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TABLE

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Petition of Appeal.

New Jersey Court of Errors and Appeals.

IN THE MATTER

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of

The Appeal of UNITED STATES
FIDELITY & GUARANTY COMPANY
from an order of the Prerogative
Court made on June 11, 1917,
affirming a decree of the Or-
phans' Court of Essex County
made on June 30, 1916, in the
Matter of the Estate of MABEL
VANDERBILT, a minor.

On Appeal
from Pre-
rogative
Court.

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

The petition of United States Fidelity & Guar-
anty Company, a corporation of the State of
Maryland, the appellant in the above stated cause,
respectfully shows, that your petitioner finds itself
aggrieved by an order made in the New Jersey
Prerogative Court by his Honor Edwin Robert
Walker, Ordinary, bearing date the 11th day of
June, 1917. in the matter of the appeal of
United States Fidelity & Guaranty Company
from an order of the Orphans' Court of the County
of Essex opening a decree of said Court made on
October 22, 1915, in the matter of the Estate of
Mabel Vanderbilt, a minor, in this respect, to wit:
that it was in the said order ordered, adjudged
and decreed that the order of the Orphans' Court

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Petition of Appeal.

of the County of Essex made on June 30, 1916, be and the same was thereby affirmed, with the costs of each of the respondents to be taxed, and that the record and proceedings be remitted to the Essex County Orphans' Court, to be therein proceeded with according to law and the practice of said Court. And your petitioner humbly appeals

10 from that part of the said order of the Ordinary which orders as aforesaid, upon the ground that the same is erroneous, for that: the said Ordinary should have ordered that the order of the Orphans' Court of the County of Essex of June 30, 1916, should be reversed, set aside and for nothing holden, the said order of the Orphans' Court of Essex County having been erroneous, improper and illegal, in that it did order that the decree of the said Orphans' Court made in said matter on the 22nd day of

20 October, 1915, should be opened for the purpose of permitting the petitioner, Mabel Vanderbilt, to file exceptions to the account of Edward Clinton Vanderbilt, guardian of said Mabel Vanderbilt, a minor, as filed by William S. Woodhull, administrator of the Estate of DeWitt Clinton Vanderbilt, deceased, in the form annexed to and made a part of said order.

Your petitioner therefore prays that the said order of the said Ordinary may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

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McDERMOTT & ENRIGHT,
Solicitors of Appellant.
FRANK P. McDERMOTT,
Of Counsel with Appellant.

Filed July 3, 1917.

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THOMAS F. MARTIN,
Clerk.

Answer to Petition of Appeal.
NEW JERSEY COURT OF ERRORS AND APPEALS.

<hr/> <p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;"><i>of</i></p> <p>The Appeal of UNITED STATES FIDELITY & GUARANTY COMPANY from an order of the Prerogative Court made on June 11, 1917, affirming a decree of the Or- phans' Court of Essex County made on June 30, 1916, in the Matter of the Estate of MABEL VANDERBILT, a minor.</p> <hr/>	}	<p>On Appeal 10 from Pre- rogative Court.</p>
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The Answer of the Respondent, MABEL VANDER-
 BILT, to the Petition of Appeal of the above named
 Appellant: **20**

This respondent, not acknowledging all or any
 of the matters which in the said petition of appeal
 are contained to be true, for answer thereto says
 and admits that an order was made and entered in
 the Prerogative Court on the date and of the pur-
 port mentioned in said petition, but as to the
 substance and form thereof this respondent prays
 to refer thereto when the same shall be produced.
 And she is advised and believes that the said order
 is just and equitable and prays that the same may **30**
 be affirmed with costs to be adjudged to this re-
 spondent.

COLLINS & CORBIN,
 Proctors of Respondent, Mabel Vanderbilt.

We consent to the filing of the foregoing answer
 on or before September 15, 1917, as of time.

McDERMOTT & ENRIGHT,
 Proctors of Appellant.

Notice of Settlement.

Notice is hereby given that the Accounts of the subscriber, Administrator of DeWitt C. Vanderbilt, deceased, who was in his lifetime the guardian of Mabel Vanderbilt, a minor, will be audited and stated by the Surrogate and reported for settlement to the Orphans' Court of the County of Essex, on Wednesday, the 25th day of August next.

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WILLIAM S. WOODHULL.

Dated, July 14, 1915.

LAMBERT & STEWART,

Proctors.

Account.

ESSEX COUNTY ORPHAN'S COURT.

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IN THE MATTER

of

The Estate of MABEL VANDERBILT.

The account of DeWitt C. Vanderbilt, guardian of Mabel Vanderbilt, a minor, by William S. Woodhull, Administrator of the Estate of DeWitt C. Vanderbilt, deceased.

First:

30 This accountant charges the said DeWitt C. Vanderbilt, as Guardian of Mabel Vanderbilt, as follows:

10 shares of first preferred capital stock of the Erie Railroad Company	\$ 702.50
32 shares of capital stock Pennsylvania Railroad Company ..	2,104.00
30 shares of capital stock American Express	7,050.00
14 shares of first preferred stock Southern Pacific	1,648.50

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Account.

	Difference between appraised value of 14 shares of preferred stock of Southern Pacific R. R. stock, and price at which same was sold by guardian ..	71.47	
	Jewelry at appraised value of ..	200.00	
	Cash receipts on sale of 7 shares of Wells, Fargo & Co. stock ..	628.84	
1908.			
Dec. 1.	By cash, Pennsylvania Railroad	48.00	
1909.			
Jan. 5.	" " American Express ...	90.00	10
Apr. 5.	" " " " ...	90.00	
June 3.	" " Pennsylvania Railroad	48.00	
July 2.	" " balance of dividend, American Express	78.50	
	By cash, July, 1909, interest ..	2.76	
Oct. 6.	" " balance of dividend, American Express	85.00	
Dec. 8.	By cash, dividend of Pennsylvania Railroad Company	48.00	
Dec. 15.	By cash, proceeds of sale of Pennsylvania rights	127.00	
		<u>\$13,022.57</u>	
1910.			
Jan. 3.	By cash, dividend, American Express Company	90.00	20
	By cash, January, 1910, interest	7.14	
Mar. 2.	" " dividend, Pennsylvania Railroad	24.00	
Apr. 6.	By cash, dividend, American Express	90.00	
June 3.	By cash, dividend, Pennsylvania Railroad	24.00	
July 6.	By cash, balance of dividend American Express	78.50	
	By cash, July, 1910, interest ..	14.52	
Sept. 5.	" " balance of dividend Pennsylvania Railroad	19.00	
Oct. 4.	By cash, dividend, American Express	90.00	
Dec. 12.	By cash, dividend, Pennsylvania Railroad	24.00	30
1911.			
Jan. 4.	By cash, dividend, American Express stock	90.00	
	By cash, January, 1911, interest	19.09	
July 11.	" "	249.50	
	" " July, 1911, interest ..	23.74	
1912.			
Jan. 9.	" "	223.00	
	" " January, 1912, interest	26.71	
	" " July, 1912, interest ..	34.20	
	" " January, 1913, interest	34.88	
	" " July, 1913, interest ..	35.58	
	" " January, 1914, interest	36.30	
	" " July, 1914, interest ..	37.02	
	" " January, 1915, interest	37.76	
1908.			
Aug. 13.	" "	140.00	40
Oct. 5.	" "	90.00	

Account.

	"	"	January, 1909, interest	1.40
	"	"	January, 1910, interest	78.82
	"	"	July, 1910, interest ..	40.60
	"	"	January, 1911, interest	41.40
1911.				
Feb. 20.	"	"

\$14,723.73

	By cash,	July, 1911, interest ..	41.41
	"	" January, 1912, interest	46.59
	"	" July, 1912, interest ..	47.39
	"	" January, 1913, interest	55.12
	"	" July, 1913, interest ..	56.22
	"	" January, 1914, interest	57.34
	"	" July, 1914, interest ..	58.48
	"	" January, 1914, interest	59.66

This Accountant prays allowance for :

	Portion of jewelry inventoried and delivered to Mabel Vanderbilt	\$ 50.00
	Difference between appraised value of 10 shares Erie first preferred and price at which same was sold	193.95

1908.			
20	July 14.	United States Fidelity & Guaranty Co., premium on bond	23.00
	" "	Guardianship papers, etc.	3.75
	Aug. 14.	William S. Woodhull, attorney's fees and disbursements	15.25
	Aug. 13.	National Safe Deposit Co., rent of box No. 85	5.00
	1909.		
	July 1.	United States Fidelity & Guaranty Co., annual premium on bond	11.50
	Aug. 10.	United States Safe Deposit Co., rent of box No. 85	5.00
30	1910.		
	July 13.	United States Fidelity & Guaranty Co., annual premium on bond	11.50
	Aug. 13.	United States Safe Deposit Co., rent of box No. 85	5.00
	1911.		
	July 11.	United States Fidelity & Guaranty Co., annual premium on bond	11.50
	Aug. 15.	United States Safe Deposit Co., rent of box No. 85	5.00
	1912.		
40	July 15.	United States Fidelity & Guaranty Co., annual premium on bond	11.50

Account.

Sept. 13.	United States Safe Deposit Co., rent of box No. 85	5.00	
			356.95
			<u>\$15,145.94</u>
1913.			
July 14.	6th annual premium United States Fidelity & Guaranty Co.	11.50	
Sept. 22.	Rent of safe deposit box	5.00	
1914.			
July 3.	7th annual premium United States Fidelity & Guaranty Co.	11.50	10
Dec. 1.	Rent of safe deposit box	5.00	
		<u>\$389.95</u>	<u>\$15,145.94</u>

SUMMARY.

This accountant charges himself with ..	\$15,145.94
This accountant prays allowance for	389.95

Balance \$14,755.99

SUMMARY OF ASSETS AS FOLLOWS:

32 shares of the capital stock of the Pennsylvania Railroad Company	\$ 2,104.00	20
30 shares of the capital stock of the American Express Company	7,050.00	
Cash on deposit in the Irvings Savings Institution, with interest to date	3,042.95	
Cash on deposit in the Emigrant Industrial Savings Bank	1,926.20	
	<u>14,123.15</u>	
	\$ 632.84	

The foregoing stock and bank books are in the possession of the United States Fidelity & Guaranty Company of New York, the bondsmen of the said DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt. **30**

The above mentioned apparent deficiency of \$632.84 in large part consists of the cash receipts which arose from the sale of 7 shares of Wells, Fargo & Co. stock, amounting to the sum of \$628.84. The purpose to which such proceeds were devoted by the said DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt is unknown to the accounting party.

WILLIAM S. WOODHULL. **40**

Account.

STATE OF NEW JERSEY, }
 County of Essex. } ss. :

10 WILLIAM S. WOODHULL, the above named administrator, being duly sworn according to law, on his oath deposes and says that the foregoing account is in all things just and true both as to the charge and discharge thereof according to the best of his knowledge and belief.

WILLIAM S. WOODHULL.

Subscribed and sworn to before }
 me, this 30th day of June, 1915. }

Charles H. Stewart,
 Master in Chancery of N. J.

ESSEX COUNTY SURROGATE'S COURT.

20 To the Orphans' Court of the County of Essex :

The foregoing account having been by me audited and stated and placed on the files of my office on the Fourteenth day of July, 1915, I respectfully report the same for settlement.

CHARLES F. KOCHER,
 Deputy Surrogate.

Dated, Oct. 22, 1915.

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Decree on Final Accounting.**ESSEX COUNTY ORPHAN'S COURT.**

 IN THE MATTER

of

 The Estate of MABEL VANDERBILT.

The Surrogate having audited and stated the
 final account of DeWitt C. Vanderbilt, guardian
 of Mabel Vanderbilt, a minor, by William S.
 Woodhull, administrator of the estate of DeWitt
 C. Vanderbilt, deceased, and having placed the
 same on the files of his office twenty days previous
 to the 25th day of August, 1915, and having on
 the day last aforesaid reported the same to this
 court for allowance and settlement, and it having
 been proved to the satisfaction of the court that
 all persons concerned in the said account were
 duly cited, according to law, to appear before
 this court on the day set for the passing of said
 account, and the said matter having been ad-
 journed from time to time, and coming on to be
 heard in the presence of Lambert & Stewart,
 proctors for the accountant, and of Daniel Camp-
 bell, proctor for Fidelity Trust Company, substi-
 tuted guardian of Mabel Vanderbilt, and of Ira L.
 Anderson, proctor for United States Fidelity &
 Guaranty Company, the bondsman of DeWitt C.
 Vanderbilt, as guardian as aforesaid, and the
 court having examined the said account and the
 vouchers and receipts for payments and disburse-
 ments claimed therein, and having found the same
 to be correct in all respects so far as the said
 account relates to the acts of the said William S.
 Woodhull, as administrator of DeWitt C. Vander-
 bilt, deceased, in relation to the accounts of said

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Decree on Final Accounting.

- DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt, and no exceptions having been made to the report of the Surrogate, and the Court having heard the testimony of William S. Woodhull, and it appearing that there is in the possession of the United States Fidelity & Guaranty Company of New York, the bondsman of the said DeWitt C.
- 10** Vanderbilt as guardian of Mabel Vanderbilt, 32 shares of the capital stock of the Pennsylvania Railroad Company, 30 shares of the capital stock of the American Express Company and the bank deposit books for money deposited in the Irving Savings Institution and Emigrant Industrial Savings Bank, both of New York, in the name of DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt, and the Court having considered the same,
- 20** It is on this 22nd day of October, 1915, ordered, adjudged and decreed that the said account be and the same hereby is in all things allowed as stated, in so far as the said account relates to the acts of the said William S. Woodhull, as administrator of DeWitt C. Vanderbilt, in his relation as guardian for Mabel Vanderbilt, and that the estate of DeWitt C. Vanderbilt be charged with the sum of \$632.84, as the portion of the said estate of said minor for which the accountant has
- 30** been unable to account, and that there is now in the hands of the said United States Fidelity & Guaranty Company, as bondsman of DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt, 32 shares of the capital stock of the Pennsylvania Railroad Company, 30 shares of the capital stock of the American Express Company, and the bank deposit books for money deposited in the Irving Savings Institution and the Emigrant Industrial Savings Bank, both of New York, in the name of
- 40** DeWitt C. Vanderbilt, as guardian of Mabel Van-

Decree on Final Accounting.

derbilt, as is shown in said account, and the said United States Fidelity & Guaranty Company, as bondsman of DeWitt C. Vanderbilt, as aforesaid is directed forthwith to sign all checks and do all such acts as may be necessary to assign and deliver the securities and other property of the said Mabel Vanderbilt in said account mentioned and set forth to the Fidelity Trust Company, substituted guardian for Mabel Vanderbilt. **10**

And it is further ordered that the Fidelity Trust Company, substituted guardian of said Mabel Vanderbilt, and the said Mabel Vanderbilt, have leave to take such proceedings against the estate of DeWitt C. Vanderbilt, or against the United States Fidelity & Guaranty Company, bondsman of the said DeWitt C. Vanderbilt, as aforesaid, as it or she may be advised. **20**

And it is further ordered that the said Fidelity Trust Company, guardian of the said Mabel Vanderbilt, pay to Lambert & Stewart, proctors for said accountant, the sum of \$125.00, and the costs of this accounting to be taxed. **20**

And it is further ordered that the said William S. Woodhull, as administrator as aforesaid, be allowed as and for his commissions in this matter the sum of One hundred and fifty Dollars.

WM. P. MARTIN, **30**
J.

Notice of Motion.**ESSEX COUNTY ORPHAN'S COURT.**

IN THE MATTER

of

The Estate of MABEL VANDERBILT,
a minor.

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To Messrs. McDermott & Enright, Proctors for
United States Fidelity and Guaranty Company;
William S. Woodhull, Administrator of the
Estate of DeWitt Clinton Vanderbilt, deceased;
and Fidelity Trust Company, Substituted Guar-
dian of Mabel Vanderbilt, a Minor:

SIRS:

20 TAKE NOTICE, that on Friday, the second day
of June, nineteen hundred and sixteen, at ten
o'clock in the forenoon, or as soon thereafter as
counsel may be heard, we shall apply to the
Essex County Orphans' Court, at the Court House
in Newark, New Jersey, for an order opening,
vacating and setting aside the decree of the said
Court made in the above entitled matter on the
22nd day of October, 1915, in accordance with
the prayer of the petition of Mabel Vanderbilt, a
30 true copy of which is annexed hereto and made a
part of this notice, which said petition and the
affidavit annexed thereto we shall read upon the
said application in support thereof.

Dated, May 26, 1916.

Respectfully,

COLLINS & CORBIN,

Proctors for Petitioner, Mabel Vanderbilt.

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Petition.**ESSEX COUNTY ORPHAN'S COURT.**

 IN THE MATTER

of

 The Estate of MABEL VANDERBILT,
 a minor.

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To the Honorable the Judges of the Essex County Orphans' Court:

The petition of Mabel Vanderbilt respectfully shows unto your Honors, as follows:

1. Your petitioner resides in the Town of Montclair, New Jersey, and reached the age of twenty-one years on the 29th day of August, 1915.

2. Your petitioner's mother, Nellie Black Vanderbilt, died on the 11th day of February, 1907, having first made her last will and testament, by which, after making certain specific gifts and bequests, she gave, devised and bequeathed to your petitioner one-half of the balance of moneys, bonds and investments of which she might die possessed, and appointed as executors of her will her husband, DeWitt Clinton Vanderbilt, and Emma Littell Black.

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3. Your petitioner was, at the time of the death of her said mother, a minor, and accordingly her father, DeWitt Clinton Vanderbilt, was, by the Surrogate of Essex County, appointed guardian of your petitioner's estate on the 14th day of July, 1908. At the time of his appointment as such guardian the said DeWitt Clinton Vanderbilt entered into a bond, with the United States Fidelity and Guaranty Company as surety upon the said bond, for the due performance of all his duties and obligations as such guardian.

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Petition.

4. On the 13th day of August, 1908, the said DeWitt Clinton Vanderbilt, as guardian of the estate of your petitioner, received from himself, as executor of the last will and testament of your petitioner's mother, Nellie Black Vanderbilt, certain moneys and securities, including thirty-two shares of the capital stock of the Pennsylvania Railroad Company and thirty shares of the capital stock of the American Express Company.

5. Said DeWitt Clinton Vanderbilt died on the 31st day of December, 1914. Thereafter one William S. Woodhull, who had been duly appointed administrator of the estate of the said DeWitt Clinton Vanderbilt, filed in this Court what purported to be the final account of the said DeWitt Clinton Vanderbilt as guardian of your petitioner's estate.

6. The Fidelity Trust Company, a corporation of the State of New Jersey, was, upon the 26th day of January, 1915, duly appointed by the Surrogate of the County of Essex substituted guardian of your petitioner's estate in the place and stead of the said DeWitt Clinton Vanderbilt, deceased.

7. The said final account of DeWitt Clinton Vanderbilt, as guardian of your petitioner's estate, filed by the said William S. Woodhull as administrator of the estate of DeWitt Clinton Vanderbilt, deceased, having been duly audited and stated by the Surrogate of the County of Essex and having been placed on the files of his office twenty days previous to the 25th day of August, 1915, and the said Surrogate having on the day last aforesaid reported the same to this Court for allowance and settlement and the matter having been adjourned from time to time, it was on the 22nd day of October, 1915, ordered, adjudged and decreed by this Court that the said account be allowed as

Petition.

stated, so far as it related to the acts of the said William S. Woodhull, as administrator of DeWitt Clinton Vanderbilt, deceased, and that the estate of DeWitt Clinton Vanderbilt be charged with the sum of \$632.84 as the portion of the said estate of your petitioner for which the accountant was unable to account.

8. Your petitioner charges that the account so filed by William S. Woodhull, administrator of the estate of DeWitt Clinton Vanderbilt, deceased, and allowed by this Court excepting as to the item above noted, improperly asks allowance for the said thirty-two shares of the capital stock of the Pennsylvania Railroad Company at the sum of \$2,104. and for the said thirty shares of the capital stock of the American Express Company at the sum of \$7,050., which continued to form a part of your petitioner's estate.

9. Your petitioner further shows that the said Fidelity Trust Company, as substituted guardian of your petitioner's estate, although a party to the said accounting, failed and neglected to file exceptions to the said account as in the performance of its duty as such guardian it should have done with respect to the said items of \$2,104. and \$7,050., respectively, for which allowance was prayed, the said sums being, respectively, greatly in excess of the actual value of the said thirty-two shares of the capital stock of the Pennsylvania Railroad Company and of the said thirty shares of the capital stock of the American Express Company.

10. Your petitioner expressly charges that the said DeWitt Clinton Vanderbilt, as guardian of the estate of your petitioner, failed in his duty and committed a breach of his trust in failing to dispose of the said stocks at a time when he might have obtained a favorable price for the same, and that as a result of such neglect of duty and

Petition.

breach of trust the estate of your petitioner has suffered a depreciation of about four thousand dollars, for which the said accountant should have been charged upon the settling of his said account.

10 Wherefore your petitioner humbly prays that the said decree of this Court made in this matter upon the 22nd day of October, 1915, may be opened, vacated and set aside, and that your petitioner, who is now of full age, may have leave to file exceptions to the said account in the particulars aforesaid, and that your Honors may grant to your petitioner such other and further relief in the premises as to them may seem just and according to law.

Dated, May 24th, 1916.

20 COLLINS & CORBIN,
Proctors for Petitioner, Mabel Vanderbilt.

STATE OF NEW YORK,)
County of New York. } ss.:

30 MABEL VANDERBILT, of full age, being duly sworn according to law, upon her oath, says that she is the petitioner named in the foregoing petition; that she is familiar with the facts and statements contained therein, and that the same are true.

MABEL VANDERBILT,

Subscribed and sworn to at New York City, N. Y., this 25th day of May, 1916, before me, the subscriber, a Notary Public in and for said County and State, duly commissioned and sworn, as witness my hand and official seal. }

40 L. Gardner, (L. S.)
Notary Public, Kings County,
Certificate filed in N. Y. Co. No. 153.

Answer to Petition of Mabel Vanderbilt.**ESSEX COUNTY ORPHAN'S COURT.**

In the Matter of the Estate

of

MABEL VANDERBILT, a minor.

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The answer of United States Fidelity & Guaranty Company, respondent, to the petition of Mabel Vanderbilt.

(1) This respondent admits paragraphs 1, 3, 4, 5, and 6 of said petition.

(2) This respondent admits that petitioner's mother, Nellie Black Vanderbilt, died on or about February 11, 1907, having first made her last Will and Testament. Said last Will and Testament was duly admitted to probate. In and by said last Will and Testament said Nellie Black Vanderbilt did, among other things, direct, give, devise and bequeath as follows:

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"1. I direct that my just debts and funeral expenses be paid as soon after my death as possible.

"2. I give, devise and bequeath to my husband, DeWitt Clinton Vanderbilt, the sum of five thousand dollars, (\$5,000).

"3. I give, devise and bequeath to my daughter, Mabel Vanderbilt one-half ($\frac{1}{2}$) of the balance of moneys, bonds and investments, that I may die possessed of."

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This respondent admits that said Nellie Black Vanderbilt appointed as executors of her Will, her husband, DeWitt Clinton Vanderbilt, and Emma Lepell Black.

(3) Respondent admits that the final account of DeWitt Clinton Vanderbilt as guardian of

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Answer to Petition of Mabel Vanderbilt.

petitioner's estate filed by William S. Woodhull as administrator of the Estate of DeWitt Clinton Vanderbilt, was filed in the office of the Surrogate of the County of Essex, and further, that on October 22, 1915, an order was made by this Court ordering, adjudging and decreeing that said account be and the same hereby was in all
10 things allowed as stated in so far as said account relates to the acts of William S. Woodhull as administrator of DeWitt Clinton Vanderbilt, as guardian for Mabel Vanderbilt, and that the Estate of DeWitt Clinton Vanderbilt be charged with the sum of \$632.84 as the portion of the said estate of said minor for which the accountant had been unable to account. And this respondent respectfully refers to the said account and all proceedings thereon, including the said
20 decree of October 22, 1915, as the same now remains of record in the office of the Surrogate of the County of Essex.

(4) Paragraph 8 of said petition is denied.

(5) Respondent admits that Fidelity Trust Company, substituted guardian of petitioner's estate, mentioned in paragraph 9 of said petition, did not file exceptions to the said account; the remainder of said paragraph is denied.

30 (6) Paragraph 10 is denied.

(7) Respondent further says that said Mabel Vanderbilt became of age on August 29, 1915, and competent to manage her affairs and to file exceptions to the said account. That said account was not approved until October 22, 1915, nearly two months after the petitioner reached her majority. That shortly after the decree of October 22, 1915, was made, respondent paid over to said Mabel Vanderbilt the sum of \$687.63,
40 and delivered to her a pass book in the Irving

Answer to Petition of Mabel Vanderbilt.

Savings Institution, on which was due the sum of \$3,042.95, with interest from January 1, 1915, together with a pass book in the Emigrant Industrial Savings Bank on which there was due the sum of \$1,926.20, with interest from January 1, 1915, being the pass books represented by two of the items of assets set forth in said account, and that on February 16, 1916, this respondent delivered to said Mabel Vanderbilt a certificate or certificates of stock representing thirty-two shares of the capital stock of the Pennsylvania Railroad Company and a certificate or certificates representing thirty shares of the capital stock of the American Express Company, being the other two items of assets set forth in said account. That respondent has thus paid the balance found to be due on said accounting and delivered over to the said petitioner all the assets of said estate.

(8) Respondent respectfully submits that the prayer of said petition should be denied.

MCDERMOTT & ENRIGHT,
Proctors for Respondent.

STATE OF NEW JERSEY, }
County of Hudson. } ss. .

Ira L. Anderson, of full age, being duly sworn on his oath says that he is an attorney at law of the State of New Jersey and in this behalf the agent of the respondent, United States Fidelity & Guaranty Company.

Deponent further says that after the making of the decree of the Orphans' Court of October 22, 1915, respondent paid to said Mabel Vanderbilt by delivery of a check to her attorney, William S. Woodhull, the sum of \$687.63, representing the sum of \$632.84, found to be due by said

Answer to Petition of Mabel Vanderbilt.

decree, with interest thereon at 5% from April 20, 1914.

10 On or about January 19, 1916, this respondent delivered to William S. Woodhull, the attorney of said Mabel Vanderbilt, the bank books showing deposit of the amounts in the Emigrant Industrial Savings Bank and the Irving Savings In-
 20 stitution referred to in the said account. On February 16, 1916, deponent was present at the safe deposit vault when the box standing in the name of DeWitt C. Vanderbilt as guardian was opened. At that time the certificate or certificates representing thirty-two shares of the capital stock of the Pennsylvania Railroad Company and the certificate or certificates representing thirty shares of the capital stock of the American Express Company were turned over to Mabel Vanderbilt, the petitioner.

IRA L. ANDERSON,

Sworn and subscribed before me
 this 14th day of June 1916.)

Henry A. Oetjen, (L. S.)
 Notary Public of New Jersey.

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Order Opening Decree.**ESSEX COUNTY ORPHAN'S COURT.**

In the Matter of the Estate
of
MABEL VANDERBILT, a minor.

This matter coming on to be heard upon the
duly verified petition of Mabel Vanderbilt, and
upon the answer thereto of United States Fidelity
and Guaranty Company and the affidavit an-
nexed thereto, and in the presence of Collins &
Corbin, proctors for and of counsel with the said
petitioner, and of McDermott & Enright, proctors
for and of counsel with the respondent United
States Fidelity and Guaranty Company, and of
William S. Woodhull, administrator of the Es-
state of DeWitt Clinton Vanderbilt, deceased,
counsel pro se, and of Francis Lafferty, proctor
for and of counsel with Fidelity Trust Company,
and it appearing to the Court that the decree of
this Court made herein on the twenty-second day
of October, 1915, allowing the account of DeWitt
Clinton Vanderbilt, guardian of Mabel Vander-
bilt, a minor, as filed by William S. Woodhull,
Administrator of the Estate of DeWitt Clinton
Vanderbilt, deceased, expressly reserved leave
to the said Mabel Vanderbilt and to the Fidelity
Trust Company, substituted guardian of said
Mabel Vanderbilt, to take such further proceed-
ings against the Estate of DeWitt Clinton Van-
derbilt or against the United States Fidelity and
Guaranty Company, bondsmen of the said DeWitt
Clinton Vanderbilt, as she or it might be advised;
and it further appearing to the Court that the
account heretofore filed herein by the said Wil-

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Order Opening Decree.

liam S. Woodhull as Administrator of the Estate
 of DeWitt Clinton Vanderbilt, deceased, and ad-
 vertised by the Surrogate of Essex County for
 allowance and settlement on the twenty-fifth day
 of August, nineteen hundred and fifteen, was in
 fact an intermediate account, the said Mabel
 Vanderbilt not having become of age until the
 10 twenty-ninth day of August, nineteen hundred
 and fifteen; and it further appearing to the Court
 that the said Mabel Vanderbilt had no notice of
 the proceedings for the settlement and allowance
 of the said account, which resulted in the afore-
 said decree of this Court made on the twenty-
 second day of October, nineteen hundred and fif-
 teen, and the Court being therefore of the opinion
 that the prayer of the said petition, (to wit, that
 the said petitioner Mabel Vanderbilt might have
 20 leave to file exceptions to the said account so
 far as the same asks allowance for 32 shares of
 the capital stock of the Pennsylvania Railroad
 Company at the sum of \$2,104., and for 30 shares
 of the capital stock of the American Express
 Company at the sum of \$7,050.), should be grant-
 ed:

It is on this thirtieth (30th) day of June nine-
 teen hundred and sixteen, upon motion of Collins
 & Corbin ORDERED that the decree of this Court
 30 made herein on the twenty-second day of Octo-
 ber, nineteen hundred and fifteen, be opened for
 the purpose of permitting the said petitioner
 Mabel Vanderbilt to file exceptions to the ac-
 count of DeWitt Clinton Vanderbilt, guardian of
 Mabel Vanderbilt, a minor, as filed by William
 S. Woodhull, Administrator of the Estate of
 DeWitt Clinton Vanderbilt, deceased, in the form
 hereto annexed and made a part of this order.

Exceptions.**ESSEX COUNTY ORPHAN'S COURT.**

In the Matter of the Estate
of
MABEL VANDERBILT, a minor.

On Excep-
tions to
account.

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Mabel Vanderbilt, hereby excepts to the account of DeWitt Clinton Vanderbilt, guardian of Mabel Vanderbilt, a minor, as filed by William S. Woodhull, Administrator of the Estate of DeWitt Clinton Vanderbilt, deceased, for the following reasons:

FIRST: Because the said accountant asks allowance for thirty-two shares of the capital stock of the Pennsylvania Railroad Company at the sum of \$2,104., being the same amount with which he charges himself, whereas the said shares had depreciated in value to the extent of \$328. at the time of the death of the accountant's intestate, so that they were worth only \$1,776.

20

SECOND: Because the said accountant asks allowance for thirty shares of the capital stock of the American Express Company at the sum of \$7,050., being the same amount with which he charges himself, whereas the said shares had depreciated in value to the extent of \$3,330, at the time of the death of the accountant's intestate, so that they were worth only \$3,720.

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Dated, Newark, N. J., June 29, 1916.

MABEL VANDERBILT,
By Collins & Corbin,
Proctors of Mabel Vanderbilt.

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Notice of Appeal.**ESSEX COUNTY ORPHAN'S COURT.**

In the Matter of the Estate
of
MABEL VANDERBILT, a minor.

On Petition
of Appeal.

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United State Fidelity & Guaranty Company, a corporation of the State of Maryland, hereby appeals to the Prerogative Court from the order entered herein on the petition of Mabel Vanderbilt, on the thirtieth day of June, nineteen hundred and sixteen, wherein it was ordered that the decree of this Court made herein on the twenty-second day of October, nineteen hundred and fifteen, be opened for the purpose of permitting the said petitioner, Mabel Vanderbilt, to file exceptions to the account of DeWitt Clinton Vanderbilt, Guardian of Mabel Vanderbilt a minor, as filed by William S. Woodhull, Administrator of the Estate of DeWitt Clinton Vanderbilt, deceased, in the form annexed to and made a part of said order; and every part thereof.

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Dated Newark, N. J., August 24, 1916.

MCDERMOTT & ENRIGHT,
Proctors for Appellant.

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Certificate.**STATE OF NEW JERSEY.****ESSEX COUNTY SURROGATE'S COURT.**

I, FRED G. STICKEL, JR., Surrogate of the County of Essex, and Clerk of the Orphans' Court of said County, do certify the foregoing to be a true transcript of all the proceedings of the Orphans' Court of the County of Essex of the Order entered in the matter of the Estate of Mabel Vanderbilt, a minor, on the thirtieth day of June, 1916, wherein it was ordered that the decree of this Court made herein on the twenty-second day of October, nineteen hundred and fifteen, be opened for the purpose of permitting the said petitioner, Mabel Vanderbilt, to file exceptions to the account of DeWitt Clinton Vanderbilt, Guardian of Mabel Vanderbilt, a minor, as filed by William S. Woodhull, Administrator of the Estate of DeWitt Clinton Vanderbilt, deceased, in the form annexed to and made a part of said Order, as the same appear on file and of record in this office.

10**20**

Witness my Hand and Seal of Office, this eleventh day of September in the year of our Lord one thousand nine hundred and Sixteen.

(Seal.)

FRED G. STICKEL, JR., **30**
Surrogate and Clerk.

(Stamp.)

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Will of Nellie Black Vanderbilt.

IN THE MATTER

of

10 The Appeal of UNITED STATES
FIDELITY & GUARANTY COMPANY
from an order of the Prerogative
Court made on June 11, 1917,
affirming a decree of the Or-
phans' Court of Essex County
made on June 30, 1916, in the
Matter of the Estate of MABEL
VANDERBILT, a minor.

20 I, NELLIE BLACK VANDERBILT, make, publish
and declare this my last will and testament. 1.
I direct that my just debts and funeral expenses
be paid as soon after my death as possible.

2. I give, devise and bequeath to my husband,
DeWitt Clinton Vanderbilt, the sum of Five
Thousand Dollars (\$5,000.).

3. I give, devise and bequeath to my daughter,
Mabel Vanderbilt one-half ($\frac{1}{2}$) of the balance of
moneys, bonds and investments, that I may die
possessed of.

30 4. I give, devise and bequeath to my son, Clin-
ton Black Vanderbilt the other one-half ($\frac{1}{2}$) of
the balance of moneys, bonds and investments,
that I may die possessed of. The said Clinton
Black Vanderbilt is not to receive his share until
he is twenty-five (25) years of age. Should I
die before he has reached that age, he is to re-
ceive the income only from his share, until his
twenty-fifth birthday when he is to receive his
share.

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Will of Nellie Black Vanderbilt.

5. I give, devise and bequeath to my husband, De Witt Clinton Vanderbilt for his use during his lifetime, all of household furniture, furnishings, silverware, etc., that I may die possessed of. The said household furniture, furnishings, silverware, etc., to be divided share and share alike to my two herein mentioned children at my husband's death. 10

6. I give, devise and bequeath to my daughter Mabel Vanderbilt all of my jewelry, with the exception of such articles as I have designated in a letter which will be found with this, my last will and testament. The requests in said letter I wish carried out.

7. I appoint as executors of this will, my husband, DeWitt Clinton Vanderbilt and my sister Emma Littell Black, and direct that no bonds be required of them because of non-residence or for any other reason. 20

8. I hereby revoke all other and former wills by me at any time made.

In Witness Whereof, I hereunto set my hand and seal this 31st day of May, 1905.

NELLIE BLACK VANDERBILT (L. S.).

Subscribed, sealed, published and declared by the testatrix as and for her last will and testament, in the presence of us, and each of us this 31st day of May 1905. In Witness Whereof we have hereunto set our hands as witnesses in the presence of the testatrix and of each other and at her request this 31st day of May 1905. 30

Fannie F. Black, 535 West 111th Street, New York City.

Minnie A. Black, 135 West 82nd., St., New York City.

James A. Black, 135 West 82nd., St., New York City. 40

Certification.

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

10 I, CHARLES F. KOCHER, Deputy Surrogate of the County of Essex, and Clerk of the Surrogate's Court of said County, do certify the annexed to be a true copy of the record of the Last Will and Testament of Nellie Black Vanderbilt, deceased, as the same appear of record in this office.

(Seal.)

Witness my hand and seal of office, this eleventh day of September in the year of our Lord one thousand nine hundred and Sixteen.

20 CHARLES F. KOCHER,
Deputy, Surrogate and Clerk.

Petition of Appeal.

NEW JERSEY PREROGATIVE COURT.

30 In the matter of the appeal of United States Fidelity & Guaranty Company from an order of the Orphans' Court of the County of Essex opening a decree of said Court made on October 22, 1915, in the matter of the Estate of MABEL VANDERBILT, a minor.

On Petition
of Appeal.

To the Ordinary of the State of New Jersey:

The petition of United States Fidelity & Guaranty Company, a corporation of the State of Maryland, respectfully shows that:

Petition of Appeal.

(1) Petitioner became surety on the bond of DeWitt Clinton Vanderbilt, guardian of Mabel Vanderbilt, a minor, on or about July 14, 1908.

(2) Said DeWitt Clinton Vanderbilt died on or about December 31, 1914. Thereafter one William S. Woodhull, who had been appointed administrator of the estate of said DeWitt Clinton Vanderbilt, filed in said Orphans' Court what purported to be the final account of said DeWitt Clinton Vanderbilt as guardian of the estate of said Mabel Vanderbilt, a minor. 10

(3) On October 22, 1915, a decree was made by the Orphans' Court of Essex County wherein the said court did order, adjudge and decree as follows, to wit:

"It is on this 22nd day of October, 1915, ordered, adjudged and decreed that the said account be and the same hereby is in all things allowed as stated, insofar as the said account relates to the acts of the said William S. Woodhull, as administrator of DeWitt C. Vanderbilt, in his relation as guardian for Mabel Vanderbilt, and that the estate of DeWitt C. Vanderbilt be charged with the sum of \$632.84, as the portion of the said estate of said minor for which the accountant has been unable to account, and that there is now in the hands of the said United States Fidelity & Guaranty Company, as bondsman of DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt, 32 shares of the capital stock of the Pennsylvania Railroad Company, 30 shares of the capital stock of the American Express Company, and the bank deposit books for money deposited in the Irving Savings Institution and the Emigrant Industrial Savings Bank, both of New York, in the name of DeWitt C. Vanderbilt, as guardian of Mabel Vanderbilt, as is shown in said account, and the said United States Fidelity & Guaranty Company, as 20 30 40

Petition of Appeal.

bondsman of DeWitt C. Vanderbilt, as **af**ore-said is directed forthwith to sign all checks and to do all such acts as may be necessary to assign and deliver the securities and other property of the said Mabel Vanderbilt in said account mentioned and set forth to the Fidelity Trust Company, substituted guardian for Mabel Vanderbilt.

10 "And it is further ordered that the Fidelity Trust Company, substituted guardian of said Mabel Vanderbilt, and the said Mabel Vanderbilt, have leave to take such proceedings against the estate of DeWitt C. Vanderbilt or against the United States Fidelity & Guaranty Company, bondsman of the said DeWitt C. Vanderbilt, as aforesaid, as it or she may be advised."

(4) On June 30, 1916, said Orphans' Court of the County of Essex, on the petition of said
20 Mabel Vanderbilt, made an order wherein it was ordered that the said decree of said court made therein on the 22nd day of October, 1915, be opened for the purpose of permitting the said petitioner, Mabel Vanderbilt, to file exceptions to the account of DeWitt Clinton Vanderbilt, guardian of Mabel Vanderbilt, a minor, as filed by William S. Woodhull, administrator of the estate of DeWitt Clinton Vanderbilt, deceased, in the form annexed to and made a part of said
30 order.

(5) Your petitioner complains and alleges that the whole and every part of the said decree is erroneous, improper and illegal; that your petitioner is aggrieved thereby and hereby appeals therefrom.

Your petitioner therefore prays that the aforesaid order of the said Orphans' Court and every part thereof be reversed by this court.

40 Dated, Newark, N. J., August 28, 1916.

MCDERMOTT & ENRIGHT,
Proctors for and of counsel
with Appellant.

Answer to Petition of Appeal.
NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

of

The Appeal of the United States Fidelity and Guaranty Company from an order of the Orphans' Court of the County of Essex, opening a decree of said Court made on October 22, 1915, in the matter of the Estate of MABEL VANDERBILT, a minor.

On Petition **10**
of Appeal.

The Answer of Mabel Vanderbilt, respondent, to the petition of appeal of United States Fidelity and Guaranty Company, a corporation of the State of Maryland, appellant: **20**

1. This respondent answering admits the allegations contained in the first, second, third and fourth paragraphs of appellant's petition of appeal filed herein.

2. This respondent is advised, believes and submits that the whole and every part of the said order complained of by appellant is just and lawful, and this respondent denies that the whole and every part, or any part, of the said order is erroneous, improper or illegal, and alleges that the whole and every part of the said order is legal, proper and correct. **30**

She therefore prays that the said petition of appeal may be dismissed with costs.

COLLINS & CORBIN,
Proctors for and of Counsel with
Mabel Vanderbilt, Respondent.

ENDORSED:

"Filed, Sept. 15, 1916,
Thomas F. Martin,
Register."

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Answer to Petition of Appeal.**NEW JERSEY PREROGATIVE COURT.**

 IN THE MATTER

of

10 The Appeal of the United States Fidelity and Guaranty Company from an order of the Orphans' Court of the County of Essex, opening a decree of said Court made on October 22, 1915, in the matter of the Estate of MABEL VANDERBILT, a minor.

On Petition
of Appeal.

20 The Answer of William S. Woodhull, Administrator of the Estate of DeWitt Clinton Vanderbilt, deceased, respondent, to the petition of appeal of United States Fidelity and Guaranty Company, a corporation of the State of Maryland appellant:

1. This respondent answering admits the allegations contained in the first, second, third and fourth paragraphs of appellant's petition of appeal filed herein.

30 2. This respondent is advised, believes and submits that the whole and every part of the said order complained of by appellant is just and lawful, and this respondent denies that the whole and every part, or any part, of the said order is erroneous, improper or illegal, and alleges that the whole and every part of the said order is legal, proper and correct.

He therefore prays that the said petition of appeal may be dismissed with costs.

EDWARD A. MARKLEY,
Proctor for and of Counsel with
respondent, William S. Woodhull,
Administrator etc.

ENDORSED:

"Filed, Sept. 15, 1916,
Thomas F. Martin,
Register."

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**Order Affirming Order of Essex County
Orphan's Court.**

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE APPEAL

of

UNITED STATES FIDELITY AND
GUARANTY COMPANY FROM AN
ORDER OF THE ORPHANS' COURT
OF THE COUNTY OF ESSEX OPEN-
ING A DECREE OF SAID COURT
MADE ON OCTOBER 22, 1915, IN
THE MATTER OF THE ESTATE OF
MABEL VANDERBILT, A MINOR.

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This cause coming regularly on to be heard on a transcript of the pleadings and proofs in the court below, in the presence of Frank P. McDermott, Esquire, of counsel for the appellant, and of Charles B. Bradley, Esquire, of counsel for the respondent, Mabel Vanderbilt, and of Daniel L. Campbell, Esquire of counsel, for the respondent, Fidelity Trust Company, and of Edward A. Markley, Esquire, of counsel for respondent, William S. Woodhull, administrator of the estate of

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Order Affirming Order of Essex County Orphans' Court.

DeWitt Clinton Vanderbilt, deceased; and the Court having read and considered the pleadings and proofs and the arguments of counsel, and being of opinion that the order appealed from should be affirmed.

10 It is, on this eleventh day of June, in the year of our Lord one thousand nine hundred and seven-
 teen, on motion in behalf of Collins & Corbin, proctors for the respondent, Mabel Vanderbilt, by the Ordinary of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Ordinary does, by virtue of the power and authority of this Court and the statute in such case made and provided, hereby ORDER, ADJUDGE AND DECREE that the order appealed from be, and the same hereby is, affirmed, with the costs of each
 20 of the said respondents to be taxed; and that the record and proceedings be remitted to the Essex County Orphans' Court to be therein proceeded with according to law and the practice of said Court.

E. R. WALKER,
 O.

Respectfully advised,
 Vivian M. Lewis,

V. O.

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Notice of Appeal.
NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE APPEAL
of
UNITED STATES FIDELITY AND
GUARANTY COMPANY FROM AN
ORDER OF THE ORPHANS' COURT
OF THE COUNTY OF ESSEX OPEN-
ING A DECREE OF SAID COURT
MADE ON OCTOBER 22, 1915, IN
THE MATTER OF THE ESTATE OF
MABEL VANDERBILT, A MINOR.

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The United States Fidelity and Guaranty Com-
pany hereby appeals to the New Jersey Court of
Errors and Appeals from the order entered here-
in on June 11, 1917, and from each and every
part thereof.

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Dated, June 15, 1917.

McDERMOTT & ENRIGHT,
Proctors for and of counsel
with Appellant.

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

FRANK P. McDERMOTT,
Of Counsel. 30

Filed, June 16, 1917,
Thomas F. Martin,
Register.

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THE HISTORY OF THE
CITY OF BOSTON

From the first settlement of the
city in 1630 to the present time
the city has grown from a small
village to a large and important
city. The city has been the seat
of many important events and
has played a prominent part in
the history of the United States.

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Memorandum of Lewis, Vice Ordinary.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER

of

The Appeal of the UNITED STATES FIDELITY AND GUARANTY COMPANY, from an order of the Orphans' Court of the County of Essex, opening a decree of said Court made on October 22, 1915, in the matter of the Estate of Mabel Vanderbilt, a minor.

On Petition
of Appeal.

10

MESSRS. McDERMOTT AND ENRIGHT, for the Appellant.

MESSRS. COLLINS AND CORBIN, for the Respondent, Mabel Vanderbilt. **20**

MR. DANIEL L. CAMPBELL, for the Respondent, Fidelity Trust Company.

MR. EDWARD A. MARKLEY, for Respondent, William S. Woodhull.

Heard on a transcript of the pleadings and proofs in the court below.

LEWIS, V. O.

Nellie Black Vanderbilt, the mother of the respondent, Mabel Vanderbilt, died February 11, 1907, leaving a will by which, after making certain specific gifts, she gave to her daughter, Mabel, one-half of the balance of the money, bonds and investments of which she might die seized, and appointed as executors of her will, her husband, DeWitt Clinton Vanderbilt and Emma Littell **30**

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Black. Mabel Vanderbilt was born August 29, 1894, and consequently was a minor at the time of the death of her mother. Her father, DeWitt Clinton Vanderbilt, was accordingly appointed by the Surrogate of Essex County, July 14, 1908, guardian of her estate, and the United States Fidelity and Guaranty Company became surety upon his bond as such guardian. On August 13, 1908, DeWitt Clinton Vanderbilt, as guardian, received from himself as executor under the will of Nellie Black Vanderbilt, certain money and securities representing the one-half share bequeathed to Mabel Vanderbilt by her mother. Included in these securities were thirty-two shares of the capital stock of the Pennsylvania Railroad and thirty shares of the capital stock of the American Express Company.

DeWitt Clinton Vanderbilt dies on the 31st of December, 1914, nearly a year before his daughter and ward, Mabel Vanderbilt, became of age, and thereafter one William S. Woodhull was appointed administrator of his estate and filed in the Essex County Orphans' Court what purported to be the final account of DeWitt Clinton Vanderbilt as guardian of the estate of Mabel Vanderbilt. This account was noticed for settlement August 25, 1915, the notice being dated July 14, 1915. In the meantime, on January 26, 1915, the Fidelity Trust Company had been appointed by the Surrogate of Essex County substituted guardian of the estate of Mabel Vanderbilt. It will be noted that Mabel Vanderbilt did not become of age until August 29, 1915, so that she was a minor when the notice of the settlement was first given, and continued to be a minor on August 25, 1915, the date for which the settlement was noticed. The settlement of the account was adjourned by the Orphans' Court until Octo-

ber 22, 1915, and upon that date the account was settled and a decree made charging the estate of DeWitt Clinton Vanderbilt with the sum of \$632.84 as the portion of the estate of Mabel Vanderbilt for which the accountant was unable to account, as shown by the account itself. The parties represented by appearances upon the making of this decree were the accountant, the Fidelity Trust Company, substituted guardian of Mabel Vanderbilt, and the United States Fidelity and Guaranty Company, bondsman of DeWitt Clinton Vanderbilt as guardian. Mabel Vanderbilt herself had no notice of the proceedings for settlement. The balance of \$632.84 with which the estate of DeWitt Clinton Vanderbilt was charged by this decree of settlement was obtained by including amongst the items for which the accountant prayed allowance the thirty-two shares of the capital stock of the Pennsylvania Railroad Company at the sum of \$2,104.00 and the thirty shares of the American Express Company at the sum of \$7,050.00, these stocks being in the hands of the accountant. The sums thus allowed on account of these stocks were greatly in excess of their actual market value at the time of the death of DeWitt Clinton Vanderbilt and at the time of the settlement of the account. The decree of settlement, after directing that these shares, together with the other securities and moneys of the estate, be turned over to the Fidelity Trust Company, as substituted guardian for Mabel Vanderbilt, further ordered "that the Fidelity Trust Company, substituted guardian of said Mabel Vanderbilt, and the said Mabel Vanderbilt have leave to take such proceedings against the estate of DeWitt C. Vanderbilt or against the United States Fidelity and Guaranty Company, bondsman of the said DeWitt C. Vanderbilt as aforesaid, as it or she may be advised."

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In May, 1916, Mabel Vanderbilt, who had then attained her majority, filed a duly verified petition in the Essex County Orphans' Court, setting forth the foregoing facts and charging that DeWitt Clinton Vanderbilt, as guardian of her estate, failed in his duty and committed a breach of his trust in failing to dispose of the Pennsylvania Railroad stock and the American Express Company stock at a time when he might have obtained a favorable price for the same, and that as a result of such neglect of duty and breach of trust, the petitioner's estate had suffered a depreciation of about \$4,000.00, for which William S. Woodhull, as administrator of the estate of DeWitt Clinton Vanderbilt, should have been charged upon the settling of his account. The petition then prayed that the decree of the Orphans' Court made October 22, 1915, settling the account in question, might be opened, vacated and set aside, and that the petitioner might have leave to file exceptions to the account in the particulars named. To this petition, the United States Fidelity and Guaranty Company, surety on the guardianship bond of DeWitt Clinton Vanderbilt, filed an answer admitting the facts set forth in the petition, but denying the charge thereof. After hearing and argument, the Essex County Orphans' Court ordered that the decree of October 22 be opened for the purpose of permitting Mabel Vanderbilt to file exceptions to the account of DeWitt Clinton Vanderbilt, guardian, as filed by William S. Woodhull, administrator of the estate of DeWitt Clinton Vanderbilt, deceased, in a form annexed to and made part of the order. The exceptions thus permitted to be filed attacked the account, first, because the accountant asked allowance for the thirty-two shares of Pennsyl-

vania Railroad Company stock at \$2,104.00, whereas the same were worth, at the time of the death of accountant's intestate, only \$1,776.00; and, secondly, because the accountant asked allowance for thirty shares of the stock of the American Express Company at the sum of \$7,050.00, whereas the same were worth, at the time of the death of accountant's intestate, only \$3,720.00 (p. 23.) The depreciation thus claimed by the exceptions amounted to \$3,658.00, in an estate of approximately \$15,000.00, in other words, about a quarter of the value of the entire estate. From the order of the Essex County Orphans' Court opening its own decree and permitting these exceptions to be filed, the United States Fidelity and Guaranty Company has appealed to the Preogative Court. 10

The only question presented by this appeal concerns the power of the Orphans' Court to open its own decree settling the account of the guardian, the time for an appeal from the decree in question having passed. 20

At the time the account was noticed for settlement and on the day for which the settlement was appointed, Mabel Vanderbilt was still a minor and had no notice of the proceedings, nor did she appear to the same subsequently on the day when the decree was actually made, October 22, 1915, by which time she had attained her majority. In the very nature of the case, therefore, the account and the decree thereon could have been only intermediate in character, although the accountant referred to and entitled his account "final." But the Orphans' Court, so far from regarding the account or decree as final, incorporated in the decree an express reservation granting to the Fidelity Trust Company, substituted 30

guardian of Mabel Vanderbilt, and to Mabel Vanderbilt herself, leave to take such proceedings against the estate of DeWitt Clinton Vanderbilt, or against the United States Fidelity and Guaranty Company as they might be advised. In opening the decree, the Orphans' Court was careful to recite, as a ground for so doing, the express reservation referred to and also the fact that the account in question was in reality an intermediate

10 account. The nature of the decree and its express reservations are, therefore, such as amply to justify the Orphans' Court in permitting a further inquiry into the items of the account. Indeed, the Orphans' Court, in making the reservation in the decree, must have contemplated such further inquiry, and left it open to the respondent to take such action for the instituting of such an inquiry as she might be advised. It now clearly appears that the proper practice in such a case is that

20 adopted by the respondent. The propriety and correctness of the order complained of may, therefore, rest upon the language of the original decree itself reserving to the respondent the very right that the appellant now seeks to deny. In opening its own decree to permit exceptions to be filed, the Orphans' Court was, in reality, but taking steps for disposing of a matter which, on the very face of the original decree, was left unsettled.

30 The order of the Orphans' Court opening the decree of October 22, 1915, and permitting the respondent, Mabel Vanderbilt, to file certain specific exceptions, should be affirmed with costs to the respondent.

6 NOV. 1. 1918

New Jersey Court of Errors and Appeals.

NOVEMBER TERM, 1918.

IN THE MATTER

of

The Appeal of UNITED STATES
FIDELITY & GUARANTY COMPANY
from an order of the Prerogative
Court made on June 11, 1917,
affirming a decree of the Or-
phans' Court of Essex County
made on June 30, 1916, in the
MATTER OF THE ESTATE OF
MABEL VANDERBILT, a minor.

On Appeal
from Pre-
rogative
Court.

Sat below:
WALKER, O.;
LEWIS, V. O.

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BRIEF ON PART OF APPELLANT.

Statement of Case.

Nellie Black Vanderbilt, the mother of Mabel
Vanderbilt, died on February 11, 1907, leaving a
husband and two minor children. She left an
estate of \$30,000 or over, consisting largely of
stocks, two blocks of which were in the Pennsyl-
vania Railroad Company and American Express
Company, which had been in the family for a
long time. In her will, made in May, 1905, in
evidence in these proceedings (p. 26), Mrs. Van-
derbilt after a minor bequest gave her daughter
Mabel one-half of the balance of her moneys,
bonds and investments of which the above stocks
were a part, using this language (paragraph 3):

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"I give, devise and bequeath to my daughter Mabel Vanderbilt one-half ($\frac{1}{2}$) of the balance of moneys, bonds and investments that I shall die possessed of."

In paragraph 4 the other one-half is given to her son, and other specific bequests follow. Mrs. Vanderbilt evidently desired her stocks and other securities to be turned over intact to her daughter and son. Her husband, who was her executor, delivered to himself as guardian of Mabel in specie her stock in the several companies above mentioned, including 32 shares of Pennsylvania Railroad stock, valued and taken by him as guardian at \$2104 and 30 shares of American Express Company stock valued and taken at \$7050 (pp. 4, 14). These Pennsylvania Railroad and American Express stocks he held as her guardian up to the time of his death, which occurred on December 31, 1914. On January 26, 1915, Fidelity Trust Company of Newark was appointed substituted guardian and at about the same time William S. Woodhull was appointed administrator of the former guardian. The Pennsylvania and American Express stock were not sold or disturbed by the executor, guardian, substituted guardian or administrator, but were retained in specie until after the making of the decree of the Orphans' Court which the daughter now seeks to open.

In the Summer of 1915, in anticipation of Mabel's becoming twenty-one on August 29, Mr. Woodhull, as administrator of the guardian, prepared and filed an account. It was noticed for settlement on August 25, 1915, and was reported to the Orphans' Court by the Deputy Surrogate on October 22, 1915 (p. 8). On that day, this account described in the decree of the Essex County Orphans' Court as "the final account of DeWitt C. Vanderbilt, Guardian of Mabel Vanderbilt, a minor, by William S. Woodhull, admin-

istrator of the Estate of DeWitt C. Vanderbilt, deceased" (p. 9), was "in all things allowed as stated insofar as the said account relates to the acts of the said William S. Woodhull as administrator of DeWitt C. Vanderbilt in his relation as guardian for Mabel Vanderbilt" (p. 10, line 22). This decree of the Orphans' Court found that the estate of DeWitt C. Vanderbilt should be charged with the sum of \$632.84, for which the accountant had been unable to account (p. 10), and that there was in the hands of the United States Fidelity & Guaranty Company, as bondsman of the guardian, 32 shares of Pennsylvania Railroad stock, 30 shares of American Express Company stock, and certain savings bank books. The Guaranty Company, as bondsman, was directed to sign all checks and do all such acts as might be necessary to assign and deliver the securities and other property to the substituted guardian. The summary of assets set out in the account included the bequeathed shares of stock of the Pennsylvania Railroad and American Express Company, and cash on deposit in two savings banks (p. 7). In January, 1916, some months after Miss Vanderbilt became of full age, the appellant, having paid over in cash the deficiency found by the account, delivered to William S. Woodhull, then her attorney, the books showing deposits in the savings banks (p. 20), identical items in the account, all in compliance with the decree.

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A little later, on February 16, 1916 (pp. 18, 19, 20), appellant delivered to Mabel Vanderbilt the certificates representing 32 shares of Pennsylvania Railroad stock and 30 shares of American Express Company stock, being the two items of stock set forth in the summary of assets in the account (p. 7), and part of the identical stock which was embraced in the bequest to Mabel, and transferred by the executor to himself as her guardian (pp. 13, 14). Throughout all the intervening years

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these stocks were held intact. The appellant thus complied fully with the directions of the decree of October 22, 1915.

10 Mabel Vanderbilt became of age on August 29, 1915, about two months before the account was reported for settlement (October 22, 1915, p. 8) and nearly six months before the certificates of stock were delivered to her. She alleges, in her petition, that these stocks had depreciated in value; that the values given in the account filed by Mr. Woodhull were in excess of their true value at that time (pp. 15, 16).

20 The Guaranty Company having paid the deficiency and delivered the bank books and stocks in specie which the Orphans' Court ordered so delivered, thus divesting itself of any right to the appreciation in value which had followed the great slump in 1914, and Mabel Vanderbilt thus having received the full benefit of the decree of October 22, 1915, and such appreciation in value of the stocks, presented the petition printed on pages 13, 14, 15 and 16, praying leave to file exceptions to the account filed by Mr. Woodhull, her attorney and the administrator of her father's estate, aimed at the Guaranty Company to compel it to pay the difference between the market value of the stocks as stated in the account and as they stood at the date of her father's death in December, 1914, when the stock market was demoralized.

30 The Guaranty Company answered and added an affidavit of essential facts. With the records of the Orphans' Court, the petition and answer and affidavits annexed, and the Will of Mrs. Vanderbilt before him, and under consideration, Judge Martin made the order of June 30, 1916, permitting certain exceptions to be filed (p. 23).

40 On appeal to the Prerogative Court, where Mr. Woodhull, administrator, &c., placed himself in

antagonism to his own account and the decree allowing it (p. 32), the order of the Orphans' Court was affirmed (p. 33). The appellant then approached this Court and sought its aid.

Grounds of Appeal.

The appellant is aggrieved by the order of the Prerogative Court in that it affirms the order of the Essex Orphans' Court of June 30, 1916. The latter order opened the decree made by it on October 22, 1915, approving the account of Miss Vanderbilt's guardian as filed by William S. Woodhull, the guardian's administrator, and permitted her to except to it. This order of the Orphans' Court, appellant insists, was illegal and erroneous, as the case presented disclosed no ground for allowing exceptions to be filed, and the appellant had in the meantime obeyed the decree of October 22, 1915, and the respondent received the benefit of it.

Points and Argument.

(1) Under the bequest of the stocks of the Pennsylvania Railroad Company and American Express Company in the Will of Nellie Black Vanderbilt, the executor of the Will and the guardian of Mabel Vanderbilt was not required to dispose of them and his retention of them was proper and justifiable.

(2) The decree of October 22, 1915, allowing the account and ordering the Guaranty Company to turn over assets, consisting of savings bank books definitely described, and the stocks bequeathed in Mrs. Vanderbilt's Will was in accordance with law and Mrs. Vanderbilt's intent.

(3) There is no sufficient proof of fraud or mistake to warrant the vacation of the decree and permission to except to the account.

(4) The recitals on which the order of June 30, 1916, is predicated, do not, on analysis, appear to be supported by facts.

(5) If the statements of the petition are accepted the stocks are fluctuating in value; if not, there is no proof that they were worth less than stated in the account; if they were not to be taken at the value set forth in the account the decree should have so stated and safeguarded the parties.

10 (6) The appellant, the Guaranty Company, having paid the deficiency found by said account, and obeyed the decree directing the delivery of the assets of the estate displayed in the account, in specie, has performed its full duty, and the respondent, Mabel Vanderbilt, having accepted the benefit of said decree and received the bank books and stocks ordered delivered to her, long after she became of age, is now estopped from seeking to
20 open the decree and except to the account on the ground that the stocks had depreciated in value.

POINT I.

Under the bequest of the stocks of the Pennsylvania Railroad Company and American Express Company in Mrs. Vanderbilt's will, the executor and guardian of Mabel Vanderbilt was not required to dispose of them, and his retention of them was proper and justifiable.

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This Court in *Norris vs. Executors of Thomson*, 16 Equity, 542, speaking by Mr. Justice Ogden, laid down the rules under which specific legacies are to be distinguished from others and made the application. This case has been followed in many instances and may be considered to reflect the settled law of this State.

40 In *Lee vs. Babcock*, 45 Eq., 353, a very obscure

will was before this Court. After several gifts to other parties the testator gave to his wife all of the remainder of his property, both real and personal, for life, indicating by his language that he wished everything to remain in the house and that he gave all to his wife for her natural life. This was held in the Court of Chancery to give the widow a life interest in the residuary estate in specie, and this Court affirmed for the reasons given below.

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In *Blair vs. Scribner*, 67 Eq., 583, this Court in an opinion by Chief Justice Gummere reversed the Court of Chancery and held certain gifts of stock to be general and not specific, but we do not understand that this case modifies in any manner the earlier ruling of the court in *Norris vs. Thomson*. *Allen vs. Allen*, 76 Eq., 245, 250.

See also *Moore vs. Moore*, 50 N. J. Eq., 554, particularly Syllabus 2.

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Kearns vs. Kearns, 77 N. J. Eq., 453.

In the instant case Mrs. Vanderbilt's executor turned over to himself as guardian of his daughter Mabel moneys and securities including the Pennsylvania Railroad and American Express Company stocks, and these stocks were retained in specie until delivered to Mabel.

The conduct of the guardian is not to be judged by the standard set where investments are made by the trustee, or where the securities come from the testatrix herself—here the securities were specifically bequeathed and it was the duty of the guardian to deliver them to the ward, unless facts are shown to establish his wilful misconduct.

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In 44 L. R. A., New Series, at page 957, a number of cases relating to the duty of a trustee where there has been a specific gift of investments are collected by the annotator. Without

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attempting to recite these in detail, we deduce the principle that a trustee is not liable in the absence of his own wilful act or default where securities suffer depreciation in value. In one case cited on that page, *Murray vs. Feinour*, 2 Md. Ch., 418, the Court is said to have stated that when a testator sets aside certain stock in trust without delegating any power to change the investment, if the trustee, without an express authority from some competent tribunal should dispose of those stocks and invest the money in other securities, he would upon a proper application be decreed to replace them.

POINT II.

The decree of October 22, 1915, allowing the account and ordering the Guaranty Company to turn over assets, consisting of savings bank books definitely described, and the stocks bequeathed in Mrs. Vanderbilt's will was in accordance with law and Mrs. Vanderbilt's intent.

The Guaranty Company was under no duty to appeal from this decree. It was its duty to obey it and this duty was performed. And if it had not the next clause of the decree (p. 11) gave ample power to the substituted guardian and to the former ward herself to compel performance, by any such proceedings as might be advised. The decree operated to direct the delivery of the stocks in specie, and this was in accordance with law (as we have shown under Point I) and carried out the intention of the testatrix.

POINT III.

There is no sufficient proof of fraud or mistake to warrant the vacation of the decree and permission to except to the account.

Whether the accounting approved by the decree of October 22, 1916, be termed a final account or an intermediate account, we submit that nothing has been shown to warrant the order to open. No fraud or mistake has been shown. No testimony was taken in open Court on the hearing and the only proofs offered were the records of the Orphans' Court and the Will of Mrs. Vanderbilt. The petition of Mabel Vanderbilt and the answer of the Surety Company were read and considered. Both have affidavits attached. 10

The petition sets forth that the Fidelity Trust Company was made substituted guardian on January 26, 1915 (p. 14), and that it, although a party to the said accounting, failed and neglected to file exceptions to the said account (p. 15). 20

In paragraph 8 (p. 15) the petitioner charges (does not state as a fact) that the account filed by William S. Woodhull, administrator, "improperly ask allowance for the said 32 shares of the capital stock of the Pennsylvania Railroad at the sum of \$2104, and for the said 30 shares of the capital stock of the American Express Company at the sum of \$7050, which continued to form a part of your petitioner's estate". 30

It will be observed that these stocks continued to form a part of the petitioner's estate, as indeed they should, having been specifically bequeathed to her. But there is no adequate statement of mistake, and clearly no statement of fraud in the accounting. Taken in connection with para- 40

graph 9 (p. 15) the purport of the allegation is that the sums allowed as the values of said stocks were in excess of their actual value, but this was no mistake as the accountant, Mr. Woodhull, employed the valuations of the inventory, following the correct method in view of the duty of the guardian to retain the stocks in specie and deliver them in this form to the infant on her becoming of age. There is no allegation that the
10 accountant, or the Fidelity Trust Company, acted under any mistake or misapprehension as to the value of the stocks.

In paragraph 10 (p. 15) the petitioner charges (does not state as a fact) that her father as her guardian "failed in his duty and committed a breach of his trust in failing to dispose of the said stocks at a time when he might have obtained a favorable price for the same, and that
20 as a result of such neglect of duty and breach of trust the estate of your petitioner has suffered a depreciation of about \$4000, for which the said accountant should have been charged upon the settling of his said account".

We submit that this charges neither fraud nor mistake. Her father was dead long before the account was filed and no fraud in the statements of the account is alleged and no fraud in procuring its allowance. There was no mistake because
30 the fact of a fluctuating market price of these stocks was well known at the time the account was allowed, and the Fidelity Trust Company was not unaware of it. The petition wholly fails to disclose *when* the father should have sold the stocks, or at what price, or under what circumstances the depreciation occurred, or what was the market value when they were turned over to the petitioner.

Clearly Miss Vanderbilt does not prove her
40 father was guilty of fraud or the accountant

guilty, and we credit her with having no intention to suggest fraud.

And no mistake is shown or averred. No mistake of fact; there is no claim that the facts are not correctly stated in the account and the decree allowing it.

No mistake of law; no one seems to have been in error respecting the law. The disposition of the stock was strictly in accordance with law.

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POINT IV.

The recitals on which the order of June 30, 1916, is predicated, do not, on analysis, support the order.

Three of these recitals are quoted under this head, marked a, b and c:

(a) "It appearing to the Court that the decree of this Court made herein on the 22nd day of October, 1915, allowing the account of DeWitt Clinton Vanderbilt, guardian of Mabel Vanderbilt, a minor, as filed by William S. Woodhull, administrator of the estate of DeWitt Clinton Vanderbilt, deceased, expressly reserved leave to the said Mabel Vanderbilt and to the Fidelity Trust Company, substituted guardian of said Mabel Vanderbilt, to take such further proceedings against the ^{estate} ~~surety~~ of DeWitt Clinton Vanderbilt or against the United States Fidelity & Guaranty Company, bondsman of the said DeWitt Clinton Vanderbilt, as she or it might be advised" (p. 21).

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We feel obliged to call attention to this because this leave given in the decree of October 22, 1915 (p. 11) seems to loom large in the proceedings (pp. 21, 42). The order of October 22, 1915, found that the guardian should be charged with the sum of \$632.84, and that there was in the hands of the bondsman of the guardian 32 shares of Pennsylvania Railroad stock, 30 shares of

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American Express Company stock, and certain savings bank books in the name of the guardian, as shown in said account, and the Guaranty Company, as bondsman, was directed forthwith to sign all checks and do all such acts as might be necessary, to assign and deliver the securities and other property of the said Mabel Vanderbilt in said account mentioned and set forth to the substituted guardian (pp. 10, 11). And thereupon, and clearly to provide for the enforcement of the order thus made, leave was given the substituted guardian, and the said Mabel Vanderbilt to take proceedings against the estate or against the surety (p. 11). The construction of these clauses of the order seems subject to no doubt on the plainest principles. And how can it be claimed that this leave to take proceedings meant or included leave to file exceptions to this account nine months later? The account was then before the Court receiving its active attention and if the Court intended to grant leave to file exceptions to it why did not the court or some one of the counsel participating make the order say so, and why did not Miss Vanderbilt, then of full age, if she was aggrieved file exceptions then before the account was allowed? That a decree can allow an account and give leave to except to the same account is contrary to reason and logic. The clear intent of the recital was to enable proceedings to be brought to enforce the decree, if the surety did not comply with it. Since then, the bondsman has done all the decree of October 22, 1915, directed to be done, and the clause above recited, inserted to enable the beneficiary to enforce the previous part of the order, has become futile.

(b) "And it further appearing to the Court that the account heretofore filed by the said William S. Woodhull as administrator, &c., and advertised by the Surrogate of Essex County for allowance and settlement on the

25th day of August, 1915, was in fact an intermediate account, the said Mabel Vanderbilt not having been of age until the 29th day of August, 1915."

It is a fact that this account was advertised for August 25, 1915, and that Mabel reached her majority August 29, 1915, but it was reported to the Court for settlement by the Deputy Surrogate on October 22, 1915, as appears by the report following the account (p. 8). Almost two months before that time Mabel Vanderbilt had become of age and was in a position to object to the account if not satisfactory to her. The order of October 22, 1915, which was made in the presence of, and presumably prepared by, counsel of reputation, including counsel for the Fidelity Trust Company, Mabel's substituted guardian, bears this caption: "Decree on final accounting", and the first lines read: "The Surrogate having audited and stated the final account of DeWitt C. Vanderbilt, guardian of Mabel Vanderbilt, a minor, by William S. Woodhull, administrator of the estate of DeWitt C. Vanderbilt, deceased, &c." It is apparent, therefore, that the several counsel appearing and Mr. Woodhull, the administrator, all agreed, and the Court declared the decree of October 22, 1915, to be a decree on final accounting, and the account then before the Court a final account, and Miss Vanderbilt, in her petition, on which the Court's order is founded refers to it in paragraph 5 as "what purported to be a final account", and in paragraph 7 as "the said final account" (p. 14) and recites that it was duly audited and stated. And then, after the surety had delivered the moneys, stocks and savings bank books as required by this decree and final accounting, it was for the first time called an intermediate account.

(c) "And it further appearing to the Court that the said Mabel Vanderbilt had no notice of the proceedings for the settlement and al-

lowance of the said account, which resulted in the aforesaid decree of this Court made on the 22nd day of October, 1915," &c.

In her petition, carefully prepared by able counsel, no allegation is made that she had no notice (p. 13). It is impossible from this record to say what citations were issued on this accounting. The statutory notice of settlement was issued, advertised in the Newark Sunday Call and given
10 publicity as required by statute. The decree of October 22, 1915, distinctly states, "It having been proved to the satisfaction of the Court that all persons concerned in the said account were duly cited according to law to appear before this Court on the day set for the passing of the account, &c." (p. 9). Perhaps Miss Vanderbilt was actually present, but even if she were not, the Fidelity Trust Company, her efficient substituted guardian, appeared by its proctor and took part in the proceedings; William S. Woodhull, her friend, and her attorney then or a little later (p. 20), appeared and gave testimony (p. 10), and shortly after she received the moneys, stocks and bank books required to be delivered to her in this decree. So that if it be the fact (contrary to this decree, and with no proof here to establish it) that she had no notice, it is apparent from the decree itself that her interests were protected by counsel of the Fidelity Trust Company and Mr. Woodhull.
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30 We submit that the above recitals in this order of June 30th, 1916, contradict, without proof to support them the decree of October 22nd, 1915, and do not in anywise warrant the making of the order.

POINT V.

If the statements of the petition are accepted the stocks are fluctuating in value; if not, there is no proof that they were worth less than stated in the account; if they were not to be taken at the value set forth in the account the decree should have so stated and safeguarded the parties. 10

This point requires no elaboration. The Guaranty Company, directed to obey a decree, had the right to assume that it could safely obey, and looking at the account and decree together could assume that obedience to the decree implied satisfaction of the decree.

POINT VI.

The appellant, the Guaranty Company, having paid the deficiency found by said account and obeyed the decree directing the delivery of the securities and other property mentioned in the account, in specie, has performed its full duty, and the respondent, Mabel Vanderbilt, having accepted the benefit of said decree and received the bank books and stocks ordered delivered to her, long after she became of age, is now estopped from seeking to open the decree and except to the account on the ground that the stocks had depreciated in value. 20 30

Some months after Miss Vanderbilt attained her majority and after she, her substituted guardian and counsel had full opportunity to learn the facts, the Surety Company complied with the directions of the decree of October 22, 1915 (pp. 40

10, 11), by paying over the ascertained deficiency of \$632.84 with interest (pp. 19, 20), delivering the savings bank books mentioned in the decree to her, and on February 16, 1916, turning over to her the certificates representing the stocks of the Pennsylvania Railroad and American Express Company (p. 20).

10 The conduct of Miss Vanderbilt after she became of full age placed the Surety Company, the appellant, in such a position that she cannot now be permitted to open the decree allowing the account and attack the account. The effect of her claim, which is lacking in detail, is that the Surety Company should account to her because of the alleged failure in duty of her father to sell said stocks when he might have obtained a favorable price for the same (p. 15, line 40), for the difference between the valuation of the stocks mentioned ~~at~~ the time they were turned over by her father as executor to himself as guardian, and the 20 low price which prevailed at the time of her father's death, December 31, 1914. Obviously these stocks fluctuated in value and the Surety Company had acquired certain rights in connection with them at the time the decree was made. This delivery to her in specie was long after she became of full age, and if she intended then to have the account opened she should have declared her intention, so that the Surety Company might at 30 least have sold these stocks at their enhanced market value or held them for a future rise in price. The Surety Company had the right to assume that in view of the gift of these stocks to her and the terms of the decree of the Orphans' Court made in accordance with this gift, that the stocks belonged to her and that the delivery to her was in satisfaction of the decree. Upon well established principles she is now estopped by her 40 conduct from opening the decree.

The right to correct an account is confined to cases in which no element of estoppel has intervened.

“It has been held that where upon the statement of an account there is an actual settlement or payment of the balance shown, it cannot be avoided for mistakes in the items of an account.”

1 C. J., 712, 713.

But this unqualified restriction has not always been recognized. 10

“However, where the balance stated has been paid it has been held that it would require stronger evidence to overcome the settlement than where the balance is simply agreed upon.”

1 C. J., 713.

“One may as a result of his acts or agreements be estopped to make objections to or to contest the account of a personal representative, and one which has been paid by a personal representative considerably more than he had any right to claim from him, is not in a position to complain of his accounts.” 20

18 Cyc., 1173.

The case of *Childs vs. Childs*, 150 App. Div., N. Y., 656, is pertinent. Quoting from the opinion of Mr. Justice McLaughlin at p. 662:

“But, aside from the conclusiveness of the various decrees of the Surrogate’s Court, I am of the opinion that the acceptance by the plaintiff, or his assignee, of his share of the proceeds of the transactions now complained of constituted a ratification of such transactions and estops him from now maintaining this action. At the time when the defendant, pursuant to the final decree, paid to the plaintiff or his representative the amount directed to be paid to him, the plaintiff had full knowledge of all the facts of which he 30

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10 now complains. With such knowledge he did not appeal from the decree or ask that it be modified or set aside; on the contrary, he acquiesced in it and accepted the payments directed to be made. He is not now in a position to question the validity of the decree. He certainly cannot take and retain the proceeds of the sales and at the same time regain his interest in the property. In any view, before he could question the validity of the sales, he would have to return what he had received from the proceeds of the sales."

"One who accepts the benefits of a verdict, decree or judgment is thereby estopped from reviewing it or from escaping from its burdens."

Brigham City vs. Toltec Ranch Co., 101 Fed. Rep., 85, at p. 89;

Hill vs. Phelps, 101 Fed. Rep., 650, Syllabus 4;

20 *Chase vs. Driver*, 92 Fed. Rep., 780, 786;
Allright vs. Oyster, 60 Fed. Rep., 644.

The syllabus in *Levis vs. City of Utica*, 67 Barb., 456, reads as follows:

"A party assenting to proceedings, aiding them and approving them until others act on his assent and approval, contributes to a binding estoppel against himself."

See also

30 *In re Neafie's Estate*, 91 Atl., 958;
Stewart's Estate, 21 Pa. Dist., 635.

In an old New Jersey case, *Scott vs. Gamble and Wife*, 9 N. J. Eq., 218, we find this statement in Syllabus 5:

40 "But where it appears that the complainant received the purchase money with a full knowledge of the facts, and deliberately ratified the sale, with a knowledge of the fact, which would avoid the sale, it is a bar to any

relief which this court might otherwise have afforded."

The complainant in that instance seems to have employed counsel while a minor, and to have become acquainted with her rights at the time of the sale complained of, although not then of full age (p. 232). Later and after she had arrived at full age (p. 241) she received an assignment of a bond representing a portion of the purchase price and executed a receipt therefor prepared by her attorney. The Chancellor in a long statement of facts and ~~the~~ citation of cases found as follows (p. 244):

"Upon the ground that this sale was ratified by the complainant, by her receipt of the purchase money, and that this act of ratification stands in full force, without even an allegation on the part of the complainant, that what she did was in ignorance of her rights, and without the validity of that act as an act of confirmation being put in issue, I do not feel that I should be justified in interfering with the sale."

We respectfully urge that Miss Vanderbilt in the present instance accepted the benefits of the decree of October 22, 1915, with full knowledge of the facts; that the Surety Company has been deprived of the privilege of selling the stocks at a higher price, and that she is now estopped from opening the decree and objecting to the account.

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In Conclusion.

This appeal is in no wise perfunctory or taken for the purpose of delay, which is of no possible advantage to the appellant.

10 It is taken because in no other way can justice and equity be served. Exceptions relate to the account as filed and when before the Court for approval. Here the decree on the accounting has been fully performed and equities have arisen and the filing of exceptions and action on such exceptions as of the time of the accounting must result in injustice, because of the important intervening facts. If the accounting was wrong or incomplete or the decree erroneous, action should have been taken by appeal (*Baker's Case*, 61 N. J. Eq., 592, at 598) or by objections before the decree was performed by the surety.

20 **We submit that the appeal should be sustained and the order of the Prerogative Court reversed.**

McDERMOTT & ENRIGHT,
Proctors of Appellant.

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NEW JERSEY
Court of Errors and Appeals.

In the Matter of the Appeal of the
UNITED STATES FIDELITY AND
GUARANTY COMPANY from an
order of the Prerogative Court
made on June 11th, 1917, af-
firming a decree of the Orphans'
Court of Essex County, made on
June 30, 1916, in the Matter of
the ESTATE OF MABEL VANDER-
BILT, a minor.

*On Appeal
from Preroga-
tive Court.*

**Brief for the Respondent, Mabel Van-
derbilt.**

STATEMENT OF FACTS.

The undisputed facts material to the question raised by this appeal are set forth in the petition of Mabel Vanderbilt in the Essex County Orphans' Court and the answer thereto filed by the United States Fidelity and Guaranty Company. The petition and answer are printed in the case at pp. 13 *et. seq.* Shortly stated, these facts are as follows:

Nellie Black Vanderbilt, the mother of the respondent, Mabel Vanderbilt, died February 11, 1907, leaving a will by which, after making certain specific gifts, she gave to her daughter Mabel, one-half of the balance of moneys, bonds and investments of which she might die possessed, and appointed as executors of her will, her husband, DeWitt Clinton Vanderbilt, and Emma Littell Black.

Mabel Vanderbilt was born August 29, 1894, and consequently was a minor at the time of the death of her mother. Her father, DeWitt Clinton Vanderbilt, was appointed by the Surrogate of Essex County, July 14, 1908, guardian of her estate, and the United States Fidelity and Guaranty Company became surety upon his bond as such guardian. On August 13, 1908, DeWitt Clinton Vanderbilt, as guardian, received from himself as executor under the will of Nellie Black Vanderbilt, certain money and securities representing the one-half share bequeathed to Mabel Vanderbilt by her mother. Included in these securities were thirty-two shares of the capital stock of the Pennsylvania Railroad and thirty shares of the capital stock of the American Express Company.

DeWitt Clinton Vanderbilt died on the 31st of December, 1914, nearly a year before his daughter and ward, Mabel Vanderbilt, became of age, and thereafter one William S. Woodhull was appointed administrator of his estate and filed in the Essex County Orphans' Court what purported to be the final account of DeWitt Clinton Vanderbilt as guardian of the estate of Mabel Vanderbilt. This account was noticed for settlement August 25, 1915, the notice being dated July 14, 1915. In the meantime, on January 26, 1915, the Fidelity Trust Company had been appointed by the Surrogate of Essex County substituted guardian of the estate of Mabel Vanderbilt. It will be noted that Mabel Vanderbilt did not become of age until August 29, 1915, so that she was a minor when the notice of settlement was first given, and continued to be a minor on August 25, 1915, the date for which the settlement was noticed. The settlement of the account was adjourned by the Orphans' Court until October 22, 1915, and upon that date the account was settled

and a decree made charging the estate of DeWitt Clinton Vanderbilt with the sum of \$632.84 as the portion of the estate of Mabel Vanderbilt for which the accountant was unable to account, as shown by the account itself (see decree, pp. 9-11 and Account, pp. 4-7). The parties represented by appearances upon the making of this decree were the accountant, the Fidelity Trust Company, substituted guardian of Mabel Vanderbilt and the United State Fidelity and Guaranty Company, surety of DeWitt Clinton Vanderbilt, as guardian. Mabel Vanderbilt herself had no notice of the proceedings for settlement and did not in fact appear in the matter (see recitals in order opening decree, p. 22, ll. 11-17). The balance of \$632.84, by which the estate of DeWitt Clinton Vanderbilt was charged by this decree of settlement, was obtained by including amongst the items for which the accountant prayed allowance the thirty-two shares of the capital stock of the Pennsylvania Railroad Company at the sum of \$2,104, and the thirty shares of the American Express Company at the sum of \$7,050, these stocks being still in the hands of the accountant. The sums thus allowed on account of these stocks were greatly in excess of their actual market value at the time of the death of DeWitt Clinton Vanderbilt and at the time of the settlement of the account, and the Orphans' Court apparently felt that the allowances asked on account of these stocks were improper. for the decree of settlement, after directing that these shares, together with the other securities and moneys of the estate, be turned over to the Fidelity Trust Company, as substituted guardian for Mabel Vanderbilt, further ordered, 'that the Fidelity Trust Company, substituted guardian of said Mabel Vanderbilt, and the said Mabel Vanderbilt have leave to take such proceedings against the

estate of DeWitt C. Vanderbilt or against the United States Fidelity and Guaranty Company, bondsman of the said DeWitt C. Vanderbilt as aforesaid, as it or she may be advised."

Accordingly, in May, 1916, Mabel Vanderbilt, who had then attained her majority, filed a duly verified petition in the Essex County Orphans' Court, setting forth the foregoing facts and charging that DeWitt Clinton Vanderbilt, as guardian of her estate, failed in his duty and committed a breach of his trust in failing to dispose of the Pennsylvania Railroad stock and the American Express Company stock at a time when he might have obtained a favorable price for the same, and that as a result of such neglect of duty and breach of trust, the petitioner's estate had suffered a depreciation of about \$4,000, for which William S. Woodhull, as administrator of the estate of DeWitt Clinton Vanderbilt, should have been charged upon the settling of his account. The petition then prayed that the decree of the Orphans' Court made October 22, 1915, settling the account in question, might be opened, vacated and set aside, and that the petitioner might have leave to file exceptions to the account in the particulars named. To this petition, the United States Fidelity and Guaranty Company, surety on the guardianship bond of DeWitt Clinton Vanderbilt, filed an answer admitting the facts set forth in the petition, but denying the charge thereof. After hearing and argument, the Essex County Orphans' Court ordered that the decree of October 22, be opened for the purpose of permitting Mabel Vanderbilt to file exceptions to the account of DeWitt Clinton Vanderbilt, guardian, as filed by William S. Woodhull, administrator of the estate of DeWitt Clinton Vanderbilt, deceased, in a form annexed to and made part of the order. The ex-

ceptions thus permitted to be filed attacked the account, first, because the accountant asked allowance for the thirty-two shares of Pennsylvania Railroad Company stock at \$2,104, whereas the same were worth, at the time of the death of accountant's intestate, only \$1,776; and, secondly, because the accountant asked allowance for thirty shares of the stock of the American Express Company at the sum of \$7,050, whereas the same were worth, at the time of the death of accountant's intestate, only \$3,720 (p. 23). It will be noted that the depreciation thus claimed by the exceptions amounted to \$3,658, in an estate of approximately \$15,000—in other words, about a quarter of the value of the entire estate. From the order of the Essex County Orphans' Court opening its own decree and permitting these exceptions to be filed, the United States Fidelity and Guaranty Company appealed to the Prerogative Court, which Court affirmed said order, and the appellant has now appealed to this Court.

ARGUMENT.

The only question presented by the appeal concerns the power of the Orphans' Court to open its own decree settling the account of the guardian, the time for an appeal from the decree in question having passed.

(a)

Without reference to the peculiar language of the decree of the Orphans' Court under review, by which it limits its own operation it would seem that the Orphans' Court, in a proper case for the correcting of fraud, mistake or other injustice, has inherent power to open, revise, modify and vacate its own decrees. The jurisdiction of the Orphans' Court, though limited, is not special as is that of

the Surrogate. On the contrary, the Orphans' Court is a court of general jurisdiction over the matters committed to it by statute, and, as such, has general power to revise its own proceedings. The distinction between the Orphans' Court and the Surrogate in this respect has been recently pointed out by the Court of Errors and Appeals in *Mellor v. Kaighn*, 89 N. J. L., 544, in which the power of the Surrogate to open or vacate his decree for any cause was denied upon the express ground that his jurisdiction, unlike that of the Orphans' Court was special and not general and extended only to the express powers granted him by statute. See also *Vincent v. Vincent*, 70 N. J. Eq., 272, and cases collected there.

Since the Orphans' Court has general power to revise its own decree, we need only inquire whether or no the power was properly exercised in the present case. It would appear that the Fidelity Trust Company, as substituted guardian for Mabel Vanderbilt, should have challenged the account as to the items in question. It failed to do so, whether by negligence or mistake. The minor was thus deprived of an opportunity to show the improper administration of her estate, of which she alleges that her original guardian was guilty. The propriety of the Court's opening its decree to examine into the matters complained of would seem, on the face of it, to be unquestioned. The time for appeal had gone by. The petition for the re-opening of the decree was filed with reasonable promptness and no other remedy was open to the petitioner. In any collateral suit against the estate of DeWitt Clinton Vanderbilt, she would be confronted with the decree settling his account.

If an inquiry into the discretion of the Orphans' Court in thus revising its own decree, is warrant-

able, surely the facts of the present case amply justifies the exercise of such discretion. Furthermore, the authority of this Court sustains the action of the Orphans' Court in this case. In *Jackson v. Reynolds*, 39 N. J. Eq., 313, the Orphans' Court opened its own decree settling an intermediate account of trustees because it was made to appear that commissions had been allowed in excess of the sum fixed by the statute. This Court sustained the action of the Orphans' Court and Reed, J., said (p. 315):

“That the power existed in the Orphans' Court to correct the error is, I think, manifest.

“Regarding the method of procedure adopted in the present case, it may be said that probably the better practice in dealing with a partial account, in which an error is said to exist is to attack it directly by a rule to set it aside in respect to the matter complained of.”

It will be noted that the respondent in the present case adopted the practice thus recommended by this Court.

The case of *Liddel v. McVickar*, 11 N. J. L., 44, is also instructive upon this point, and the case of *Culver v. Brown*, 16 N. J. L., 533, decided in the Prerogative Court by Chancellor Green, sitting as an Ordinary, is direct authority in support of the action of the Orphans' Court in this case.

If upon this appeal the Court should think proper to inquire into the legal merits of the respondent's exceptions as a basis for the proper exercise of the discretion of the Orphan's Court in opening its decree, it is only necessary to refer to the undisputed fact, appearing from the petition and from the account, that the securities in question had declined

in value during the administration of the estate by the guardian, in an aggregate amount nearly one-half of their value at the beginning of the guardianship. This in itself constitutes a *prima facie* case of breach of trust and the burden of proof rests upon the guardian to explain his retention of such securities in the minor's estate. *Beam v. Paterson Safe Deposit & Trust Company*, 81 N. J. Eq., 195. In the case cited this Court subsequently held (83 N. J. Eq., 628) that the trustee in that case had adequately explained its retention of securities that had suffered an abnormal shrinkage. In the present case, the guardian, by the administrator of his estate, will have an opportunity to make such an explanation, if any there be, upon the hearing of the exceptions that the Orphans' Court has permitted the respondent to file. No injustice will result to the estate of the guardian or to the surety of his bond. If the retention of the securities can be justified, the items in question, will, of course, be allowed. If, on the other hand, as claimed by the respondent, the retention of the securities constituted a breach of trust, the account will be surcharged and the respondent will become entitled to the amount which her estate has lost through the guardian's maladministration.

It follows that the Orphans' Court had the power to make the order complained of and exercised the power in a proper case.

(b)

At the time the account was noticed for settlement and on the day for which the settlement was appointed, Mabel Vanderbilt was still a minor and had no notice of the proceedings, nor did she appear to the same subsequently on the day when the decree was actually made, October 22, 1915, by which time she had attained her majority. In the

very nature of the case, therefore, the account and the decree thereon could have been only intermediate in character, although the accountant referred to and entitled his account "final." But the Orphans' Court, so far from regarding the account or decree as final, incorporated in the decree an express reservation (p. 11, ll. 12-20) granting to the Fidelity Trust Company, substituted guardian of Mabel Vanderbilt, and to Mabel Vanderbilt herself, leave to take such proceedings against the estate of DeWitt Clinton Vanderbilt, or against the United States Fidelity and Guaranty Company as they might be advised. In opening the decree, the Orphans' Court was careful to recite, as a ground for so doing, the express reservation referred to and also the fact that the account in question was in reality an intermediate account (see Order, p. 21, l. 24 to O. 22, l. 8). The nature of the decree and its express reservation are therefore such as amply to justify the Orphans' Court in permitting a further inquiry into the items of the account. Indeed, the Orphans' Court, in making the reservation in the decree, must have contemplated such further inquiry, and left it open to the respondent to take such action for the instituting of such an inquiry as she might be advised. It now clearly appears that the proper practice in such a case is that adopted by the respondent. See *Jackson v. Reynolds*, supra. The propriety and correctness of the order complained of may, therefore, rest upon the language of the original decree itself, reserving to the respondent the very right that the appellant now seeks to deny. This particular aspect of the case speaks for itself and needs no recourse to the general principles of the power of the Orphans' Court heretofore discussed. In opening its own decree to permit exceptions to be filed, the Orphans' Court was,

in reality, but taking steps for disposing of a matter which, on the very face of the original decree, was left unsettled.

The foregoing brief is substantially that submitted to the Prerogative Court. I have nothing to add to it except to say that the effort of the appellant in the brief served in this Court seems to be to forestall a decision on the merits without the evidence to which the respondent is entitled. All that respondent in petitioning the Orphans' Court to open its decree was called on to do was to make a *prima facie* case. Whether or not the stocks in question were fluctuating or whether or not the circumstances were such as to warrant the guardian in retaining them will depend on facts incumbent on the appellant to prove before the Orphans' Court in answer to the permitted exceptions.

Of course there is nothing in suggestion of counsel for appellant that the stocks were specific legacies. They were general under all the adjudged cases. The respondent received half the "balance" of the estate of testatrix. See the will (case, p. 17). But even if the stocks in question were specifically bequeathed, it does not follow the guardian of the infant legatee was obliged to hold them during the minority of his ward. On the contrary, his duty was the same toward those stocks as toward any other investment that might come to his hand.

The order of the Prerogative Court affirming the order of the Orphans' Court opening the decree of October 22, 1915, and permitting the respondent, Mabel Vanderbilt, to file certain specific exceptions, should be affirmed with costs to the respondent.

GILBERT COLLINS,
Of Counsel with the Respondent,
Mabel Vanderbilt.

John R. Smith

Green Bond