

I N D E X

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NOTICE OF ASSESSMENT

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THE BOARD OF SUPERVISORS

OF THE COUNTY OF

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NOTICE OF APPEAL.

(Filed July 31, 1931.)

NEW JERSEY PREROGATIVE COURT.

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In the Matter of the Ap-
peal from the Decree of
the Orphans' Court of
the County of Atlantic,
dated January 14, 1930,
probating a paper writ-
ing dated September 7,
1928, as the last will and
testament of ALBERT AL-
LEN, deceased, and di-
recting letters testamen-
tary thereon to KATHRYN
AILES.

Notice of Appeal.

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Kathryn Ailes, the executrix of the last will and
testament of Albert Allen, deceased, hereby appeals
from so much of the final decree made in this Court
in the above-entitled cause, dated the 17th day of
November, 1930, by the Ordinary upon the advice
of Robert H. Ingersoll, Vice-Ordinary, as provides
for the payment to Allen B. Endicott, Jr., Proctor of
the caveator, Lillian Seltzer Reulens, of seventy-
five hundred dollars, together with costs and ex-

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penses, and to W. Elmer Brown, Jr., Proctor of Thomas Allen and others, next of kin, of twenty-five hundred dollars, together with costs and expenses; said sums to be paid out of the estate of said testator, to the Court of Errors and Appeals in the last resort in all causes.

HENRY W. LEWIS,

Proctor for Kathryn Ailes.

10

LEWIS STARR,

Of Counsel.

Dated July 30, 1931.

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

LEWIS STARR,

*Of Counsel with Kathryn Ailes,
Appellant.*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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In the Matter of the Ap-
peal from the Preroga-
tive Court with respect
to the order of the lat-
ter, providing for the
payment of counsel fees
and costs to ALLEN B.
ENDICOTT, JR., Proctor
of LILLIAN SELTZER
REULENS, and W. ELMER
BROWN, Proctor of
THOMAS ALLEN, *et als.*

On Appeal.
Petition of Appeal.

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*To the Honorable Judges of the Court of Errors and
Appeals:*

The petition of Kathryn Ailes, of the City of 30
Pleasantville, New Jersey, respectfully shows:

1. The petitioner finds herself aggrieved by a final
decree made in the New Jersey Prerogative Court
by his Honor, Edwin Robert Walker, Ordinary of

the State of New Jersey, bearing date November 17, 1930, in a certain cause pending in the said New Jersey Prerogative Court entitled, "In the Matter of the Appeal from the Decree of the Orphans' Court of the County of Atlantic, dated January 14, 1930, probating a paper writing dated September 7, 1928, as the last will and testament of Albert Allen, deceased, directing the issue of letters testamentary thereon to Kathryn Ailes," in this respect, to wit:

Said decree adjudges that there be paid "to said Allen B. Endicott, Jr., the sum of seventy-five hundred dollars (\$7,500), together with costs and expenses, as set forth in said decree, and to said W. Elmer Brown the sum of twenty-five hundred dollars (\$2,500), together with costs and expenses, all such sums to be paid out of the estate of said testator."

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2. Said petitioner appeals from that portion of the decree above set forth, upon the ground that the same is erroneous in that the allowance of seventy-five hundred dollars (\$7,500), and costs and expenses made to the said Allen B. Endicott, Jr., and twenty-five hundred dollars (\$2,500), and costs and expenses to W. Elmer Brown, as provided by the said decree of the Ordinary, are grossly excessive, in view of the size of the estate of the said Albert Allen, and the services performed by the said Allen B. Endicott, Jr., and W. Elmer Brown.

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Petitioner, therefore, prays that so much of the said decree of the Ordinary as above set forth, may,

in the particulars aforesaid, be set aside and reversed.

Dated December 8, 1931.

HENRY W. LEWIS,

and

LEWIS STARR,

Proctors for Kathryn Ailes.

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We consent to the filing of the foregoing amended petition of appeal.

ALLEN B. ENDICOTT, JR.,

*Proctor for Lillian Seltzer
Reulens.*

W. ELMER BROWN,

Proctor of Thomas Allen, et als.

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AFFIDAVIT.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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In the Matter of the Ap-
 peal from the Preroga-
 tive Court with respect
 to the order of the lat-
 ter, providing for the
 payment of counsel fees
 and costs to ALLEN B.
 ENDICOTT, JR., Proctor
 of LILLIAN SELTZER
 REULENS, and W. ELMER
 BROWN, Proctor of
 THOMAS ALLEN, *et als.*

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On Appeal, &c.
 Affidavit.

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

30 KATHRYN AILES, being duly sworn according to
 law, on her oath, deposes and says:

Attached hereto and forming part hereof is a
 statement of the assets of the personal estate of
 Albert Allen, deceased, made pursuant to an inven-
 tory and appraisement filed by Robert M. Boyle,
 ancillary administrator *pendente lite* of Albert Al-

len in Philadelphia County, and also an inventory and appraisement filed by the Guarantee Trust Company, administrator *pendente lite* in Atlantic County.

Said statement is true and correct, and accurately shows the amount of the inventory and the loss sustained in the value of securities since the initiation of the litigation, respecting the probate of the will of Albert Allen, deceased. 10

The said Allen also owned real estate in New Jersey as follows:

1. Block 172, Lot 47, Greenway Avenue, Pleasantville, N. J. Value \$100.

2. Block 314, Lot 1, Iowa and Leeds Avenues, 25' x 125', value \$150.

The said testator also owned, at the time of his decease, Lots 1155 and 1154, situate in the Township of Moreland, County of Montgomery and State of Pennsylvania, on the east side of Madison and Sheldon Road, containing in front fifty feet and extending in length or depth one hundred twenty-five feet, upon which the assessment for 1930 was \$200. 20

The net worth of the estate, as shown by the annexed statement, will be further diminished by payment of Federal Estate taxes, New Jersey transfer inheritance tax, cost of administration and miscellaneous debts; also commissions due the administrators in New Jersey and Pennsylvania, counsel fees and costs in Pennsylvania, where the bulk of the estate is located, and also counsel fees and costs in the State of New Jersey of the administrator and 30

counsel fee and costs of counsel representing the executrix of the will, and also for counsel fees and costs, representing the executrix for services in the Prerogative Court and the Court of Errors and Appeals.

KATHRYN AILES.

10 Sworn and subscribed to before me this 30th day of December, 1931.

C. C. JEREMIAH,
Notary Public.

(Seal)

My commission expires June 7, 1934.

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STATEMENT OF THE LOSS IN THE ESTATE OF ALBERT ALLEN, DECEASED, ACCORDING TO THE INVENTORY AND APPRAISEMENT FILED BY ROBERT M. BOYLE, ANCILLARY ADMINISTRATOR PENDENTE LITE OF ALBERT ALLEN, DECEASED, IN PHILADELPHIA COUNTY, PA., VIZ:

Amount of Principal as per Inventory filed.....			\$146,051.61
Loss of Principal in investment of this estate as follows:			
1. Total loss in the value of 100 shares of the common capital stock of the Northwestern Trust Company of Philadelphia, occasioned by the fact that this company has become insolvent and taken over by the Banking Department of Pennsylvania on July 17, 1931, and the stock has become worthless.	\$101,000.00		
2. Loss in the value as of 12/21/1931 of 5 shares of stock of the Pleasantville Trust Company of Pleasantville, N. J., as shown by letter dated 11/28/1931 of D. S. LeCompte, Treasurer:			
Appraised in the Inventory @.....	\$1,125.00		
Re-appraised as of 11/28/1931.....	875.00	250.00	101,250.00
Present value of the principal of the estate in Pennsylvania. . . .			\$44,801.61

STATEMENT OF THE LOSS IN THE ESTATE OF ALBERT ALLEN, DECEASED, ACCORDING TO THE INVENTORY AND APPRAISEMENT FILED BY GUARANTEE TRUST COMPANY, ADMINISTRATOR PENDENTE LITE IN ATLANTIC COUNTY, NEW JERSEY, VIZ:

Amount of Principal as per Inventory filed....			\$16,308.48
Additional Principal not included in the Inventory filed, collected since date of decedent's death, being amount of first mortgage on 3121 VanKirk Street Philadelphia			
		1,200.00	
Total principal.			\$17,508.48
Loss of Principal in investment of this estate as follows:			
1. Total loss of second mortgage given by Stanley Mitchell to Albert Allen, dated July 9, 1928, covering premises 7 E. Oakland Ave., Pleasantville, N. J., which was foreclosed under the 1st mortgage and bought in for some other account other than estate.....	\$494.00		
2. Total loss of second mortgage given by Enoch Berry & Sara Louise Boyle to Albert Allen, dated August 30, 1928, covering premises North line of Reading Ave., Pleasantville, N. J., foreclosed under 1st mtge. and bought in for some other account other than this estate.....	500.00		
3. Total loss of second mortgage given by Edgar Sapp and Mary Sapp to Albert Allen, dated September 10, 1928, covering premises Hazelwood & Madison Aves., Egg Harbor Township, Atlantic Co., N. J., foreclosed under 1st mtge. and bought in for some other account other than this estate..	600.00	\$1,594.00	
4. Loss in value of 50 shares of United Gas Improvement Company:			
Appraised @.	\$7,300.00		
Present market value as of 12/21/1931...	5,475.00		
Loss.	\$1,825.00	1,825.00	
Total loss.		\$3,419.00	3,419.00
Present value of Principal of Estate in New Jersey.			\$14,089.48
Net value.			\$58,891.09

Affidavit and Statement

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

In the matter of the Appeal from the Prerogative Court with respect to the order of the latter, providing for the payment of counsel fees and costs to Allen B. Endicott, Jr., Proctor of Lillian Seltzer Reulens, and W. Elmer Brown, Proctor of Thomas Allen, *et als.*, in the matter of the Will of ALBERT ALLEN, deceased.

ON APPEAL FROM THE PREROGATIVE COURT.

BRIEF ON BEHALF OF KATHRYN AILES,
EXECUTRIX APPOINTED IN THE WILL
OF ALBERT ALLEN, DECEASED, ON THE
QUESTION OF COUNSEL FEES ALLOWED
BY THE PREROGATIVE COURT.

STATEMENT OF THE CASE.

A contest with respect to the will of Albert Allen, deceased, arose in the Orphans' Court of Atlantic County, upon caveats filed by Lillian Seltzer Reulens and Thomas Allen and others. After a hearing the

will was admitted to probate. The contestants appealed to the Prerogative Court and the decree of the Orphans' Court was affirmed (Main Case, p. 21, *et seq.*). An appeal is now pending in this court from the order of affirmance. Such appeal will be referred to herein as the main appeal.

At the time the Orphans' Court ordered the probate of the will, it was assumed that the estate of the testator would approximate \$140,000. The Orphans' Court Judge made the following allowances:

To the Proctors of the Proponent.....	\$10,000.
Costs and expenses.....	826.05
To Allen B. Endicott, Jr., Proctor for Caveators	10,000.
Expenses	1,105.67
To W. Elmer Brown, Jr., Proctor of Thomas Allen and others, counsel fee	3,000.
Costs	463.50

The order of the Orphans' Court Judge provided that all counsel fees, costs and expenses should be paid out of the estate.

The executrix appealed from the allowances made by the Orphans' Court to the Prerogative Court, and the latter made the following revisions:

Proctor for Proponent—\$7,500 and costs.

Allen B. Endicott, Jr., Proctor of Caveators—\$7,500 and costs as allowed by the Orphans' Court.

W. Elmer Brown, Jr.—\$2,500, together with costs allowed by the Court, all of which to be paid out of the estate (Main C., p. 54, l. 25).

It may not be inappropriate to refer to the fact

that even in the Orphans' Court, counsel for the executrix objected to any allowance, by way of counsel fees, in excess of \$5,000 to each side, but regardless of this objection, the Orphans' Court allowed a counsel fee of \$10,000 to the proponents, and \$13,000 to the caveators. These allowances were reduced, as herein set forth, by the Vice-Ordinary.

The question involved in this appeal is the propriety of the allowances, by the Prerogative Court, to all counsel, in view of the services performed, the size of the estate and particularly the value of the latter at the present time, as shown by an affidavit of the appellant, printed on page 6 of the State of the Case, with reference to this appeal.

The gross personal estate of the testator, at the present time, is approximately \$58,000. This, however, does not cover deduction for debts, Federal Estate and New Jersey transfer inheritance taxes, costs of administration, commissions in reference to the main administration in New Jersey and ancillary administrations here and in Pennsylvania, and counsel fees which may be allowed with respect thereto.

ARGUMENT.

The record in the main case shows that approximately nine hundred fifty pages of testimony was taken, in the Orphans' Court. Seven days were devoted in the production of proofs in open court, eighteen witnesses were sworn on behalf of the caveators and thirty witnesses produced on the part of the proponent. One day was devoted to argu-

ment in the Orphans' Court, voluminous briefs were presented by each side. The depositions of witnesses were taken in Cape May City upon one occasion, and in Winchester, Virginia, on another day, both at the instance of the caveators.

In view of these facts, and in consideration of the amount of the estate at that time, and the expenses incident to the primary and ancillary administrations, counsel for the executrix expressed to the Orphans' Court the hope that an allowance of \$10,000 to all counsel for both sides was ample for the services performed. This proposition, however, was not acceded to by the Orphans' Court Judge.

When the appeal was heard in the Prerogative Court, the executrix made the same proposition as to the amount of fees, but \$7,500 was allowed to the latter's attorney, which was in excess of the amount suggested, and \$10,000 allowed to counsel for the caveators.

The aggregate of the fees allowed by the Prerogative Court, and the amount of expenses to be paid out of the estate are approximately \$20,000, which is substantially one-third of the value of the gross estate at the present time. Such sums are grossly excessive.

It may be that this question cannot appropriately be disposed of at the present time, based upon the depreciation of the estate since the decree appealed from was made in the Prerogative Court. If this Court is of the opinion that it cannot take into consideration, upon the question of counsel fees, any change in the status of the estate accruing since the decree appealed from was made, privilege should be afforded the executrix to make an application

either to the Prerogative Court or to the Orphans' Court for an appropriate revision of fees, based upon the present status of the estate, so that the lower Courts be advised that the executrix is not precluded from making such application, either because of the affirmance of the decree appealed from or the dismissal of the same.

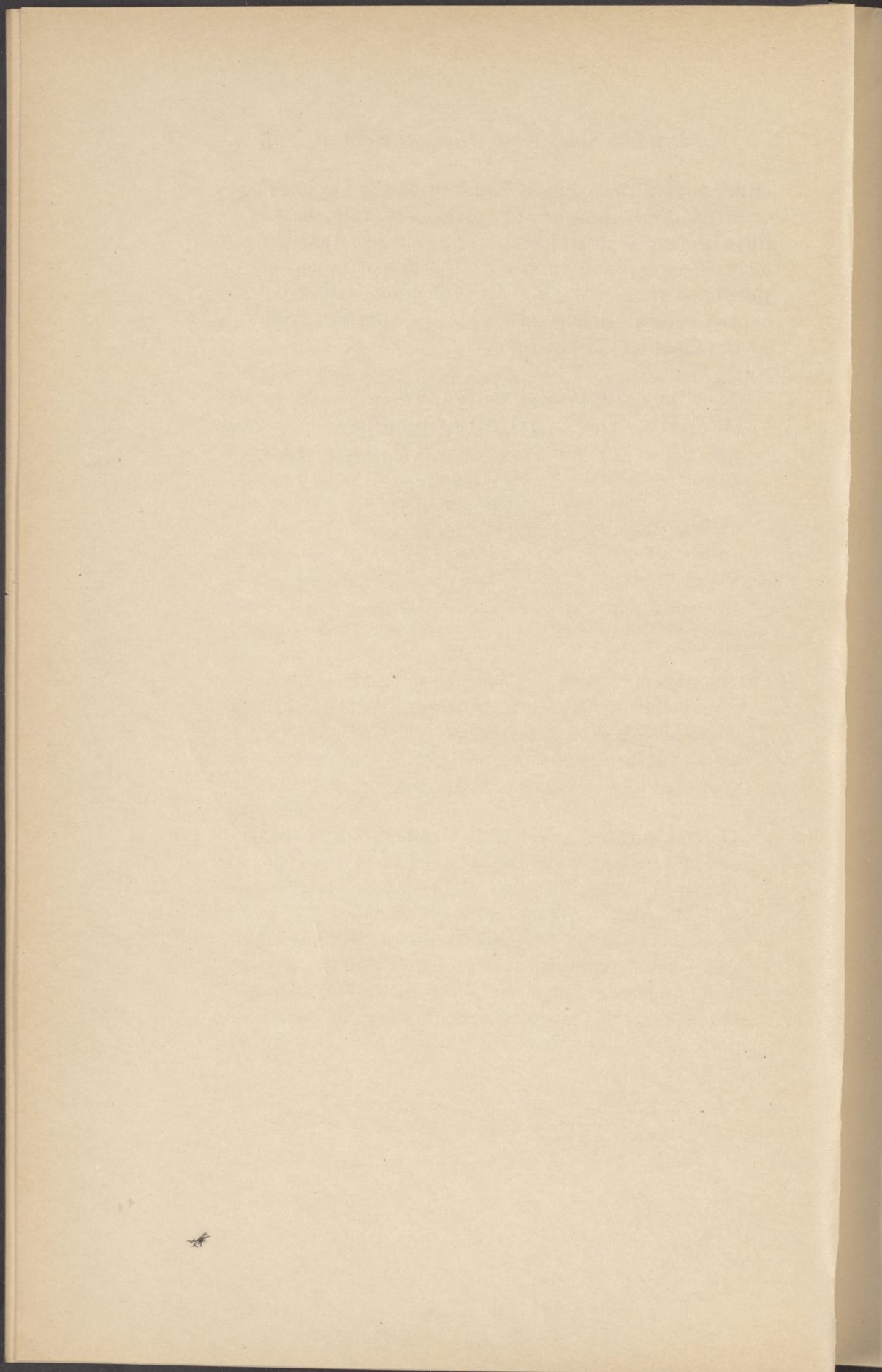
Respectfully submitted,

HENRY W. LEWIS,

*Proctor of Kathryn Ailes,
Executrix.*

LEWIS STARR,

Of Counsel.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

In the Matter of the Appeal from the Prerogative Court with respect to the order of the latter, providing for the payment of counsel fees and costs to ALLEN B. ENDICOTT, JR., Proctor of LILLIAN SELTZER REULENS, and W. ELMER BROWN, Proctor of THOMAS ALLEN, *et als.*, in the matter of the Will of ALBERT ALLEN, deceased.

ON APPEAL FROM THE PREROGATIVE COURT.

BRIEF ON BEHALF OF THOMAS ALLEN,
SARAH A. REGER, WM. M. ALLEN, ANNA
M. GRIMM, BESSIE LINCOLN, THOMAS J.
ALLEN, HERBERT S. LANDELL, MARY A.
FAIRLEY, SARAH COBB ALLEN, EDYTHE
A. SAVIN AND MAE TARR, HEIRS AND
NEXT OF KIN.

A caveat was filed in the above-entitled cause by Lillian Seltzer Reulens, contesting the validity of the last will and testament of the above-named decedent. All of the above-named parties, in whose behalf this

brief is filed, were cited to appear in response to the filing of said caveat. A hearing was had in due course which resulted in a decree denying the claim of the caveator and admitting the will to probate. Said caveator, together with the heirs and next of kin, filed an appeal to the Prerogative Court. After hearing on the appeal, the order of the Orphans' Court was affirmed.

An appeal was thereafter taken by Lillian Seltzer Reulens, caveator, which appeal is now pending in this Court. This latter appeal is not joined in by said heirs and next of kin.

At the time of the hearing before the Atlantic County Orphans' Court, fees were allowed to counsel for the respective parties as follows:

To proctors of the proponent \$10,000.00.

To proctor for the caveator \$10,000.00.

To proctor for the above heirs and next of kin \$3,000.00.

In addition to the above fees, the respective parties were allowed their costs and expenses.

At the time of the appeal to the Prerogative Court, the executor of decedent's will appealed from the above allowances. The said fees were revised by the Prerogative Court as follows:

To proctor for proponent \$7,500.00.

To proctor for caveator \$7,500.00.

To proctor for heirs and next of kin \$2,500.00.

The executor of said decedent has appealed to this Court from the allowances as revised by the Prerogative Court.

It is with reference to the appeal from the allowance of the Prerogative Court to W. Elmer Brown,

Jr., Proctor for the above-named heirs and next of kin, that this brief is directed.

The fee allowed to W. Elmer Brown, Jr., proctor for the heirs and next of kin, was authorized by our Orphans' Court Act, Section 197. In Volume I, of Kocher's New Jersey Probate Law, page 232, it is said:

“Under Section 197 of the Orphans' Court Act, the Court is authorized to include counsel fees to both sides as part of the costs and expenses of the litigation; and in a will contest initiated by a caveat, where persons in interest other than the caveator and proponent have appeared and taken part in the controversy, it is lawful to allow fees to counsel representing these proper parties, as well as to those who represent the necessary parties; in other words, the controversy being inaugurated, all parties who lawfully participate in it have an equal standing before the Court and an equal claim to its consideration.”

There can be no question that this is a proper case for the allowance of counsel fees to all the parties involved in the litigation.

While the heirs and next of kin did not file the caveat, they were cited to and did appear as persons in interest. The interests of the heirs and next of kin so far as this contest was concerned, were one and the same. Counsel for the heirs and next of kin, therefore, collaborated with and assisted the proctor for the caveator in the preparation of the case for trial before the Orphans' Court, in the con-

duct of the trial, and also in the prosecution of the appeal in the Prerogative Court.

The preparation of the case for trial in the Orphans' Court involved a great deal of investigating, the interviewing of many witnesses, securing their presence in court, and also the thorough investigation of the law as the same might be applied to the facts of this case.

In connection with the preparation for trial, it was also necessary and important that counsel for the heirs and next of kin, and counsel for the caveator, should confer from time to time. The taking of testimony in the trial before the Orphans' Court consumed 8 days, and in addition thereto testimony was taken in Cape May City, New Jersey, and in Winchester, Virginia. Counsel for the heirs and next of kin was not present when the testimony was taken at Cape May and Winchester, but he was in constant attendance before the Court during the eight days of trial at Atlantic City. The testimony was transcribed, consisting of 952 typewritten pages. Eighteen witnesses were called on behalf of the caveator and the heirs and next of kin. Twenty-eight witnesses were called on behalf of the proponent.

The will of the decedent was admitted to probate by the order of the Orphans' Court, but the Judge of that Court, in his opinion, said that the question submitted to him was "a very close one."

In this status of affairs, on application being made therefor, the Orphans' Court allowed fees to all counsel, including counsel for the heirs and next of kin.

It is noted that the heirs and next of kin are re-

ferred to in appellant's brief as caveators. Said heirs and next of kin, however, did not file caveat, but appeared in answer to the caveat which had been filed by Lillian Seltzer Reulens, chief beneficiary under a prior will of the decedent.

The order of the Orphans' Court was appealed to the Prerogative Court. Separate appeals were taken by the caveator and by the heirs and next of kin. Said appeals were combined and argued as one. Counsel for the caveator and counsel for the heirs and next of kin met several times in conference to discuss and prepare the brief and argument on said appeal. Both of said counsel participated in the preparation of the brief and in the argument on the appeal. The brief, as filed with that Court, consumed 53 typewritten pages.

Appeal having been taken to the Prerogative Court by the proponent of the will, contesting the allowances made to respective counsel, that Court, by its order, reduced the fees allowed by the Orphans' Court, and said fees as reduced were allowed in consideration of the work done at the main trial and on said appeal. The fee allowed by the Prerogative Court to counsel for the heirs and next of kin was \$2,500.00. Said Court also allowed said heirs and next of kin their costs and expenses. It is from this award that proponent has appealed.

It is to be borne in mind that the Judge of the Orphans' Court, as well as the Vice-Ordinary of the Prerogative Court, had an opportunity of knowing, by actual presence, the labor performed by counsel for the respective parties. The award or allowance made to counsel ought not to be set aside on this

appeal unless it quite conclusively appears that the allowance was excessive.

The principal reason that the caveator has appealed from the allowance made by the Prerogative Court is that the value of the estate has greatly depreciated since then, due to the financial depression which has existed for the past two years or so. Appellant adopts the very unusual procedure of filing her own affidavit as proof of the depreciation. This is certainly not the proper method of bringing the facts before the Court. It is in the nature of testimony offered by witness without an opportunity of cross-examination. Assuming that the depreciation has occurred to the extent claimed, it does not seem fair that counsel should be asked to accept less than a reasonable compensation for services rendered just because of that. Certainly in view of all the circumstances attendant to the trial of this case before the Orphans' Court and the prosecution of the appeal before the Prerogative Court, the allowance of \$2,500.00 made to W. Elmer Brown, Jr., counsel for the heirs and next of kin of the decedent, together with costs and expenses is not excessive. And the same, therefore, ought not to be disturbed.

Respectfully submitted,

WM. ELMER BROWN, JR.,

*Counsel for Thomas Allen, Sarah
A. Reger, Wm. M. Allen, Anna
M. Grimm, Bessie Lincoln,
Thomas J. Allen, Herbert S.
Landell, Mary A. Fairley,
Sarah Cobb Allen, Edythe A.
Savin and Mae Tarr, heirs
and next of kin.*

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