy of the inventory filed by George H. Jacobs, executor of Anna B. Fulmer, deceased, in the office of the Surrogate of Camden County, setting forth the assets of said decedent, Anna B. Fulmer, which have come into the hands of her said executor. In addition to the personal property specified and listed in said inventory, said Anna B. Fulmer at the time of her death owned certain real estate at Parkland, Bucks County, Pennsylvania, which real 30

estate, however, was acquired by said Anna B. Fulmer many years before the death of her husband, the said George W. Fulmer, and which real estate has always stood of record in the name of the said Anna B. Fulmer, deceased. These defendants are unable to determine and do not know what specific items of the personal property set forth in the aforesaid inventory were acquired by the said Anna B. Fulmer, deceased, from her husband, George W. Fulmer, nor what specific items were acquired by her from sources other than her deceased husband's estate; and they leave the complainants to make such proof thereof in this respect as they may be advised.

8. Further answering said bill of complaint, these defendants join in the prayer contained in said bill for the construction of the last will and testament of George W. Fulmer to the end that the rights of complainants and defendants may be ascertained and declared and that the assets which have come into the hands of the defendant, George H. Jacobs, executor of Anna B. Fulmer, deceased, may be distributed as of right and in equity they ought to be distributed.

WALTER R. CARROLL,
Solicitor of Defendants.

30. A TRUE AND PERFECT INVENTORY AND APPRAISEMENT OF THE Goods, Chattels, Rights, Credits and effects of Anna B. Fulmer, deceased, late of the County of Camden, made this twelfth day of April, A. D. 1928, by George H. Jacobs, Executor and Eleanor Ramsey and Bonnie Stoner Appraisers.

Amount on deposit in checking account in Camden National Bank, Camden, N. J.	\$1,647.73	
Amount on deposit in Savings Account #3584, in Camden National Bank, Camden, N. J.	6,001.97	
Certificate No. N51252 for 24 shares of stock in the American Telephone and Telegraph Company, \$167.87 per share on June 9th, 1927.	4,028.88	10
Certificate No. 7532 for 24 shares of stock in the Keystone Telephone Company of Pennsylvania, (Preference Stock), \$55.00 per share on June 9th, 1927.	1,320.00	
Bond and mortgage, Joseph Palladino, et ux, to George W. Fulmer and Anna B. Fulmer, to secure \$2600, dated Sept. 8, 1914, recorded in the Office of the Register of Deeds of Camden County in Book "134" of Mortgages, at page 435, covering premises on the west side of Fourth Street 119 feet 7 inches South of Chestnut Street, Camden, N. J. Note: This mortgage was originally in the amount of \$2600. but during decedent's lifetime was reduced to \$1300.		20
Balance of principal due	1,300.00	
To accrued interest thereon from March 8th, 1927, to June 9th, 1927.	20.15	30
4th Liberty Loan 4¼ Bond, 1933 and 1938 Series, C1134813, value at time of decedent's death.	1,038.80	
Int. earned on Coupon 18 from April 15, 1927, to June 9th, 1927.	6.49	
4th Liberty Loan 4¼ Bond, 1933-1938		

	Series, D0113814, value at time of decedent's death	1,038.80
	Int. earned on Coupon 18 from April 15, 1927, to June 9th, 1927.	6.49
	3rd Liberty Loan 4 $\frac{1}{4}$ Gold Bond, 1928, 1104984;	1,103.20
	Int. earned on Coupon 19, from March 15th to June 9th, 1927,	2.95
10	3rd Liberty Loan 4 $\frac{1}{4}$ Bond, 1928, Series,	55.16
	Int. earned on Coupon 19	.16
	Participation Certificate No. 11 Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug "Juno" and is entitled to 2/64ths part interest in said tug and her earnings. Value at time of decedent's death	62.50
20	Participation Certificate No. 11, Frank Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug "Newcastle" and is entitled to 2/64ths of interest in said tug and her earnings. Value at time of decedent's death	117.00
30	Participation Certificate No. 11 Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug "Bryn Mawr" and is entitled to 2/64ths interest in said tug and her earnings. Value at time of decedent's death	75.00
	Participation Certificate No. 9, Frank L. Neall, Trustee, certifying that	

George W. Fulmer has advanced
 2/64ths of purchase money of tug
 "Inca" and is entitled to 2/64ths in-
 terest in said tug and her earnings.
 Value at time of decedent's death 469.04

Participation Certificate No. 225, Offi-
 cial No. 106046, Red Star Tugs, certi-
 fying that 2/64ths of the purchase
 money of tug "Argus" was paid by
 George W. Fulmer, and he is entitled 10
 to 2/64ths of the earnings and value
 of said tug. No Value

Participation Certificate No. 55, Offi-
 cial No. 3141, certifying that George
 W. Fulmer had advanced 2/64ths of
 purchase money of tug "Battler" and
 is entitled to 2/64ths interest in said
 tug and her earnings. No Value

Note:—

The values of the above Participation 20
 Certificates are determined according
 to a letter from Gailey, Davis & Co.,
 Inc., Agents, dated March 10th, 1928.
 Death benefit in the amount of \$50.
 from Monarch Temple No. 9, Ladies
 of the Golden Eagle. 50.00

Death benefit from Rising Star Lodge
 #5, Order of Shepherds of Bethlehem 150.00

Total\$18,521.32 30

George H. Jacobs,
 Executor.

Eleanor Ramsey,
 Appraiser.
 Bonnie Stoner,
 Appraiser.

A true copy.

Ferd GARRETSON,
Clerk.

REPLICATION.

(Filed June 4th, 1928.)

10

IN CHANCERY OF NEW JERSEY.

Between

ANNA B. KLEAVER, *et als.*,
Complainants,
and

20 GEORGE H. JACOBS, ex-
ecutor of the Estate
of ANNA B. FULMER,
deceased, *et als.*,
Defendants.

On Bill, etc.
Replication.

Complainants, replying to the answer filed on behalf of the defendants herein to complainants' complaint, say that:

- 30 1. They join issue to the answer of the defendants herein, and deny each and every allegation contained therein.

WALTER S. KEOWN,
Solicitor for Complainants.

A true copy.

Ferd GARRETSON,
Clerk.

ORDER OF REFERENCE.

(Filed June 19th, 1928.)

IN CHANCERY OF NEW JERSEY

Between

ANNA B. KLEAVER, *et als.*,
Complainants,

and

GEORGE H. JACOBS, ex-
ecutor of the Estate
of ANNA B. FULMER,
deceased, *et als.*,
Defendants.

On Bill, etc.
Order of Reference.

10

20

It is, on this 19th day of June, A. D. 1928, on motion of Walter S. Keown, solicitor for the complainants, ordered that the above-named cause be referred to Hon. E. B. Leaming, one of the Vice-Chancellors, to hear the same for the Chancellor, and advise what order or decree shall be made therein.

E. R. WALKER,
C.

30

We consent to the above order.

WALTER S. KEOWN,
Solicitor for Complainants.

WALTER R. CARROLL,
Solicitor for Defendants.

A true copy.
THOMAS BARBER,
Clerk.

A true copy.
FERD GARRETSON,
Clerk.

10 ORDER OF DESIGNATION.

(Filed June 25th, 1928.)

IN CHANCERY OF NEW JERSEY.

20 Between
ANNA B. KLEAVER, *et als.*,
Complainants,
and
GEORGE H. JACOBS, ex-
ecutor of the Estate
of ANNA B. FULMER,
deceased, *et als.*,
Defendants. }
On Bill, etc.
Order of Designation.

30 It is, on this 25th day of June, in the year of our Lord, one thousand nine hundred and twenty-eight, on motion of Walter S. Keown, solicitor for complainants, ordered that this cause be set down for hearing on the 31st day of January, 1929, at the Chancery Chambers, Court House, Camden, New Jersey, at the hour of ten o'clock in the forenoon

of that day or as soon thereafter as counsel can be heard.

E. B. LEAMING,
V. C.

We consent to the above order.

WALTER S. KEOWN, 10
Solicitor for Complainants.
WALTER R. CARROLL,
Solicitor for Defendants.

A true copy.

FERD GARRETSON,
Clerk.

20

30

NOTICE OF FINAL HEARING.
IN CHANCERY OF NEW JERSEY.

10	Between ANNA B. KLEAVER, <i>et als.</i> , <i>Complainants,</i> and GEORGE H. JACOBS, ex- ecutor of ANNA B. FULMER, deceased, <i>et</i> <i>als.</i> , <i>Defendants.</i>	} On Bill, etc. Notice of Final Hearing.
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*To Walter R. Carroll, Esq., Sol'r for Defendants,
Fourth and Market Sts., Camden, New Jersey:*

Take notice of final hearing of this cause before the Honorable E. B. Leaming, the Vice-Chancellor of this court, to whom said cause has been referred, on the 31st day of January, 1929, at the hour of ten o'clock in the forenoon at the Chancery Chambers in the City of Camden, the time and place designated by the order heretofore made by the said Vice-Chancellor.

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Dated: June 28th 1928.

WALTER S. KEOWN,
Solicitor for Complainants.

A true copy.

FERD GARRETSON,
Clerk.

[ENDORSED]

Due and legal service of a copy of the within notice is hereby acknowledged this 29th day of June, 1928.

Walter R. Carroll,
Sol'r for Defendants.

10

ORDER FOR CONTINUANCE.

(Filed Feb. 4th, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

ANNA B. KLEAVER, *et als.*,
Complainants,

and

GEORGE H. JACOBS, ex-
ecutor, *etc.*, *et als.*,
Defendants.

On Bill, *etc.*
Order for Contin-
uance.

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It is, on this 31st day of January, A. D. 1929, on motion of Walter S. Keown, solicitor for and of counsel with the complainant, ordered that the final hearing in the above-stated cause be and the same is hereby continued from the day of the date hereof to Thursday, February 7th, A. D. 1929, at the hour of 10 o'clock in the forenoon of said day at the

30

Chancery Chambers in the Court House, in the City
of Camden.

E. B. LEAMING,
V. C.

I consent to the making and entry of the above
order.

10

WALTER R. CARROLL,
Solicitor of Defendants.

A true copy.

FERD GARRETSON,
Clerk.

20

30

ADDITION TO BILL BY WAY OF
SUPPLEMENT.

(Filed Feb. 4th, 1929.)

IN CHANCERY OF NEW JERSEY.

10

Between
ANNA B. KLEAVER, *et als.*,
Complainants,
and
GEORGE H. JACOBS, *et*
als.,
Defendants. } On Bill, etc.
Addition to Bill by
Way of Supplement.

20

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

The complainants, Anna B. Kleaver and Mary Jane Morgan, of the City and County of Camden and State of New Jersey, respectfully show that:

1. Since the death of Anna B. Fullmer, on January 9, 1927, as set forth in paragraph 3 of the bill of complaint, no representative of the estate of George B. Fullmer had been appointed. On the 31st day of January, 1929, Albert E. Scheffin was duly appointed substituted administrator C. T. A., of the estate of George W. Fullmer, deceased, by the Surrogate of Camden County and has duly qualified as such substituted administrator C. T. A.

30

Your complainants therefore pray that:

1. George H. Jacobs, executor of the estate of Anna B. Fullmer, deceased, Samuel P. Conard and Mae A. Jaggard, and Albert E. Scheffin, substituted administrator of the estate of George W. Fullmer, deceased, who are the defendants to this addition by way of supplement to the bill of complaint filed herein, may answer the same and each supplement
10 therein made.

2. That these complainants may have the same relief against the defendants, George H. Jacobs, executor of the estate of Anna B. Fullmer, deceased, Samuel P. Conard, Mae A. Jaggard and Albert E. Scheffin, substituted administrator C. T. A. of the estate of George W. Fullmer, deceased, as they might have had if the facts hereinbefore stated by way of supplement had been stated in the complainants' original bill of complaint.
20

3. That this Court may construe the said last will and testament of George W. Fullmer, deceased, and declare the rights of the defendants, if any such rights exist, and by its decree may require the defendant, George H. Jacobs, executor of the estate of Anna B. Fullmer, deceased, to account for and turn over to the defendant, Albert E. Scheffin, substituted administrator C. T. A. of the estate of
30 George W. Fullmer, the assets of the estate of George W. Fullmer, deceased, now in the hands of the said George W. Jacobs.

4. That a writ of subpoena may issue commanding the defendant, Albert E. Scheffin, substituted administrator C. T. A. of the estate of George W.

Fullmer, deceased, to answer the bill of complaint and this addition by way of supplement to the bill of complaint, and each statement therein and herein made, commanding him to abide by such decree as this Court may make in the premises.

WALTER S. KEOWN,
*Solicitor for and of Counsel
with the Complainants,
Anna B. Kleaver and
Mary Jane Morgan.* 10

A true copy.

FERD GARRETSON,
Clerk.

[ENDORSED]

Service of a copy of the within addition to the bill by way of Supplement to the Original Bill of Complaint, is hereby acknowledged and consent given to the filing of the same. 20

Walter R. Carroll,
Sol'r of Defts., George
H. Jacobs, Exec. of
the estate of Anna B.
Fullmer, Samuel P.
Conard and Mae. A.
Jaggard. 30

Albert E. Schefflen,
Substituted Admr. of the
Estate of George W.
Fullmer, Sol'r per se.

ANSWER OF ALBERT E. SCHEFLEN, ADMIN-
ISTRATOR C. T. A. OF GEORGE W.
FULMER, DECEASED.

(Filed Feb. 4th, 1929.)

10

IN CHANCERY OF NEW JERSEY.

Between		
	ANNA B. KLEAVER, <i>et als.</i> ,	} On Bill, etc. Answer of Albert E. Scheflen, Adminis- trator C. T. A. of George W. Fulmer, Deceased.
	<i>Complainants,</i>	
	and	
20	GEORGE H. JACOBS, ex- ecutor of ANNA B. FULMER, deceased, <i>et</i>	
	<i>als.</i> , <i>Defendants.</i>	

30 The answer of Albert E. Scheflen, administrator
C. T. A. of George W. Fulmer, deceased, answering
the bill of complaint and the addition thereto by
way of supplement, says that:

1. He admits the first paragraph of the bill.
2. He admits the second paragraph of the bill.
3. He admits the third paragraph of the bill.

4. The averments contained in the fourth paragraph of the bill, while true when said bill was filed, no longer represent the existing situation; and this defendant says that on January 31, 1929, he was duly appointed administrator C. T. A. of the estate of George W. Fulmer, deceased, and has duly qualified as such.

10

5. He neither admits nor denies the fifth paragraph of the bill, but with respect to the questions therein raised, whether of fact or whether of law, he submits himself to the jurisdiction of this Court.

6. He neither admits nor denies the sixth paragraph of the bill, but with respect to the questions therein raised, whether of fact or whether of law, he submits himself to the jurisdiction of this Court.

20

7. He neither admits nor denies the seventh paragraph of the bill, but with respect to the questions therein raised, whether of fact or whether of law, he submits himself to the jurisdiction of this Court.

8. He admits the first paragraph of the addition by way of supplement to the original bill.

9. He is without interest in the controversy raised by the bill and the addition thereto by way of supplement, and the answer thereto of the defendants, George H. Jacobs, executor of Anna B. Fulmer, deceased, Samuel P. Conard and Mae A. Jaggard, and upon all questions presented, whether of law or whether of fact, submits himself to the jurisdiction of this Court.

30

28 *Answer of Albert E. Scheflen, Adminis-
trator C. T. A. of George W.
Fulmer, Deceased*

10. This defendant joins in the prayers of said bill and of the addition thereto by way of supplement, to the extent that a construction is sought of the last will and testament of George W. Fulmer, deceased, and the rights of the parties herein in and to the assets of said estate are sought to be determined.

10

ALBERT E. SCHEFLEN,
*Administrator C. T. A. of
George W. Fulmer, De-
ceased, Solicitor per se.*

A true copy.

FERD GARRETSON,
Clerk.

20

30

Answer of George H. Jacobs, Executor, 29
Samuel P. Conard and Mae A.
Jaggard to Addition by Way of
Supplement to Original Bill

ANSWER OF GEORGE H. JACOBS, EXECUTOR
OF ANNA B. FULMER, DECEASED,
SAMUEL P. CONARD AND MAE A.
JAGGARD TO THE ADDITION BY
WAY OF SUPPLEMENT TO
THE ORIGINAL BILL. 10

(Filed Feb. 4th, 1929.)

IN CHANCERY OF NEW JERSEY.

Between		On Bill, etc. 20
ANNA B. KLEAVER, <i>et als.</i> ,	}	Answer of George H. Jacobs, Executor of Anna B. Fulmer, Deceased, Samuel P. Conard and Mae A. Jaggard to the Ad- dition by Way of Supplement to the Original Bill.
Complainants,		
and		
GEORGE H. JACOBS, ex- ecutor of ANNA B. FULMER, deceased, <i>et</i>	}	
<i>als.</i> ,		
Defendants.		30

George H. Jacobs, executor of Anna B. Fulmer, deceased, Samuel P. Conard and Mae A. Jaggard, answering the addition by way of supplement to the original bill, say that:

30 *Answer of George H. Jacobs, Executor,
Samuel P. Conard and Mae A.
Jaggard to Addition by Way of
Supplement to Original Bill*

1. They admit the first paragraph of the addition
by way of supplement to the original bill.

WALTER R. CARROLL,

*Solicitors for and of Coun-
sel with George H.
Jacobs, Executor of Anna
B. Fulmer, Deceased, et
als., Answering Defen-
dants.*

10

A true copy.

FERD GARRETSON,
Clerk.

20

30

REPLY TO ANSWER OF GEORGE H. JACOBS,
EXR., ETC., SAMUEL P. CONARD AND
MAE A. JAGGARD.

(Filed Feb. 4th, 1929.)

10

IN CHANCERY OF NEW JERSEY.

Between

ANNA B. KLEAVER, *et als.*,
Complainants,

and

GEORGE H. JACOBS, ex-
ecutor of the Estate
of ANNA B. FULMER,
deceased, *et als.*,
Defendants.

On Bill, etc.
Reply to Answer of
George H. Jacobs,
Exr., etc., Samuel P.
Conard and Mae A. 20
Jaggard.

Complainants, replying to the answer to the addi-
tion by way of supplement to the original bill of
complaint filed herein by the defendants, George H.
Jacobs, executor of the estate of Anna B. Fulmer,
deceased, Samuel P. Conard and Mae A. Jaggard, 30
say that:

1. They join issue to the answer of the defendants
herein, and deny each and every allegation contained
therein.

WALTER S. KEOWN,
Sol'r for Complainants.

32 *Reply to Answer of Albert E. Schefflin,
Administrator C. T. A. of Estate of
George W. Fulmer, Deceased*

A true copy.

FERD GARRETSON,
Clerk.

10 REPLY TO ANSWER OF ALBERT E.
SCHEFLIN, ADMINISTRATOR C. T.
A. OF THE ESTATE OF GEORGE
W. FULMER, DECEASED.

(Filed Feb. 4th, 1929.)

IN CHANCERY OF NEW JERSEY.

20 Between
 ANNA B. KLEAVER, *et als.*,
 Complainants,
 and
 GEORGE H. JACOBS, ex-
 ecutor of the Estate
 of ANNA B. FULMER,
 deceased, *et als.*,
 Defendants. } On Bill, etc.
 } Reply to Answer of
 } Albert E. Schefflin,
 } Administrator C. T.
 } A. of the Estate of
 } George W. Fulmer,
 } Deceased.

30

Complainants, replying to the answer to the bill of complaint and to the addition by way of supplement to the original bill of complaint filed herein by the above defendant, Albert E. Schefflin, administrator C. T. A. of the estate of George W. Fulmer, deceased, say that:

Reply to Answer of Albert E. Schefflin, 33
Administrator C. T. A. of Estate of
George W. Fulmer, Deceased

1. They join issue to the answer of the defendant herein, and deny each and every allegation contained therein.

WALTER S. KEOWN,
Sol'r for Complainants.

A true copy.

FERD GARRETSON,
Clerk.

10

20

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10 Between
 ANNA B. KLEAVER, *et als.*,
Complainants,
 and
 GEORGE H. JACOBS, ex-
 ecutor, etc., *et als.*,
Defendants. } On Bill, etc.

20

February 7, 1929.

 LEAMING, V. C.

30 WALTER S. KEOWN, Esq., and GEORGE D. ROTHER-
 MEL, Esq., for complainants.
 CARR & CARROLL, Esqs., WALTER R. CARROLL, Esq.,
 for defendants.

Mr. Carroll (to the stenographer): You can note the appearance of Mr. Scheffen, solicitor per se, as administrator c. t. a. of George W. Fullmer, de-

ceased, and Mr. Rothermel, representing Mr. Keown, for the complainants, and Mr. Carroll, for the defendants.

Mr. Scheffen: If the Court please, I have been served an addition to the bill, by way of supplement, to which I have filed an answer.

Mr. Carroll: I understand they have been handed to the Vice-Chancellor. 10

The Court: This brings in the substituted administrator and he is now in court and has answered?

Mr. Scheffen: That is correct.

Mr. Carroll: I don't imagine there is any necessity for you to say further. 20

Mr. Scheffen: I don't want to unless the Court thinks I ought to.

The Court: I don't recall, but I suppose the answers probably admit all the material averments of the bill, don't they?

Mr. Carroll: Practically so.

The Court: It is simply a question of the construction of the will? 30

Mr. Carroll: Yes. While Mr. Rothermel is for the complainants, I procured these papers, so we might as well offer them in evidence at this time. Do you want to do that, Mr. Rothermel? Certified

copy of the will and the surrogate's certificate of the appointment of Mr. Schefflen.

Mr. Rothermel: I would like to offer a copy of the will of George W. Fullmer, duly certified by the surrogate of Camden County, and ask that it be marked Exhibit C1. Also a certified copy of the will of Anna B. Fullmer, and ask that it be marked Exhibit C2. Certified copy of the inventory and appraisal filed in February, 1924, in the estate of George W. Fullmer, duly certified by the surrogate of Camden County, and ask that it be marked Exhibit C3. Certified copy of the inventory and appraisal dated April 12, 1928, in the estate of Annie B. Fullmer, certified by the surrogate of Camden County, and ask that it be marked Exhibit C4. Do you have a certificate showing the appointment of Mr. Jacobs? I also offer, if the Court please, a certificate from the surrogate of Camden County showing the appointment of George H. Jacobs as executor of the will of Annie B. Fullmer, and ask that it be marked Exhibit C5. I also offer a certificate from the surrogate of Camden County showing the appointment of Albert E. Schefflen as substituted administrator with the will annexed of George W. Fullmer. This certificate also shows that the executrix named in the will of George W. Fullmer was Annie B. Fullmer, who has since died, and I ask that it be marked Exhibit C6. On behalf of the complainants, those papers having been introduced, I have no testimony to offer in connection with them; the averments of the bill are largely covered by the exhibits now introduced in evidence, and the complainants will rest.

Mr. Carroll: Now, may it please your Honor, one of the inquiries in this situation is a question of

fact which may or may not become important, that question depending on the construction which your Honor places on this will, but I think we can in a few minutes offer such evidence that it is at all possible to produce tending to show what assets of George W. Fullmer came into the hands of his widow and remained in her hands at the time of her death. Now, there is no proof offered by Mr. Rothermel on that behalf, and I think, in fairness, we ought to show your Honor the exact situation. 10

Mr. Rothermel: Mr. Carroll and the Court will appreciate the complainants' position, they are almost in a position where they have no proof on that other than the inventory, of what she received.

The Court: It is probably immaterial what order the proofs come in.

20

GEORGE H. JACOBS, ESQ., SWORN.

By Mr. Carroll:

Q. Mr. Jacobs, where do you reside?

A. Merchantville, New Jersey.

Q. You are the executrix of the last will and testament of Annie B. Fullmer?

A. Not the executrix, the executor. 30

Q. Pardon me. Now, I am going to use, your Honor, the copies of the inventory, the certified copies are there before your Honor. Now, Mr. Jacobs, I call your attention to the inventory filed in the office of the surrogate of Camden County in the matter of the estate of George W. Fullmer,

and I call your attention to the fact that the first item on the inventory is a \$1,000 Liberty Bond of the fourth series, or fourth issue, whatever they call it, now, do you know whether or not that particular bond was among the assets of Mrs. Fullmer when you took possession of those assets after her death?

10 A. I found in Mrs. Fullmer's safe deposit box a bond of that character, but nothing to identify it in any way, they were ordinary unregistered Liberty Bonds.

The Court: Fourth Liberty Loan Bond?

Mr. Carroll: \$1,000.

The Court: I don't see that.

20 Mr. Rothermel: The first item on the inventory of George W. Fullmer, sir.

The Court: I have it now.

Q. Have you any knowledge at all, Mr. Jacobs, as to whether or not the \$1,000 Fourth Liberty Bond which you found among the assets of Mrs. Fullmer was the same \$1,000 Fourth Liberty Loan Bond as appears on the inventory of George W. Fullmer?

A. I have no knowledge.

30 Q. Now, I call your attention to the fact the inventory of George W. Fullmer shows another Fourth Liberty Bond in the sum of \$1,000, and that the inventory of Annie B. Fullmer also shows a Fourth Liberty Loan Bond in the sum of \$1,000 in addition to the one I have just been discussing, have you any way of knowing whether this \$1,000 Fourth

Liberty Bond which you found among the assets of Mrs. Fullmer is the same bond mentioned in the inventory of George W. Fullmer?

A. I found a bond of that character in the assets of Mrs. Fullmer but I have no knowledge as to whether it was the same bond or not as reported in her husband's estate.

Q. Now, I see on the inventory of George W. Fullmer a Third Liberty Bond in the sum of \$1,000, and also on the inventory of Annie B. Fullmer a Third Liberty Bond in the sum of \$1,000, have you any knowledge as to whether those two bonds are identical? 10

A. My answer to that is the same as my previous answer.

Q. Now, I notice on the inventory of George W. Fullmer a \$50 Third Liberty Loan Bond, and I notice in the inventory of Annie B. Fullmer a Third Liberty Loan Bond for \$50, have you any knowledge whether those two bonds are identical? 20

A. My answer is the same as my previous answer. May I ask, Mr. Carroll, did you ask about another Liberty Bond of \$1,000 in the third series? I think you only asked about one. There were two in the fourth, two in the third—no, beg pardon, that is right.

Q. Now, among the papers and documents and records belonging or appertaining to the estate of Mrs. Fullmer that came into your hands, did you find anything that would indicate whether or not she had disposed of these bonds set forth in the inventory of George W. Fullmer and had purchased anew those bonds appearing in her inventory? 30

A. Nothing whatever.

The Court: What about the Victory Loan, two Victory Loans, \$100 Bonds, and one Victory Loan

\$50 Bond, were they in the inventory of the husband, George W. Fullmer?

Mr. Carroll: No, I don't think so, your Honor. Yes, they were in George W. Fullmer's.

Mr. Rothermel: They were in the husband's inventory but they don't appear on the wife's.

10 The Witness: In answer to your Honor's question they were not among the assets of my testate.

The Court: What about the rest of the securities in the inventory of the husband's estate?

The Witness: My investigation of the South Ward Building & Loan Association shows there was no stock of record in the name of George W. Fullmer or in the name of Annie B. Fullmer.
20

Mr. Rothermel: May a question be permitted on that point, sir? This is rather informal, and I might ask him a question on that point now.

The Court: Yes.

Mr. Rothermel: The South Ward Building and Loan Association, do you know whether or not those
30 shares had run out, whether the money had been paid to Mrs. Fullmer?

The Witness: Mr. Carroll has a letter.

Mr. Carroll: I have a letter from the South Ward Building and Loan Association and I suppose you

will admit the record without having someone come here and swear to its contents.

Mr. Rothermel: I have no objection.

Mr. Carroll: If the Court please, with respect to the three items of building and loan dues appearing in the inventory of the estate of George W. Fullmer, I have a letter here from L. E. Shreves, secretary of the building and loan association, stating as follows: 5 shares, book #5093, matured and paid to George W. Fullmer's account October 11, 1921, \$1,000. 10

The Court: October 11, 1921, that must have been before his death?

Mr. Rothermel: He died December 15, 1920. I think the executrix must have received that check and deposited it in the estate's account. 20

Mr. Carroll: Now, with respect to the 10 shares evidenced by book 5440, matured and paid to Annie B. Fullmer, October 12, 1925, \$2,000; and with respect to the 5 shares, book #5577, matured and paid to Annie B. Fullmer October 11, 1926, \$1,000. I will offer that letter.

(Said letter offered in evidence and marked Exhibit D1.) 30

Q. Mr. Jacobs, I notice in the inventory of George W. Fullmer, participation certificates of interest in certain tug boats, Juno, New Castle, Bryn Mawr and Inca, were any of those tug boat certificates found among the assets of Annie B. Fullmer?

A. I found those tug boat certificates that you mention, and also two others, and I took the matter up with Gaty-Davis & Company, who seemed to be in charge of those tug boats, and they advised me that the four you mention had no value, the tugs had ceased to exist, and the two which I reported in my inventory a 2-64 interest in the Argus and— I will withdraw that, I will withdraw the whole answer. I found that the Inca, according to the state-
10 ment of Gaty-Davis & Company, had a value of \$469.04, and the Argus had no value, the tug having passed out of existence.

The Court: The Inca value?

The Witness: \$469.04.

Mr. Carroll: There is no dispute about those any-
20 how, because they passed under the will of Mrs. Fullmer to Mrs. Kleaver and Mrs. Morgan at any event.

The Witness: There are two mentioned in her inventory which I don't think were in the inventory of the husband, Mr. Carroll, and that is the Argus and the Battler, but neither of them had any value. The Inca had a value of \$469.04, the Bryn Mawr had a value of \$75, the New Castle had a value of \$117, and the Juno \$62.50.
30

Q. Those values were fixed shortly after the death of Mrs. Fullmer?

A. Yes, at the time of her death for the purpose of reporting the inheritance tax.

The Court: But in any event all the tug interests

that she had were specifically devised to someone else?

Mr. Carroll: To the complainants in this suit, and they are not involved in this controversy, really.

Q. Mr. Jacobs, going back again to the inventory of George W. Fullmer, cash in purse, \$13, you can't identify that in any way?

10

A. No, all I found in the safe deposit box with respect to that was a little small pocketbook with a single clasp, but there was nothing in it.

Q. Another item appearing on George W. Fullmer's estate, old gold watch, did you trace that?

A. Mrs. Jaggard told me that after the death of Mrs. Fullmer she had delivered that to one of the complainants in this case, so that never came into my possession.

Q. Another item on George W. Fullmer's estate, household goods \$100, I don't suppose you could find or trace any of those household goods?

20

A. I found a furnished house and two furnished bungalows at Parkland, Pennsylvania.

Q. But you don't know whether the furniture in those bungalows embraced any of the articles included in this item of household goods?

A. I do not.

Q. Speaking now of the inventory of George W. Fullmer, a half interest in the Paladeno mortgage, \$1300, explain that transaction to the Court.

30

Mr. Rothermel: May I have, for the purpose of the record, that the old gold watch referred to was given to the complainant, Mrs. Morgan, who now has it?

The Witness: May I leave the stand to look at my papers a moment, your Honor?

The Court: Yes.

The Witness: Answering your question with respect to the Paladeno mortgage I would state the cancelled mortgage is in my office safe, and the circumstances respecting the mortgage are these. The
10 mortgage was originally made by Joseph Paladeno and others to George W. Fullmer and Annie B. Fullmer, it was for \$2600, dated December 8, 1914, and recorded in Camden County in book 134 of mortgages, page 435, and it covered property on Fourth Street south of Chestnut Street in Camden. At the time I drew Mrs. Fullmer's will and in going over her affairs with her, she advised me that \$1300 had been paid on that mortgage, and subsequently, after I had qualified as executor, Judge
20 Boyle wanted to pay the mortgage off, and his clients, the Paladenos, produced receipts showing their last interest payments were based on the sum of \$1300, so I accepted the balance of principal, \$1300 and the interest to date in settlement of that mortgage. The mortgage, I would like to add, with your Honor's permission, did not contain any wording whatever that it was jointly and not severally, and upon the death of either to the survivor.

30 The Court: It was to George W. Fullmer and his wife?

Mr. Rothermel: The inventory only shows a one-half interest of George W. Fullmer estate.

Q. Could you determine, or did you ascertain whether the first payment of \$1300 on account of the

principal of that mortgage was paid before or after George W. Fullmer's death?

A. I did not. Mrs. Fullmer merely told me at the time I drew her will that half the mortgage was paid off.

Mr. Rothermel: These interest receipts which were produced, would they throw any light as to when that payment of \$1300 was made?

10

The Witness: No, they were only interest receipts for the semi-annual installments of interest.

Mr. Rothermel: You made no inquiry of the mortgagors to determine when it was paid?

The Witness: No, other than I demanded that they produce their last couple of receipts, and I recalled the conversation I had with Mrs. Fullmer at the time I drew her will that half the mortgage had been paid.

20

The Court: Do you know when it was paid?

The Witness: No.

The Court: Paid in the lifetime of the husband, George W. Fullmer?

The Witness: She did not tell me, sir.

30

Mr. Rothermel: It would appear, sir, merely from the inventory of Mr. Fullmer, it was not, because that shows the mortgage of \$2600.00 and George W. Fullmer as holding a one-half interest, which is valued at \$1300.

The Court: That would appear so.

Mr. Rothermel: Perhaps with that we can check up. Are the parties living in Camden?

The Witness: As far as I know they are living in the property.

10 Q. Mr. Jacobs, there are only two other items on the inventory of George W. Fullmer that we haven't covered. I call your attention to 2 Victory Loans, \$100 each, \$200. Did you find those bonds among the assets of Mrs. Fullmer?

Mr. Rothermel: Referring to what?

Q. Two Victory Loans, \$100 each, and one of \$50.

A. I have accounted for the one of \$50.

20 Q. No, you accounted for the Third Liberty Bond of \$50, now this is the Victory Loan, 2 Victory Loans at \$100 each and one Victory Loan of \$50.

A. No, I did not receive the Victory Loan of \$50 nor the two of \$100 each, they were not in the assets of the deceased.

Q. Now, did Mrs. Fullmer at the time of her death have any bank account?

30 A. I investigated and I found a savings account which was opened in 1901 in her name at the Camden National Bank, and a checking account which was opened in 1911 in her name at the same institution, and at which institution I also found her safe deposit box.

The Court: Were they subsequent to the death of her husband?

The Witness: No, prior. The savings account was opened in 1901 and the checking account in 1911.

Mr. Carroll: I don't know whether we have told your Honor when these people died. George W. Fullmer died November 18, 1920, and Annie B. Fullmer died June 9, 1927.

Mr. Rothermel: That is January, isn't it? 10

Mr. Carroll: No, that is June.

The Court: Do you know what she had in these checking accounts on November 18, 1920?

Mr. Carroll: Yes, sir. Mr. Rothermel, I have here a gentleman from the Camden National Bank who has handed me a transcript of the time account, and he has a transcript of the checking account. Is there any objection to just putting these in? 20

Mr. Rothermel: No. If he says they are a correct transcript that is all.

Mr. Carroll: Now, may it please your Honor, I have here, furnished us by the bank, the gentleman has just identified them, to Mr. Rothermel's satisfaction, a transcript of the saving account in the name of Annie B. Fullmer. The first date is September 5, 1901, that is the first deposit, and the last deposit was made October 17, 1925. Now, I have made an analysis of this account, and this transcript shows the deposits, the interest which was added from time to time, and all the checks by which funds were withdrawn, and I have had those added up on the adding machine—I had better take 30

the deposits first—I have the young lady who did this if you want to ask her about it—there was deposited in this account a total—that is, from the first date to the last date mentioned, \$35,360.38. Subsequent to November 18th, the date of the husband's death, November 18, 1920, there was deposited \$12,361.98 and prior to the husband's death there was deposited \$22,998.40.

10 The Court: Can you show what the balance was in the account on November 18, 1920, the date of the husband's death?

Mr. Carroll: I think we can work that out, your Honor. There was withdrawn from that account between the two dates I have mentioned, a total of \$32,934.44, and of that sum \$13,102.44 was withdrawn after the husband's death, and \$19,832 was withdrawn before the husband's death, and that
20 \$13,102.44 includes an item of \$2500 taken out by Mr. Jacobs as executor to pay the transfer inheritance tax.

The Court: Show me, if you can, what there was in the account at the time of the husband's death.

Mr. Carroll: Now, I had better cover the interest prior to the husband's death. There was credited to the account for interest \$331.71, and after the
30 husband's death there was credited to the account for interest \$814.34. Could you tell us approximately what the balance of this time account was as of November 18, 1920?

A Voice: The balance was \$3,498.11.

STEVEN M. GRZECZKOWSKI, SWORN.

By Mr. Carroll:

Q. By whom are you employed?

A. The First Camden National Bank and Trust Company.

Q. Was that formerly, prior to its merger, the Camden National Bank? 10

A. Yes, sir.

Q. Have you brought with you the ledger sheets and records of the bank appertaining to the checking account of Annie B. Fullmer?

A. Yes, sir.

Q. Are these the original ledger sheets and papers?

A. Original ledger sheets and papers.

Q. Can you refer to that and tell us the date of the first item of that account? 20

The Court: This was the time account?

Mr. Carroll: This is the checking account, we have covered the time account.

The Witness: December 2, 1911.

The Court: That was the time account you just gave? 30

Mr. Carroll: Yes, sir.

Q. That was opened, I suppose, with a deposit?

A. \$129.50.

The Court: When?

The Witness: December 2, 1911.

Q. When was the last item of the account?

A. You mean the last deposit?

Q. The last deposit or the last withdrawal?

A. A withdrawal, September 23, 1927.

Q. How much was that?

A. \$71.40.

10 The Court: Can you tell what was in that account on November 18, 1920?

The Witness: May I correct that one entry? I notice this is a bookkeeper's entry right here. The last entry on that is July 15, 1927.

Mr. Rothermel: Was that a withdrawal or a deposit?

20 The Witness: A deposit, the last date, July 15. Balance on November 18, 1920, \$249.72.

Q. What was the balance in June, 1927, at the time Mrs. Fullmer died?

A. The last balance in June, 1927, was \$1,674.73.

Cross-examination.

30 By Mr. Rothermel:

Q. Whate date would that be?

A. June 6th.

Q. The balance of 6-6-27?

A. Yes.

Q. That is the amount that was turned over to Mr. Jacobs as executor?

The Court: What did you say was the balance in the other account, Mr. Carroll, at the time of the widow's death?

Mr. Carroll: At the time of the husband's death?

The Court: No, at the time of the widow's death, in the time account, you gave it, I think.

Mr. Carroll: There was a balance of \$6,091.99. 10

Mr. Rothermel: If the Court please, I think the inventory shows \$6,001.97. I don't think Mr. Jacobs would be charged with any more than he got.

Q. What was the balance at the time of her death in June, 1927, in the time account?

A. That was \$3,501.97.

Q. Wasn't there \$2500 drawn out? That was June 1, 1927. Did she die in January or June? She died June 9th, 1927, and I always understood that the last item of \$2500 was taken out by Mr. Jacobs to pay the transfer inheritance tax. You took \$2500 out of the account as executor? 20

Mr. Jacobs: Yes, to pay the deposits and pay the funeral expenses.

Mr. Rothermel: June 1, 1927, the balance was 30 \$6,001.97, that is correct, in the time account.

The Court: \$6,001.97.

Mr. Rothermel: That is the amount shown by the inventory.

Mr. Jacobs: Do you have what was in the checking account at the date of her death?

The Court: That he gave, \$1,674.73.

Mr. Rothermel: Any further information your Honor wants?

10 The Court: I think not.

GEORGE H. JACOBS, ESQ., recalled.

By Mr. Carroll:

Q. Now, Mr. Jacobs, did you ascertain whether or not Mrs. Fullmer owned any real estate in New Jersey?

20 A. I ascertained she owned none in New Jersey.

Q. Did she own any real estate in Pennsylvania?

A. Parkland, Bucks County, Pennsylvania.

Q. Have you the deeds for those properties? At the time of her death will you tell us what she owned, that is, the real estate at Parkland, Pennsylvania?

The Court: At the time of her husband's death?

30 Mr. Carroll: No, at the time of her death.

A. At the time of her death, after I had qualified as executor of the will, I examined the records at Doylestown, Bucks County, and checked them against the deeds which I found in decedent's safe deposit-box, and as the result of that I determined

definitely that decedent owned an enclosed lot known as #13 on Avenue B., Meshamney Park Lots, that she also owned lots #11, #9, #7, on Avenue B., and upon these three lots, or a portion thereof, was a very large mansion house. I also determined she owned a lot #12 on Avenue C., of the same plan, and upon that there was erected a small bungalow, and that she also owned lot #10, Avenue C., on the aforesaid plan, and upon that there was also erected a small bungalow. All of the other lots and real estate which she had owned she had parted with the title. 10

Q. Didn't she have an unimproved lot that was fenced in?

A. That was the first I mentioned, the enclosed lot. There was an enclosed lot and three lots in connection with the homestead.

The Court: Do you know approximately the value of those properties above the encumbrances? 20

The Witness: She valued them at \$30,000.

The Court: Altogether?

The Witness: Altogether. I had appraisers familiar with values there—may I have the Pennsylvania Collateral Inheritance Tax Report—local appraisers put a value on the holdings which I have described of \$7500, due to present market conditions. They were assessed for \$4,000 the year of decedent's death. 30

The Court: Can you tell me whether any of them or whether all of these interests were acquired prior to her husband's death or subsequent?

The Witness: Yes, your Honor, lots #10 and #12, section B., Mrs. Fullmer acquired in September, 1904. Lot #13, which was the enclosed vacant lot, was acquired the 11th of January, 1921, for \$500.

Mr. Rothermel: That was #13, section B?

The Witness: Avenue B.

10 Mr. Rothermel: Acquired September, 1921?

Mr. Carroll: January 11, 1921.

The Witness: Now, lots #5, #7, #9 and #11, section B., lots #10 and #12, section C., which includes more than what she owned at the time of her death, was acquired the 26th of November, 1901.

Q. Out of the lots conveyed by this deed you just
20 mentioned, am I correct in understanding she re-
sold those lots?

A. Not out of that tract, Mr. Carroll.

Q. She resold some of them?

A. She resold one, she sold lot #5, the others remained in her name.

Q. November 26, 1901?

A. Yes, sir.

The Court: All the real estate was acquired by
30 her prior to her husband's death except that \$500
purchase?

The Witness: That is true.

Q. In addition to those lots you mentioned, Mr. Jacobs, am I correct in understanding that on May

2, 1905, she bought 33 lots at Parkland, all of which she sold in her lifetime in addition to those I have otherwise mentioned?

A. That is correct, and here is the deed.

Q. And these items you have just been testifying about, so far as you know, constituted all of her real estate holdings and transactions?

A. That is all I could find.

Mr. Carroll: Now, I guess, that is about the extent of the information we can offer your Honor. If there is anything else you want to know—do you want to know the age of these people? 10

The Court: That is all, I think, that can be of any use. Did George W. Fullmer leave any real estate?

The Witness: Who, sir? 20

The Court: Did George W. Fullmer leave any real estate?

The Witness: According to the records of Bucks County he did not own any.

Mr. Carroll: The situation, I might say, and I don't think there is any doubt about this, is that Mrs. Fullmer when she died was a lady of quite advanced years, and her husband, during his life, had been a pilot on a tug boat, and Mrs. Fullmer was his second wife. By his first wife he had the complainants, Mrs. Morgan and Mrs. Kleaver, and they were quite young children when the first wife died, and they were brought up by the second wife, and she was rather a thrifty woman, and the hus- 30

band turned his wages over to her, and she inherited some money, she raised chickens, and vegetables, and things of that sort, and she was a pretty good business woman.

The Court: She seems to have owned more than he.

10 Mr. Carroll: But I guess most of it came from his earnings, because I understand he practically turned everything over to her.

The Court: That I can hardly act upon in the absence of competent evidence, in the matter of construction of the will. If there is no other testimony I will hear counsel in the matter.

Mr. Rothermel: If I may interrupt for a moment

20 By Mr. Rothermel:

Q. Mr. Jacobs, Keystone Telephone Company stock, was there anything to indicate when that had been acquired by Mrs. Fullmer?

The Court: Which was that?

30 Mr. Rothermel: Keystone Telephone stock, which appears on the inventory of Annie B. Fullmer.

A. Nothing that I have here, Mr. Rothermel. I could get you the dates by referring to the certificate of stock which is in the safe deposit box at the bank.

Q. You still have that?

A. Yes.

Q. What about the American T. & T. stock?

A. My answer would be the same except two days after election, when the market went up and got to 188 $\frac{5}{8}$ I sold it, because at the date of death it was \$169.50, and I thought it was an advantageous market, and I sold it.

Mr. Carroll: Since then it has gone to 220.

10

Mr. Rothermel: My information is that both of those blocks of stock were purchased after her husband's death, that is the reason I wanted to get that information into the record. Mrs. Jaggard, one of the defendants, states the stock was purchased, both of these stocks were purchased by Mrs. Fullmer, September, 1924, when Mrs. Fullmer was residing with Mrs. Jaggard. That, I say, checks up with my information that they were both purchased while she was residing with Mrs. Jaggard, and we can, 20 therefore, stipulate that is a fact.

Mr. Jacobs: I have no objection.

Mr. Rothermel: There seems to be no dispute on that point, sir.

MARY J. MORGAN, SWORN.

30

By Mr. Rothermel:

Q. Mrs. Morgan, you are a daughter of George W. Fullmer?

A. Yes, sir.

Q. I understand by the wife before Annie B. Fullmer?

A. Yes, sir.

Q. I trust you will pardon me, but how old are you?

A. I will be 65 years old this coming October.

Q. Do you recall, or can you tell me, when your father married Annie B. Fullmer?

A. He married her on August 15, 1879.

10 Q. Were you living with your father at that time?

A. Yes, sir.

Q. And Annie B. Fullmer is not your mother, then?

A. No, sir.

Q. How long did you remain living at home?

A. I was past 20 when I left home.

Q. How old were you when your father married Mrs. Fullmer?

A. I was in my 13th year.

20 Q. After you were 20 did you then get married yourself?

A. Yes, sir.

Q. Did your father and mother live in the neighborhood that you did, I mean your father and Mrs. Fullmer?

A. Yes, sir.

Q. And you visited them, I presume, all the time?

A. Yes, sir.

Q. What business was your father engaged in?

30 A. Steam-boat captain.

Q. Was there any money which came into the house other than the earnings of Mr. Fullmer?

A. Not a penny.

Q. What was the custom of your father with respect to his earnings, what would he do with them, or to whom would he give them?

A. He always brought them home and gave them to my stepmother.

Q. And she ran the house?

A. Yes, sir.

Q. And took care of the business matters in connection with it?

A. Yes.

Q. To your knowledge, during the years that Mrs. Fullmer and your father were married, was there any money that came to Mrs. Fullmer other than 10 from your father?

A. She had an aunt that died and I think she got \$500 from her.

Q. Outside of that \$500?

A. Not a penny.

Q. Outside of that all the money that Mrs. Fullmer had came from your father's earnings?

A. Yes, sir.

The Court: Do you know whether she had any- 20 thing when she married your father?

The Witness: No, sir, she didn't have a penny.

(No cross-examination.)

ANNA KLEAVER, SWORN.

30

By Mr. Rothermel:

Q. Mrs. Kleaver, you are also a daughter of George W. Fullmer?

A. Yes, sir.

Q. I understand by a wife prior to Annie B. Fullmer?

A. Yes, sir.

Q. How old are you?

A. 62.

Q. Do you recall when your father married Mrs. Annie B. Fullmer?

A. Yes, sir.

Q. Where were you living at that time?

10 A. With Father.

Q. Did you continue living with your father and stepmother?

A. Yes, sir.

Q. Until when?

A. Until I was married.

Q. When was that?

A. In 1877.

Q. And since your marriage did you keep in touch with your father and stepmother?

20 A. Yes, sir.

Q. Did you live in the same neighborhood with them?

A. Yes, sir.

Q. Where have they lived?

A. First, when we were home, 1115 S. Fourth, and then they went to 341 Chestnut Street.

Q. And these two addresses covered the entire period you referred to?

A. Yes, sir.

30 Q. Where did you live?

A. 712 S. 4th Street, and I lived where I am now.

Q. Here in Camden?

A. Yes, sir.

Q. What was your father's business, Mrs. Kleaver?

A. Steam-boats.

Q. Was he engaged in that business up until the time of his death?

A. Six months before he died.

Q. With reference to the running of the house and taking care of the household, who ran it when you were at home?

A. Why, Mother. Of course, Father gave her all the money, and she ran the house.

Q. What proportion, if you know, of your father's earnings, were turned over to Mrs. Fullmer? 10

A. That part I couldn't tell, I couldn't tell how much he turned over for the house.

Q. To your knowledge did Mrs. Annie B. Fullmer have any income from any outside source other than the money received from your father?

A. She got \$500 from an aunt.

Q. When the aunt died?

A. Yes, sir.

Q. With the exception of the \$500, was there any other income that you knew of that Mrs. Fullmer had? 20

A. No, sir.

Q. The rest of the funds came from your father, and represented his earnings?

A. Yes, sir.

Cross-examination.

By Mr. Carroll:

30

Q. Now, Mrs. Kleaver, didn't a substantial portion of your father's income come from an interest in these different tug boats?

A. No, sir, they never paid much.

Q. You are positive of that?

A. That is what I have always been told.

Q. But you don't know?

A. I have letters from Mother shortly before she died.

Q. But you don't know of your own knowledge?

A. No, sir, not of my own knowledge, Mother always said there wasn't much came from them.

Mr. Rothermel: That is the only assistance I can
10 give the Court.

The Court: If there is no more testimony in the aid of the construction I will hear counsel on the construction of the will.

1. It is a fixed rule of construction in this State
20 as to testamentary gifts, either absolute in form or in form indeterminate as to the quantity of the estate given, that, if testator, either expressly or by implication, manifests an intent to invest in the first devisee or legatee the uncontrolled power of disposition of the property, such power embraces the quality of absolute ownership, and a subsequent limitation over is void as inconsistent with the right of the first devisee or legatee. The manifestation of that intent may appear in the gift over as well as
30 elsewhere.

2. To create a valid devise or bequest over and at the same time give the primary devisee or legatee an uncontrolled power of disposition, the primary gift may be made for life only by certain and express words; in such case the power of disposition given to the devisee or legatee for life will not im-

port an estate in fee in realty or an absolute property in personalty and the gift over will be valid. But to overcome the controlling effect of an unrestrained power of disposition the life estate must be created by certain and express words.

3. The common law rule is that in a devise of realty words of limitation must be added to give more than a life estate; in a bequest of personalty words of qualification are required to restrain the 10 extent and duration of the interest.

4. In a gift over, at the death of the first taker, as follows: "Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath," etc., there is imported an uncontrolled power of disposition upon the part of the widow and that involves the idea of absolute ownership and renders the gift over void as inconsistent with the rights of the first legatee. 20

CONCLUSIONS.

(Filed Sep. 9, 1929.)

IN CHANCERY OF NEW JERSEY.

10

Between

ANNA B. KLEAVER, *et als.*,
Complainants,

and

GEORGE H. JACOBS, *et als.*,
Defendants.} Final Hearing on Bill
to Construe Will.
Conclusions.

20

The issue presented herein is whether a gift over, which is contained in the will of George W. Fullmer, deceased, is ineffective as a gift over because inconsistent with the estate given to his widow as the first legatee.

After directing the payment of debts and funeral expenses, the will provides as follows:

30

“Second. I give bequeath and devise to my wife hereinafter named all the rest and residue of my estate wheresoever the same may be found or of whatsoever nature the same may consist to my wife Anna B. Fullmer and to have the net income from my estate, and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best.

Upon the death of my said wife if any of my

estate shall remain unexpended, I hereby bequeath one-half to daughter Anna B. Kleaver, and one-half to my daughter Mary Jane Morgan."

The wife is then made executrix.

Anna B. Kleaver and Mary B. Kleaver are daughters of testator by a former wife.

Testator's estate was wholly personal property.

10

WALTER S. KEOWN, Esq., for complainants.

WALTER R. CARROLL, Esq., for defendants.

LEAMING, V. C.:

It may be said to be reasonably clear that testator intended that in case any part of his estate which he gave to his wife should remain unexpended by her at her death, such unexpended portion should go to his two daughters. But it is entirely clear that testator did not employ the necessary means to accomplish a purpose of that nature. 20

It is a fixed rule of construction in this State as to testamentary gifts, either absolute in form or in form indeterminate as to the quantity of the estate given, that, if testator, either expressly or by implication, manifests an intent to invest in the first devisee or legatee the uncontrolled power of disposition of the property, such power embraces the quality of absolute ownership, and a subsequent limitation over is void as inconsistent with the right of the first devisee or legatee. The manifestation of that intent may appear in the gift over as well as 30

elsewhere. *Annin's Executors v. Candoren's Adm.*, 14 N. J. Eq. 135. This rule of construction has been so frequently recognized by the Courts of this State that citation of the several cases seems inappropriate.

- To create a valid devise or bequest over and at the same time give the primary devisee or legatee an uncontrolled power of disposition, the primary gift may be made for life only, by certain and express words; in such case the power of disposition given to the devisee or legatee for life will not import an estate in fee in realty or an absolute property in personalty and the gift over will be valid. Downey v. Borden, 36 N. J. Law 460. This requirement that the life estate must be created by certain and express words, to be effective to overcome the controlling effect of an unrestrained power of disposition, is uniformly recognized. Even in cases in which a life estate in realty would be said to result by implication by reason of the absence of words of limitation, an uncontrolled power of disposition will be held to raise such an estate to a fee. Downey v. Borden, *supra*. As to personalty this is the more forceful by reason of the common law rule that in a devise of realty words of limitation must be added to give more than a life estate, whereas in a bequest of personalty words of qualification are required to restrain the extent and duration of the interest. Adamson v. Armitage, 19 Ves. Jr., 416, 418.
- 10
- 20
- 30
- The will here presented for construction is controlled by these established rules which cannot be ignored. Obviously the primary bequest to the wife of testator cannot be said to be for life only by clear and express words.

Nor can it be doubted that by the terms of the gift over testator has adequately manifested an intent

to confer upon his widow an uncontrolled power of disposition of the property bequeathed to her. The gift over at the death of the widow is of so much of the estate, if any, as "shall remain unexpended" by the widow. In this respect the gift over is practically identical with that considered in *Annin's Ex'rs. v. Vandoren's Adm.* (*supra*). It is there held that this manifests an uncontrolled power of disposition upon the part of the widow, and that such power involves the idea of absolute ownership and renders the gift over void as inconsistent with the rights of the first legatee. It cannot be doubted that testator's intent was to confer upon his widow the uncontrolled power of disposition of the property and if any remained unexpended by her at her death to give that to his daughters. As already stated, testator could have accomplished that by conferring upon his widow a life estate only by certain and express words. That he failed to do.

A decree will be advised pursuant to the views herein expressed. 20

Submitted: March 9th, 1929.

Determined: May 1st, 1929.

A true copy,
FERD GARRETSON,
Clerk.

BE IT REMEMBERED.

30

That I, George W. Fullmer, being of sound and disposing mind, memory, and understanding, and considering the uncertainty of life, do therefore make, ordain, publish and declare this to be my last

Will and Testament in manner, and form following, that is to say:

Imprimis: First: I direct that all my just debts and funeral expenses be paid as soon as the same conveniently may be after my decease.

10 SECOND: I give, bequeath and devise to my wife hereinafter named all the rest and residue of my estate wheresoever the same may be found or of whatsoever nature the same may consist to my wife Anna B. Fullmer and to have the net income from my estate, and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best.

Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath one half to daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan.

20 *And as to all the rest, residue and remainder of my estate, real, personal or mixed, of whatever nature or kind, or wheresoever situate at the time of my decease, I do hereby give, devise and bequeath.*

And lastly, I do make, constitute and appoint my wife, to be the *executress* of this my last will and testament, hereby revoking all former wills by me at any time heretofore made, and declaring these presents only to be and contain my last will and testament.

30 In Witness Whereof, I have hereunto subscribed my name and affixed my seal the sixteenth day of April in the year of our Lord one thousand nine hundred and eight.

Geo. W. Fullmer.

Signed, sealed, published and declared by the testator above named, as and for his last will and tes-

tament, in the presence of us, who hath hereunto, at his request subscribed our names in his presence, and in the presence of each other, as witnesses hereto.

Walter A. Kruck. #929 Broadway, Camden, N. J.
Edmund J. Alff. 511 Pine St., Camden, N. J.

STATE OF NEW JERSEY.

10

COUNTY OF CAMDEN.

I, GEORGE W. WHITE, Surrogate of the County of Camden, do hereby certify that the foregoing is a true copy of the last will and testament of George W. Fullmer, deceased, late of the County of Camden and State of New Jersey, upon which letters testamentary were granted on December 15th, A. D., 1920, unto Anna B. Fullmer, the executrix named therein. The said will was filed December 15th, A. D., 1920, and recorded in the Surrogate's Office of the County of Camden, in Book 53 of Wills, page 326, &c. 20

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this thirty-first day of March, A. D., 1928.

GEORGE W. WHYTE,

(Seal)

Surrogate.

By C. M. POWELL QUICKSALL, 30
Deputy Surrogate.

I, ANNIE B. FULLMER, a resident of the County of Bucks, in the State of Pennsylvania, but

temporarily sojourning in the Borough of Collingswood, County of Camden and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this writing as and for my last will and testament, hereby revoking and making void any and all wills by me at any time heretofore made.

10 FIRST. It is my will and I do order and direct that all my just debts and funeral expenses be paid and satisfied by my Executor hereinafter named, as soon as conveniently may be after my decease.

SECOND. I give and bequeath unto the West Jersey Homeopathic Hospital in the City of Camden, the sum of Five hundred dollars, absolutely.

THIRD. I give, devise and bequeath all my interest in and to Tug Shares or Participation Certificates to my two step-daughters, Mary Jane Morgan and Annie B. Kleaver, in accordance with the will of their late father, George W. Fullmer.

20 FOURTH. I give, devise and bequeath all my right, title, interest and estate in and to lot No. 223 Highland Lawn to George W. Kleaver. (The deed to said lot being in the joint names of George W. Kleaver and myself.)

FIFTH. All the rest, residue and remainder of my estate, of whatsoever kind and description and wheresoever situate, I give, devise and bequeath unto my Executor hereinafter named, IN TRUST, for the following uses and purposes:

30 (a) To sell at public or private sale for the best price or prices obtainable in his judgment, all my property, real, personal and mixed, of whatsoever kind and description and wheresoever situate, and to execute the necessary and proper deed or deeds therefor, without any liability on the part of the purchaser or purchasers to see to the application, misapplication or non-application of the purchase

money, and to do all other lawful things to carry out this, my last will and testament.

(b) Out of the proceeds of such sale or sales, after the payment of all just debts, expenses, commissions on sales, etc., in connection with the administration of my estate, to pay over the same in equal shares to my nephew, Samuel P. Conard, and my niece, Mae A. Jaggard. In the event that my said nephew or niece predeceasing me, then and in such case, the share of such decedent or decedents is to be paid to his or her heirs at law. 10

LASTLY. I hereby nominate, constitute and appoint George H. Jacobs, Esquire, a member of the New Jersey Bar, Executor of this my last will and testament, and I do order and direct that my said Executor be not required to give bonds or other securities as such Executor in the State of Pennsylvania or any other jurisdiction wherein proceedings may be required to be taken in connection with this, my will. 20

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twentieth day of May, Nineteen hundred and twenty-five.

Annie B. Fullmer SEAL.

Signed, sealed, published and declared by the said Annie B. Fullmer, as and for her last will and testament, in the presence of us, who, at the same time, in her presence, in the presence of each other and at her request, have hereunto subscribed our names as witnesses. 30

Sadie Herman	Anna C. Derrick
212 So. Broad St.,	54 W. Chestnut Ave.,
Woodbury, N. J.	Merchantville, N. J.
Herbert F. Oehlers	
520 Jessamine Ave.,	
W. Collingswood, N. J.	

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, GEORGE W. WHYTE, Surrogate of the County of Camden, do hereby certify that the foregoing is a true copy of the last will and testament of Annie B. Fullmer, deceased, late of the County of Camden, State of New Jersey, upon which letters testamentary were granted on June 24th, 1927, unto
 10 George H. Jacobs, the Executor named therein. The said will was filed June 24th, 1927, and recorded in the Surrogate's Office of the County of Camden, in Book "67" of Wills, page 481.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this thirtieth day of December, A. D., 1929.

GEORGE W. WHYTE,

(Seal)

Surrogate.

20

C. M. POWELL QUICKSALL,
Deputy Surrogate.

A TRUE AND PERFECT INVENTORY AND APPRAISEMENT.

of the Goods, Chattels, Rights, Credits and effects of George W. Fullmer, deceased, late of the county of Camden, made this day of February,
 30 A. D., 1924, by Annie B. Fullmer, Executrix, and Anna C. Morton and Paul S. Pike, Appraisers.

1 4th Liberty Loan Bond,	1,000.00
Accd. int.	3.89
1 4th Liberty Loan Bond,	1,000.00
Accd. int.,	3.89
1 3rd Liberty Loan Bond,	1,000.00

Inventory and Appraisement 73

Accd. int.,	7.43	
1 3rd Same,	50.00	
Accd. int.,	.37	
2 Victory Loan \$100.	200.00	
1 " "	50.00	
Accd. int., on \$250	4.88	
5 shrs. South Ward B. & L. Ass'n., Book No. 5093,	750.00	
10 shrs. South Ward B. & L. Ass'n., Book No. 5440,	866.40	10
5 shrs. South Ward B. & L. Ass'n., Book No. 5577	360.00	
2/64 Int. in the following Tug Boats, to wit:	897.50	
"Juno" \$312.50; "Bow Castle" \$585. "Bryn Mawr," \$375; "Inca" \$781.25	1,156.25	
(Note. 6 months dividend was \$1,302.- 24 paid as of Dec. 31st, 1920)	998.39	
Cash in purse,	13.00	20
Old gold watch,	15.00	
Household goods, estimated now scat- tered,	100.00	
1-2 interest in Mtge., made by Joseph Palladino, et al., to George W. Full- mer, and Annie B. Fullmer, his wife, dated Sept. 8, 1914, rec. office of Register of Deeds of Camden County, in Book No. 134 of mtge. pages 435, &c., premises 1125 S. 4th St., Camden, N. J.	1,300.00	30
Accd. int.,	15.17	
	\$9,792.17	

Annie B. Fullmer, Executrix,
Anna C. Morton,
Paul S. Pike, Appraisers.

State of New Jersey, }
 Camden County, } ss.

10 Anna C. Morton, one of the appraisers of the foregoing inventory being duly sworn according to law, did say that the goods and chattels, rights and credits in said inventory set down and specified, were by them appraised according to their just and true respective rates and values after the best of their judgment and understanding; and that Paul S. Pike, the other appraiser whose name is thereto subscribed was present at the same time and consented in all things to the doing thereof, and that they appraised all things that were brought to their view for appraisement.

Anna C. Morton,
 Paul S. Pike.

20 Sworn and subscribed at Camden, the seventh day of February, A. D., 1924, before me,
 Geo. W. Whyte,
 Deputy Surrogate.

State of New Jersey, }
 Camden County, } ss.

30 Annie B. Fullmer, Executrix of the estate of the within named George W. Fullmer, deceased, being duly sworn according to law, did say that the annexed writing contains a true and perfect inventory of all and singular the goods, chattels, rights and credits of the said deceased, so far as have come to her knowledge or possession of any other person or persons for his use.

Annie B. Fullmer.

Sworn and subscribed at Camden, the seventh day of February, A. D., 1924, before me,

Samuel P. Hagerman,
M. C. C. of N. J.

Received and Recorded February 7th, A. D., 1924.

STATE OF NEW JERSEY.

10

COUNTY OF CAMDEN.

I, GEORGE W. WHYTE, Surrogate of the County of Camden, do hereby certify that the foregoing is a true copy of the inventory in the matter of the estate of George W. Fullmer, deceased. The said inventory was filed February 7th, 1924, and recorded in the Surrogate's Office of the County of Camden, in Book V of Inventories, page 411, etc.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this thirtieth day of December, A. D., 1929.

GEORGE W. WHYTE,

(Seal)

Surrogate.

By C. M. POWELL QUICKSALL,
Deputy Surrogate.

A TRUE AND PERFECT INVENTORY AND APPRAISEMENT OF THE Goods, Chattels, Rights, Credits and effects of Anna B. Fulmer, deceased, late of the County of Camden, made this twelfth day of April, A. D. 1928, by George H. Jacobs, Executor, and Eleanor Ramsey and Bonnie Stoner, Appraisers. 30

Amount on deposit in checking account in Camden National Bank, Camden, N. J.

\$1,674.73

	Amount on deposit in Savings Account #3584, in Camden National Bank, Camden, N. J.	6,001.97
	Certificate No. N51252 for 24 shares of stock in the American Telephone and Telegraph Company, \$167.87 per share on June 9th, 1927.	4,028.88
10	Certificate No. 7532 for 24 shares of stock in the Keystone Telephone Company of Pennsylvania, (Preference Stock), \$55.00 per share on June 9th, 1927.	1,320.00
20	Bond and mortgage, Joseph Palladino, et ux, to George W. Fullmer and Anna B. Fulmer, to secure \$2600, dated Sept. 8, 1914, recorded in the Office of the Register of Deeds of Camden County in Book "134" of Mortgages, at page 435, covering premises on the west side of Fourth Street 119 feet 7 inches South of Chestnut Street, Camden, N. J. Note: This mortgage was originally in the amount of \$2600. but during decedent's lifetime was reduced to \$1300.	
	Balance of principal due	1,300.00
	To accrued interest thereon from March 8th, 1927, to June 9th, 1927.	20.15
30	4th Liberty Loan 4 $\frac{1}{4}$ Bond, 1933 and 1928 Series, C1134813, value at time of decedent's death.	1,038.80
	Int. earned on Coupon 18 from April 15, 1927, to June 9th, 1927	6.49
	4th Liberty Loan 4 $\frac{1}{4}$ Bond, 1933-1938 Series, D01134814, value at time of decedent's death	1,038.80

Inventory and Appraisement 77

Int. earned on Coupon 18 from April 15, 1927, to June 9th, 1927.	6.49
3rd Liberty Loan 4¼ Gold Bond, 1928, 1104984;	1,103.20
Int. earned on Coupon 19, from March 15th to June 9th, 1927	2.95
3rd Liberty Loan 4¼ Bond, 1928 Series,	55.16
Int. earned on Coupon 19	.16
Participation Certificate No. 11, Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money for tug "Juno" and is entitled to 2/64ths part interest in said tug and her earnings.	10
Value at time of decedent's death.	62.50
Participation Certificate No. 11, Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug "Newcastle" and is entitled to 2/64ths interest in said tug and her earnings. Value at time of decedent's death.	20
Participation Certificate No. 11, Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug "Bryn Mawr" and is entitled to 2/64ths interest in said tug and her earnings. Value at time of decedent's death.	117.00
Participation Certificate No. 9, Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug	30
Participation Certificate No. 9, Frank L. Neall, Trustee, certifying that George W. Fulmer has advanced 2/64ths of purchase money of tug	75.00

	“Inca” and is entitled to 2/64ths interest in said tug and her earnings. Value at time of decedent’s death.	469.04
10	Participation Certificate No. 225, Official No. 106046, Red Star Tugs, certifying that 2/64ths of the purchase money of tug “Argus” was paid by George W. Fulmer, and he is entitled to 2/64ths of the earnings and value of said tug.	No value
	Participation Certificate No. 55, Official No. 3141, certifying that George W. Fulmer has advanced 2/64ths of the purchase money of tug “Battler” and is entitled to 2/64ths interest in said tug and her earnings.	No value
	Note: The values of the above Participation Certificates are determined according to a letter from Gailey, Davis & Co., Inc., Agents, dated March 10th, 1928.	
20	Death benefit in the amount of \$50. from Monarch Temple No. 9, Ladies of the Golden Eagle.	50.00
	Death benefit from Rising Star Lodge #5, Order of Shepherds of Bethlehem	150.00
	TOTAL	\$18,521.32
30	Eleanor M. Ramsey, Appraiser. Bonnie Stoner Appraiser.	George H. Jacobs, Executor.

State of New Jersey, }
Camden County, } ss.

Eleanor Ramsey and Bonnie Stoner, the appraisers of the foregoing inventory, being duly sworn according to law, did say that the goods and chattels, rights and credits in said inventory set down and specified, were by them appraised according to their just and true respective rates and values after the best of their judgment and understanding; 10
and that they were present at the same time and consented in all things to the doing thereof, and that they appraised all things that were brought to their view for appraisement.

Eleanor M. Ramsey
Bonnie Stoner

Sworn and subscribed at Camden, this twelfth day of April in the year of our Lord one thousand nine hundred and twenty-eight (1928).

20

Warren Stafford,
Special Probate Clerk.

State of New Jersey, }
Camden County, } ss.

George H. Jacobs, the executor of the estate of the within named Annie B. Fulmer, deceased, being duly sworn according to law, did say that the annexed writing contains a true and perfect inventory of all and singular, the goods, chattels, rights and credits of the said deceased, so far as have come to his knowledge or possession, or to the possession of any other person or persons for his use. 30

George H. Jacobs

Sworn and subscribed at Camden, this twelfth day of April in the year of our Lord one thousand nine hundred and twenty-eight (1928).

William J. Shepp,
Attorney at Law of New Jersey
Received and Recorded April 16th, 1928.

10

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, GEORGE W. WHYTE, Surrogate of the County of Camden, do hereby certify that the foregoing is a true copy of the inventory in the matter of the estate of Annie B. Fulmer, deceased. The said inventory was filed April 16, 1928, and recorded in the Surrogate's Office of the County of Camden, in Book X of Inventories, page 301, etc.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this thirtieth day of December, A. D. 1929.

(Seal) GEORGE W. WHYTE,
Surrogate.

By C. M. POWELL QUICKSALL,
Deputy Surrogate.

30

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

To all to whom these presents shall come, GREETING:

Whereas, George W. Fulmer, late of the County
 10 of Camden, in the State of New Jersey, died, hav-
 ing made and executed a last will and testament,
 which has been duly proved according to law before
 the Surrogate of the County of Camden; and
 whereas, the said testator appointed Annie B. Ful-
 mer the executrix thereof, who, after taking upon
 herself the burden of administration, departed this
 life before the settlement of said estate,

Therefore I, George W. Whyte, Surrogate of the
 County of Camden, on this fifth day of February,
 20 in the year of our Lord one thousand nine hundred
 and twenty-nine, in place and stead of the said Annie
 B. Fulmer hereby substitute and appoint Albert E.
 Schefflen administrator of all and singular the goods,
 chattels and credits of the said testator, who is duly
 authorized, as such substituted administrator, to ad-
 minister the same agreeably to said will.

In witness whereof, I have hereunto set my hand
 and seal of office, this thirtieth day of December,
 in the year of our Lord one thousand nine hundred
 30 and twenty-nine (1929).

(Seal)

GEO. W. WHYTE,
Surrogate.

By C. M. POWELL QUICKSALL,
Deputy Surrogate.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

Between	}	10
ANNA B. KLEAVER, <i>et al.</i> ,		On Bill, etc. Stipulation.
<i>Complainants,</i>		
and		
GEORGE H. JACOBS, ex- ecutor of ANNA B. FULMER, deceased, <i>et</i> <i>als.</i> ,		
<i>Defendants.</i>		

20

It is hereby stipulated and agreed by and between counsel for the respective parties of the within cause that Exhibit D1, namely, a letter from L. E. Shreves, secretary of the South Ward Building & Loan Association, to Walter R. Carroll, Esq., attorney for the defendants, which has been lost or misplaced, contained information that five shares of building and loan association stock in the South Ward Building & Loan Association, represented by Book No. 5093, matured and was paid to George W. Fulmer's account on October 11th, 1921, the amount paid being \$1,000.00; further, that ten shares of stock in the same building and loan association, represented by Book No. 5440, matured and was paid to Annie B. Fulmer on October 12th, 1925, the amount paid being \$2,000.00; further, that five

30

shares of stock in the same building and loan association, represented by Book No. 5577, matured and was paid to Annie B. Fulmer on October 11th, 1926, the amount paid being \$1,000.00.

It is further stipulated and agreed that this stipulation is to be printed in the state of the case in the place and stead of Exhibit D1 referred to herein.

10 We consent to the above stipulation.

WALTER S. KEOWN,

Attorney for Complainants.

ALBERT E. SCHEFLEN, per se,

Attorney for Defendant, Al-

bert E. Scheflen, Adm. C. T.

A., etc.

WALTER R. CARROLL,

Attorney for George H.

Jacobs, Exec., Samuel P.

Conard and Mae A. Jag-

gard.

20

30

FINAL DECREE.

(Filed May 16th, 1929.)

IN CHANCERY OF NEW JERSEY.

	10
Between	
ANNA B. KLEAVER and	
MARY J. MORGAN,	
<i>Complainants,</i>	
and	
GEORGE H. JACOBS, ex-	
ecutor of the Estate	
of ANNA B. FULMER,	
deceased, SAMUEL F.	
CONARD, MAE A. JAG-	
GARD and ALBERT E.	
SCHEFLEN, substituted	
administrator with	
the will annexed of	
GEORGE W. FULMER,	
deceased,	
<i>Defendants.</i>	
	20
	20

On Bill, etc.
Final Decree.

30

The complainants having filed their bill in the above-stated cause for the construction of the last will and testament of George W. Fulmer, deceased, dated April 16, A. D. 1908, and admitted to probate by the Surrogate of Camden County on De-

cember 15, A. D. 1920, and of record in said surrogate's office in Book 53 of Wills, at page 326, &c., claiming that by the provisions thereof they were entitled to take and receive so much of the estate of said George W. Fulmer which came into the hands of his widow and executrix, Anna B. Fulmer, as remained by her unexpended at the time of her death; and the matter coming on for final hearing pursuant to due notice, on February 7, A. D. 1929, in the presence of George D. Rothermel, representing Walter S. Keown, solicitor of the complainants, and Walter R. Carroll, solicitor of the defendants, George H. Jacobs, executor of Anna B. Fulmer, deceased, Samuel P. Conard and Mae A. Jaggard; and Albert E. Scheffen, substituted administrator with the will annexed of the estate of George W. Fulmer, deceased, appearing on his own behalf, upon said bill and an addition thereto by way of supplement, and answers and replications and proofs taken in open court; and the Chancellor having read the pleadings and heard the proofs of the respective parties and having heard and considered the arguments of respective counsel, and being of the opinion that the complainants are not entitled to the relief prayed for in their said bill (other than to a construction of the last will and testament of the said George W. Fulmer, deceased), and that complainants' bill ought accordingly to be dismissed;

30 It is, thereupon, on this 16th day of May, A. D. 1929, on motion of Walter R. Carroll, solicitor for and of counsel with the defendants, ordered, adjudged and decreed by Edwin Robert Walker, Chancellor of the State of New Jersey, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree as follows:

1. That by the provisions of the last will and testament of George W. Fulmer, deceased, his widow took and became entitled to, absolutely and unconditionally, with full and complete power of disposition thereover, all the estate of the said George W. Fulmer, deceased, real, personal and (or) mixed.
2. That the complainants, Anna B. Kleaver and Mary J. Morgan, have no right, title or interest in and to or claim upon any of the assets and property constituting the estate of the said George W. Fulmer, deceased, which came into the hands of his widow and executrix, Anna B. Fulmer, under the said last will and testament of the said George W. Fulmer, deceased, or otherwise. 10
3. That the defendants be, and they are hereby allowed their costs to be taxed, and that the same be paid out of the funds in the hands of the defendant, George H. Jacobs, executor of the estate of Anna B. Fulmer, deceased. 20
4. That Walter R. Carroll, solicitor of the defendants, be and he is hereby allowed a counsel fee of two hundred and fifty dollars, to be included in the defendants' taxed bill of costs, and to be collectible therewith.
5. That the defendant, Albert E. Scheffen, substituted administrator with the will annexed of the last will and testament of George W. Fulmer, deceased, be and he is hereby allowed a counsel fee of fifty dollars, to be paid out of the funds in the hands of George H. Jacobs, executor of the estate of Anna B. Fulmer, deceased. 30

6. That the complainants be, and they are hereby allowed their costs to be taxed, and that the same be paid out of the funds in the hands of the defendant, George H. Jacobs, executor of the estate of Anna B. Fulmer, deceased; and that Walter S. Keown, solicitor of the complainants, be and he is hereby allowed a counsel fee of two hundred and fifty dollars, to be included in the complainants' taxed bill of costs and to be collectible therewith.

10

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING,
V. C.

Approved as to form.

20

WALTER S. KEOWN,
Solicitor of Complainants.
ALBERT E. SCHEFLEN,
Substituted Administrator
C. T. A. of George W.
Fulmer, Deceased, Solic-
itor per se.

A true copy.

FERD GARRETSON,
Clerk.

30

NOTICE OF APPEAL.

(Filed Sept. 25th, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

ANNA B. KLEAVER and
MARY J. MORGAN,
Complainants,

and

GEORGE H. JACOBS, ex-
ecutor of the Estate
of ANNA B. FULMER,
deceased, SAMUEL P.
CONARD, MAE A. JAG-
GARD and ALBERT E.
SCHEFLEN, substituted
administrator with
the will annexed of
GEORGE W. FULMER,
deceased,

Defendants.

10

On Bill, etc.
Notice of Appeal.

20

To *Walter R. Carroll, Sol'r of Defts., George H. Jacobs, Exec. of the Estate of Anna B. Fullmer, Dec'd, Samuel P. Conard and Mae A. Jaggard, and Albert E. Scheflen, Substituted Admr. of the Estate of George W. Fullmer, Sol'r per se:* 30

The complainants hereby appeal from the whole and every part of the final decree made in this

court in the above-stated cause on the 16th day of May, 1929, said decree having been made by the Chancellor on the advice of Honorable E. B. Leaming, Vice-Chancellor, to the Court of Errors and Appeals in the last resort in all causes.

September 20th, 1929.

WALTER S. KEOWN,
Solicitor for Complainants.

10

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

GEORGE D. ROTHERMEL,
Of Counsel with Complainants.

A true copy.

FERD GARRETSON,
20 *Clerk.*

[ENDORSED]

Due and legal service of a copy of the within notice is hereby acknowledged this 20th day of Sept., 1929.

30

Albert E. Scheffen,
Substituted Admr. of Estate of George W. Fullmer, Sol'r per se.
Walter R. Carroll,
Sol'r of Defts., George H. Jacobs, Exec. of the Estate of Anna B. Fullmer, Dec'd, Samuel P. Conard and Mae A. Jaggard.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between		10
ANNA B. KLEAVER and MARY J. MORGAN, <i>Complainants,</i>	}	
and		
GEORGE H. JACOBS, ex- ecutor of the Estate of ANNA B. FULMER, deceased, SAMUEL P. CONARD, MAE A. JAG- GARD and ALBERT E. SCHEFLEN, substituted administrator with the will annexed of GEORGE W. FULMER, deceased,	}	
<i>Defendants.</i>		
	On Bill, etc. Petition of Appeal.	20

To the Honorable, the Court of Errors and Appeals 30
in the Last Resort in All Causes:

The petition of Anna B. Kleaver and Mary J. Morgan, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by final decree made in the Court

of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date, the 16th day of May, 1929, wherein Anna B. Kleaver and Mary J. Morgan were complainants and George H. Jacobs, executor of the estate of Anna B. Fulmer, deceased, *et als.*, were defendants, which said decree construed a certain last will and testament made and executed by George W. Fulmer, deceased, dated April 16th, 1908, and admitted to probate by
10 the Surrogate of Camden County on December 15th, 1920, and of record in said surrogate's office, in Book 53 of Wills, page 326, &c., as creating an absolute estate in Anna B. Fulmer, widow of the decedent, and that any bequest made to the complainants, Anna B. Kleaver and Mary J. Morgan, under the said will, and certain other matters more specifically set forth in said decree as based upon a finding by the Honorable E. B. Leaming, Vice-Chancellor, that
20 the bequest made to the said Anna B. Kleaver and Mary J. Morgan, was inconsistent with the right of the first devisee, or legatee, under the said will, since the testator had vested in the first devisee, or legatee, such an absolute ownership that it could not be defeated or limited by any subsequent limitation over.

And your petitioners humbly appeal from every part of the said decree of the said Chancellor, upon the ground that the same is erroneous; in that

30 1. Although conceding that it was the testator's clear intent that in case any part of his estate which he gave to his wife should remain unexpended by her, on her death such unexpended portion should go to his two daughters, the Court, nevertheless, adjudged the words employed by the testator to accomplish such intent as being deficient, and so vio-

lating a principal rule of construction, that the testator's intent shall prevail in the construction of a will.

2. In that the Court erroneously construed the first devisee under the said will as being vested with an uncontrolled power of disposition when such power was not uncontrolled or absolute, but was, by the very terms of the will, a qualified or limited one. 10

3. In that the Court erroneously construed the wife of the testator, or first devisee, as being vested with an absolute estate, whereas, under the terms of the will, her estate was for life only.

And petitioners, therefore, pray that the said decree of the said Chancellor may be in the particulars aforesaid, and in its entirety reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet and just. 20

WALTER S. KEOWN,
*Solicitor for and of Counsel
with Appellants.*

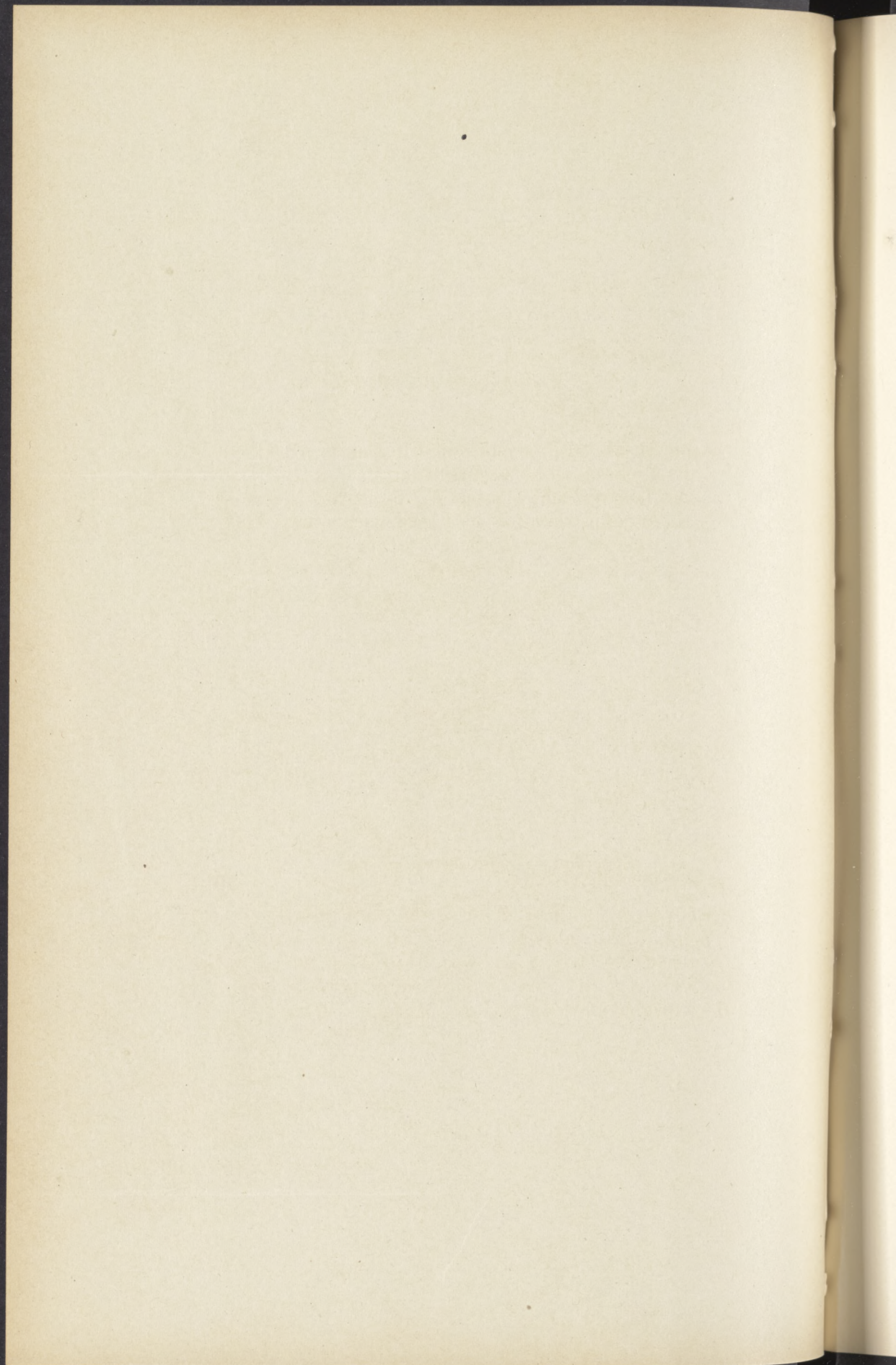
A true copy.

JOSEPH F. S. FITZPATRICK,
Clerk.

30

[ENDORSED]

Filed and recorded Sep. 28, 1929.
Joseph F. S. Fitzpatrick,
Secretary of State.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ANNA B. KLEAVER and MARY J. MORGAN,
Complainants-Appellants,

and

GEORGE H. JACOBS, executor of the Estate of ANNA
B. FULMER, Deceased; SAMUEL P. CONARD, MAE
A. JAGGARD and ALBERT E. SCHEFLEN, substi-
tuted administrator with the will annexed of
GEORGE W. FULMER, Deceased,
Defendants-Respondents.

ON APPEAL.

BRIEF OF COMPLAINANTS-APPELLANTS,
ANNA B. KLEAVER AND MARY J. MORGAN.

STATEMENT OF FACTS.

George W. Fulmer died on the 18th day of No-
vember, 1920, leaving a last will and testament
(State of the Case, page 67). He was survived by
his wife, Anna B. Fulmer, and two daughters, Anna
B. Kleaver and Mary Jane Morgan. Under the

said will, he appointed Anna B. Fulmer executrix and after the usual provision directing the payment of his just debts and funeral expenses, provided in the second paragraph of his will as follows:

“SECOND: I give, bequeath and devise to my wife hereinafter named all the rest and residue of my estate wheresoever the same may be found or of whatsoever nature the same may consist to my wife Anna B. Fulmer and to have the net income from my estate, and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best.

Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath one half to daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan.”

Thereafter, to wit, on the 9th day of June, 1927, the said Anna B. Fulmer died while living in the Borough of Collingswood, County of Camden and State of New Jersey, leaving a last will and testament (State of the Case, page 69), which last will and testament was, on the 24th day of June, 1927, duly admitted to probate by the Surrogate of the County of Camden, and letters testamentary thereto issued to George H. Jacobs, the executor therein named, who proceeded to administer the said estate.

The inventory filed by the said Anna B. Fulmer, as executrix of the estate of George W. Fulmer, showed the nature of the estate of George W. Fulmer as being entirely personal property (State of the Case, page 73). Under the will of Anna B. Fulmer, the only bequest made to the complainants-appellants, Anna B. Kleaver and Mary J. Morgan,

consisted of an interest in certain tug shares or participation certificates, which interest, according to the testimony, is practically valueless or very nominal (State of the Case, page 41, line 32, and State of the Case, page 42, lines 1 to 18).

On or about April 17th, 1928, the complainants-appellants, Anna B. Kleaver and Mary J. Morgan, filed a bill in Chancery for the construction of the will of the said George W. Fulmer, contending that by the terms of the second paragraph of the will of George W. Fulmer, deceased, the said decedent, George W. Fulmer, left his estate in the hands of the executrix, giving his wife, the said executrix, a life interest in said property, and upon the death of the said wife, the second paragraph of the said will provided that the balance of the estate should then be equally divided between the complainants-appellants.

On or about the 7th day of February, 1929, the matter was brought on for final hearing before the Honorable Edmund B. Leaming, Vice-Chancellor, at Camden, New Jersey, and on the 7th day of May, 1929, the learned Vice-Chancellor rendered his conclusions (State of the Case, page 64), to which the complainants-appellants take exception.

REASONS FOR REVERSAL.

The complainants-appellants appeal to your Honorable Court for a reversal of the decree made by the Honorable Edwin Robert Walker, Chancellor, and advised by the Honorable Edmund B. Leaming, Vice-Chancellor, on May 16th, 1929, for the following reasons:

1. That although the learned Vice-Chancellor conceded that it was the testator's clear intent that in case any part of his estate which he gave to his wife should remain unexpended by her at her death, such unexpended portion should go to his two daughters, the learned Court, nevertheless, adjudged the words employed by the testator to accomplish such intent as being deficient, thereby violating a principal rule of construction, namely, that the testator's intent shall prevail at the construction of a will.

2. That the learned Court erroneously construed the first legatee under the said will as being vested with an uncontrolled power of disposition, when, by the very terms of the will, such power was not uncontrolled nor absolute, but was a qualified or limited one.

3. That the learned Court below erroneously construed the wife of the testator, or first legatee, as being vested with an absolute estate, whereas under the terms of the will, her estate was for life only.

ARGUMENT.

PART ONE.

1. THAT ALTHOUGH THE LEARNED VICE-CHANCELLOR CONCEDED THAT IT WAS THE TESTATOR'S CLEAR INTENT THAT IN CASE ANY PART OF HIS ESTATE WHICH HE GAVE TO HIS WIFE SHOULD REMAIN UNEXPENDED BY HER AT HER DEATH, SUCH UNEXPENDED PORTION SHOULD GO TO HIS TWO DAUGHTERS, THE LEARNED COURT, NEVERTHELESS, ADJUDGED THE WORDS EMPLOYED BY THE TESTATOR TO ACCOMPLISH SUCH INTENT AS BEING DEFICIENT, THEREBY VIOLATING A PRINCIPAL RULE OF CONSTRUCTION, NAMELY, THAT THE TESTATOR'S INTENT SHALL PREVAIL AT THE CONSTRUCTION OF A WILL.

The cases wherein a construction of a will has been necessary in New Jersey are voluminous. However, a research of these cases reveals that the predominate idea of the testator's mind, if at all apparent, is heeded as against all doubtful and conflicting provisions which might of themselves defeat it. *Johnson v. Haldane*, 95 N. J. E. 404, 124 Atl. 63.

Bearing in mind the principle that in construing a will, the most notable feature is to determine the testator's intent, if possible, and construe the will in that respect, it is indeed surprising and disappointing to us that the learned Vice-Chancellor in his conclusions states that "although it may be said to be reasonably clear that the testator intended that in case any part of his estate which he gave to his wife should remain unexpended by her at her death,

such unexpended portion should go to his two daughters. But it is entirely clear that the testator did not employ the necessary means to accomplish a purpose of that nature." It is our contention that the learned Court below erred in supplanting or defeating the real substance of the intent of the testator by guiding itself with the form of expression used by the testator to accomplish his intent or purpose and that in so doing, the learned Court below violated a cardinal rule of construction. In our State, the fundamental rule of all rules of construction is that the intention of the testator is to be given effect as far as possible and shall govern the construction throughout.

Assuming, but not conceding that the language of the second paragraph of the will of George W. Fulmer to be somewhat vague in form as to the provisions intended by the testator, it is our contention that the testator's real intent is not lost track of, and that a proper analysis of the paragraph, both in its verbal construction and in considering the relative rights of the parties in interest, reveals that the testator's real intent was to create a life estate in favor of his wife, Anna B. Fulmer, with a vested remainder to his children, Anna B. Kleaver and Mary Jane Morgan.

It is elementary that in construing a will we are compelled to follow as closely as possible the general language of the will, giving it its common purport and meaning. Following the general language of this will and cogitating on each thought as expressed therein so as to arrive, if at all possible, at the real intent of the testator, we find first, that the testator gave, bequeathed and devised to his wife all the rest and residue of his estate, wherever the same may be found or of whatsoever nature the

same may consist and to have the *net income* from his estate and her to sell any or all of the estate at public or private sale and *reinvest* the same in such securities as she may deem best.

There are four thoughts expressed in this sentence, all however so closely connected and linked with each other that the construction must be adduced from the whole sentence, first, because it is indicative of the testator's intention, and second, because of the manner in which the sentence is verbally constructed, there being connectives such as the word "and" used between each thought.

Analyzing the above, we find that first he gives to his wife, Anna B. Fulmer, and in describing what he gives, in the same sentence he says as to the quantum of the estate that it shall be the *net income*, together with a power of sale, but in the same sentence limiting the power of sale in that he directs his wife to reinvest the proceeds in securities. The notions or thoughts contained in the above paragraph cannot stand alone and independent of each other for they are all integrant parts of a whole and together form the testator's real intent.

We contend that by the above construction there was created in favor of the wife, Anna B. Fulmer, either a life estate together with a limited power of sale and reinvestment or an indefinite estate together with a limited power of disposal. However, either of these creations would have the same effect, namely, that a life estate only was directed in her favor. The cases wherein a construction of a will has been necessary, in New Jersey, are voluminous. *Inter alia*, the most notable principles deducted therefrom aided in construing the quantum of an estate are as follows:

That if a life estate is expressly created in the

first instance, with remaindermen over and a full power of disposal granted, the estate will, nevertheless, be construed to be a life estate and is not enhanced by the power of disposal. *Long v. Katzenbach*, 128 Atl. 600; *Wooster v. Cooper*, 53 N. J. E. 682, 33 Atl. 1050.

That if an indefinite estate is created with a full power of disposal and no remaindermen over, the estate will vest in fee. *Drake v. Byram*, 100 N. J. E. 343, 134 Atl. 758; *Gaston v. Ford*, 93 N. J. E. 592, 133 Atl. 531.

That if an estate in fee is created by the use of expressed words in the first instance, the fee will not be defeated by the appearance of subsequent limitations. *Harkness v. Zelle*y, 100 N. J. E. 48, 135 Atl. 347.

Bearing in mind the above stated principle that where an indefinite estate is created in the first instance, together with an absolute power of disposal, a fee simple estate shall result. What construction can be placed upon the language of the will in question? It is the contention of complainants-appellants that it is a life estate only with a power of disposal for the purpose of reinvestment and the right to use the income. Taking, however, the strongest construction that can be given the language at best it is an indefinite estate with a limited power of disposal and if this be true under the above rules as enunciated by the New Jersey Courts it must be construed to be a life estate. To substantiate this may we direct the Court's attention to the following decisions: *Wright v. Wright*, 41 N. J. E. 382; 4 Atl. 855; *Hensler v. Senfert*, 52 N. J. E. 754; 29 Atl. 202, and *Wills v. Wills*, 72 N. J. E. 782, 69 Atl. 256, which cases have all recognized the principle that if there is an indefinite or uncertain estate created, coupled

with a *limited* power of disposal, the devise is not construed to pass a fee but a life estate only. In this case, analyzing the language used, it cannot be said that a fee was created in the first instance. To the contrary, giving the word "income" its usual and proper meaning, the language can only be construed to be a life estate. It will be noted also that there is no unlimited power of disposal and this being true the life estate granted cannot be enhanced under the rules enunciated above.

The learned Court below cites the case of *Annin v. Vandoren*, 14 N. J. E. 135, to substantiate his holding in this respect. However, in that case, there was an absolute gift to the daughter, Lena, and an attempted bequest over upon the condition that the share of Lena had not previously been paid or if any part had been paid, then a bequest over as to the remaining part. The Court very properly held there that there having been an absolute gift in the first instance, the bequest over was void for inconsistency, but it is submitted by complainants-appellants that there is no such question involved in the case at bar in view of the clear and unmistakable language used in the will which grants a bequest of the net income only with no power of disposal. In other words, in the case at bar, there is no such absolute gift as was evident in the case of *Annin v. Vandoren*. Further, it will be noted that the complainants-appellants, are the direct children of the decedent, while the executrix, Anna B. Fulmer, is the second wife, not being the mother of the children (State of the Case, pages 57 and 59).

In construing a will the object to be obtained is to determine the intent of the testator as gathered from the document as applied to the testator's situation. *Trustees of Princeton University v. Wilson*, 78 Atl.

393, 78 E. 1. It is certainly consistent with the ordinary usage and practice for a man to wish his second wife to have sufficient to keep her during her lifetime in order that she may never know want, but that upon a change in her status, or as in this case at her death, then to direct that his children receive the corpus of his estate in order that those who naturally are and should be his beneficiaries should receive the benefits of his efforts.

PART TWO.

2. THAT THE LEARNED COURT ERRONEOUSLY CONSTRUED THE FIRST LEGATEE UNDER THE SAID WILL AS BEING VESTED WITH AN UNCONTROLLED POWER OF DISPOSITION, WHEN BY THE VERY TERMS OF THE WILL, SUCH POWER WAS NOT UNCONTROLLED NOR ABSOLUTE, BUT WAS A QUALIFIED OR LIMITED ONE.

Complainants-appellants are familiar and thoroughly in accord with the principle that where an estate in the first instance is uncertain or indefinite by reason of the lack of expressed words creating such estate, that an uncontrolled power of disposition will be held to raise such an estate to a fee. However, we beg to differ with the learned Court below for in the case at bar it cannot be fairly nor correctly stated that there was present an uncontrolled power of disposition.

In the case of *McCloskey v. Thorpe*, 74 N. J. E. 413, Mr. Justice Swayze stated that:

“An examination of these cases demonstrates that if the language of the will is such as necessarily to imply an absolute power of disposition, the estate is absolute in the first taker, and

such power of disposition is to be implied from an untrammelled power to expend the legacy."

The complainants-appellants thoroughly agree with the rule as stated by Mr. Justice Swayze here but submits that this is not the situation now before this Court since in the present case there is no absolute power of disposition but a distinct limited power of disposition nor is there an unlimited power to expend but only a power to expend the income. The difference between the cases can, therefore, be very easily appreciated.

The language used in this will is not unlike the language used by most authorities in drawing trust provisions, namely, an absolute bequest to the trustee followed by a limitation, the limitation in this case being, in the very words of the will, "to have the net income from my estate and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best." There certainly is nothing contained in this language which gives the wife an absolute power to use and dispose of the estate but, to the contrary, the very language negatives that idea and shows clearly that it is given to her for the purpose of having her sell and dispose of it as she deemed most judicious, but with the expressed limitation that it be reinvested and that she is to have the net income from either the estate or the investments that she may make from the proceeds of the estate.

It may be urged that the second paragraph of the will, namely, "Upon the death of my said wife if any of my estate shall remain unexpended, I hereby bequeath one half to daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan," is indicative of the fact that the testator intended to

give the wife a full power of disposition on the strength of the word "unexpended." However, an attempt to clarify the words of the first paragraph by the words "remained unexpended" appearing in the second paragraph in our mind would lead to a fallacious construction in that such words do not necessarily mean or infer that the testator intended that his wife could expend all of the estate, particularly in view of the fact that the words appearing in the first paragraph were that she had to reinvest the same, for it is just as logical and sound to argue that the testator's thought for so providing was that in case the power of sale was executed and the proceeds invested in certain securities, that such securities might fluctuate to a total loss with a result that upon the death of the wife there would be no estate of value remaining.

Considering further the phrase "if any of my estate shall remain unexpended" as giving to the wife the absolute right to use any portion of the estate that she desired, it is submitted that such construction is not, and cannot be gathered from reading the entire second paragraph of the will since it is just as consistent with the terms of this will to regard this in the light of limiting the liability of the wife as trustee of the estate, in that if she disposed of a portion of the estate and reinvested the same in a security or securities which showed a depreciation or loss, her personal estate was not to be charged with such depreciation or loss. Nor can it be said that the authority to sell and reinvest points to an absolute gift to the wife by reason of the fact that she was given discretionary powers therein by such authority.

This Court has, no doubt, seen prepared and passed upon, numerous wills involving trusts. It is

a usual and common practice in creating a trust to give the trustee or executor discretionary powers with respect to the sale of the estate and reinvestment thereof, and if this were not so, it could readily be seen that a great hardship could be imposed upon the estate due to the changes in market conditions or fluctuations in the prices of securities. This, of course, is done so that the trustee can secure the best prices obtainable and there is no language contained in this will which goes beyond that or is in any wise different from the language contained in the usual form of will drawn under similar conditions and for similar purposes.

PART THREE.

3. THAT THE LEARNED COURT BELOW ERRONEOUSLY CONSTRUED THE WIFE OF THE TESTATOR, OR FIRST LEGATEE, AS BEING VESTED WITH AN ABSOLUTE ESTATE, WHEREAS UNDER THE TERMS OF THE WILL, HER ESTATE WAS FOR LIFE ONLY.

It is our contention that the estate created in favor of Anna B. Fulmer under the will of George W. Fulmer can only be construed at most as being a life estate, in that by the very language of the will she was entitled only to the net income during her life. It might be urged by the defendants-respondents in their brief that if our contention is correct, that in such event, there is no disposition made of the corpus. A mere reading of the second paragraph will show this to be untrue because therein is contained an absolute bequest to the complainants-appellants in equal shares of the estate and, there-

fore, any such argument of the defendants-respondents that there is no gift of the corpus must be disregarded.

May we direct the Court's attention to the following cases:

In the case of *Johnson v. Talman*, 134 Atl. 357, wherein the testatrix granted her husband the use of all the rents, issues, profits, etc., of her property and named her three children as remaindermen and although there appeared a power of sale it was held to be a life estate and that a fee simple vested in her children at the death of her husband.

The case of *McDermot v. Zimmerman*, 108 Atl. 7, held that a will leaving an estate to another for life "with full power and authority to sell or otherwise dispose of, mortgage or in any way encumber the whole or any part of said property as he shall see fit" gave only a life estate with power or disposal during life.

CONCLUSION.

It is respectfully submitted by the complainants-appellants, that for the reasons set forth above and the authorities cited therefor, that this Honorable Court will construe the will of George W. Fulmer to be, as is clearly expressed therein, namely, a gift of the income of the estate to the wife, Anna B. Fulmer, for life only, and that the corpus of the estate at her death vested in the children, Anna B. Kleaver and Mary Jane Morgan.

It is, therefore, prayed by the complainants-appellants, that your Honorable Court will reverse the decree ordered by the learned Chancellor below, or

reform it in such respects as your Honorable Court will deem equitable and just.

WALTER S. KEOWN,
*Solicitor for Complainants-
Appellants.*

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ANNA B. KLEAVER and MARY J. MORGAN,
Complainants-Appellants,

and

GEORGE H. JACOBS, executor of the estate of ANNA
B. FULMER, deceased; SAMUEL P. CONARD, MAE
A. JAGGARD, and ALBERT E. SCHEFLEN, substi-
tuted administrator with the will annexed of
GEORGE W. FULMER, deceased,
Defendants-Appellees.

ON BILL, &c.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF FOR DEFENDANTS-APPELLEES.

George W. Fulmer died November 18, 1920, tes-
tate of a last will and testament. He appointed his
widow, Anna B. Fulmer, executrix, and after direct-
ing the payment of his just debts and funeral ex-

penses, provided in the second paragraph of his will as follows:

“SECOND: I give, bequeath and devise to my wife hereinafter named all the rest and residue of my estate wheresoever the same may be found or of whatsoever nature the same may consist to my wife Anna B. Fulmer and to have the net income from my estate, and her to sell any or all of my estate at public or private sale and reinvest the same in such securities as she may deem best.

Upon the death of my said wife *if any of my estate shall remain unexpended*, I hereby bequeath one half to daughter Anna B. Kleaver, and one half to my daughter Mary Jane Morgan.”

The widow, Anna B. Fulmer, duly took upon herself the burden of the executorship, and she died on or about June 9, 1927, also testate of a last will and testament whereby, after directing the payment of debts and funeral expenses bequeathing \$500.00 to a local charity and certain tugboat participation certificates to the complainants, Anna B. Kleaver and Mary Jane Morgan, testatrix devised all her residuary estate to her executor in trust for the use of her nephew, Samuel P. Conard, and her niece, Mae A. Jaggard.

The complainants contend that under the second paragraph of the will of George B. Fulmer they are entitled to take so much of his estate as came into the hands of his widow and remained unexpended by her at the time of her death; and that upon a proper construction of the will of George W. Fulmer, his widow took merely a life estate with a gift or remainder over to the complainants of so much

of his estate as the widow did not dispose of in her lifetime.

Upon the question of law presented; namely, the proper construction of the will of George W. Fulmer, it is contended on behalf of the defendants that the widow took her husband's estate absolutely and unconditionally, and that the gift over to Anna B. Kleaver and Mary Jane Morgan is void for inconsistency.

The rule may be stated to be that where there is an absolute and unconditional gift to the widow (no life estate being created expressly or by necessary implication), accompanied by a power of disposal, without reservation as to mode of execution, with a gift over of so much as may remain unused or unexpended by the widow, the latter takes the entire estate and the gift over is void for inconsistency, unless the widow's right to use and expend is expressly limited to what she may require for her support and maintenance.

40 *Cyc.*, p. 1612;

Annin v. Vandoren, 14 N. J. Eq. 135;

McCloskey v. Thorpe, 74 N. J. Eq. 413 (E. & A.);

Hyde v. Hyde, 88 N. J. Eq. 358 (E. & A.);

Bunnell v. Bean, 86 N. J. Eq. 101;

Huston v. Boyd, 84 N. J. Eq. 107;

Wills v. Wills, 72 N. J. Eq. 782.

The rule was recognized, but not applied, in *Smith v. Field*, 98 N. J. Eq. 532, where the right to use, given to a son by his father's will, was limited "to expend and consume for his living such portion of the principal as he shall need;" and in *Leaming v. Huffman*, 96 N. J. Eq. 249, where a gift was expressly created for life only, with a power

of disposal during life "for his comfort, convenience, pleasure and happiness;" and also in *Bryan v. Bryan*, 61 N. J. Eq. 45, where the estate was held to be given for life only by necessary implication because the gift was for "as long as she remains my widow."

In 40 *Cyc.* 1612, the rule is laid down as follows:

"Where personal property is given absolutely by will, a gift over of what remains indisposed of is void for inconsistency."

In *Annin v. Vandoren*, 14 N. J. Eq. 135, the testator, by one clause of his will, directed as follows:

"Should my daughters Lenah and Mary, or either of them, die leaving no legal issue, the share or shares herein bequeathed to her or them (if not paid over by my executors, and if paid over, then *such part thereof as remains unexpended*) I give and bequeath unto my surviving children and their heirs equally between them."

Lenah, one of the daughters, having received her share of the funds from her father's executors, died without issue, leaving a part of her share unexpended in the hands of her agent.

On a bill filed by the executors of the testator to determine the true construction of the bequests to Lenah, it was *held* —

That the bequest over after the death of Lenah without issue was void, being inconsistent with the absolute power of disposition conferred upon the legatee.

It seems clearly settled that a right in the legatee or devisee to dispose of the estate given or devised at his pleasure, and not a mere power of specifying who may take, amounts to

an absolute gift—and a devise over in such a case is inoperative.

The power of expenditure conferred by the bequest in this case is equivalent in principal to an absolute power of disposition; the unlimited power of expenditure involves the idea of absolute ownership.”

In his discussion, Chancellor Henry W. Green further said:

“The cases rest upon the principle, that if the testator, either expressly or by implication, manifests an intent to vest in the first legatee the uncontrolled power of disposing of the property, such power involves the idea of absolute ownership, and the limitation over is void, as inconsistent with the rights of the first legatee. The uncontrolled power of expenditure necessarily implies absolute ownership as fully as the power of disposing of it. And this difficulty can only be overcome by limiting the right of expenditure to so much as may be necessary for the support of the legatee. But there is no such limitation in the will. If the legatee had seen fit to expend the whole of the legacy in a style of living totally distinct from that to which she had been accustomed in her father’s house, there would have been no power in this Court or elsewhere to prevent it. The unlimited power of expending the legacy involving the idea of absolute ownership as fully as the absolute power of disposing of it, a gift over of so much of the legacy as remains unexpended is tantamount to a gift of so much as remains, or so much as remains undisposed of. All the expressions involve the idea that the

legatee should expend or dispose of the money as she sees fit; in other words, that she has the right of absolute ownership."

In the case of *McCloskey v. Thorpe*, 74 N. J. Eq. 413, the testator directed that his share in a partnership should be sold and the proceeds thereof paid over to his wife for her use, and continued, "and if there should be anything left after her death, then I want that divided, etc."

It was held by the Court of Errors and Appeals that the wife took an absolute estate.

Mr. Justice Swayze, speaking for the Court of Errors and Appeals, after referring to the cases of *Annin v. Vandoren*, *supra*; *Downey v. Borden*, 36 N. J. L. 460, and numerous other cases, said:

"An examination of these cases demonstrates that if the language of the will is such as necessarily to imply an absolute power of disposition, the estate is absolute in the first taker, and such power of disposition is to be implied from an untrammelled power to expend the legacy.

In the present case the testator, by Clause 3 of the will, directed absolutely a sale of the real estate, and then directed that the money be paid over to his widow for her use, and followed this by an absolute gift of the personal property. The language used in this blended gift of proceeds of sale of realty and of personalty was the language of an absolute gift. If this absolute estate is to be restricted to a life estate, such restriction should be apparent in the rest of the will. An examination of the will shows that the testator did not contemplate that anything would necessarily be left.

His language is not, as in some of the cases cited, 'what remains,' but 'if there should be anything left.' The conditional form indicates that nothing might be left. * * *

We are satisfied that the testator intended that his wife should expend the proceeds of sale if she wished. To do this, she must have an absolute power of disposition, and the case is within the principle relied on by Chancellor Green in *Annin's Executor v. Van Doren's Administrator*."

In the case of *Hyde v. Hyde*, 88 N. J. Eq. 358, the language of the will was as follows:

"It being my will and intention that while my wife, Elizabeth Hyde, shall have the actual custody, control and disposal during her life of the portion of my personal estate which comes to her under this fourth paragraph of my will, still that so much thereof as shall remain at her death shall be distributed and divided equally among and between my five children * * * "

It was held that the widow took absolutely and that the gift over was void because the will gave to the widow an uncontrolled power to dispose of her share of interest in the estate without any limitation or restraint.

In *Bunnell v. Bean*, 86 N. J. Eq. 101, the will was in the following language:

"Fifth. As to the rest of my estate, real, personal and mixed, I hereby give, devise and bequeath unto my said husband, after his death and all expenses are paid, if there is any residue left it is to be divided among my six cousins."

Vice-Chancellor Backes held the gift over to be void, and laid down the rule that a limitation over is void where the first taker, under a will, has the uncontrolled power of consuming and exhausting the estate.

Other cases to the same effect are *Downey v. Borden*, 36 N. J. L. 460; *Rodenfels v. Schuman*, 45 N. J. Eq. 383; *Weaver v. Patterson*, 92 N. J. Eq. 107; *Gaston v. Ford*, 99 N. J. Eq. 592, and *Harkness v. Zelle*, 100 N. J. Eq. 48.

ANSWER TO ARGUMENT OF COMPLAIN-
ANTS-APPELLANTS.

We agree with opposing counsel that the primary purpose in the construction of a will is to ascertain the testator's intention. But no matter how clearly the testator's intention may be expressed or how obvious it may be, such intention, though clearly manifest, cannot override established principles of law. Thus, Vice-Chancellor Leaming, in *Wills v. Wills*, 72 N. J. Eq., p. 782,, said:

“While full force should be given to the intent of the testator, yet that intent must be gathered by the application of the known rules of construction and interpretation established by oft-repeated and long-standing adjudication.”

It is well established by a long line of decisions that the intent of the testator will never be carried out unless it can be done consistently with the rules of law. Even though the intention of the testator can be clearly ascertained, such intention will not prevail if it is in violation of the rules of law.

There can be no doubt that the testator intended and desired that his daughters, the complainants, should have so much of his estate as remained unexpended by his widow at her death. The difficulty is not in ascertaining the testator's intention, but in the fact that to enforce the intention is to violate a well-established principle of law.

Vice-Chancellor Leaming did not hold that the words used by the testator were inadequate clearly to express the testator's intention, *but what he did hold was that the testator's intention with respect to the gift over was not enforceable because void under the established law of this State.*

We are unable to see any ground for complainant's contention that the power of sale and the direction to reinvest must be construed as a limitation on the widow's power of disposal. The unlimited power of disposal given to the widow does not flow from nor rest upon the power of sale, but results by necessary implication from the gift over being only so much of testator's estate as should remain unexpended by the widow, if any. This power of disposal is without reservation as to mode of execution. The widow can expend or abstain from expending as she sees fit, and if she does expend, it may be for any purpose that she desires. There is, accordingly, no limitation on the widow's right of expenditure, and hence, it is an unlimited power of disposal.

It is also important to note, so far as the power of sale is concerned, that the exercise thereof by the widow is optional and discretionary because the power is to sell "any or all" of the estate. This is not a mandatory direction to sell.

The language of the gift over carries with it the notion of and clearly implies a right in the widow

to use so much of the *corpus* as she desires, without limitation or restriction, and there is no limitation of such right to only so much of the *corpus* as may be necessary for her support and maintenance. Furthermore, the language of the gift over shows that the testator contemplated that nothing might be left, and this obviously implies that his widow might use the entire *corpus*. The unrestricted right to use necessarily carries with it full power of disposal, and that, in turn, involves the idea of absolute ownership.

We submit that the following points, all operative to sustain the decree below, are clearly established:

1.

Conceding that it was testator's contention that if any of his estate should remain unexpended by his widow at her death, such unexpended portion should go to his daughters, the complainants, such intention cannot be carried out because to do so would violate the well-established principle of law applied by Vice-Chancellor Leaming in his opinion.

2.

That no life estate in the widow is *expressly* created by the will.

3.

That the will contains no language from which a life estate in the widow can be implied.

4.

That the power of sale and direction to reinvest contained in the will afford no ground for implying that the widow took only a life estate; the exercise of such power being discretionary with the widow. Even if the power were mandatory, the result would be the same.

5.

There is nothing inconsistent between the power of sale and the direction to reinvest on the one hand and the widow's absolute power of expenditure on the other.

6.

Neither the power of sale nor the direction to reinvest is a limitation on the widow's right of absolute expenditure.

7.

The words, "To have the net income from my estate," following, as they do, an absolute gift to the widow of testator's entire estate cannot, under any circumstances, be construed as a limitation upon or a reduction of the *quantum* of the gift to the widow. It is an absolute gift of both *corpus* and income coupled with an absolute power of disposal.

The decree of the Court of Chancery ought accordingly be affirmed.

Respectfully submitted,

WALTER R. CARROLL,
*Solicitor for and of Counsel
with Defendants.*

