

New Jersey Court of Errors and Appeals.

No. 139, March Term, 1917.

Between

J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators de bonis non with the Will annexed of Paul Farnum, deceased; J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators de bonis non with the Will annexed of James Edward Farnum, and as Administrators de bonis non of George W. Farnum, deceased,

Complainants-Respondents,
vs.

THE PENNSYLVANIA COMPANY for Insurances on Lives and Granting Annuities, as Trustees of the Trust Fund of \$100,000.00 with appreciations and accumulations thereon, under the Trust created under the last Will and Testament of Paul Farnum, deceased; THE PENNSYLVANIA COMPANY for Insurances on Lives and Granting Annuities, as Executor and Trustee under the last Will and Testament and Codicils thereto of SARAH E. (FARNUM) BATTERSON, deceased, and FLORENCE M. MOBERLY,

Defendants-Appellants.

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On Appeal
from

Chancery.

Sat below:

Walker C.

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Backes, V. C.

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Brief on Part of Complainants-Respondents.

Paul Farnum, who died in the Township of

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Willingborough, County of Burlington and State of New Jersey in October, 1859, left a last Will and Testament dated May 28, 1856, and a codicil (unimportant in this proceeding) which were duly proved on October 31, 1859, before the Surrogate of the County of Burlington. (State of Case pp. 8, 18.)

The pertinent paragraph of his will is as follows:

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"In addition to the House and lot of land in Arch Street Philadelphia in the hands of a trustee for the use of my daughter Sarah E. Farnum, I give and bequeath unto the Pennsylvania Company for insurance on lives and granting annuities located in the City of Philadelphia Pa. one hundred thousand dollars in bonds or stocks, my said daughters choice of such as I may die possessed (Except Bank Stock which I divide between my sons) in trust nevertheless for the use of my said daughter Sarah E. Farnum, the interest or dividends arising therefrom to be paid by the said Company to the sole order of my said daughter semi-annually during the term of her natural life, and not be liable for the debts nor affected by the extravagance or misfortunes of any husband she may marry. *And at the death of my said daughter the principal sum and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company or trustees to*

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pay over to such person or persons as my said daughter by any instrument of writing in the nature of a Will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct limit and appoint, or designate. My will and design is that the house and lot in Arch Street shall pass in like manner to such person or persons as she may designate (provided however that I give the said Company my said trustee to change any of the securities deposited with them whenever they may think proper during the life time of my aforesaid daughter."

In 1866, seven years after her father's death and ten years after his will was made Sarah E. Farnum became the wife of Herman G. Batterson, who died in 1902 (p. 10).

On or about June 27, 1915, said Sarah E. (Farnum) Batterson died, leaving no issue (p. 10). She left a last Will and Testament dated February 2, 1912, a first codicil dated April 23, 1913, and a second codicil dated October 15, 1914, all of which were admitted to probate by the Deputy Register for the Probate of Wills &c., in and for the City and County of Philadelphia on July 15, 1915 (pp. 10, 25). 10

Respondents, who are the legal representatives of Paul Farnum, the donor of the power, as well as of George W. Farnum and James Edward Farnum, the residuary legatees under the Will of Paul Farnum, (pp. 8, 11, 13) filed their bill in the Court of Chancery seeking an accounting of said fund of \$100,000 held under the trust created in the Paul Farnum Will, and a construction of said Will, so that it might be determined whether or not the said bequest of \$100,000 passed to the executor and trustee of the last Will and codicils of Mrs. Batterson, or whether the said bequest fell into and became part of the residuary estate of Paul Farnum; and a decree that said fund be paid to them. 20

Respondents claim that Mrs. Batterson did not exercise the power of appointment bestowed on her in the will of her father. 30

In her will dated February 2, 1912, in paragraph 73, (p. 37) she uses the following language in disposing of her residue:

"One-half of all the rest, residue and remainder of my estate, real, personal and mixed, including that over which I have or may have a power of appointment, * * * and the remaining one-half of said rest, 40

residue and remainder I give, devise and bequeath to the following named societies, persons, institutions and corporations in the proportion mentioned, viz.”

In the first Codicil of April 23, 1913, in paragraph 12 (p. 41) she makes certain modifications of the residuary clause of her Will, which are not material on this argument.

10 In the second Codicil dated October 15, 1914, in paragraph 9 (p. 44) she revokes all the provisions of the residuary clause of her Will, including necessarily her reference to the power of appointment, and also all the provisions of paragraph 12 in the first Codicil in the following language:

20 “I hereby revoke all the provisions of item Seventy-three in my said will and all the bequests therein contained and I also revoke all the provisions of Item Twelve in said first Codicil to my said will and all the bequests therein contained.”

She then disposes of the residue (p. 45) in several paragraphs, viz:

“13. Out of the rest, residue and remainder of my estate, I give and bequeath unto (naming beneficiaries and amounts).

“14. I give and bequeath one-fourth of said rest, residue and remainder of my estate unto (naming beneficiary).

30 “15. I give and bequeath one-fourth of said rest, residue and remainder of my estate unto (naming beneficiary).

“16. Whereas * * * I now give and bequeath unto (naming beneficiary) the sum of Five Thousand dollars absolutely, for the use of said Church, said sum to be paid out of my residuary estate.

“17. Out of said residue and remainder of my estate I give and bequeath unto (naming beneficiaries and amounts).

40 “18. All the rest, residue and remainder of

my estate remaining, I give bequeath and devise unto Miss Florence M. Moberly, who lives with me, absolutely."

It thus appears that if the express revocation by Mrs. Batterson of her reference to the power of appointment is to be wholly disregarded, as is contended by the appellants, then the residue of the estate, including the trust fund, will go to Mrs. Batterson's companion or attendant, Florence M. Moberly and her nearest blood relatives will be disinherited. 10

Soon after the death of Paul Farnum on April 12, 1860, the trust fund of \$100,000 was turned over to The Pennsylvania Company as Trustee (p. 107). The cash and securities constituting the trust fund at that time are disclosed in the account of the Trustee produced on the final hearing of this cause (p. 107) in which it charged itself as follows: 20

"With securities and cash received from the Executors of the Estate of Paul Farnum, deceased, composing the \$100,000 fund to be held in Trust in accordance with the provisions in the Will of the Testator, and the income thereof paid to Sarah E. Farnum (now Batterson) during life, as follows, viz:

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|--|--------|----------|
| 440 shs. Morris Canal & Banking Co., preferred stock at 109 $\frac{3}{4}$ | 48,290 | |
| 12,000 Morris Canal & Banking Co., 1st Mtge. 6% Coupon Bonds at 89 $\frac{1}{2}$ | 10,740 | 30 |
| 12,000 Delaware R. R. 6% Coupon Bonds (guaranteed by Phila. & Baltimore R. R. Company) at 87 | 10,440 | |
| Cash | 30,530 | 100,000" |

This account shows that on July 1, 1875, the Delaware Railway six per cent. bonds were sold for \$12,000. a profit of \$1560 (p. 108) that on 40

April 1, 1876 the Morris Canal & Banking Company first mortgage six per cent. bonds were sold for \$12,000, a profit of \$1260 (p. 108) and that on March 9th and April 11, 1911, the 440 shares of the Morris Canal & Banking Company preferred stock were sold for \$74,894.50, a profit of \$26,604.50 (p. 108). The aggregate of these gains is \$29,404.50; the principal fund according to this account is \$128,873.69 (p. 121). The supplemental

10 account shows the principal to be \$127,402.09.

It is obvious that substantially the entire accretion to the fund came from the stocks and bonds mentioned above.

The personal estate of Mrs. Batterson as inventoried, with a small item not inventoried, but admitted, of \$85.07 amounted to \$381,130.66 (pp. 93, 97). It is apparent that this is adequate to pay the general and specific legacies bequeathed

20 by her without resorting to anything claimed by appellants to belong to residuary estate.

In her original will (p. 25) in which she referred to the power of appointment (p. 37) Mrs. Batterson gave (not including jewelry in paragraph 68 inventoried at \$2,752.75) absolute pecuniary legacies amounting to \$339,250 and then disposed of the residue to various legatees (p. 37).

By her first codicil she made some modifications which are of no moment in this case (p. 38).

30 By her second codicil (p. 42) she explicitly revoked the provisions relating to the exercise of her power of appointment (par. 9, p. 44) and made some decided changes in her disposition of her estate. She reduced the absolute pecuniary legacies to \$294,250., revoked a legacy of \$50,000 to Lydia Tiffany and gave her a life estate therein (par. 7, p. 44) making with the gift of \$10,000 to Rev. S. M. Griswold, reduced to a life estate in the earlier codicil, (par. 7, p. 39). \$60,000 which upon

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the termination of the life estates fell into the residue, out of which residue there was a provision for certain small money legacies aggregating \$6600.

The preliminary account of the Executor of Mrs. Batterson's estate which was produced showed a total of assets of \$381,130.66 (p. 97) and a number of disbursements (including an item for collateral inheritance tax of \$17,049.82) amounting to \$20,375.19, leaving a balance of \$360,755.47 (p. 100). To this balance there should be added the income of the estate for one year which we estimate from the account (where the income for a little over seven months is shown as \$10,359.29 pp. 102, 3, 4) to be \$18,043.58.

In addition to the cash and securities which have been inventoried Mrs. Batterson's estate will be entitled, when the decree of the Chancellor in this cause is carried into effect, to a one-fourth share of the trust fund of \$100,000, now increased to over \$128,000. (p. 121). Owing to her failure to exercise the power of appointment the principal of this trust estate will pass as the residuary estate of Paul Farnum to the estates of his two sons, George W. Farnum and J. Edward Farnum (p. 21). Under the law of the State as laid down in *Clement v. Creveling*, 83 N. J. Eq. 318, the interest of the remaindermen in this fund became vested at the death of Paul Farnum, subject to the life estate of Mrs. Batterson and subject to being divested by her exercising the power of appointment. It follows that the fund is distributable by the administrators with the will annexed of Paul Farnum to the legal representatives of the residuary legatees, to be distributed by them in one instance to the next of kin of George W. Farnum and in the other to the legatees under the will of James Edward Farnum. As George W. Farnum died intestate and unmarried (pp. 11, 12, 72), his

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property went in equal shares to his brother J. Edward Farnum and his sister Sarah E. Batterson and his share of said fund is now divided equally between their estates. Her estate will therefore necessarily be increased by more than \$30,000. from this source.

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|------------------------------|--------------|
| She had thus a net estate of | \$360,755.47 |
| Plus one year's income of | 18,043.48 |
| Plus at least | 30,000.00 |

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more representing her interest in the \$100,000 fund on her failure to appoint, in all a grand total of

\$408,799.05

of her own personal estate, much more than enough to answer all the purposes of the Will and Codicils.

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We may assume that when Mrs. Batterson made her will and the codicils she contemplated the possibility of her estate increasing in value in two ways, first, by an appreciation in the value of the securities, and secondly, by accumulations of income in excess of her living expenses. The income of her own estate was approximately \$18,000 and the income from the trust fund about \$6,400 a year. In the words of the Vice Chancellor "There is no evidence to show how old she was or her condition of health, and although it appears that she died shortly after the execution of the last codicil, there is nothing in the case from which it can be assumed that she anticipated an early demise."

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It is reasonable, therefore, to assume that she contemplated ordinary longevity and the possibility of her estate increasing in value.

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Argument.

Counsel of complainants-respondents submit their discussion of the points of law and facts involved in this cause under the following heads:

First.

The law of the Domicile of the donor of the power controls both as to the validity of the execution of the power and its interpretation. (Page 11.) 10

Second.

Under the Law of New Jersey a general residuary clause does not carry property subject to a power of appointment. (Page 20.)

Third.

The intent to exercise a power must clearly appear on the face of the will or other instrument. (Page 25.) 20

Fourth.

The burden of proof as to whether the Donee of a power intended to execute it rests upon the party asserting execution. (Page 27.)

Fifth.

The proffered evidence of declarations by or conversations with the Donee of the power was properly rejected by the Court below. (Page 29.) 30

(a) The instructions by a testator to the scrivener who prepares the will are inadmissible to explain the intent of the testator where there is no latent ambiguity.

(b) Evidence to show or tending to show that the scrivener made a mistake either of fact or of law is inadmissible. 40

Sixth.

In cases like the present, where the question relates to the exercise of a power of appointment, extrinsic evidence of the condition of the personal estate of the Donee of the power is inadmissible. (Page 37.)

Seventh.

- 10 Where the words in a will admit of a clear and sensible interpretation, extrinsic circumstances are inadmissible to prove that a different meaning was intended. (Page 40.)

Eighth.

Words in a will are to be taken in their natural sense unless the meaning of the context is thus rendered unreasonable. (Page 43.)

Ninth.

- 20 Where there is no ambiguity or incongruity extrinsic evidence is inadmissible to change the primary meaning of the words used in a will where the words admit of a sensible interpretation. (Page 45.)

Tenth.

- 30 Where a testator has failed to exercise the power of appointment a Court of Equity has no power to execute it for him. (Page 47.)

Eleventh.

A power of appointment exercised by will may be revoked by a subsequent will. (Page 49.)

Twelfth.

- 40 The accretions to the \$100,000 fund representing the increase in value of the bonds and stocks composing the fund, become a part of the corpus and pass with it. (Page 50.)

(a) The profit arising from the sale of securities held by a trustee with direction to pay the income to a life tenant and the principal to a remainderman is an appreciation of the principal fund—an increase of the corpus and belongs to the remainderman and not to the life tenant.

(b) All the evidence tends to show that the increase belongs to the corpus.

First.

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The law of the Domicile of the Donor of the power controls both as to the validity of the execution of the power and its interpretation.

At the creation of the trust in the present case the donor of the power was a resident of New Jersey. So was the donee. Under the New Jersey law the will in question is not sufficient to pass the appointed property. The fund which was the subject of the power is held by trustees, who must account for it to the New Jersey Court. The law of the State of New Jersey, the domicile of the donor, applies as to the validity of the execution of the power and its interpretation.

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In his opinion in the court below, Vice Chancellor Backes finds:

“The donor, at the time of the creation of the power, was a resident of New Jersey. So was the donee. The power was created and exists by virtue of the laws of this state and it is settled law that the exercise of powers conferred by will is controlled by the law of the testator’s domicile, both as to the execution of the power and the interpretation of it. *Rosenbaum v. Garrett*, 57 N. J. Eq., 186; *Bingham’s Appeal*, 64 Pa. St., 345; *Sewall v. Wilmer*, 132 Mass., 131; *Tudor v. Vail*, 195 Mass., 18; *Cotting v. De Sartiges*, 17 R. I. 668; 16 L. R. A., 367; *Lane v. Lane*, 64 L. R. A., 849; *In re Philbrick*, 209 N. Y.

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585; *Prince De Bearn v. Winans*, 111 Md. 434; *Rhode Island Hospital Trust Co. v. Dunnell*, 83 Atl., 858: The selection of a foreign trustee and possession of the fund outside of the state, does not affect the rule, for the reason that the property belongs to the estate of a testator domiciled here, and is to be administered according to our laws under the supervision of our courts, to which the trustee is amenable."

- 10 In *Rosenbaum vs. Garrett* 57 N. J. Eq., 186 at 191, Vice Chancellor Reed says:

"The exercise of powers conferred by testator is controlled by the law of the testator's domicile both as to the execution of the power and the interpretation of it. *Bing. App. Cas.*, 64 Pa. St., 345; *Sewall vs. Wilmer*, 132 Mass., 131; *Tatnall vs. Hankey*, 2 Moo. P. C. 342."

- 20 In *Sewall vs. Wilmer*, 132 Mass., 131, the donor, a resident of Massachusetts, gave a power of appointment to his daughter, a resident of Maryland. She made a general residuary clause, which under the Massachusetts law was effective to pass the appointed property. Under the Maryland law this clause would not operate as to the appointed property. It was held that the Massachusetts law controlled and that the power was exercised. The distinguished jurist who speaks for the Court says (p. 136):

- 30 "It is true that as to personal property at least the construction and effect of a will and the distribution thereby made of the testator's estate are to be governed by the law of his domicile. * * * But the property of which Mrs. Wilmer had a power of appointment is not her property but the property of her father; and the instrument executed by her takes effect not as a disposition of her own property but as an appointment of property of her father under the power conferred upon her by his will. The domicile of the testator whose property is in ques-
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tion is therefore the domicile of the father. The property is held by trustees residing and appointed in Massachusetts and must be distributed here and the trustees cannot be compelled to account for it in Maryland or in any other State even if they should be personally found there. * * *

"As the property which Mrs. Wilmer has the power to dispose of is the property of a person domiciled here, is here held by trustees who can only be compelled to account for and distribute it here, and is part of her share of her father's estate, the other part of which clearly intended in her will, she has derived from the same source and as no testamentary form is requisite to her execution of the power she must be presumed to have intended that her will should have the effect by way of appointment attributed to it by the law of the only place in which it could be made operative as such and by the court upon which the duty of expounding it devolves."

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Sewall v. Wilmer has been frequently approved, recently in *Tudor v. Vail*, 195 Mass. 18, and *Walker v. Mansfield* 221 Mass, 600 at 603, 109 N. E., 647 at 648.

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In Re Philbrick, 209 N. Y., 585, 103 N. E. 315 (Nov. 1913) the donor of the power, a resident of New York, gave a power of appointment to his daughter, who became a resident of Italy. On a visit to New York she executed a will not referring specifically to the power of appointment. It was held that the law of New York, the donor's domicile, applied and that the general residuary clause was effective to pass the appointed property. The Court says at page 316:

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"We * * * prefer to put our decision squarely on the ground that the construction and effect of the will of Madame Franchetti, in so far as it involved an exercise of the power of appointment conferred by the will of her father is governed by the law of

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this state, the domicile of the donor of the power and the situs of the property. We adopt the rule applied in Massachusetts and concur in the reasoning of Chief Justice Gray in support of it in *Sewall v. Wilmer*, 132 Mass. 131."

See also

- 31 Cyc. 1135;
 22 Am. and Eng. Ency. 2nd Ed. 1372;
 10 64 L. R. A. note at 892;
 Rorer on Interstate Law 289 note;
 Dicey on Conflict of Law (Am. Edition);
 1891, 710 Am. Notes;
 Page on Wills 1901, Section 39.

An interesting contention was made below in behalf of appellants that the law of Pennsylvania controls because it was the intention of Paul Farnum, the donor of the power, that it should do so.

20 Supporting this contention it was argued that the method of execution of the power was in conformity with the law of Pennsylvania and not that of New Jersey.

Paul Farnum provided for the payment of the trust fund after his daughter's death:

30 "To such person or persons as my said daughter by any instrument of writing in the nature of a will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct" &c.

Singularly enough, the law of Pennsylvania under the Act of April 8, 1833, requires that a will shall be proved by two or more *competent* witnesses; *subscribing* witnesses were not required in that State. *Carson's Appeal* 59 Pa. St. 493.

40 Paul Farnum's will bears date May 28, 1856, and a few years before, in March, 1851, an Act was passed in this State under which two sub-

scribing witnesses are necessary. Evidently Mr. Farnum had this in mind and his direction as to the method of the exercise of the power is strictly in accordance with the law of New Jersey at that time and exceeds the requirements of the law of Pennsylvania.

In further support of this contention it was stated "His daughter Sarah E. Farnum married Batterson and lived in Pennsylvania." Yes, but when? It is true that she married Herman G. Batterson, but the admitted fact is that she did this in 1866, seven years after her father's death, and there is nothing to indicate that her father, when he made his will ten years before, knew whom she was to marry, or where her husband might happen to live, nor is there evidence that she was then a non-resident of New Jersey, or that she ever made or contemplated making her residence in Pennsylvania until long after her marriage.

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Pursuing this argument, the statement was made that a creditor of the husband in Pennsylvania could not seize the fund provided by Paul Farnum for his daughter or its income for the debt of the husband. If this was the law of Pennsylvania at the time and the testator had that law in contemplation, it is strange that the safeguarding clause was placed in his will. It was unnecessary.

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It was further insisted that in New Jersey, where Paul Farnum and presumably his daughter lived, a creditor of the husband could seize the estate for debt; this, if accurate, would be a strong reason for the insertion of the safeguarding clause. We find, however, that shortly before this will was drawn, in March, 1852, under the Act for the better securing of the property of married women it became lawful for any married female to receive by gift, grant, devise or

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bequest, and hold to her sole and separate use, as if she were a single female, real and personal property, and the rents, issues and profits thereof, and that the same should not be subject to the disposal of her husband nor be liable to his debts. Prior to the enactment of this statute, it was a common thing for prudent testators to employ a clause, similar in character to that in the Farnum will, then absolutely necessary to protect the wife. An example of this is the will before the court in *Okill vs. Campbell*, 4 N. J. Eq. 13.

But it is a matter of common professional observation that for many years after the passage of the Married Woman's Act of 1852 and even after the courts (about the time of Paul Farnum's death) had settled the rights of the wife to the property and income given to her, it was the frequent practice of parental testators in New Jersey to provide in their wills that property given to their daughters should not be under the control or subject to the debts of their husbands. When Paul Farnum made his will in 1856, no prudent lawyer or prudent father in this State would have made a gift of this character without safeguarding it against the debts of a future husband, in substantially the same manner as he did.

It was claimed also on the part of appellants that the references by Paul Farnum, in his will, to the house and lot of land on Arch Street, Philadelphia, indicate that he had in mind real estate under the control of the laws of Pennsylvania and it was urged that this was an additional reason for concluding that his intention was that the power of appointment should be controlled by the law of that State.

We submit that the inference to be drawn from the statements made by Paul Farnum concern-

ing the Philadelphia property and the tenor and sequence of such statements is that it was his purpose to assimilate the devolution of the real property to that of the personal property embraced in the clause under discussion.

It was also claimed by appellants that Paul Farnum had stated in his will that prior to the making of it in 1856 he had given a house and lot of land on Arch Street, Philadelphia, to a trustee for the use of his daughter, then Sarah E. Farnum, and in other instances reference was made to this as Paul Farnum's gift and as a "dwelling house for his daughter's use." 10

The language of the testator in the second paragraph of his will is this:

"In addition to the house and lot of land on Arch Street, Philadelphia, in the hands of a trustee for the use of my daughter, Sarah E. Farnum, I give and bequeath," &c., 20

and at the end of the paragraph,

"My will and design is that the house and lot on Arch Street shall pass in like manner to such person or persons as she may designate."

There is nothing in the will and nothing before the Court to warrant the statement that Paul Farnum had given the Arch Street property to his daughter. As a matter of fact it was conveyed to John Farnum, a brother of Paul, by one Michael Kates in 1840, and was conveyed by John Farnum to the daughter in fee in 1860 when she became thirty years of age. Apparently Paul Farnum's reference to this real estate in his will was the mere expression of a wish. 30

Great stress is laid on the fact that Paul Farnum made a Company resident in Pennsylvania the trustee to handle the securities making up the trust fund, and that such trustee could or 40

did take the securities into the State of Pennsylvania.

This seems a mere incident of a not unusual character and is in no wise indicative of any intention on the part of Paul Farnum to subject the fund to the law of Pennsylvania. (*Kocher's N. J. Probate Law*, 294; *Bell v. White*, 76 N. J. Eq., 49). Non-resident executors and trustees are frequently appointed, and while their duties may in part be performed out of the State they must account in the Courts of this State and in recent years they are required to file with the Surrogate or Register a duly executed instrument making said Surrogate or Register, his or its attorney, upon whom process may be served. Such executor or trustee is clothed with authority by our courts and laws and is answerable to our courts. The fact that the property may be handled outside the State in nowise affects the trustee's responsibility to the authorities of this State.

It may be conceded that in some of the cases cited by us the trustee is native to the same state as the donor of the property, and that in some cases the property was actually within the physical confines of the state, but this is not the basis of the rule that the law of the domicile of the donor should control; and even if it had been, a trustee receiving authority through our courts and holding property for which it is responsible to our courts, would for all purposes, in the eye of the law, be the same as though actually resident and holding assets within the State.

In this connection see the cases cited by Vice Chancellor Backes in the extract from his opinion above quoted.

In *Cotting vs. De Sartiges*, 17 R. I. 669; 16 L. R. A., 367; 24 Atl. Rep., 530 we find this statement:

“The property in dispute being personal property, which, strictly speaking, has no situs, the question must be decided either by the law of New York, the domicile of the donee of the power, or of this State, the domicile of the donor. The will is a Rhode Island will. It disposes of property belonging to a resident of Rhode Island. The trustee under the will is, in effect, a Rhode Island trustee, and jurisdiction over the trustee and the fund is here. The fund in question belonged to Mrs. Bourne, and never belonged to Mr. Rice. True, he had the income from it for life, and power to dispose of it at death,—practically the dominion of an owner,—and yet it was not his.

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“The fund, then, being a Rhode Island fund, disposable under a Rhode Island will, it follows, naturally and necessarily, that the fact of its disposition must be determined by Rhode Island law. The question is not what interest is to be imputed to the will of Mr. Rice, but what interest is to be imputed to the will of Mrs. Bourne. She authorized a disposition of her property by an appointment, and it is under her will that the question arises whether an appointment has been made. Her will is to be adjudged by the law of her domicile. So far as assumptions of intent may be made, it is to be presumed she intended the appointment to be made according to the law of her domicile, and not by the law of New York or England, or any other place where the donee of the power might happen to live. It is not the fact of Mrs. Bourne’s ownership of the property which points to the law of this State as the criterion, but the fact that her will is the controlling instrument in the disposition of the property.”

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SECOND.

Under the Law of New Jersey a General Residuary Clause does not carry property subject to a power of appointment.

10 We have already shown that the law of this State controls both as to the validity of the execution of the power and its interpretation. It follows that the Statute of Pennsylvania enacted in 1879 and offered in evidence on the part of the defendants, has no application. An Act of Parliament somewhat similar in character was passed in England some years ago and in a number of the United States; but in New Jersey the rule of the common law has always prevailed as indicated in the adjudications of our Courts. Under the common law and the settled law of this

20 State for nearly a century a gift of the residue of an estate does not carry property subject to a power of appointment.

30 “It was well settled at common law, and is held in most of the United States in the absence of a statute, that a power of appointment or disposition is not executed by a general devise or bequest of all the testator’s estate, real or personal, or by a general residuary devise or bequest containing no reference to the power or to the subject matter thereof, in the absence of a plainly manifested intention to the contrary.”

31 Cyc. 1126 and notes 79 and 80 in which many English cases are cited.

See also *Sugden on Powers* (8th Ed. London 1861) p. 312; *Farwell on Powers* (2nd Ed. London 1893), p. 227; *Powell on Powers*, (2nd Ed. London 1799), p. 118.

40 In an early case in our Supreme Court, *Den vs. Crawford*, 8 N. J. L., (90), 109, the will of Fenwick Lyell giving “all my estate, both real

and personal wherever it may be found", was under consideration by Chief Justice Ewing and Mr. Justice Ford. This was held to be no execution of the power given to Fenwick in the will of his mother Eleanor Lyell. Mr. Justice Ford calls attention to the fact that Fenwick devised what he called *his* real estate; "whereas according to my construction he had no estate or interest in this remainder, and according to his own opinion he had none for he had parted with all of it to the defendant." 19

In *Wooster vs. Cooper*, 59 N. J. Eq., 204, Vice Chancellor Grey makes this statement, fortifying it with several English cases:

"It seems entirely settled that a general devise by the donee of a power in which the testator refers to the property devised as his property will not be held to have been an exercise of the power." 20

In *Meeker v. Breintnall*, 38 N. J. Eq., 345, Mrs. Breintnall, who was given an estate for life, made a will in which, after certain small provisions, she directed that the residue of her estate be divided into four equal parts, two of which were given to her two sons. Chancellor Runyon, at page 355, decides:

"It is quite clear that the testatrix cannot be adjudged to have executed the power under her father's will, for the reason that there is no evidence whatever of her intention to do so. She had a large estate of her own, consisting of real and personal property * * * There is no reference in her will to her father's will or to her power thereunder, or even to his estate, or indeed to any source from which she derived her property. There is nothing to indicate any intention to execute the power, which is a special power of appointment to particular persons." 30

The latest New Jersey case holding that prop- 40

erty subject to a power of appointment did not pass by a general residuary clause is *Ackerman v. Ackerman*, 81 N. J. Eq., 437. In this instance the amount involved was very large, an elaborate argument was made, but no appeal was taken from the decree of the Chancellor.

10 Warren Ackerman, the donor of the power, gave the residue of his estate to certain relatives named, including his brother, Theodore J. Ackerman, in trust, to divide the same, etc., and on the death of his brother and the other parties named who might survive him to pay the principal of said shares so set apart for that brother etc., as he or she might direct by his or her duly executed will and testament, and in default of any such will to the heirs and next of kin of such brother and others.

20 The brother, Theodore J. Ackerman, died January 18, 1911, a resident of New Haven, Connecticut, leaving a will, in which he disposed of the residue of his property as follows:

“Fifth. All the rest and residue of my property of whatsoever the same may consist, or wheresoever the same may be situated, I give to the New Haven Trust Company of New Haven, Connecticut, in trust, however, to pay over the income, &c.

30 “Seventh. All the rest and residue of my estate upon the termination of said trust, I desire to have distributed pursuant to the statute laws of the State of Connecticut to my next of kin, with the exception of my niece, etc.”

Vice Chancellor Lewis held that Theodore did not, by his will, execute the power of direction given him by the will of his brother, Warren Ackerman.

40 “Under the New Jersey decisions, it is quite clear that Theodore J. Ackerman cannot be adjudged to have executed the power

under his brother Warren's will, for the reason that there is no evidence whatever of his intention to do so, either by a reference in the will to the power, or to the subject of it, or from the fact that the will would be inoperative without the aid of the power, nor is there anything in the will from which an intention to execute the power can be gathered."

In *Lippincott vs. Stokes*, 2 Halst. Ch. 122, at page 151, Chancellor Halsted holds thus:

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"The only safe principle, as it seems to me, on which this case can be decided is this: Where the circumstances are so equivocal as to leave the mind in doubt whether an execution of the power was at all intended, the Court should not interpose. An intention to execute the power should clearly appear."

In *Cueman vs. Broadnax*, 37 N. J. Law, 508, this Court dealt with a power created by deed of trust or post-nuptial settlement. The lands in question were conveyed to a trustee to hold the same for the use and benefit of Mary Campbell, and upon the further trust to make, execute, deliver and acknowledge at the expense and request, in writing of the said Mary, any deed or deeds &c. to convey the same. Mary Campbell died in the lifetime of her husband, having first executed under her hand and seal a paper purporting to be her last will and testament, in which she recited (page 513):

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"Having a separate estate which is held in trust for me I do direct that the person holding in trust for me the premises upon which we now reside shall convey the same to Peter C. Bogert."

It was held that the execution of the power was not defective for want of reference to the instrument by which it was created.

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10 “Reference to the instrument creating the power is only important as evidence of the intention to execute it and any words indicating an intention to exercise a power will have that operation. The primary question is, did the cestui que trust intend to execute the power by the writing in question so that her estate in the premises should pass to and vest in her appointee? Her intention is clearly evinced by the words used (quoting above extract). The rule is well settled that although in executing a power it is regular to refer to it expressly and usual to recite it, yet it is not necessary to do this if the act shows that the donee had in view the subject matter of the power.”

20 The power was held in this instance to have been exercised, but it will be noted that in the will exercising the power there is a definite reference to the separate estate held in trust for the testatrix; and the language of the Court clearly implies that the intention to execute the power must appear in the writing in which the power is attempted to have been exercised; that while it is regular to refer to the power expressly and usual to recite it, this may be omitted if the act (that is, the will or other instrument) shows that the donee had in view the subject matter of the power.

30 In *Munson vs. Berdan*, 35 N. J. E., 376, the donee of the power was given \$14,000 for life, and to appoint the same among the donor's legatees by will. In her will the donee gave to the surviving legatees of her husband legacies grouped together in that instrument, aggregating \$14,000 precisely. She referred to one of the legatees as “surviving legatee” and the Chancellor declared this an obvious reference to the will of the donor of the power and found other evidences in the donee's will that it was her intention to execute the power of appointment.

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THIRD.**The intent to execute a power must clearly appear on the face of the will or other instrument.**

"The intention to execute a power must always appear in its execution either by express terms or recitals or by necessary implications."

31 Cyc., 1121.

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"The intent must be so clear that no other reasonable intent can be imputed to the will; if the will does not refer to the power or the subject of it, and if the words of the will may be satisfied without supposing an intention to execute the power, then, unless the intent to execute the power be clearly expressed, it is no execution of it."

4 Kent, Comm. * page 335.

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"It must not be forgotten when handling such a question that we are dealing with the property of another, and not with that of the donee of the power. In the donee it is but a trust, and those interested in the estate of William Bingham (the donor) have a right to know that the will of their testator has been actually executed as he intended, by the donee of his power."

Bingham's Appeal, 64 Pa. Stat., 345.

"A reference to the instrument by which it is given is indeed not necessary to demonstrate the intention to execute such a power, but it must appear from the will that the intention existed."

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Meeker v. Breitnall, 38 N. J. Eq., 345.

"The intention to execute the power must be apparent and clear, so that the transaction is not fairly susceptible of any other interpretation, but if it is doubtful, under all the circumstances, then that doubt will prevent it from being deemed an execution of the power."

Lee v. Simpson, 134 U. S., 572.

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In *Rhode Island Trust Co. v. Dunnell*, (R. I. 1912), 83 Atl., 853, syllabus 1, it is said:

10 "Where a donee of a power to dispose of property by will intends to execute the power, the intention, in the absence of any statute on the subject, must be so apparent that the instrument is not fairly susceptible of any other interpretation and where under the circumstances the intention is doubtful the doubt will prevent the instrument from being deemed an execution of the power."

In *Patterson v. Wilson* (Md. 1885) 1 Atl. 63. at p. 70 the rule is clearly stated as follows:

20 "It has long been the settled doctrine in England that where the power is not referred to, the property subject to its operation must be mentioned, so as to indicate that the disposition was intended to affect it; or, in other words, the donee must do such an act as to show that he has in view the thing of which he has the power to dispose. When this question has arisen in the construction of wills, it seems to have been firmly settled that a mere general devise or bequest, however unlimited in terms, will not comprehend the subject of the power, unless it refer to the subject, or to the power itself, or unless an intent to execute it becomes apparent from circumstances tending to such a conclusion." *Lowson v. Lowson*, 3 Brown, Ch., 272; *Molton v. Hutchinson*, 1 Atl. 558;

30 *Hales v. Margerum*, 3 Ves. Jr., 299.

FOURTH.

The burden of proof as to whether the donee of a power intended to execute it rests upon the party asserting execution.

Under the English Wills Act, which took effect January 1st, 1838, and under the statutes of some States a general residuary clause has the effect of including property over which testator had a power of appointment unless a contrary intention is shown. The effect of this Act was to shift the burden of proof upon the person claiming that the power was not exercised. In New Jersey there is no such statute and in its absence the burden of proof remains upon the party claiming the execution of the power. 10

See Vol. 23, *Halsbury Laws of England*, page 32, Sec. 64. 20

“In the case of general powers exercised by wills made before the 1st of January, 1838, and not republished after that date, and all general powers not exercised by will or exercised by wills not containing any general devise or bequest in the case of special powers whenever and whatever manner exercised it is necessary to show affirmatively an intention on the part of the appointor that the instrument shall operate as an execution of the power.” 30

The English statute of wills did not change the rule with regard to special powers and consequently the burden of proof remains as before.

“The exercise of a special power of appointment by will is purely a question of intention, the burden of proof being upon those who assert affirmatively the exercise of the power.”

2 *Halsbury's Laws of England*, Title 40
“Wills”, page 622, Sec. 1218.

“While the burden of proving the intention to execute a power voluntarily is upon the volunteer, if the person alleging the execution is a purchaser it is said that there is a presumption in his favor.”

23 *Halsbury Laws of England*, page 35,
Sec. 68. Note B.

10 In 2 *Jarman on Wills*, 5th American Edition, 1880, at page 280, it is said that the effect of the England Wills Act, 1 Victoria, Chap. 26, Sec. 27, is

“To reverse the old rule and to throw on those who deny that a general devise or bequest executes a general power, the burden of proving by what appears on the face of the will the testator’s intention that it shall not do so.”

20 In *Patterson vs. Wilson* (Md. 1885) 1 Atl., 68 it was held that the burden of proof whether a power of appointment was executed, was upon the party claiming under the power. At page 70 it is stated:

30 “And there being no evidence adduced by either party at the trial as to whether the testator had or had not any other real estate upon which his devise could operate, it was further held that the onus probandi rested upon him who claimed under the will as an effective execution of the power; and that it lay upon him to establish the negative proposition that the testator possessed no such property.”

Hawkins on Wills (2nd Edition 22):

“Devises and bequests *prima facie* do not include property not the testator’s own but over which he has a power of disposition.”

FIFTH.

The proffered evidence of declarations by or conversations with the donee of the power was properly rejected by the court below.

Appellants sought to introduce in evidence certain declarations by and conversations with Mrs. Batterson, the donee of the power. This line of evidence was properly rejected by the court below. 10

Aside from the interesting questions, whether the circumstances surrounding the testatrix at the time of the execution of the second codicil are admissible in evidence, and whether the rule employed in ordinary cases for the construction of wills is applicable in a case where the will is claimed to be an exercise of a power of appointment, we submit that even under the much more liberal rule observed in construction cases the statements and declarations of and conversations with the testatrix cannot be admitted. 20

In the recent case of *Hammell vs. Barrett*, 79 N. J. Equity, 96 at page 97, on a bill to charge real estate with the payment of money for the support of complainant, Vice-Chancellor Leaming states the general rule as to extrinsic evidence of circumstances in cases for the construction of wills, and adds: 30

“But statements made by the testator touching his meaning and purpose cannot be entertained. That portion of the testimony will therefore be excluded from present consideration.”

Two appeals were taken from the decree in this cause and in each the Court of Appeals held:

“So much of the decree as is involved in this appeal will be affirmed for the reasons stated in the opinion filed in the Court below by Vice-Chancellor Leaming.” 79 N. J. Eq. 217, 218. 40

We may assume that the language quoted has the approval of the Court of Appeals.

Zabriskie vs. Huyler, 62 N. J. Eq. 697 (affirmed 64 N. J. Eq. 794) was decided by Vice-Chancellor Stevenson on a motion to strike out the bill. He says on page 701:

10 "Nothing appears upon the face of the will nor is anything alleged in the bill of complaint of which this court can take cognizance which can change the meaning of this residuary clause. It may be, as would appear from the bill, that Mrs. Conklin misunderstood the meaning and legal effect of the residuary clause as her counsel had drawn it. She may have actually intended twenty years before her death, when she made this will, to dispose of her property as it is alleged she thought twenty years later she had disposed of it.

20 "The allegations in the bill in regard to the actual and declared purpose of Mrs. Conklin, her instructions to her counsel with reference to the drafting of her will and her belief in regard to the legal effect of her will as drawn must be excluded from consideration."

See also

Cleveland vs. Carson, 37 N. J. Eq. 377;
Burnet vs. Burnet, 30 N. J. Eq., 595 at 598.

30 In *Griscom vs. Evens*, 40 N. J. L. 402, which involved the construction of a will, it appeared that the testator owned a tract of land near Cropwell, consisting of two parcels adjoining each other, and the question was whether he intended to include both tracts in a devise of "all that my farm and plantation near Cropwell, conveyed to me by the heirs of my deceased wife, and where my son, Thomas Evens, now resides."

40 It was held that there being no latent ambiguity, evidence of declarations of the testator was admissible. The Court, in a brilliant opinion, after

laying down the general rule, continues, at page 407:

"The only exception to this legal rule is that the declarations of the testator may be resorted to in cases of a latent ambiguity, which arises where there are two or more persons or things, each answering exactly to the person or thing described in the will. In such an event, parol evidence of what the testator said may be lawfully adduced to show which of them he intended; but such evidence will not be allowed to show that he meant a thing different from that disclosed in the will. *Den v. Cubberly*, 7 Halst., 308; Taylor on Ev. Sections 1092, 1093; Hawkins on Wills, 9."

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The reasoning in this case was approved by the Court of Errors and Appeals in *Kupferschmidt vs. Agricultural Insurance Co.*, 80 N. J. L. 441, at pages 444 to 446.

In *Leigh vs. Savidge*, 14 N. J. Eq. 124 at 130, the question was whether the legacies were intended to be charged against the real estate of the testator not specifically devised. Evidence of the testator's declarations of his intention were excluded. See at page 130:

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"In support of the construction sought to be put upon the language of the will by the complainant, parol evidence has been offered of the testator's declarations of his intention, of the nature and amount of his estate, of his family relations, and other extrinsic circumstances. Is such evidence admissible?"

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"So far as the evidence relates to the declarations of the testator as to his meaning and intention, or to the instructions given to the scrivener, or to the understanding of those instructions by the scrivener, the evidence is clearly incompetent, and must be overruled. Parol contemporaneous evidence is inadmissible to contradict or vary the terms of any valid written instrument. 1 Greenl. Ev. Sec. 275; 2 Phil. & Amos, on Ev. 753; *Coxe v. Bennet*, 1 Green 167."

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The evidence in that case which was offered is strikingly similar to the evidence in this case. See at page 128.

See also

Den vs. Cubberly, 12 N. J. Law 308.

Account of Executors of Samuel Haines, 8 N. J. Eq. 506.

40 Cyc. 1433.

- 10** In the present case some of the testimony offered consisted of statements made by the testatrix subsequent to the execution of the will and codicils. Such evidence is inadmissible.

In *Archer vs. Morris*, 61 N. J. Eq. 152, an affidavit made by the testator after the date of the execution of the will as to the meaning of the words "ex aequo" was excluded.

- 20** (A) The instructions by testator to the scrivener who prepares the will are inadmissible to explain the intent of the testator where there is no latent ambiguity.

In *Griscom vs. Evens*, 40 N. J. Law, 402 testimony of the scrivener's instructions was excluded. See at page 406:

- 30** "It being proved that these two parcels of land had been rented and occupied together as one tract since the year 1833, the judge received the testimony of the scrivener who wrote the will, that the testator, on the occasion of drawing the will, came to his house 'with items on a piece of paper for each son'; that he had these premises marked down as 'my Cropwell farm, containing eighty-five acres'; and that the words 'conveyed to me by the heirs of my deceased wife' were not on that paper, but were inserted in the will by the scrivener as his own language, which he used as an additional description, to distinguish the premises from the testator's other property. The import of this testimony was
- 40**

to expunge from the will words which the law regards as the language of the testator, and to alter the terms of the devise. This evidence was illegal."

Mr. Justice Depue then proceeds to show that such evidence is admissible only in case of a latent ambiguity, and continues at page 407:

"The testimony of the scrivener, with regard to his instructions for the will, was not admissible within this exception. The description of the premises intended was not applicable to the two parcels of land devised by the testator under the several clauses of his will. It may be uncertain or inaccurate, as applied to either. But an uncertainty arising from mere inaccuracy of description is not such an ambiguity as authorizes the admission of evidence of intention. 10

"The cases on this subject so prolific of judicial decision, show how inflexible the foregoing rule of construction is regarded." 20

In *Zabriskie vs. Huyler*, 62 N. J. Eq. 697, in a bill to construe a will, on demurrer to the bill, which depended upon instructions of the testatrix to the draftsman of the will it was held that such instructions must be excluded, and the bill was dismissed.

In *Leigh vs. Savidge*, supra, instructions of the testator to the scrivener were held incompetent. See pages 128 and 130.

Cleveland vs. Havens, 13 N. J. Eq. 101, involved the construction of a bequest in a will. Complainant attempted to prove that the will was not drawn in pursuance of the written instructions by the testatrix. Held that such evidence was incompetent. See at page 104. 30

In *Den vs. Cubberly*, 12 N. J. Law, 308, title to land depended upon the construction of a description in a will. The course in dispute read: "thence as the line runs till it comes to the middle of the 40

road," and the dispute was what line was intended. The testator's instructions to the scrivener were excluded. See at page 314:

In *Nevius vs. Martin*, 30 N. J. Law 465, the question was whether testator intended to devise a house or the house and lot adjoining. The instructions to the scrivener who drew the will were not permitted to be offered in evidence. See at pages 465 and 466.

10 See also

Cleveland vs. Carson, 37 N. J. Eq. 377, at page 383.

In the present case the clause in the second codicil revoking the 73rd clause in the will and the 12th clause in the first codicil is clear and unambiguous (par. 9, p. 44), and the rest and residue clause in the second codicil is equally plain. The words admit of a sensible and clear interpretation and there is no latent ambiguity. The evidence offered in this case as to what the testatrix instructed the scrivener is clearly incompetent.

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(B) Evidence to show or tending to show that the scrivener made a mistake either of fact or of law is inadmissible.

A court of equity will not reform a will on the ground of mistake, and consequently evidence is inadmissible to show that the scrivener misunderstood what the testator instructed him, or that the scrivener or the testator misunderstood the legal effect of the terms they used.

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In *Griscom vs. Evens*, 40 N. J. Law, 402, the court lays down the rule clearly at pages 406 to 409. At 408 the court explains the cases of *Cleveland vs. Havens* and *Nevius vs. Martin*:

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"In *Cleveland vs. Havens*, 2 Beas. 101, evidence that the will was not drawn in pursuance of the written instructions given by the

testatrix, and that both the scrivener and the testatrix understood the will differently from its legal import as deduced from its language, was held to be inadmissible; and in *Nevius vs. Martin*, 1 Vroom, 465, testimony of the scrivener, that by the instructions given to him by the testator at the time of writing the will, he was directed to devise the lot in question in fee, and that he believed such intention was expressed by the language of the will, was rejected as incompetent."

See Zabriskie vs. Huyler, 62 N. J. Eq. 697 at 701. 10

In *Vrooman vs. Virgil*, 81 N. J. Eq. 301, at 310, it is stated:

"It is also possible that the testator reposed upon some erroneous view of the construction and effect of his will under the changed conditions which had occurred after the will was made. Courts can provide no remedy for the evil results of such errors on the part of the testators in regard to the meaning of their own wills, as I had occasion to point out in the case of *Zabriskie vs. Huyler*, 62 N. J. Eq. (17 Dick) 697. 20

The rule is clearly laid down in *Nevius vs. Martin*, 30 N. J. Law, 465 at 467:

"The plaintiff offered to prove, by the person who wrote the will, and was a subscribing witness to it, that by the instructions given to the witness by the testator, at the time of writing the will, he was directed to devise the lot in question, containing about fourteen acres, to the plaintiff in fee; and that, by the language of the will, he believed that such intent was expressed. The testimony so offered was overruled by the court, and that ruling having been excepted to, is assigned for error. 30

"On the part of the plaintiff, it is insisted that the evidence should have been received on the ground of a mistake in the will, to show that the scrivener did not use proper language to express the intention of the testator. 40

“I know of no rule of law, nor any adjudged case, on which parol testimony has been or can be received to correct a mistake in a will. By law, wills to pass real estate must be in writing, signed and published by the testator in the presence of witnesses; and it would be inconsistent with that law to permit parol proof to be introduced to contradict, add to, or explain their contents. This principle requires an inflexible adherence to it, even if the consequence should be a partial, or even total failure of the testator’s intention.

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“The formalities so carefully provided would be of no value; the statute itself would be virtually repealed, if when the written instrument is supposed not to express the clear intention of the testator, the deficiency may be supplied, and its mistakes corrected by extrinsic evidence. No principle connected with the law of wills is more firmly established or more familiar in its application than this; and it seems to have been acted upon by judges, of early and of later times as well, with a cordiality and steadiness, which shows how entirely it coincided with their own views. 1 Jarman on Wills 349.

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“A firm adherence to the rule is necessary to avoid the consequences of the misapprehension of the witness, and danger of offering temptation to perjury. This very case is a fair example of the hazard of such testimony where a witness is supposed to remember accurately in eighteen hundred and sixty, the verbal instructions received from the testator in eighteen hundred and forty-two.”

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In *Jones’ Executors vs. Jones*, 13 N. J. Eq. 236, it was attempted to prove that the scrivener made a mistake in drawing a codicil. The terms of the codicil being clear the evidence was excluded. See at page 240.

See also *Tyndale vs. McLaughlin*, 84 N. J. Eq. 652, which involved the construction of a will. At page 657 it is stated:

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“But, the will must furnish the basis for the construction. If the testator, through

ignorance, inattention or inadvertence, fails to dispose of all of his estate, it is not within the power of the court to supply the omissions. The province of the court is to construe, not to make wills."

In the present case, evidence as to what the testatrix and the scrivener understood by the rest and residue clause in the second codicil and the clause in this codicil revoking the 73rd clause of the will and the 12th clause of the first codicil, is inadmissible. 10

SIXTH.

In cases like the present, where the question relates to the exercise of a power of appointment, extrinsic evidence of the condition of the personal estate of the donee of the power is inadmissible.

Our contention as to the exclusion of testimony, before the Vice-Chancellor, was broader than his ruling as set out in his conclusions (pp. 128-130). In view of the fact that the indisputable evidence of the condition of Mrs. Batterson's personal estate shows that it was measurably in excess of the requirements of her will, it is somewhat academic to discuss this point. We submit, however, that the clear weight of authority is against the admission of extrinsic evidence relating to personal property in cases where the question is whether or not the power of appointment has been exercised. 20 30

In the leading English case, *Andrews vs. Emmot*, 2 Brown's Chancery Cases, star p. 297, decided in 1787, it was held that evidence showing that the personal estate of the testator (the donee) was insufficient to answer the purposes of the will should be rejected. Evidence as to real estate was admissible, because lands acquired after the making of the Will did not pass by it; personalty did. This 40

case was followed by many others in England. It has been cited twice with approval in New Jersey, but not on the precise point here involved. *Wooster v. Cooper*, 59 N. J. Eq. 204 at 223; *Den v. Crawford*, 3 Halst. 109 at 126.

10 On the authority of this case, many others of like import, and the text books, in an instance like the present, where personal property, only, is involved, extrinsic evidence of the extent of the estate of the donee of the power and other similar circumstances is inadmissible and all such evidence should have been excluded in the Court below.

In 2 Chance on Powers, 97, sec. 1673, the rule laid down is as follows:

“On general principles it seems parol evidence is not admissible * * * * to show by the state of the party’s property at the date of his will that his assets were insufficient to satisfy his bequests.”

20 Sugden on Powers, 313:

“Nor can the Court act on the fact of there not being sufficient to pay legacies given by the will without the power over which the testator had a power of disposition. * * * Parol evidence cannot be received of the testator’s intention to exercise his power.”

Powell on Powers (2nd Edition 1799) p. 118.

30 “And the circumstances that there will be no assets to feed a residuary disposition or even to pay general legacies unless the testator has executed a power rested in him is not sufficient to show that a mere residuary disposition was intended to be an execution of the power where there is no description applicable to the subject of the power and the expressions are such as will refer to the testator’s own property.”

23 Halsbury’s Laws of Eng’land, Title “Powers,” page 36, sec. 69:

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"There is a rule of some importance before 1838 with regard to all powers general and special * * * namely, in a gift of real estate the court may examine whether the testator's own property is such as to enable effect to be given to his will without recourse to the property subject to the power, *although in a gift of personalty the rule is otherwise.*"

Citing many English cases.

See also 2 Jarman on Wills, 275.

Wigram on the admission of extrinsic evidence in aid of interpretation of Wills, 2d American Edition from last London Edition, 1872, (page 68, Section 27) :

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"So personal estate subject to a power will not pass under the words 'my personal estate' whether the testator has personal estate at the time of making his will or not, for as personal estate acquired after the date of the will would pass by the will it might possibly have had a sensible construction without departing from the strict meaning of the words."

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See also pg. 127 of this work.

The mere fact that the bequests in a will exceed the testator's estate cannot draw, after it an intention to execute the power.

Cotting vs. De Sartiges (R. I. 1892) 24 Atl. 530. *Bingham's Appeal*, 64 Pa. St. 345.

We contend that in none of the New Jersey cases has any of its Courts departed from the rule followed so long in England. In *Micheau vs. Crawford*, 8 N. J. Law 90 (109) Chief Justice Ewing (p. 126) cites *Andrews vs. Emmot* with approval, although the precise question as to testimony relating to personal property does not seem to have been involved.

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An examination of our cases fails to disclose that this rule has not been observed in this State. One of them (*Meeker vs. Breitnall*, 38 N. J. Eq. 345) was heard on the pleadings. Another (*Munson vs.*

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Berden, 35 N. J. Eq. 376) was heard on Bill, Answer and Stipulation of counsel. In another (*Cue-man vs. Broadnax*, 37 N. J. Law 508, 513) it is not certain that any evidence of intention was introduced and in the others it is difficult to ascertain from the record what the character of the evidence was or the ruling of the Court upon it. Certainly, in none of these cases is there any ruling which would indicate an intention on the part of the New Jersey Courts to depart from the common law rule established in *Andrews vs. Emmot*.

SEVENTH.

Where the words in a will admit of a clear and sensible interpretation, extrinsic circumstances are inadmissible to prove that a different meaning was intended.

20 In this case it was attempted to prove that the clause in the second codicil revoking the 73rd clause of the will and the 12th clause of the first codicil meant something different from what the words naturally imported. In support of this contention proof was offered as to the circumstances surrounding the testatrix. Such evidence is admissible where the terms in the will are vague and and indefinite, but not in a case like the present, where the words are clear and admit of a definite practical meaning.

30 In *Griscom vs. Evens*, 40 N. J. L. 402, Mr. Justice Depue lays down the rule in remarkably clear language at page 406 :

“By the statute, a writing is made indispensable to the existence of a will, and what has been written cannot be added to, detracted from, or altered by extrinsic evidence. The functions of the court are to ascertain the intention of the testator from the language of the will. Extrinsic evidence may be resorted

to, which, in its nature and effect, is simply explanatory of what the testator has written, but no evidence can be received for the purpose of showing what he intended to have written. Wigram on Wills, Sec. 9. In every case of a controverted construction, the sole question is non quod voluit sed quod dixit. Extrinsic evidence of the circumstances, situation and surroundings of the testator, and of his property, is legitimate to place the court which expounds the will, in the situation of the testator who made it, and thus enable the court to understand the meaning and application of the language he has adopted; but the testator's intention must ultimately be determined from the language of the instrument, as explained by such extrinsic evidence, and no proof, however conclusive in its nature, can be admitted with a view of setting up an intention inconsistent with the writing itself 2 Taylor on Ev. Sec. 1082."

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Griscom vs. Evens was approved in *Kupferschmidt vs. Agricultural Ins. Co.*, 80 N. J. Law, 441 at 444:

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Massaker vs. Massaker, 13 N. J. Eq. 264 at 266;

Cleveland vs. Havens, 13 N. J. Eq. 101 at 104;

Den v. Cubberly, 12 N. J. L. 308.

Burnet vs. Burnet, 30 N. J. Eq. 595, involved the construction of a residuary clause in a will. The rule was laid down that where the meaning is clear extrinsic evidence is inadmissible. See at page 598.

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In *Hand vs. Hoffman*, 8 N. J. L. 86, the question was how much of a tract of land testator intended to include in a devise. The description being clear, extrinsic evidence was excluded. See at page 88:

See also at page 90:

"In the doctrine of the admissibility of parol evidence it is a rule that it shall never be ad-

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mitted where the will can have an effective operation without it; and such evidence shall be admitted only where the will could otherwise have no operation."

Marshall's Executors vs. Hadley, 50 N. J. Eq. 547, at 553:

10 "No rule of construction is better settled, nor more thoroughly rooted in justice and good sense, than that which declares that where a testator has told, in plain words, what disposition he intended to make of his property, his will must be executed, and the courts have no power or right, in such a case, to resort to a fanciful or conjectural construction grounded on his situation, circumstances or condition, or that of his family or property. When a testator has made known his purposes, in respect to his property, by the use of plain and unambiguous language, though his purposes may seem unreasonable, unjust or absurd to others, his will is its own expositor and a law unto the court. To refuse to give effect to his purposes, in such a case, is not to construe his will, but to make a new will for him."

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Blair vs. Scribner, 65 N. J. Eq. 498, at 524;

Attorney General v. Moore's Executors, 19 N. J. Eq. 503, at 515;

Holcomb vs. Lake, 24 N. J. L. 686, at 690.

30 In *Heater vs. Van Auken*, 14 N. J. Eq. 159, it was held that a gift in a will to children did not include illegitimate children: Evidence to the effect that the testator treated them as children was held inadmissible for that purpose (p. 167).

The courts have often confused the cases where the circumstances and surroundings of a testator are admissible to explain the meaning of words in a will. Where the object of the evidence is to aid

40 in the construction of a word as used in its pri-

mary sense such evidence is admissible, but where the object is to prove that the word was used in a sense other than its primary sense such evidence is not admissible. The distinction is clearly set forth by Wigram in his work on the admission of extrinsic evidence in aid of interpretation of wills.

In his preface at page 7 he says:

“Much confusion is occasioned by the conflicting statements to be found in the reports to the effect that the court can put itself in the place of the testator and that it cannot so place itself. It can always, however, do so for the purpose of applying the dispositions in a document according to the primary sense of the terms used, but it is only in certain cases that it can be guided by the law of extrinsic evidence in aid or reformation of the instrument as distinguished from the application of the words according to their primary meaning.”

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EIGHTH.

Words in a will are to be taken in their natural sense unless the meaning of the context is thus rendered unreasonable.

If words used in a will have both a primary and secondary meaning and each meaning in connection with the context produces a reasonable result, preference should be given to the use of the words in its primary signification. That is, the secondary meaning should not be adopted unless the primary meaning renders the context unreasonable.

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Woodruff vs. White, 78 N. J. Eq., 410 at 412.

“The principles of law which apply are, I take it, entirely settled, and do not require the citation of authority to bring them to

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mind or illustrate them. The words used in a will, as I understand it, must be taken in their natural meaning; the Court is called upon to construe what the testator has said and not to supply language, and thereby make him say that which he did not say." (Quoted with approval in *Clement v. Whittaker*, 231 Fed., 940, at 941 [Circuit Ct. App., 3d Circuit, April, 1916.])

10 *Graydon's Executors vs. Graydon*, 25 N. J. Eq., 561, at 563.

"Our duty is to construe the will in the light of the terms used and to give to them their legal and natural import."

In *Hollishead vs. Wood*, 84 N. J. Eq., 492, the Court of Errors and Appeals says, at page 493:

20 "The fundamental rule applicable to such a situation has been stated to be that courts, both of law and equity, will construe words according to their strict and primary acceptation, unless from their immediate context, or from the intention of the parties apparent on the face of the instrument, the words appear to have been used in a different sense; or unless in their strict sense they are incapable of being carried into effect."

The rule is laid down clearly in Wigram on the Admission of Extrinsic Evidence in Aid of the Interpretation of Wills, page 127:

30 "The conditions necessary to subordinate the primary meaning of a clause or term to that of the context are similar to those which will subordinate the meaning of the whole will or any parts thereof to the light afforded by parol evidence. The primary meaning in the former instance must be insensible with respect to the context before the meaning of one passage can be affected by that of another. So with respect to the whole will as regards extrinsic evidence the will must be insensible in operation and void before any

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light can be thrown on the text by parol. Necessity is thus the source of parol interpretation in the latter case and of contextual light in the former."

Citing 1 Jarman on Wills, 630.

In the present case the rest and residue clause in the second codicil and the clause revoking the 73rd paragraph of the will and the 12th paragraph of the first codicil has a sensible, definite meaning in connection with the context and consequently its meaning cannot be changed by construction. 10

NINTH.

Where there is no ambiguity or incongruity extrinsic evidence is inadmissible to change the primary meaning of the words used in a will where the words admit of a sensible interpretation. 20

The rule is well stated in Wigram on the Admission of Extrinsic Evidence in Aid of Interpretation of Wills, page 66 (2nd American Edition from last London Edition, 1872).

"Where there is nothing in the context of a will from which it is apparent that testator has used the words in which he has expressed himself in any other than their strict and primary sense and where his words so interpreted are sensible with reference to extrinsic circumstances it is an inflexible rule of construction that the words of the will shall be interpreted in their strict and primary sense and no other, although they may be capable of some popular or secondary interpretation, and although the most conclusive evidence of intention to use them in such popular or secondary sense be tendered." 30

Wigram then illustrates this principle by an 40

example of a devise: "My personal estate," where the testator had a power of appointment. The words having a sensible meaning aside from the appointed property evidence is inadmissible to change the primary meaning of these words.

See Wigram, page 100 (American notes):

10 "When the words of the will can operate in the natural sense or by construction aided by the maxims, 'Falsa demonstratio;' 'error nominis,' etc., evidence cannot be received of facts showing the probability that the testator intended a peculiar use of the terms."

Page 101:

"In short, wherever a clause is construed not according to the primary meaning of the terms used, there must be an absolute impossibility of so applying it."

20 In *Wilkins vs. Pryor* (1886), 55 L. J. Ch., 598, a case strikingly similar to the present one, the testatrix exercised a power of appointment in a will and in subsequent wills revoked prior wills, without specifically referring to the appointed property. It was held that the appointment was revoked and the property went in default of appointment. The Court said, page 599:

30 "I should have thought that it was impossible for a Court to come to any other conclusion because it would have to be arrived at upon the merest possible speculation, and how, as I have asked more than once during the argument, can the Court know that it was not the deliberate intention of the testatrix to revoke the testamentary appointment of 1866 and to allow the estate to devolve as in default of appointment under the settlement, 1834? If I cannot tell, it is obvious that if I were to hold that the words, which prima facie are quite sufficient to revoke the testamentary appointment, do not have that operation I could only arrive at that result

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by speculating as to what was the intention of the testatrix and such a speculation might lead the Court into complete error. It may have been the intention of the testatrix to allow the property to devolve under the trust in default of appointment, and if I were to hold that the words of revocation which may have been designably inserted for that very purpose are not to have any operation I might be defeating instead of carrying out her intention."

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Page 601:

"And holding as I do very strongly that the Court is always much more likely to be right when it adheres to the words of a testator as closely as it possibly can and does not attempt to speculate upon anything as not expressed by these words, it seems to me by far the safer course to hold that the words used, which are quite sufficient to effectuate a revocation, had that effect, and that the testamentary appointment of 1866 was in fact revoked, and so far as intention is to be regarded in the matter I must assume that the intention of the testatrix was to allow and advisedly the estate to devolve as in default of appointment."

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TENTH.

Where a testator has failed to exercise the power of appointment a Court of Equity has no power to execute it for him.

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The rule is clearly laid down in *Lippincott vs. Stokes*, 6 N. J. Eq., 122, at 151:

"The Court may aid a defective execution of a power; but will not supply the execution where none has been attempted or intended. It will not do that for a party which he does not think fit to do for himself (1 Story's Eq. Jur., Sec. 170).

"The only safe principle, as it seems to me, 40

on which this cause can be decided, is this: Where the circumstances are so equivocal as to leave the mind in doubt whether an execution of the power was at all intended, the Court should not interpose. An intention to execute the power should clearly appear (1 Story, Sec. 172)."

Also *Brown vs. Phillips*, 18 Atl., 249 (R. I., 1889):

- 10 "It is well settled as the complainant claims, that a court of equity will aid the defective execution of a power; but, as stated in the leading case of *Tollet v. Tollet*, 2 P. Wms., 489; 1 White & T. Lead. Cas., *227, *228, there is a difference between a non-execution and a defective execution of a power. The 'Court will not help the non-execution of a power, since it is against the nature of a power, which is left to the free will and election of a party whether to execute or not;
- 20 for which reason equity will not say he shall execute it, or do that for him which he does not think fit to do himself.' In order to sustain the execution of a power the instrument must, at least, show an intention or attempt to execute it. This may appear when the instrument would otherwise be inoperative, or when the reference to the subject of the power is such as to manifest the intention; but the non-execution of a power cannot be aided by proof of an intention to execute. * * *
- 30 Nor was the deed inoperative without the aid of the power. Nothing appears in it to show an intent to convey anything beyond her own interest. It is like the will in *Andrews v. Emmot*, 2 Brown, Ch. 297, which Lord Alvanley, in *Hales v. Margerum*, 3 Ves., 299, 301, called a leading case upon this point. There, after saying the power need not be recited in express terms, but that the intent must appear by some kind of reference to the power, the Court added: 'But the testator has not described anything; all his expressions will refer to his own prop-
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erty.' The recent case of *Patterson v. Wilson*, 64 Md., 193; 1 Atl. Rep., 68, gives a careful review of this subject. It was held, as the will in question contained no reference to the power nor to the subject on which the power was to operate, and as it was not denied that the testator had other property, her will would be operative without the aid of the power, and could not be regarded as an execution of the power. See also, *Bingham's Appeal*, 64 Pa. St., 345; *Lippincott v. Stokes*, 6 N. J. Eq., 122." 10

ELEVENTH.

A power of appointment exercised by will may be revoked by a subsequent will.

"It remains to be observed that a will is in its own nature always revocable and, therefore, where the power is executed by will an express form of revocation need not be inserted, but it may be revoked and the original power re-executed, toties quoties" (Sugden on Powers, p. 387, Sec. 53). 20

The power of appointment exercised in a will may be revoked by a general clause in a subsequent will, revoking all former wills.

Cadell vs. Wilcocks, 67 L. J. P. (1898), 8;

Kingdon, in re, Wilkins vs. Pryer (1886), 55 L. J. Ch., 598. 30

In the last-named case, the first will exercised the power of appointment. Subsequent wills in turn revoked the prior wills generally, without referring to the power. It was held that the power of appointment was revoked and that the appointed property went as in default of appointment.

In *Cadell vs. Wilcocks*, supra, the Court ap- 40

proved of *Wilkins vs. Pryer* in the following language:

10 "The question of revocation by a general revocatory clause arose simpliciter, there being no subsequent provision relating to the subject matter of the power in question and Mr. Justice Kay held that a will executing a power was revoked *in toto* by general clause of revocation in a subsequent will. * * * I cannot understand why express words revoking all previous wills should be supposed to spare an execution of a power contained in one or more of them from the fate inflicted on all the rest of their contents."

TWELFTH.

20 **The accretions to the \$100,000 fund representing the increase in value of the bonds and stocks composing the fund, become a part of the corpus and pass with it.**

30 We understand from the attitude of the appellants in the Court below that there is no real dispute on this point. The question of the devolution of the profits was suggested, but counsel for the appellants declined to press it. In view of the fact that the legal proposition involved is apparently free from doubt, counsel of respondents submits only a concise statement of the more useful authorities under the following subdivisions:

(a) The profit arising from the sale of securities held by a trustee with direction to pay the income to a life tenant and the principal to a remainderman is an appreciation of the principal fund—an increase of the corpus and belongs to the remainderman and not to the life tenant.

40 39 Cyc., 444;
40 Cyc., 1879;

- Parker vs. Johnson*, 37 N. J. Eq., 366,
at 368;
- Van Blarcom vs. Dager*, 31 N. J. Eq.,
783, at 794;
- Outcalt vs. Appleby*, 36 N. J. Eq., 73, at
78;
- Parker vs. Seeley*, 56 N. J. Eq., 110;
- 2 Cook on Corporations (7th Edition),
Sec. 560, page 1647.
- 2 Perry on Trusts (6th Edition), Sec. **10**
546, page 892;
- Graham's Estate, 198 Pa., 216 (47 Atl.,
1108, at 1109);
- Boardman vs. Mansfield* (Conn., 1907),
66 Atl., 169;
- Kemble's Estate (Pa., 1902), 51 Atl.,
310;
- Carpenter vs. Perkins* (Conn., 1910), 74
Atl., 1062;
- Neel's Estate, No. 2, 207 Pa. St., 446; **20**
- Jordan vs. Jordan Trust Estate* (Me.,
1913), 88 Atl., 390;
- In re Gerry*, 103 N. Y., 445; 9 N. E., 235;
- Devenney vs. Devenney* (Ohio, 1906), 77
N. E., 688;
- In re Connolly's Estate*, 198 Pa., 137;
47 Atl., 1125, at page 1127;
- Bryan vs. Aikin* (Del., 1912), 82 Atl.,
817. **30**

It will be noted that in the present case the testator does not direct the trustees to give the *income* of the trust fund to his daughter, but merely the "interest or dividends arising therefrom." Dividends can only refer to earnings directed to be distributed by the board of directors, and would not include an increase in the value of the stock due either to natural causes or to undistributed earnings.

(b) All the evidence tends to show that the increase belongs to the corpus.

The account which was produced before and presented to this Court at the hearing on June 13, 1916, and which is printed at page 107, shows that almost the entire accretion is due to the sale of the preferred stock and bonds previously mentioned.

10 These accretions were included in the principal account and a separate account was kept for income. At the head of the Income Account (p. 117) the trustee states. "Income account from February 4, 1914, to which date it was paid in full to Sarah E. Batterson, who is entitled to the entire income, viz." No claim was ever made by Mrs. Batterson or the trustee that these accretions were anything but principal. Mr. Gates, the vice-president of the accountant, examined the
 20 assets some two years ago and found the principal of the trust fund to be about \$125,000 (pp. 74, 75).

The statement in the account that the accretion to the fund was part of the principal is evidence in this cause. An account produced and presented to the Court by trustees and not objected to, is conclusive as to the trustees and evidence in the case as against others, and if not objected to becomes prima facie proof, and if the account
 30 is confirmed it is conclusive as to all who are parties to the suit.

See in this connection *Shearman vs. Cameron*, 78 N. J. Eq., 532; 1 C. J., 705.

In Conclusion.

The second codicil is dated October 15, 1914 (p. 46). The will itself was executed a little over two years before (p. 38) and was evidently prepared by counsel of skill and ability. It cannot be said from any competent evidence before the Court that the scrivener who drew the second codicil or the testatrix herself was in any way ignorant of the comprehensive terms employed in Item 73 of the will. The codicil was to be attached to the will and presumably the will itself was before them. Both scrivener and testatrix excised—blotted out—that part of the original residuary clause which embraced not only her own property, but as well that over which she had or might have the power of appointment. Mrs. Batterson on two previous occasions, in 1903 and 1909 (pp. 79, 80), had made wills in which the inclusive clause had been inserted. She knew this and the omission and direct revocation of such a clause in the second codicil (which was, at least, her fifth testamentary attempt) is most significant.

Our courts have been most cautious in admitting evidence, even in writing, of what is substantially a testamentary disposition, to modify a written will and have frequently commented upon the danger of permitting such evidence to take the place of a will, which must be reduced to writing, signed by the testator and attested by witnesses.

What is described as direct evidence of intention, consisting of declarations and informal written memoranda of the testator and of instructions given to the persons employed in the preparation of the formal instrument, has been declared to be so nearly allied in character to that furnished by the will itself as to present an aspect of rivalry

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to the will which raises a prejudice against its reception.

10 “Again, evidence of this kind presents peculiar facilities to fraud. It may be easily imagined or invented, and when fraudulently produced is difficult of detection. If a witness swears that a deceased testator in a private interview, explained to him the sense in which he wished some clause of his will to be understood, such evidence, however false, cannot possibly be disproved.”

 Mr. F. M. Nichols on Extrinsic Evidence in the Interpretation of Wills, quoted in Wigmore on Evidence.

20 The testimony of Mr. Emery, the Portsmouth lawyer, cannot escape attention in the light of these observations (p. 83). He had before him a will of notable clarity, executed apparently in Pennsylvania, in which, without waste of expression, direct reference was made by the testatrix to the property over which she had the power of appointment. To insert this in the codicil prepared by Mr. Emery would have required the writing of thirteen words, and the wisdom of inserting such words, if the testatrix had so intended, is too obvious to stand discussion. But this witness would have us believe that instead of inserting these few words he fortified himself from an encyclopedia (p. 88) and decided to reject the dictates of common sense, with the result of taking a long chance on the law rather than making the intention of the testatrix clear by a simple statement in writing. It is impossible to conceive of any lawyer so hazarding interests entrusted to him as to stake so large a sum on his knowledge of the law acquired, from an ordinary text-book, as against the insertion in a will of a plain statement of intention, which could do no

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40 harm under any law of any civilized country.

His explanation is inane and unreasonable; his testimony incredible, and the wisdom of the rule which makes such efforts to testify incompetent, signally emphasized.

Even if Mr. Emery's testimony were in the least material it is manifest that he was mistaken. The one object about which Mr. Emery and Mr. Gates would have us believe that Mrs. Batterson was solicitous was that her estate should be sufficient for the payment of her pecuniary legacies, and if it were a relevant fact that Mrs. Batterson made an inquiry as to the size of the trust estate as well as of her individual estate it was for the purpose of ascertaining this information. Inasmuch as it has been conclusively shown that her individual estate and the share of the trust estate to which in any event she would be entitled was abundantly sufficient to accomplish her object it is highly probable that her inquiry had reference to that, and not to the question of her power of appointment. This view harmonizes both the expressed object of her will, and the natural desire that the bulk of the trust estate should go where her father would have wished it to go, and above all *with what she actually did* when she revoked the provision as to the power of appointment. It is not, however, worth while to spend much time in discussing this phase of the case for beyond all peradventure all the testimony of intention is irrelevant.

It will be observed that prior to the making of the residuary clause in the second codicil, the residuary estate of the testatrix had been greatly increased by these facts: (1) the sum of \$50,000, given in the first item of the first codicil to Lydia Tiffany (p. 38), was revoked in the second codicil and a life estate therein provided for her (par. 7, p. 44), and the sum of \$50,000 turned into the residue; (2) the sum of \$10,000, originally given to

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Rt. Rev. S. M. Griswold was revoked, and a life estate in such sum given to him, and said sum turned into the residuary estate (p. 39); (3) a small sum, \$500.00, originally given to Katherine A. Taylor, was revoked and made a part of the residuary estate (p. 39). In this way a large residuary estate was provided by the testatrix as against which the only deduction was a few money legacies aggregating but a small sum, \$6,600. Aside
 10 from anything else representing the residuary estate the changes above indicated provided for a residuary fund of \$60,000.

Earlier in this brief we have shown that Mrs. Batterson's own estate, including her interest in the fund which came to her through her brother George W. Farnum, who died intestate, amounted to more than \$408,000. The absolute pecuniary legacies as reduced by the second codicil amount-
 20 ed to \$294,250 (not including jewelry or life estates with small legacies payable out of the residue).

Her individual estate was therefore abundantly able to meet all the present demands upon it and that at the falling in of the life estates there will be a very substantial sum to go to the appellant, Florence M. Moberly, outside of the \$60,000 given her in paragraph 3 of the original will (p. 26).

This fund of \$100,000 in controversy was never
 30 given to Mrs. Batterson—never became her property—she never even had possession of it. It was and is a part of the estate of Paul Farnum, the donor of the power, a resident of New Jersey, and naturally belongs to his descendants. It has always been in the hands of the trustee named by him, virtually a New Jersey trustee, accountable to a New Jersey Court for a New Jersey fund, established in a New Jersey will.

40 It is impossible to suppose that Paul Farnum

could have contemplated the diversion of so large a portion of his estate to ecclesiastical institutions or the personal attendant of his daughter. It naturally fell into and became a part of his residuary estate, unless, as provided in his will, his daughter should by an instrument in writing in the nature of a will, duly executed, appoint the persons to whom it should be paid. It was his privilege to dictate how the power should be exercised. She had no more right to consider it as her property, or bequeath it as her property, than if it had been given to her simply for life. 10

What was said by Judge Agnew in *Bingham's Appeal*, 64 Pa. St., 345, is most apt:

"It must not be forgotten in handling such a question that we are dealing with the property of another and not with that of the donee of the power. In the donee it is but a trust and those interested in the Estate of William Bingham have a right to know that the will of their testator has been actually executed as he intended by the donee of his power. As such they are entitled to certainties, not mere conjectures or possibilities." 20

The question to be settled in this controversy is whether the donee of the power has so exercised it as to cut off the residuary legatees under the will of her father, by whom this fund of \$100,000 was created. 30

We respectfully submit that the decree of the Chancellor should be affirmed.

McDERMOTT & ENRIGHT,
Counsel of Respondents.

LEWIS LAWRENCE SMITH,
of the Philadelphia Bar.
Of Counsel.

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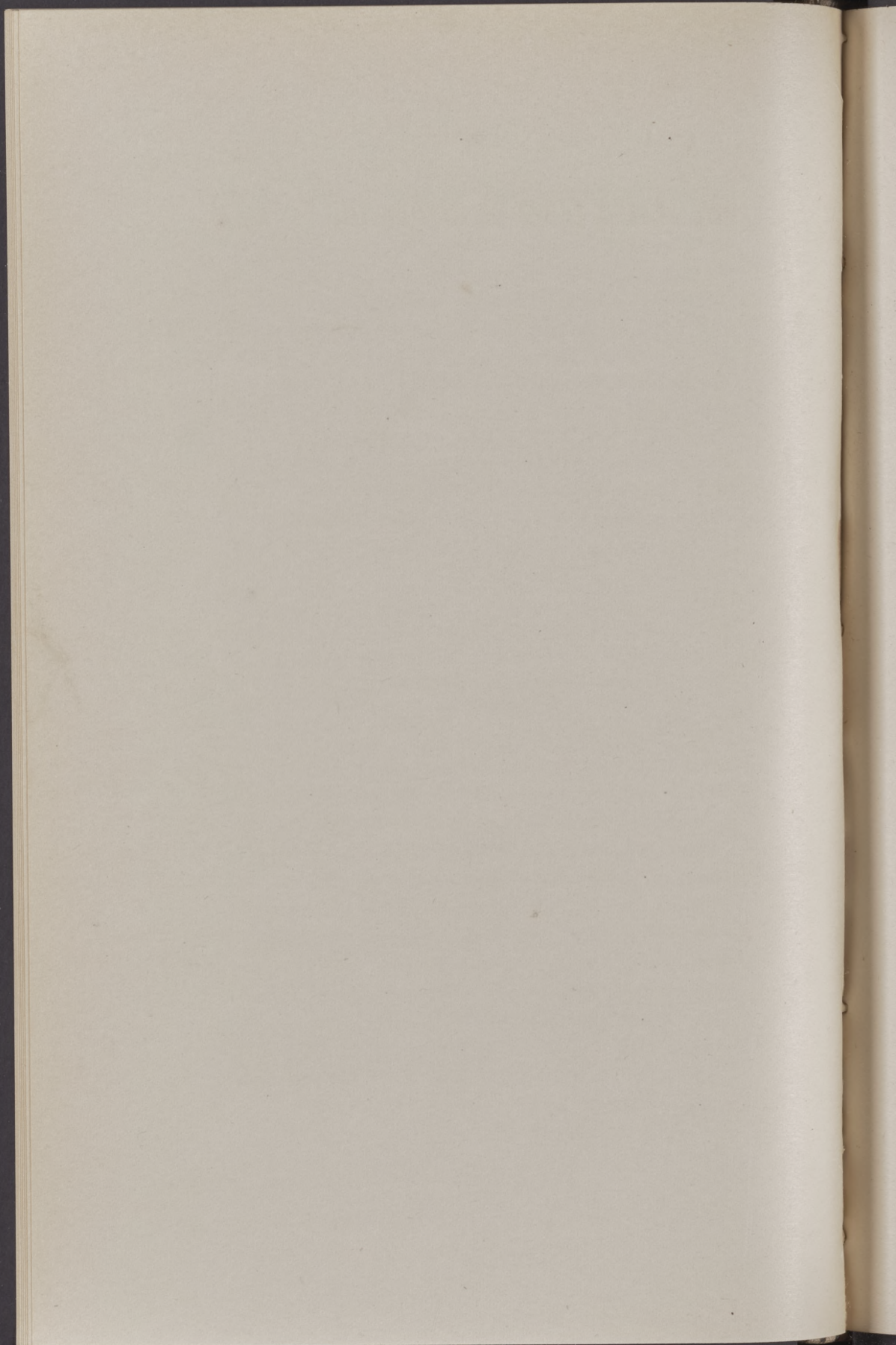
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THE JUDICIAL COURTS OF ENGLAND AND IRELAND.

The judicial system of England and Ireland is divided into two main branches, the civil and the criminal. The civil branch is divided into the High Court of Justice and the County Courts. The High Court of Justice is divided into the Queen's Bench Division, the Chancery Division, and the Family Division. The County Courts are divided into the County Court and the District Court. The criminal branch is divided into the High Court of Justice and the Magistrates' Courts. The High Court of Justice is divided into the Queen's Bench Division, the Chancery Division, and the Family Division. The Magistrates' Courts are divided into the Magistrates' Court and the District Court.

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NEW-JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

J. EDWARD FARNUM, ET AL.,
Complainants-Respondents,

AND

THE PENNSYLVANIA COMPANY,
ET AL.,
Defendants-Appellants.

ON APPEAL.
ARGUMENT FOR
DEFENDANTS-AP-
PELLANTS.

INTRODUCTION.

This case comes before the Court on appeal from a decree of the Court of Chancery, dated January eleventh, nineteen hundred and seventeen, advised by Backes, V. C., found at pages 136, *et seq.*, of the printed book.

The conclusions of the Vice Chancellor are found on pages 123, *et seq.*, of the book.

The bill was filed by the administrators d. b. n. c. t. a., of Paul Farnum, deceased, to ascertain whether or not his daughter, Sarah E. Farnum Batterson, also deceased, exercised the power of appointment conferred upon her by the will of her father, Paul Farnum. The clause of

the will in question, found at pages 19 and 123 of the book, reads as follows:

“In addition to the House and lot of land in Arch Street, Philadelphia, in the hands of a trustee for the use of my daughter, Sarah E. Farnum, I give and bequeath unto the Pennsylvania Company for Insurance on Lives and Granting Annuities, located in the City of Philadelphia, Pa., one hundred thousand dollars in bonds or stocks, my said daughters choice of such as I may die possessed, (Except Bank Stock which I divide among my sons) in trust nevertheless for the use of my said daughter, Sarah E. Farnum, the interest or dividends arising therefrom to be paid by the said Company to the Sole order of my said Daughter semi-annually during the term of her natural life, and not be liable for the debts nor effected by the extravagance or misfortunes of any husband she may Marry. And at the death of my said Daughter the principal sum and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company or trustees to pay over to such person or persons as my said Daughter by any instrument of writing in the nature of a will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct, limit and appoint, or designate My will and design is that the House and lot in Arch Street shall pass in like manner to such person or persons as she may designate (provided, however, that I give the said company my said trustee to change any of the securities deposited with them whenever they may think proper during the life time of my aforesaid Daughter.”

The bill also prays for an accounting of the \$100,000 fund and that the balance found in the hands of the trustee may be paid over to complainants.

The complainants contended that Mrs. Batterson did not execute the power and that they are entitled to the fund.

The defendants, being the Trustee of the fund and the executor and trustee under the will and two codicils of Mrs. Batterson, and the residuary legatee of Mrs. Batterson, contended that she executed the power and that the \$100,000 fund should be paid over by the Trustee of Paul Farnum to Mrs. Batterson's legatees named in her will and codicils.

FACTS.

Mrs. Batterson made a will dated May 26, 1903, in which she used this language in the 18th clause thereof, which, it will be noted, was the residuary clause of the will:

"18. All the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever, including all over which I have a power of appointment, I give, devise and bequeath," etc.

On the 3rd of May, 1909, she executed a will, by the 75th clause of which (also the residuary clause), she used this language:

"One-half of all the rest, residue and remainder of my estate, real, personal and mixed, including that over which I have or may have a power of appointment, I give, devise and bequeath," etc.

In January, 1912, she interviewed Mr. Jay Gates, of the Pennsylvania Company (the Trustee under Paul Farnum's will) for the purpose of preparing another will.

The Pennsylvania Company was at that time attorney in fact, having possession of and the handling of Mrs. Batterson's own private personal property. (P. 73, et seq.)

At the interviews in question, in the winter and spring of 1912, she inquired of Mr. Gates what property she had individually and what the Trust Fund amounted to in which she was the life tenant and over which she had a power of appointment under the will of her father, Paul Farnum. Mr. Gates, at page 5 of the typewritten testimony, says that he went to the asset books and calculated the amount both of her individual property and of the Trust Fund. He told her the Trust Fund amounted to something more than \$100,000.00 and her own estate amounted to something more than \$290,000.00, and that if the two funds were taken as one estate, there would be ample to pay all the legacies which she had provided for and the expenses of the administration, executors' fees, etc., and leave a residuary estate.

The will of February 2, 1912, printed copy of which is annexed to the copy of the bill, at page 8 thereof, was then executed. Under this will, the specific legacies amounted to \$344,250.00. In this will, paragraph 73, which is also the residuary clause, she used this language:

“One-half of all the rest, residue and remainder of my estate, real, personal and mixed, including all over which I have or may have a power of appointment, I give, devise and bequeath,” etc.

A codicil of this will of February 2, 1912, was executed by Mrs. Batterson on April 23, 1913. Before this execution she interviewed Mr. Gates again, and he prepared the codicil for her. (See his testimony, p. 76),

where it appears that she again inquired as to whether there was sufficient in both estates to pay all the legacies provided for, Mrs. Batterson saying that she wished to combine the two estates in the gifts made under her will, and to include not only that which she owned in her own right, but that over which she had a power of appointment under her father's will (p. 77). The specific legacies under the will and the first codicil together amounted to \$356,750.00.

In May, 1915, Mrs. Batterson called on Mr. Gates and told him of the execution of the second codicil at Portsmouth, New Hampshire, in the Fall of 1914, which she had sent to the Pennsylvania Company for safe keeping. At this interview she asked Mr. Gates again if she had sufficient estate, both in her own right and that over which she had a power of appointment under her father's will, to provide for the payment of all legacies. Mr. Gates told her yes, unless she had very materially increased the amount. She said she had not.

At this interview Mr. Gates had the books of the company looked up again in regard to both estates, and gave her an idea of what they were, telling her that there would be a surplus of from \$75,000.00 to \$100,000.00 after the payment of all specific legacies and the cost of administration, taxes, etc. (P. 78.)

The actual figures given by Mr. Gates to Mrs. Batterson at this time were \$100,000.00 and upwards of the Farnum fund, and of her own estate about \$300,000.00.

At the last interview Mrs. Batterson told Mr. Gates that she had made a provision for the distribution of her residuary estate, and that she was anxious that those she had named as residuary legatees should receive some share of her estate.

The 12th clause of the first codicil executed April 23, 1913, contains this language: (P. 41.)

“Whereas, by item seventy-three of my said will I have given one-half of the residue of my estate to * * * * , I now revoke such part of the direction as therein contained providing for a division of the same to the * * * * , and I direct that in lieu of the direction,” etc.

The second codicil was executed under the following circumstances, as testified to by Samuel W. Emery, a member of the Bar of the State of New Hampshire.

Mrs. Batterson sent for Emery to draft a second codicil to her will. This resulted in three or more interviews. At the second of these interviews, she told Emery that her property, as nearly as she could find out, amounted to \$400,000.00, of which \$300,000.00 was her own and over \$100,000.00 of which she had a power of disposal at her death from her father. She told him that other “young men” were interested in that fund and would like to receive it. She said they were her nephews; that they had already had money which they had wasted, plainly indicating a desire to prevent them from receiving the \$100,000.00 fund.

She instructed Emery (p. 85) to draw the codicil so that all her property, both the property which she had of her own, and the Trust Fund, should be included in the disposition of her estate so that there would be a substantial residue, and particularly for Miss Moberly. The next day Emery interviewed Mrs. Batterson with a draft of the codicil in hand. Before executing it she repeated her statement that the Trust Fund should not under any circumstances go to the people she had mentioned. A

day or two later, the codicil having been redrawn and ready for signature, she read it over before executing it, and asked Emery if what he had drawn included her own property and the Trust Fund. He told her that it did, and she then executed it.

The second codicil contain a clause (Clause 9), which reads as follows: (P. 44.)

“9. I hereby revoke all the provisions of Item Seventy-three in my said will and all the bequests therein contained, and I also revoke all the provisions of Item Twelve in said first codicil to my said will and all the bequests therein contained.”

Clauses 13, 14, 15, 16 and 17 are bequests of specific legacies to the persons named, and to be paid out of the residue of her estate. Then follows Clause 18, which reads as follows: (P. 46.)

“18. All the rest, residue and remainder of my estate remaining I give, bequeath and devise unto Miss Florence M. Moberly, who lives with me, absolutely.”

The specific legacies contained in the will and the two codicils, all taken together, amount to \$360,850.000.

From the testimony of Maurice Bower Saul (p. 89), a member of the Bar of Pennsylvania, it appears that by the Act of June 4, 1879, page 88 of the Pamphlet Laws of that year, the law of Pennsylvania (that being the legal residence of Mrs. Batterson), is that a residuary clause executes a power of appointment in the testator without any special reference in the residuary clause or in the will to the power, and without any expressed intention on the part of the testator to execute the power.

ARGUMENT.

The prayer of the bill, in the 3rd paragraph thereof, is that the will of Paul Farnum, deceased, may be construed and that it may be determined whether or not the bequest of \$100,000.00 to the Pennsylvania Company passed under the will of Mrs. Batterson, or whether the bequest fell into the residuary estate of Paul Farnum.

The question tried and determined in the Court below, however, was whether or not the power of appointment in the above-recited clause of the will of Paul Farnum was executed by the donee of the power, Sarah E. Batterson, in her will and two codicils.

Defendants-appellants contended below and contend here that Mrs. Batterson executed the power of appointment so conferred and this was so whether the law of Pennsylvania, where the donee of the power resided and the Trust Fund was located, was applicable or whether the question should be determined under the law of New Jersey, where the donee of the power resided.

A.

Discussing first the application of the Pennsylvania law. We contend the law of that State controls because it was the intention of Paul Farnum, the donor of the power, that the power of appointment should be exercised under the laws of the domicile of the donee, Mrs. Batterson.

Farnum could have legally provided that the power of appointment should be executed by Mrs. Batterson ac-

ording to the laws of Pennsylvania. We contend that he did so by the language which he used in his will above quoted, taken in conjunction with the circumstances of the bequest.

In the clause of his will, quoted at page 1 of this brief, he says that prior to the making of his will in 1856 he had given a house and lot of land in Arch street, Philadelphia, to a Trustee for the use of his daughter, then Sarah E. Farnum. In addition to that donation he expressly bequeathed \$100,000.00 in bonds and stocks, to be selected by his daughter, to the Pennsylvania Company, a corporation of Pennsylvania, the exact name of which he correctly used, and described as located in the city of Philadelphia, Pennsylvania.

By the said clause The Pennsylvania Company, the Philadelphia trustee, was to receive the securities and keep them in Philadelphia where it did business; was expressly empowered to change the securities as they might think fit during the lifetime of his daughter, and was to pay the interest or dividends to the sole order of his daughter, semi-annually, for life. He also expressly provided that the fund should not be liable for the debts or affected by the misfortunes or extravagance of any husband she might marry.

The Trustee was further directed, upon her death, to pay over to such person or persons as his daughter, by an instrument in writing, in the nature of a will, in the presence of two or more witnesses, etc., should direct, limit and appoint. His daughter was also empowered to pass the real estate in like manner to such person as she might designate.

So the testator gave real estate in Pennsylvania, the dwelling house, for his daughter's use, and where she

lived, and gave her a power of appointment over it by her will, and gave to a Pennsylvania Trust Company securities to be kept by it out of the State of New Jersey and in the State where the beneficiary lived, and he gave his daughter, thus a non-resident, a power of appointment over that non-resident fund in the hands of a non-resident trustee.

Further light is thrown on this subject by the provision that the fund should not be liable for the debts of any husband his daughter might marry. Under what law did the testator mean that clause to be construed? Obviously, the laws of the place where the donee of the power, his daughter was living. His daughter, Sarah E. Farnum, married Batterson and lived in Pennsylvania. A creditor of the husband in Pennsylvania could not seize this fund or its income for debt of the husband. In New Jersey, where Farnum resided when he made the will, a creditor of the husband could seize the estate for debt, and if the law of New Jersey were to apply to the situation, the language of the testator was null. But the common rule of construction is that a clause in the will shall be given effect if it is possible to do so.

Rosenbaum vs. Garrett, 57 Equity, page 194.

It is unnecessary to cite authority for the proposition that as to the real estate in Pennsylvania over which Farnum gave his daughter power of appointment, the question of her execution of that power must be determined by the law of the place where the real estate was located. Can it be reasonably believed that Farnum, having given power of appointment over real estate in Pennsylvania which could only be exercised under the laws of

Pennsylvania and having given a fund to a Pennsylvania Trust Company in Philadelphia, where the donee herself lived, and which fund he subjected to provisions of non-liability for her husband's debts, which could only be effective in Pennsylvania, intended that only the power of finally disposing of the fund should be exercised by the donee under the laws of the State of New Jersey, where she did not live, where the fund was not located, and with which laws she had no reason to be familiar?

In all the cases on the subject cited by complainants in their brief, and which I have been able to find elsewhere, in which the rule has been laid down that the execution of a power given by a will shall be determined by the law of the donor's domicile; the donor's property or the fund itself has been located in the place of the testator's domicile and the other elements in the case at bar were lacking.

Nor does the statement in this clause that the power should be exercised by a writing in the nature of a will, executed in the presence of two or more witnesses, militate against this view. In New Jersey a will must be executed in the presence of two witnesses. If the testator intended this power to be executed under New Jersey laws, the requirement that the instrument in the nature of a will should be executed in the presence of two witnesses was entirely superfluous; but if he meant the power to be exercised under the laws of the domicile of the donee where two witnesses *were not required*, the provision that there should be two witnesses has some meaning and the testator's language is given effect. Moreover, testator's requirement that the paper should be executed in the presence of two witnesses relates also to the

disposition by the donee of the power of appointment over the real estate which could only be dealt with under the laws of Pennsylvania.

Farnum's requirement was that the power of appointment should be exercised by the donee in exactly the same way, whether she dealt with the real state in Pennsylvania or with the Trust Fund which Farnum placed in the possession of the Pennsylvania Company, trustee.

If the question before the Court must be determined by the laws of Pennsylvania there must be a decree for the defendants, as by the application of the Pennsylvania Act of June 4, 1879, the general residuary clause in the second codicil of Mrs. Batterson's will was an execution of the power of appointment.

B.

If, however, it is determined that the question must be solved by application of the laws of New Jersey, the domicile of the testator, Paul Farnum, the same results must be reached.

The question is one of intention on the part of the donee. It was so held by the Court of Errors in *Cueman vs. Broadax*, 37 *Equity*, page 573.

The rule was recognized in *Robeson vs. Shotwell*, 55 *Equity*, 327. Affirmed by the Court of Appeals, page 828.

It is not essential or even necessary that the testator expressly refer to the instrument creating the power or in any form of words declare an intention to execute the power.

Chancellor Runyon says, in *Meeker vs. Bretnall*, 38 *Equity*, page 355:

“A reference to the instrument by which power is given is indeed not necessary to demonstrate the intention to execute such a power, but it must appear from the will that the intention existed. It need not appear by express terms or recitals in the instrument; it is sufficient if the act shows that the donee had in view the subject of the power.”

Moreover, testator's intention can be collected from the provisions of the will as applied to the character and amount of property and personal condition of testator at the time the will was made.

To this effect was the decision in the case of *Munsan vs. Berdan*, 35 *Equity*, page 376, in which power of appointment over \$14,000.00 was held to have been executed by bequeathing just that sum in various legacies, although the will contained no reference to or recital of the power.

In the case of *Ackerman vs. Ackerman*, 81 *Equity*, 441, the rules above enunciated were recognized, but the decision was that the power had not been executed because every element indicating testator's intention to do so was lacking.

The best judicial expression of the subject, however, and which conforms entirely to the New Jersey decision, is found in the New York case of *Hutton vs. Benkard*, 92 *N. Y.*, 295, at page 303, in the following language:

“If we concede the contention of the learned counsel for the appellants, that there should be a valid execution of the power as to the personal property tested by the rules of the common law, we are yet of

opinion that under the common law, as expounded by the courts of this State, the power was effectually executed.

“When a will is claimed to be effectual as an execution of a power, all parts of it may be considered and its language and terms construed in the light of circumstances surrounding the testator at the time of the execution of the will, and if, from all these, it can be seen that it was his intention, in the dispositions he made, to execute the power, such intention will have effect. The power need not be referred to in express terms; no form of words need be used; but the will is to be construed, as all wills are to be construed, so as to give effect to the intention of the testator. If it can be seen that he intended to dispose, not only of the property which he owned in his own right, but of property which he had the right to dispose of just as effectually as if he did own it, under the power of appointment, then effect will be given to the intention, if that intention can be gathered from all the terms of the will, read in the light of such circumstances surrounding the testator at the time of its execution as are proper to be considered. In *Braddish vs. Gibbs* (3 *Johns. Cha.*, 522), Chancellor Kent said: ‘The rule is that if a will be made without any reference to the power it operates as an appointment under the power, provided it cannot have operation without the power. If the act can be good in no other way than by virtue of the power, and some part of the will would otherwise be inoperative, and no other intention than that of executing the power can probably be imputed to the testator, the act, or will, shall be deemed an execution of the power, though there be no reference to the power. Here the will can have no effect without the power, not even as to personal property, and if the power operates upon it at all it operates equally upon every

part of the disposition.' In *Heyer vs. Burger* (1 Hoff., Ch. 1), it was held that a will, in the execution of a power of appointment, need not refer to the power and was well executed without any reference thereto. In *White vs. Hicks* (43 Barb., 64), H. gave to his executors the sum of \$100,000 in trust, to pay over the income to his daughter, R., during her life, and in case she should have no children or grandchildren living at the time of her death, then in trust to pay over one-half of such sum to such person or persons, whether her husband or otherwise, as she might, by last will and testament, appoint; and R. made a will by which she gave her husband \$50,000 in general terms and without any reference to the power of appointment given her by the will of her father. It was held that the will was a valid execution of the power; also that evidence as to the circumstances or condition of the property or fund in the hands of H.'s executors, to show that R.'s own savings or property were not sufficient to answer the special legacies bequeathed by her will, and of other extrinsic facts, as distinguished from what she said at or about the time of executing her will, was properly received. That case was appealed to this Court and is again reported in 33 N. Y., 383, and the judgment of the Supreme Court was here affirmed. In that case, in a very exhaustive and learned opinion, in which the numerous English cases are cited and criticised, Denio, J., reached the conclusion, which was unanimously adopted by the Court, that a person entitled under a power of appointment to dispose of property by deed or will, may make such disposition by a proper instrument without inserting in it a reference to the power, if it otherwise appear that the intention was to execute the power; that it was competent for the Court to compare the dispositions of the will with the testator's own property, and to deduce therefrom

such an intention to embrace in his testamentary gifts the subject he was entitled by the power to dispose of; that the English cases decided since the American Revolution, by which it was established that the amount of the testator's property could not be inquired into to show an intention to execute a power of appointment, are not to be followed in this State, especially as the rule has been disapproved of by English judges, and has recently been abrogated by an act of Parliament; that it was competent, not only to receive evidence respecting the property owned by the testatrix, but also in reference to her expectation of approximate death, on account of the state of her health, as bearing upon the construction to be given to her will; and that her intention could be collected from the provisions of her will, applied to the state of her property, and her personal condition at the time it was made. Further citation of authority for a rule so reasonable is not needed."

See also the following New York cases:

Trust Co. vs. Livingston, 133 New York, 125.

Lockwood vs. Mildeberger, 159 New York, 191.

White vs. Hicks, 33 New York, 383 (43 Barbour, 64).

In Pennsylvania, see:

Bingham's Appeal, 64 Pa., 345, which has been modified by the late case of *South's Estate*, 248 Pa., 165, in which case parol evidence was admitted— that of the lawyer who drew the will, showing an intention to exercise the power.

See also:

Blagge vs. Miles, 1 Story C. C., 426, especially page 446.

Boise vs. Cook, 4 Chancery Division, 53.

Clark's Estate, 14 Chancery Division, 422.

Funk vs. Eggleston, 92 Illinois, 15.

C.

It only remains to apply these rules of construction to the facts in the case at bar to ascertain the testatrix's, Mrs. Batterson's, intention as expressed in her will and codicils, and to the circumstances under which they were executed and with the knowledge she had of the fact that she was donee of the power.

Mrs. Batterson knew she was donee of the power. In two prior wills and in the will and first codicil under investigation, she had expressly referred to the power in the residuary clauses of these documents, by these words:

"Rest, residue and remainder of my estate, real, personal and mixed, including all over which I have or may have a power of appointment."

It is only from the second codicil of October 15, 1914, that reference to the power is omitted.

The circumstances under which she executed this codicil and used different language in the residuary clause are proven by the testimony of Emery, at pages 6 and 7 of this brief. From that testimony it appears that Mrs. Batterson intended and believed that the language used in the residuary clause of the second codicil included disposition of property over which she had the power of appointment under her father's will.

Under the laws of Pennsylvania, where she resided, the language in the residuary clause of the second codicil was an effective exercise of the power of appointment.

If, however, her declarations of intention and purpose, etc., be not adverted to, the other circumstances as to the amount of her estate, etc., are sufficient to indicate her intention to have been to execute the power.

At and before the time when Mrs. Batterson made her will of February 2, 1912, the codicil of April 23, 1913, and the second codicil of October 15, 1914, she believed her own personal estate amounted to \$300,000, and she knew she had the power of appointment over another fund of \$100,000.

Acting under this belief, by her will she bequeathed specific legacies in excess of \$344,000. By her first codicil specific legacies aggregating \$355,750, and by her second codicil \$360,850.

If we go no further than to apply the rule established in the case of *Munsan vs. Berdan*, 35 N. J. Equity, 376, this Court must determine that Mrs. Batterson intended to exercise the power of appointment.

Acting on the information many times given her in response to her request, she believed she had but \$300,000 of her own estate, yet in three successive wills, that is, the first will and two codicils, she bequeathed in the will \$44,000 more than she believed she had in her own estate; in the first codicil \$55,750 more and in the second codicil \$60,850 more.

Complainant's counsel argues that because \$50,000 was, by the second codicil, Clause 7, taken out of the specific legacies and, after a life interest, was directed to form a part of the residuary estate, that the specific lega-

cies were reduced by this amount. But again the question is one of intention, and by putting this \$50,000 in the residuary estate Mrs. Batterson was not indicating or declaring that she was dealing only with her separate estate. She was still evidently dealing with the same total amount of money and taking \$50,000 from the specific legacies and putting it into her residue, thereby showing that she believed that the residue would be in excess even of that \$50,000, or, in other words, in excess of a total of \$360,850. From all the information she had, the only way her residuary estate could be made to exceed that amount, or to even equal that amount, was by use of the Farnum fund, over which she knew she had the power of appointment.

It is immaterial whether her actual estate at that time was in excess of \$300,000.00 or not. The only fact to be ascertained is the donee's intention. The only way that intention can be settled is by having regard to what she believed she had, not to what she may have actually had.

The Vice-Chancellor based his finding of value of the property upon what Mrs. Batterson's estate amounted to as evidenced by the inventory (Exhibit D-3, p. 93), and the account (Exhibit D-4, p. 96), but it does not appear anywhere in the case that Mrs. Batterson ever knew or was informed of the values appearing in this inventory and account. How then can such values have any relation whatever to the real question, which is, "What was the intention of the donee of the power in dealing with the funds which she believed she had?"

A discussion of figures or values which Mrs. Batterson did not know of, it is submitted, has no relation to the question.

On the whole case, therefore, it is urged that the Court below erred in making the decree appealed from and that the decree should be reversed and complainants' bill dismissed.

Respectfully submitted,

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NELSON B. GASKILL,

Solicitors for Defendants-Appellants.

New Jersey Court of Errors and Appeals.

No. 139—March Term 1917.

J. EDWARD FARNUM and GEORGE
L. FARNUM, as administrators
&c. of Paul Farnum, deceased,
et als.,

Complainants-Respondents,

vs.

THE PENNSYLVANIA COMPANY FOR
INSURANCES ON LIVES, &c., Trustee
&c., et al.,

Defendants-Appellants.

On Appeal
from Chan-
cery: Sat
below: Wal-
ker, C.

Backes, V. C.

10

SUPPLEMENTAL BRIEF ON PART OF COMPLAINANTS-RESPONDENTS.

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Since our main brief was put in type we have received a copy of the argument on behalf of the defendants-appellants, which calls forth this supplement in response.

Some of the cases cited are inapplicable. As to all of the New York cases, this comment may be made that there is a statute in that State of the same general character as that of Pennsylvania, by the force of which the common law has been changed, and the law as now administered is diametrically opposite to that of New Jersey. None of such cases, therefore, has any application to an issue of this character arising in New Jersey.

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In particular, the facts in *Hutton vs. Benkard*, 92 N. Y., 295, and *White vs. Hicks*, 33 N. Y., 393, were also such that there was a basis for the finding of the Court that it was the intention

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of the donee to exercise the power of appointment.

Lockwood vs. Mildeberger, ¹⁵⁷53 N. Y., ¹⁸¹161, relied on by appellants' counsel, establishes the principle that even under the New York rule, if it appears from the will itself that *the Testator had knowledge of the power of appointment at the time of the execution of the will, the fact that he omitted to expressly mention the power gives rise to an implication that he did not intend to execute it.* 10 In the case before this Court it appears from Mrs. Batterson's will that she had knowledge of the power of appointment, and yet not only did she omit all reference to it in the codicil but expressly revoked the provision relating to its exercise.

Blagge vs. Miles, 1 Story (C. C. U. S.), 426, is frequently cited and is not essentially in conflict with the principles laid down in the New Jersey cases, but it has a peculiar significance 20 which may have been sometimes overlooked as appears from the opinion of the Court on page 454:

“Nor do I rely upon the fact, that the personal estate of Mrs. Blagge, at her death, was insufficient to discharge these legacies; for that circumstance alone would not affect the present question; as from the nature and fluctuation of personal estate the amount, which would be assets at the death of the testatrix, must always be somewhat conjectural; and, on that account, has not like real estate been supposed to be within the contemplation of the testator as a specific bequest.” 30

The reference to *South's Estate*, 248 Pa., 165, is of little moment for the reason that all cases in Pennsylvania since the Act of 1879 are necessarily affected by that statute, and *South's Estate* was squarely decided upon it. It follows 40

that the discussion with regard to the admission of extrinsic evidence was wholly unnecessary to the decision.

The intimation that in that case *Bingham's Appeal* was modified, and that the parol evidence of the lawyer who drew the will showing an intention to exercise the power was admitted, is unwarranted. Except so far as affected by the Act of 1879, *Bingham's Appeal* is still the law of Pennsylvania, and has been frequently cited. It is not referred to in *South's Estate*. The suggestion made is opposed to the Pennsylvania adjudications. *South's Estate* cites *Herman's Estate*, 220 Pa., 52, which in turn goes back to *Postlethwait's Appeal*, 68 Pa., 477. In this latter case parol evidence was properly admitted to explain a *latent ambiguity*. 10

If it is intended to suggest that conversations between a scrivener and a testator are admissible in evidence in Pennsylvania, the position is untenable. 20

In *Willard's Appeal* which was also reported in 68 Pa., Judge Sharswood, who wrote the opinion in *Postlethwait's Appeal*, says on page 329:

"In regard to the admissibility of the parol evidence of Henry F. Snyder, the scrivener who drew the Will of William Waldo Willard, as to his understanding of what the testator intended, it would be in the teeth of every precedent, and a virtual repeal of the Act of Assembly which required all wills to be in writing." 30

In *Best vs. Hammond*, 55 Pa., 409, it was held that the purpose of parol evidence is in general to apply provisions of a will to the subject or person intended where the description is defective, uncertain or too general to be understood specifically. 40

That in the main is what is intended by a latent ambiguity.

In Root's Estate, 187 Pa., 118-121, the following rule is regarded as established:

10 "Where a subject exists which satisfies the terms of the will and to which they are perfectly applicable, there is no latent ambiguity. *Evidence is only admitted de hors the will from necessity to explain that which otherwise would have no operation. If the rule were held otherwise, a person could feel no security in making a will.* His intention clearly expressed in writing and the object of his bounty found in all respects answering the description, might be defeated and the statute relating to wills be made practically inoperative."

This language is quoted in *Hunter vs. Hunter*, 37 Pa. Superior Court, 319, where the cases are collated.

20 The leading case, with the opinion by Tilghman. C. J., is *Iddings, et al., vs. Iddings*, 7 S. & R., 110, where he says:

30 "This may be a very unfortunate mistake for some of the children of the testator, but I am clearly of opinion that the evidence was not admissible. Our law requires that wills should be in writing, and proved by two witnesses. But if this writing is to be contradicted by parol evidence, the object of the law will be defeated and all certainty destroyed. It is very common for scribes to make mistakes, particularly where they make use of technical words, which they are fond of doing. But, if these mistakes were to be corrected by the scrivener's recollection of his conversation with the testator, it would open such a door for perjury and confusion, as would render wills of very little use. The rule of law, therefore, is that the writing is not to be altered, or explained by evidence aliunde."

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The recent case of *Vanleer vs. Vanleer*, 221 Pa., 195, adopts the following language from Hawkins on Wills:

“In construing a will, the object of the courts is to ascertain, not the intention simply, but the expressed intentions of the testator, i. e., the intention which the will itself, either expressly or by implication, declares, or (which is the same thing) the meaning of the words—the meaning, that is, which the words of the will, properly interpreted, convey.” 10

This case adopts with approval the much quoted opinion of Mitchell, J., in *Woelpper's Appeal*, 126 Pa., 562:

“It is often said * * * that ‘the question in expounding a will is not what the testator meant, but what is the meaning of his words.’ But by this it was never intended to say that the testator’s meaning, when apparent can be disregarded, but that it cannot be got at aliunde, by what he might have meant, or even what under the circumstances, perhaps, he would have meant, but only by what he said. The search is confined to his language, but its object is still his meaning.” 20

When Paul Farnum made his will and when the daughter made her will the law relating to the power of appointment had been fixed and established by a long line of decisions in New Jersey based upon the common law. In England about 1838 a statute was enacted which changed the law as it had stood for generations, but in this State no statute has modified or varied it, and when Paul Farnum died it was a fixed and settled part of our system of jurisprudence. The common law had long before been adopted in this State and our courts had frequently given expression to their approval of this part of it. 30

This Court in *Cueman v. Broadnax*, 37 Law, 40 508, p. 513, in 1874, approved the rule of the

common law as laid down by Chancellor Kent. See short quotation on page 25 of our main brief. And the Supreme Court, almost a century ago in *Den v. Crawford*, 8 Law, 108, made it clear that a devise of the donee's real estate, was not a devise of what the donee might have controlled by the exercise of the power of appointment. And later, in 1884 (*Meeker vs. Brietnall*, 38 Eq., 345), in 1889 (*Wooster vs. Cooper*, 59 Eq., 204) and 10 in 1913 (*Ackerman vs. Ackerman*, 81 Eq., 437) the Court of Chancery following this Court and the Supreme Court, recognized the stability of this rule and the reason on which it was founded. The common law rule has been widely accepted and found highly beneficial in operation.

20 Estates have been settled on the basis fixed by this law and titles have passed and become vested under it. A change in adjudication at this late day would work great hardship, unsettle titles and render wills inoperative.

This Court has frequently expressed itself in favor of observing the fixity of the law.

State vs. Taylor, 68 L., 376;

Bowman vs. Freeholders, 73 L., 543;

Freeholders vs. Jersey City, etc., Co., 85 L., 179.

30 While we contend that the rule as established in New Jersey is both logical and just, yet if there ever should come a time when a change becomes desirable, it should be accomplished as in England and in some of our states, by statute, and for a century and a half there has been no evidence here of a demand for such a statute.

We submit that the decree of the Court of Chancery is consonant with reason and justice and in accordance with the established law of this State.

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MCDERMOTT & ENRIGHT,
LEWIS LAWRENCE SMITH,
Of Counsel with Respondents.

THE HISTORY OF THE UNITED STATES

OF THE

AMERICAN PEOPLE

FROM THE

EARLIEST PERIOD

TO THE

PRESENT

BY

W. H. CHAPMAN

OF THE

NEW YORK

LIBRARY

OF THE

AMERICAN

PEOPLE

AND

THE

LIBRARY

(Filed February 17, 1917.)

IN CHANCERY OF NEW JERSEY.

Between

J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators *de bonis non* with the Will annexed of PAUL FARNUM, deceased; J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators *de bonis non* with the Will annexed of JAMES EDWARD FARNUM, and as Administrators *de bonis non* of GEORGE W. FARNUM, deceased,

Complainants,

vs.

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, as Trustees of the Trust Fund of \$100,000.00 with appreciations and accumulations thereon, under the Trust created under the last Will and Testament of PAUL FARNUM, deceased; THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, as Executor and Trustee under the last Will and Testament and Codicils thereto of SARAH E. (FARNUM) BATTERSON, deceased, and FLORENCE M. MOBERLY,

Defendants.

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ON BILL, &c.

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NOTICE OF
APPEAL.

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These defendants hereby appeal from the whole and every part of the final decree made in this Court in the above entitled cause.

Dated February 15, 1917.

GREY & ARCHER,

Solicitors for and of Counsel with the Defendants,
The Pennsylvania Company, Trustee and Executor,
and Florence M. Moberly.

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

NORMAN GREY,

Of Counsel with the Defendants, The Pennsylvania Company, &c., Trustee and Executor, and
Florence M. Moberly.

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(Filed February 20, 1917.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators *de bonis non* with the Will annexed of PAUL FARNUM, deceased; J. EDWARD FARNUM and GEORGE L. FARNUM, as Administrators *de bonis non* with the Will annexed of JAMES EDWARD FARNUM, and as Administrators *de bonis non* of GEORGE W. FARNUM, deceased,

Complainants-Respondents,

vs.

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, as Trustees of the Trust Fund of \$100,000.00 with appreciations and accumulations thereon, under the Trust created under the last Will and Testament of PAUL FARNUM, deceased; THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, as Executor and Trustee under the last Will and Testament and Codicils thereto of SARAH E. (FARNUM) BATTERSON, deceased, and FLORENCE M. MOBERLY,

Defendants-Appellants.

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ON BILL, &c.
PETITION OF
APPEAL.

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To the Honorable, the Judges of the Court of Errors and Appeals in the last resort in all causes:

The petition of The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustees of the Trust Fund of \$100,000.00, with appreciations and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased; the Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. (Farnum) Batterson, deceased, and Florence M. Moberly, defendant-appellants in the above matter, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eleventh day of January, nineteen hundred and seventeen, in these respects: That the said decree adjudges:

20 1. That one Sarah E. Farnum Batterson died without having exercised the power of disposition and appointment with respect to Trust Fund created for her benefit under the will of Paul Farnum, deceased.

2. That the principal, appreciation and accumulations of interest of said bequest of \$100,000.00 by the will of said Paul Farnum, deceased, less \$1,818.20, fell into and became a part of the residuary estate of Paul Farnum, deceased, and that the complainants, as administrators *de bonis non* with the will annexed of Paul Farnum, deceased, are entitled to have the said fund, as invested, transferred and paid over to them for distribution under the will of said Paul Farnum, deceased.

30 3. That the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000.00, transfer and set over the cash and securities constituting the balance of

said Trust Fund remaining in its hands to the said complainants, J. Edward Farnum and George L. Farnum, as administrators *de bonis non* with the will annexed of said Paul Farnum, deceased.

4. That the said decree is in divers other respects erroneous, oppressive and contrary to equity and good conscience.

Solicitors for and of Counsel with the Defendants-
Appellants, The Pennsylvania Company for In-
surance on Lives and Granting Annuities, as
Trustee and Executor, and Florence M. Mo-
berly.

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(Filed February , 1917.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

10 J. EDWARD FARNUM and GEORGE L.
FARNUM, as Administrators *de*
bonis non with the Will annexed
of PAUL FARNUM, deceased; J.
EDWARD FARNUM and GEORGE L.
FARNUM, as Administrators *de*
bonis non with the Will annexed
of JAMES EDWARD FARNUM, and
as Administrators *de bonis non* of
GEORGE W. FARNUM, deceased,
Complainants-Respondents,

vs.

20 THE PENNSYLVANIA COMPANY FOR
INSURANCE ON LIVES AND GRANT-
ING ANNUITIES, as Trustees of
the Trust Fund of \$100,000.00
with appreciations and accumula-
tions thereon, under the Trust
created under the last Will and
Testament of PAUL FARNUM, de-
ceased; THE PENNSYLVANIA COM-
30 PANY FOR INSURANCE ON LIVES
AND GRANTING ANNUITIES, as
Executor and Trustee under the
last Will and Testament and Codicils
thereto of SARAH E. (FAR-
NUM) BATTERSON, deceased, and
FLORENCE M. MOBERLY,
Defendants-Appellants.

ON BILL, &C.
ON APPEAL
FROM CHAN-
CERY.
ANSWER TO
PETITION OF
APPEAL.

The answer of the above named respondents to the petition of appeal of the above named appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that a decree was, on the 11th day of January last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced, and these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

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McDERMOTT & ENRIGHT,
Solicitors of Complainants-Respondents.

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(Filed December 11, 1915.)

IN CHANCERY OF NEW JERSEY.

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

The complainants, J. Edward Farnum and George L. Farnum, of the township of Nether Providence, in the county of Delaware and State of Pennsylvania, as administrators *de bonis non* with the will annexed of Paul
 10 Farnum, deceased, late of the county of Burlington, in the State of New Jersey; J. Edward Farnum and George L. Farnum, as administrators *de bonis non* with the will annexed of James Edward Farnum, late of the said township of Nether Providence, in the county of Delaware and State of Pennsylvania, deceased, and as administrators *de bonis non* of George W. Farnum, late of the city and county of Philadelphia, in said State, deceased, respectfully show:

20 (1) Paul Farnum died in the township of Willingborough, in the county of Burlington and State of New Jersey, on or about October , 1859, having been at the time of his death a resident of said township of Willingborough, leaving in force and unrevoked his last will and testament, bearing date May 28, 1856, and a codicil thereto, bearing date February 28, 1857, copies of which are hereto annexed and made a part hereof, which said last will and testament and codicil thereto were there-
 30 admitted to probate by the Surrogate of the county of Burlington aforesaid, to whom original jurisdiction in that behalf appertained, and were recorded in Book I of Wills for said county, on page 358, &c.

(2) In and by his last will and testament the said Paul Farnum did among things give, bequeath and direct as follows, viz.:

“In addition to the House and lot of Land in Arch Street Philadelphia in the hands of a trustee

for the use of my Daughter Sarah E. Farnum, I give and bequeath unto the Pennsylvania Company for insurance on lives and Granting annuities located in the City of Philadelphia Pa. one hundred thousand dollars in bonds or stocks, my said Daughters choice of such as I may die possessed (Except Bank Stock which I divide between my sons) in trust Nevertheless for the use of my said Daughter Sarah E. Farnum, the interest or dividends arising therefrom to be paid by the said Company to the *Sole order of my said Daughter* semi-annually during the term of her natural life, and not be liable for the debts nor affected by the extravagance or misfortunes of any husband she may Marry. And as the death of my said Daughter the principal *sum* and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company or trustees to pay over to such person or persons as my said Daughter by any instrument of writing in the nature of a Will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct limit and appoint, or designate My will and design is that the House and lot in Arch Street shall pass in like manner to such person or persons as she may designate, (Provided however that I give the said Company my said trustee to Change any of the securities deposited with them whenever they may think proper during the life time of my aforesaid Daughter.”

(3) The Trustee named in the foregoing extract from said last will and testament, the true name of which is The Pennsylvania Company for Insurance on Lives and Granting Annuities, a corporation of the State of Pennsylvania, located in the city of Philadelphia, in said State, shortly after the probate of said will and testament and codicil, and on or about April 12, 1860, took into its charge the bequest of \$100,000 mentioned in above re-

cited extract from said will and has held and retained the said sum of \$100,000 in trust under said will, which said fund with accumulations of interest and appreciation in the stocks and bonds in which same was invested, now amounts as complainants are informed and believe to the sum of \$130,000 and over.

10 (4) In the year 1866 the said Sarah E. Farnum, named in the above recited paragraph of said last will and testament, inter-married with one Herman G. Batterson, who died in the year 1902, or thereabouts.

20 (5) On or about June 27, 1915, said Sarah E. (Farnum) Batterson, the daughter of said Paul Farnum, deceased, and the person for whose benefit for life a trust was created in his said last will and testament, died, leaving no issue. A paper writing bearing date February 2, 1902, purporting to be the last will and testament of said Sarah E. (Farnum) Batterson, deceased, and a codicil thereto, dated April 23, 1913, and a second codicil thereto bearing date October 15, 1914, true copies of which will and codicil are hereto annexed, were thereafter and on or about July 15, 1915, proved and approved before H. C. Broomall, Deputy Register for the Probate of Wills and Granting Letters of Administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, and letters testamentary were thereon issued to the Pennsylvania Company for Insurance on Lives and Granting Annuities, the Executor and Trustee in said last will and testament mentioned and appointed; which said last mentioned instrument or will 30 of Sarah E. (Farnum) Batterson, and the codicils thereto attached, were thereupon duly recorded in the office of the Register for the Probate of Wills and Granting Letters of Administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, in Book 371 of Wills for said city and county, on pages 42, &c.

(6) Said Sarah E. (Farnum) Batterson, under the said instrument purporting to be her last will and testament, in the seventy-third paragraph thereof, referred to property over which she had or might have a power of appointment, but in the codicils attached to her will this clause was revoked and the said Sarah E. (Farnum) Batterson died without having exercised the power of disposition or appointment in respect of the Trust Fund created for her benefit in the will of the said Paul Farnum, deceased, under which she was the life beneficiary of said Trust Fund, and without having by any instrument of writing in the nature of a will, executed under her hand and seal, in the presence of two or more subscribing witnesses, directed, limited, appointed or designated the person or persons to whom the said principal sum of said Trust Fund, together with such interest as may have accumulated and not been paid, should be paid over by said Trustee named in the said last will of the said Paul Farnum, deceased, in the foregoing recited paragraph thereof, as directed in his last will and testament in the said recited paragraph; whereupon the principal and accumulated interest of said bequest fell into and became a part of the residuary estate of said Paul Farnum, deceased.

(6a) On June 13, 1916, the personal estate of the said Paul Farnum, deceased, not having been fully administered and the executors named in his said last will and testament having theretofore departed this life, letters of administration *de bonis non cum testamento annexo* of all and singular the goods and chatteds, rights and credits which were of the said Paul Farnum, deceased, were duly granted by the Ordinary of the State of New Jersey, to whom jurisdiction in that behalf appertained, to the complainants, J. Edward Farnum and George L. Farnum, who thereupon duly qualified according to law.

(7) George W. Farnum, one of the two sons of the said Paul Farnum, deceased, to whom in and by his said

last will and testament he gave, devised and bequeathed all the residue and remainder of his estate, real, personal and mixed, whatsoever and wheresoever the same might be, died in the city of Philadelphia, in the State of Pennsylvania, on October 22, 1861, unmarried and intestate, leaving him surviving as his only next of kin a sister, the above named Sarah E. Farnum (afterwards Battersson), and a brother, James Edward Farnum. On October 28th, 1915, the personal estate of the said George W. Farnum not having been fully administered, and no part

10 of the said fund of \$100,000 mentioned in the foregoing recited paragraph of the last will of the said Paul Farnum, deceased, and the interest thereon, or the interest of the said George W. Farnum therein having been administered, letters of administration *de bonis non* of all and singular the goods, chattels, rights and credits which were of the said George W. Farnum, deceased, were duly granted by James B. Sheehan, Register for the Probate of Wills and Granting of Letters of Administration in and for the county of Philadelphia, in the Commonwealth of Pennsylvania, to whom jurisdiction in that behalf appertained, to complainants, J. Edward Farnum and George L. Farnum, of the township of Nether Providence, in the county of Delaware and State of Pennsylvania, who thereupon duly qualified according to law and took upon themselves the burthen of the administration of the estate of the said George W. Farnum, deceased, and became invested with full power and authority to demand, collect, sue for, recover and receive the same, as by reference to the said letters of administration

20 *de bonis non* now on file and of record in the office of the said Register for the Probate of Wills and Granting Letters of Administration in and for the county of Philadelphia, in the Commonwealth of Pennsylvania, and a duly exemplified copy of said letters of administration filed in the office of the Register of the Prerogative Court of this State will appear.

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(8) James Edward Farnum, the other of the two sons of the said Paul Farnum, deceased, to whom in and by his said last will and testament he gave, devised and bequeathed all the residue and remainder of his estate, real, personal and mixed, whatsoever and wheresoever the same might be, died on or about the 13th day of May, 1884, being then a resident of Delaware county, in the State of Pennsylvania, leaving in force and unrevoked his last will and testament, bearing date March 27, 1874, and a codicil thereto bearing date December 23, 1881, copies of which are hereto annexed and made a part hereof, which said last will and testament and codicil thereto were thereafter and on May 20th, 1884, duly proved and approved before and admitted to probate by the Register for the Probate of Wills and Granting Letters of Administration in and for the county of Delaware, in the State of Pennsylvania, to whom jurisdiction in that behalf appertained, and recorded in the office of said Register in Book H of Wills for said county of Delaware, on pages 374, &c. 10

Eliza L. Farnum, the executrix duly appointed in said last will and testament, having departed this life on February 12, 1912, without fully administering the estate of the said James Edward Farnum, deceased, the complainants, J. Edward Farnum and George L. Farnum, on October 28, 1915, were by the Register for the Probate of Wills and Granting Letters of Administration in and for the county of Delaware, in the Commonwealth of Pennsylvania, to whom jurisdiction in that behalf appertained, duly ordained, constituted and deputed the administrators *de bonis non cum testamento annexo* of all and singular the goods and chattels, rights and credits which were of the said James Edward Farnum, deceased, to the use and for the use and for the purposes mentioned in his said last will and testament and the codicil thereto, as by reference to the record of said last will and codicil in the office of the said Register for the Probate of 30

Wills and Granting Letters of Administration, and the original letters of administration remaining of record in said office, and to the duly exemplified copies of said will, codicil and letters of administration filed in the office of the Register of the Prerogative Court of this State will appear.

10 (9) Said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee under the will of said Paul Farnum, deceased, has never filed in the Orphans' Court of the county of Burlington, in the State of New Jersey, the domicile of said Paul Farnum before and at the time of his death, or in this court, an account of the said Trust Fund held by it under the terms of Trust set forth in said will of Paul Farnum, deceased, in the foregoing recited paragraph thereof, although said Trust fund has remained in its hands for over fifty years, as above set forth. That an account of said fund extending over so long a period and involving a large number of transactions is complicated to a great degree and
20 requires consideration and examination by this Court.

(10) Said The Pennsylvania Company for Insurance on Lives and Granting Annuities, the Trustee named in the will of said Paul Farnum, deceased, to which was given and bequeathed in trust the fund of \$100,000 hereinabove mentioned, and which is also the Executor and Trustee under the last will and testament and codicils thereto of Sarah E. (Farnum) Batterson, deceased, claims to be in doubt as to the disposition to be made of said fund, but has made no application to this Court for
30 instruction in the premises.

(11) Said The Pennsylvania Company for Insurance on Lives and Granting Annuities, the Executor of and Trustee in and under the said last will and testament and codicils of the said Sarah E. (Farnum) Batterson, upon the grant of letters testamentary to it, as hereinabove recited, took upon itself the burthen of the administration

of the estate of the said Sarah E. (Farnum) Batterson, and has in its hands sufficient assets of the estate of said Sarah E. (Farnum) Batterson, deceased, to pay the general and specific legacies bequeathed under said last will and testament and codicils thereto, and in part the legacies directed to be paid out of the residue of the estate of said Sarah E. (Farnum) Batterson in the codicils to her said last will and testament. But the residuary legatees named in the second codicil to said last will and testament and who claim to be interested in the residuary estate of said Sarah E. (Farnum) Batterson, to wit, 10
 Bessie Pentreath, of the city of New York, in the State of New York; Mary Maynard, of the city of New York, in the State of New York; Josephine Paxton, of the same city; Annie T. Mold, of the same city; Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas; The Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York; the rector, church wardens and vestrymen of St. James' Church of Washington, D. C.; Mrs. 20
 J. C. Honeybourne (Christian name Virginia), of Guilford, England; Margaret Sheehan, of the city of New York, in the State of New York, and Florence M. Moberly, claim that the said fund of \$10,000, with appreciation and accumulation of interest thereon, should be paid over to and administered by the said Executor and Trustee under the last will and codicils of said Sarah E. (Farnum) Batterson, deceased, in their interest and for their benefit, which said claim of the said residuary legatees, above named, is inequitable, unjust and contrary to 30
 the laws of the State of New Jersey.

(12) Under the will of said Paul Farnum, deceased, on a proper construction thereof, the said bequest of \$100,000 which was enjoyed by the said Sarah E. (Farnum) Batterson during her life, did not pass to the Executor and Trustee named in her will, and the said Executor and Trustee and the said residuary legatees above

mentioned, acquired and have no interest whatever therein, for the reason that she did not by an instrument of writing in the nature of a will, executed under her hand and seal in the presence of two or more subscribing witnesses, direct, limit and appoint or designate the person or persons to whom the said principal sum of \$100,000 and accumulation of interest should be paid, but the said sum, with all accumulations thereon, fell into the residue of the estate of the said Paul Farnum, deceased, and should be decreed to be paid over to complainants, who
10 are entitled thereto as the legal representatives of the residuary legatees named in the said last will and testament of said Paul Farnum, deceased.

(13) The said The Pennsylvania Company for Insurance on Lives and Granting Annuities is not an indifferent and unprejudiced Trustee in the handling and disposition of said bequest of \$100,000 entrusted to it under and by the last will and testament of Paul Farnum, deceased, as it is interested in obtaining the control and dis-
20 position of said fund as Executor and Trustee under the last will and testament and codicils of the said Sarah E. (Farnum) Batterson, deceased, and refuses to pay over the said sum with accumulations thereon to complainants and to account to them for the said fund and the administration thereof by it; that on a due and proper accounting by the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of said bequest of \$100,000 under the last will and testament of Paul Farnum, deceased, a large sum of money,
30 which complainants believe to be over the sum of \$130,000, will be found to be due to complainants from said Trustee. That said account, extending over a period of fifty years, is intricate, complicated and involved, and that the accounting by said Trustee of the said fund held and administered by it in trust should be taken under the direction and control of this Court and the distribution of said fund made under the direction and decree of this

Court, in accordance with the terms of the said last will and testament of Paul Farnum, deceased.

Complainants are without adequate remedy in any of the Courts of this State save this Honorable Court, and therefore pray:

1. That the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, and said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. (Farnum) Batterson, deceased, Bessie Penreath, Mary Maynard, Josephine Paxton, Annie T. Mold, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas; The Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, the Rector, Church Wardens and Vestrymen of St. James' Church of Washington, D. C., Virginia Honeybourne, Margaret Sheehan and Florence M. Moberly, who are the defendants to this suit, may answer this bill and complaint, without oath, and each statement therein made. 10 20

2. That an account may be taken in this Honorable Court of the said fund of \$100,000 held under the trust created in the last will and testament of Paul Farnum, deceased, with the appreciation and interest thereon, in the hands of said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee, and the administration of said fund, principal and interest, by the said Trustee since said fund came to its hands, and that this Court may on such accounting ascertain and determine the balance remaining in the hands of said Trustee. 30

3. That the said last will and testament of Paul Farnum, deceased, may be construed by this Honorable Court, and that it may be determined whether or not the said bequest of \$100,000 entrusted as herein set forth in and by said last will and testament to the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, passed to the Executor and Trustee of the last will and testament and codicils of Sarah E. (Farnum) Batterson, deceased, or whether the said bequest fell into and became a part of the residuary estate of the said Paul Farnum, deceased.

4. That the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee under the trust contained in the last will and testament of the said Paul Farnum, deceased, as hereinabove recited, may be decreed to pay to complainants the balance remaining in its hands of the said bequest of \$100,000, with appreciation and accumulations of interest thereon, after deducting all just allowances to which said Trustee may be found to be entitled.

5. That a writ of subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

McDERMOTT & ENRIGHT,
Solicitors for and of Counsel with Complainants.

30 COPIES OF WILL AND CODICIL OF PAUL FARNUM,
DECEASED, REFERRED TO IN FOREGOING BILL.

I PAUL FARNUM of the Township of Willingborough in the County of Burlington and State of New Jersey, being aged but of sound and disposing mind and memory, and desirous of settling my worldly affairs, do make and publish this my last will and testament in manner following to wit.

In the first place, I order and direct, my Executors hereinafter named to pay all my Just debts and funeral Expences at as early a period after my decease as propriety and Convenience will admit.

In addition to the House and lot of land in Arch Street Philadelphia in the hands of a trustee for the use of my Daughter Sarah E. Farnum, I give and bequeath unto the Pennsylvania Company for insurance on lives and Granting annuities located in the City of Philadelphia Pa. one hundred thousand dollars in bonds or stocks, my said Daughters choice of such as I may die possessed, 10
(Except Bank Stock which I divide between my sons) in trust Nevertheless for the use of my said Daughter Sarah E. Farnum, the interest or dividends arising therefrom to be paid by the said Company to the *Sole order of my said Daughter* semi-annually during the term of her natural life, and not be liable for the debts nor effected by the extravagance or misfortunes of any husband she may Marry. And at the death of my said Daughter the principal *sum* and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company 20
or trustees to pay over to such person or persons as my said Daughter by any instrument of writing in the nature of a Will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct limit and appoint, or designate My will and design is that the House and lot in Arch Street shall pass in like manner to such person or persons as she may designate, (Provided however that I give the said Company my said trustee to Change any of the securities deposited with them 30
whenever they may think proper during the life time of my aforesaid Daughter.

I give and bequeath unto my two sons George W. Farnum and James Edward Farnum, and to three other persons, (which three persons shall be nominated by the Governor, and appointed by him by and with the advice and consent of the Senate, who shall hold their office re-

spectively for three years, except that at the first meeting of the board of trustees it shall be determined by lot or otherwise which of those three members shall hold for one year which for two Years and which for three Years, and in case of the death or refusal of either of my sons to act, then there shall be appointed one or two others as the case may be, in like manner as the first, only that the term of office shall be five instead of three Years) all that Brick School House furniture and fixtures thereunto belonging situate in the borough of Beverly, known as the Farnum School, and the lot of Land upon which the same is erected Containing one acre of Ground more or less, which Caleb Perkins and wife conveyed to me by deed dated May 4th, 1855, recorded in No. 5 of deeds page 230 &c., in the Clerks Office of the County of Burlington To hold to them the said trustees, and to their success forever—In trust Nevertheless for the following uses. That the said House Grounds, furniture and fixtures, shall be opened for a school (after a lapse of one year after my decease) for the reception of Children from the three lower or northwardly School districts, as now laid off in the Township of Willingborough to be admitted in such numbers as said trustees or a Majority may direct—I also give and bequeath unto the trustees aforesaid and to their successors in office Twenty Thousand dollars in bonds or stocks, paying not less than six per cent, in trust Nevertheless, to be and Continue a permanent fund for the purpose of sustaining a school in the aforesaid School House, the interest or dividends only arising from said fund to be appropriated by said trustee semi annually for the support of said school above named to employ competent Teachers, and defray the contingent expences, which interest or dividends added to such sums as may be raised by tax or otherwise in said districts. I earnestly hope may be sufficient to support a school in said House, nearly if not entirely free during the whole time (I empower said trustees to change the securities of said fund whenever four fifths of said Board

may deem it for the best interests, of and safety of said fund). The trustees shall provide a book in which shall be entered a minute of all meetings and proceedings of said trustees, an account of the names of the scholars, the time they attend school, the progress they make in the different branches. Provided however that my Executors shall not be called upon to pay any legacy herein bequeathed until the expiration of one full Year after my decease.

I give devise and bequeath all the residue and remainder of my Estate Real, personal, and mixed whatsoever and wheresoever the same may be, unto my two sons, George W. Farnum and James Edward Farnum, in equal proportions share and share alike. 10

And Lastly I nominate and appoint my sons George W. Farnum and James Edward Farnum Executors of this my last will and testament revoking and annulling all former Will or Wills, Testaments, Legacies and Executors, heretofore named willed and bequeathed ratiifying and confirming this and no other to be my last Will and Testament. In Testimony whereof I have hereunto set my hand and affixed my seal the twenty-eighth day of May in the Year of our Lord Eighteen hundred and fifty-six. 20

Signed, sealed, Published and declared as his last Will and testament by the Testator in our presence who at his request and in our presence have hereunto set our hands as witnesses.

Note Words "to" "for a school" "only" interlined on the second page before signing—also the word "choise" interlined on the first page before signing.

PAUL FARNUM
(SEAL)

30

CHAS C. BOWEN
JOHN W. FENIMORE

Whereas I Paul Farnum of the Township of Willing-
borough in the County of Burlington and State of New
Jersey having made and duly executed my last will and
Testament in writing bearing date the twenty eight day
of May Eighteen hundred and fifty six—Now I declare
this present writing to be a codacil thereto and taken as
a part thereof—And Whereas I have in said will directed
the appointment of certain Trustees, to take charge of
certain Buildings, and furniture thereunto attached, in
10 trust for school purposes as therein set forth—But since
the execution of said will I have entered into an agree-
ment with certain Trustees of the New Jersey State Nor-
mal School, in which agreement they stipulate during a
certain period therein named to keep open a school in
said Buildings, of such a character as to prepare pupils
for entering the State institution—And my will is and I
direct my Executors to pay over the Securities for Twen-
ty thousand dollars named in my said will to the last
20 mentioned trustees who are to receive the same in trust
nevertheless, the interest accruing thereon to be by said
trustees applied to the support of the said preparatory
School the fund or principal of Twenty Thousand dol-
lars to be managed in the same manner as is directed in
my said will. And further my will is that so long as the
State of New Jersey shall continue to occupy said Build-
ings, and fund and conduct said school said Buildings,
fund and furniture aforesaid shall be placed at the dis-
posal thereof But should the State abandon said school
30 and neglect to keep it up for one year, then the trustees
last named shall give up the possession of the said Build-
ings furniture and funds or securities for Twenty Thou-
sand dollars to the Trustee first named in said will
to be managed as therein directed. In testimony where-
of I have hereunto set my hand and seal the twenty-eight

day of February in the Year of our Lord Eighteen hundred and Fifty Seven 1857.

Signed, Sealed and declared by
 the said Paul Farnum as a
 Codicil to his last will and
 Testament in the presence of
 us. } PAUL FARNUM (SEAL)

CHAS C. BOWEN
 JOHN W. FENIMORE

10

STATE OF NEW JERSEY, BURLINGTON COUNTY, SS:

CHARLES C. BOWEN and JOHN W. FENIMORE the witnesses to the within Will being Severally duly sworn do depose and say that they saw Paul Farnum the testator therein named, sign and seal the same, and hear him publish, pronounce and declare the within writing to be his last will and Testament, and that at the time of the doing thereof, the said testator was of sound and disposing mind, memory and understanding, so far as they know and as they verily believe; and that they were both present at the same time and signed their names as witness to the said Will, in the presence of the said testator.

20

Sworn and Subscribed, County }
 and State aforesaid, October } CHAS. C. BOWEN
 31st, A. D. 1859, before me, } JOHN W. FENIMORE

WM K. ARMSTRONG,
 Surrogate.

STATE OF NEW JERSEY, BURLINGTON COUNTY, SS.

30

GEORGE W. FARNUM and JAMES EDWARD FARNUM, Executors of the within named Paul Farnum, deceased, being severally duly sworn according to law, do depose and say that the within writing contains the true last Will and Testament of Paul Farnum therein named, deceased, so far as they know and as they verily believe;

that they will well and truly perform the same, by paying first the debts of the said deceased and then the legacies in the said Testament specified, so far as the goods, chattels and credits of the said deceased can thereunto extend; and that they will make and exhibit, or cause to be exhibited, into the Registry of the Prerogative Court, in the Secretary's Office of this State, or unto the Surrogate's Office of the County of Burlington, at or before the expiration of six calendar months, a true and perfect Inventory of all and singular the goods and chattels, rights and credits of the said deceased, that have, or shall, come to their knowledge or possession, or to the possession of any other person or persons, for their use; and render a just and true account when thereunto lawfully required.

Sworn and Subscribed at
 Mount Holly, County and
 State aforesaid, October
 31st, A. D. 1859, before
 me.

GEORGE W. FARNUM
 JAMES EDWARD FARNUM

WM. K. ARMSTRONG,
 Surrogate.

STATE OF NEW JERSEY,
 BURLINGTON COUNTY, ss.

CHARLES C. BOWEN and JOHN W. FENIMORE the subscribing witnesses to the annexed writing (Codicil) being severally duly sworn according to law do depose and say that they saw Paul Farnum the Testator therein named sign and seal the same writing to be a codicil to his last will and testament to be taken as part and parcel thereof; and that at the doing thereof the same testator was of sound and disposing mind memory and understanding so far as they know and as they verily believe, and they were both present at the same time and signed

their names as witnesses to the said codicil in the presence of the said testator.

Sworn and subscribed October } CHAS C. BOWEN
 31st 1859 before me } JOHN W. FENIMORE
 WM. K. ARMSTRONG,
 Surrogate.

Recd October 31—1859 and Recorded in Book 1 of Wills page 358 &c. in the Surrogates Office of the County of Burlington, at Mount Holly.

WM. K. ARMSTRONG,
 Surrogate.

10

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of the Last Will and Testament and Codicil thereto, of PAUL FARNUM, Deceased, as the same is taken from and compared with the original filed in this office.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this
 (SEAL) twenty-sixth day of October, A. D. 1915.

THOMAS F. MARTIN,
 Secretary of State.

COPIES OF WILL AND CODICIL OF SARAH E. (FARNUM)
 BATTERSON, REFERRED TO IN FOREGOING BILL.

30

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

I, SARAH E. BATTERSON, of the City of Philadelphia, Widow of Hermon G. Batterson, do hereby make, publish and declare this my last Will and Testament, hereby

revoking any and all other wills by me at any time heretofore made.

1. I direct that my body shall be decently interred by the side of my husband in the church yard of St. James the Less, Philadelphia, and a monument like my husband's erected to mark my grave.

2. I direct the payment of my just debts and funeral expenses as soon as conveniently may be after my decease.

10 3. I give and bequeath to Florence M. Moberly, now residing at No. 156 West Seventy-third Street, New York City, the sum of Sixty thousand dollars absolutely, in consideration of the services she rendered to my husband in his last illness, and her kind attention to me, said sum to be paid to her as soon as conveniently may be after my decease.

4. I give and bequeath to Lydia Tiffany, widow of the late William L. Tiffany, the sum of forty thousand dollars absolutely.

5. I give and bequeath to Margaret Tiffany, daughter of said William L. Tiffany, the sum of One thousand dollars absolutely.

6. I give and bequeath to Katharine Tiffany, daughter of said William L. Tiffany, the sum of One thousand dollars absolutely.

7. I give and bequeath to Mary E. Rowland, of Norfolk, Virginia, the sum of One thousand dollars absolutely.

8. I give and bequeath to the Rev. Dr. George McClellan Fiske, of Providence, Rhode Island, the sum of Five hundred dollars absolutely.

9. I give and bequeath to the Rev. Frederick W. Harriman, of Windsor, Connecticut, the sum of One thousand dollars absolutely.

10. I give and bequeath to Annie G. Brown, now residing at No. 2118 Ontario Street, Philadelphia, the sum of Two hundred and fifty dollars absolutely.

Sarah E. Batterson.

11. I give and bequeath to the Rt. Rev. Frank Mills-paugh, Bishop of Kansas, the sum of Two thousand dollars absolutely.

12. I give and bequeath to the Rev. J. S. Miller, of Newark, New Jersey, the sum of Fifteen hundred dollars absolutely. 10

13. I give and bequeath to Clarence P. Weld, now residing in Houston, Minnesota, the sum of One thousand dollars absolutely.

14. I give and bequeath to Hermon Batterson Boger, son of Edwin Boger, now residing in Germantown, Philadelphia, the sum of One thousand dollars absolutely.

15. I give and bequeath to the Confraternity of the Blessed Sacrament, the sum of Five hundred dollars absolutely, to be paid to the Superior of the Order, whose residence is in Fond-du-lac, Wisconsin. 20

16. I give and bequeath to the Guild of All Souls, the sum of Three thousand dollars absolutely, to be paid to the Superior of the Guild, whose present address is in Chicago, Illinois.

17. I give and bequeath to the Rev. Hugh L. Burleson, now in Church Mission House, New York, the sum of Two thousand dollars absolutely. 30

18. I give and bequeath to the Rev. Edward W. Burleson, now residing in Jamestown, North Dakota, the sum of One thousand dollars absolutely.

19. I give and bequeath to the Rev. John K. Burleson, now residing at Grand Forks, North Dakota, the sum of One thousand dollars absolutely.

20. I give and bequeath to Guy P. Burleson, now residing at Auburn, N. Y., the sum of One thousand dollars absolutely.

21. I give and bequeath to Mrs. Burleson, widow of Solomon Burleson, deceased, the sum of One thousand dollars absolutely.

22. I give and bequeath to Annie Pratt, daughter of my sister-in-law, Mary B. Fuller, the sum of One thousand dollars absolutely.

10 23. I give and bequeath to Sarah Donaldson, daughter of my sister-in-law, Mary B. Fuller, the sum of Two thousand dollars absolutely.

24. I give and bequeath to Katharine A. Taylor, wife of the Rev. E. B. Taylor, now residing in Bayonne, N. J., the sum of Five hundred dollars absolutely.

Sarah E. Batterson.

20 25. I give and bequeath to Mrs. Brine, wife of Rev. Charles LeV. Brine, now residing in Portsmouth, New Hampshire, the sum of Fifteen hundred dollars absolutely.

26. I give and bequeath to Rev. Joseph Sherlock, now Rector of the Church of Saint John Chrysostom, the sum of two thousand dollars absolutely.

27. I give and bequeath to my goddaughter, Edith Child, daughter of the late William S. Child of New York, the sum of two thousand dollars absolutely.

30 28. I give and bequeath to Mary Brown, widow of Rev. Thomas McKee Brown, and now residing in New York City, the sum of Five hundred dollars absolutely.

29. I give and bequeath to the Rt. Rev. S. M. Griswold of Salina, Kansas, the sum of Ten thousand dollars (\$10,000) for his own personal use.

30. I give and bequeath to the Rector, Church Wardens and Vestrymen of the Church of Saint Edward the

Martyr, of New York, the sum of Five thousand dollars.

31. I give and bequeath to Annie B. Moore of Pleasantville, N. Y. the sum of One thousand dollars (\$1,000.).

32. I give and bequeath to the Rector, Church Wardens and Vestrymen of St. James Church, Washington, D. C. the sum of Five thousand dollars (\$5000).

33. I give and bequeath to Evie Palmer, if living at the time of my decease, the sum of Three thousand dollars (\$3000). 10

34. I give and bequeath to the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, the sum of Fifteen thousand dollars absolutely.

35. I give and bequeath to the Community of Saint Mary, now having its Convent at Peekskill on Hudson, New York, the sum of Eighteen thousand dollars absolutely. 20

36. I give and bequeath to the Rector, Church Wardens and Vestrymen of the Church of Saint John Chrysostom, Philadelphia, for the use of said Church, the sum of Three thousand dollars absolutely.

37. I give and bequeath to the Rector, Church Wardens and Vestrymen of the Church of the House of Prayer, Newark, New Jersey, for the use of said Church, the sum of three thousand dollars absolutely.

Sarah E. Batterson. 30

38. I give and bequeath to the house of Saint Michael and All Angels, of Philadelphia, for the use of the Institution, the sum of One thousand dollars absolutely.

39. I give and bequeath to Saint Mary's Free Hospital for Children, New York City, for the general pur-

poses of said hospital, the sum of ten thousand dollars absolutely.

40. I give and bequeath to the Clarkson Hospital of Omaha, Nebraska, for the general purposes of said Hospital, and in memory of Meliora, wife of Bishop Clarkson, the sum of Two thousand dollars, absolutely.

10 41. I give and bequeath to the Corporation for the Relief of the Widows and Children of Clergymen in the Communion of the Protestant Episcopal Church in the Commonwealth of Pennsylvania, for the general purposes of said Society, the sum of five thousand dollars, absolutely.

42. I give and bequeath to the English Church Union now situate in London, England, of which Lord Halifax is now President, for the purposes of said Union, and in memory of my husband, the sum of Three thousand dollars absolutely.

20 43. I give and bequeath to the Community of Ascot Priory, near Windsor, England, the sum of Twenty five hundred dollars absolutely.

44. I give and bequeath to the Convent St. Mary, Burlington Lane, Chiswick, London, the sum of Two thousand dollars absolutely.

45. I give and bequeath to the Society for the Prevention of Cruelty to Children of Philadelphia, the sum of Five thousand dollars, absolutely.

30 46. I give and bequeath to the Free and Open Church Association of Philadelphia, the sum of Three thousand dollars absolutely.

47. I give and bequeath to the Society for the Prevention of Cruelty to Animals of Philadelphia, the sum of Twenty-five hundred dollars absolutely.

48. I give and bequeath to the Sanitarium Association of Philadelphia, the sum of Three thousand dollars absolutely.

49. I give and bequeath to the Children's Seashore House, Atlantic City, New Jersey, the Sum of Three thousand dollars absolutely.

Sarah E. Batterson.

50. I give and bequeath to the Women's Seashore House, Atlantic City, New Jersey, the sum of Three thousand dollars absolutely.

51. I give and bequeath to the Day Nursery, now situate at No. 2218 Lombard Street, Philadelphia, the sum of Two thousand dollars absolutely. 10

52. I give and bequeath to the Children's Country Week Association of Philadelphia, now having its office at No. 1412 Arch Street, the sum of Two thousand dollars absolutely.

53. I give and bequeath to the Flower Mission of the City of Philadelphia, now meeting at the Church of St. Luke and Epiphany, Philadelphia, for the use of the Ice Fund of said Mission, the sum of One thousand dollars absolutely. 20

54. I give and bequeath to the Trustees of the School situate in Beverly, New Jersey, founded by my father, known as the Farnum School, in memory of my father, the late Paul Farnum, for the use and purposes of said School, the sum of Two thousand dollars absolutely.

55. I give and bequeath to the Charity Organization Society now having its office at No. Fourth Avenue, in the City of New York, the sum of Four thousand dollars absolutely. 30

56. I give and bequeath to the Home for Aged Couples, now situate at Seventeenth and St. Francis Streets, in the City of Philadelphia, the sum of One thousand dollars absolutely.

57. I give and bequeath to the Rector, Church Wardens and Vestrymen of the Church of the Ascension,

Philadelphia, to be distributed among the poor of the Parish, the sum of One thousand dollars absolutely.

58. I give and bequeath to the Nashotah House, Nashotah, Wisconsin, for the use of what is known as the "Daily Fund", the sum of Five thousand dollars absolutely.

10 59. I give and bequeath to my Trustee hereinafter named, its successors and assigns, the sum of Fifteen thousand dollars, in trust to invest and reinvest the same at pleasure, and the income thereof to collect and receive, and the net income arising therefrom to pay periodically to my cousins Mary Farnum and Nettie Farnum, now living.

Sarah E. Batterson

20 in Poughkeepsie, New York, in equal portions share and share alike, and to the survivor of them, for and during the terms of their natural lives and the life of the survivor of them, for their and each of their own separate use and enjoyment free and clear of and from all liability for their or either of their debts, contracts or engagements or liens or attachments by reason of the same; and upon the death of both of said cousins, Mary Farnum and Nettie Farnum, then in trust to pay the principal of said trust fund and undistributed income thereon to the Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, to be used by him for missionary work in his district.

30 60. I give and bequeath to my Trustee, hereinafter named, its successors and assigns, the sum of twelve thousand dollars in trust to invest and reinvest the same at pleasure and the income arising therefrom to collect and receive, and the net income thereof to pay periodically to my cousin, Caroline L. Roney, wife of William S. Roney, Esq., now residing at Paoli, Pennsylvania, for and during the term of her natural life, for her own separate use and enjoyment free and clear of

and from all liability for her debts, contracts or engagements or liens or attachments by reason of the same, and upon the death of my said cousin, Caroline L. Roney, then in trust to divide said principal sum and the undisturbed income thereon between the Rt. Rev. the Protestant Episcopal Bishop of Los Angeles California, and the Rt. Rev. the Protestant Episcopal Bishop of Fond-du-Lac, Wisconsin, in equal portions to be used by them respectively for missionary work in their respective dioceses.

61. I give and bequeath to my said Trustee, its successors and assigns, the sum of six thousand dollars in trust to invest and reinvest the same at pleasure and the income arising therefrom to collect and receive and the net income thereof to pay periodically to my friend Mary E. Aertsen, of Germantown, Philadelphia, for and during the term of her natural life for her own separate use and enjoyment, free and clear of and from all liability for her debts, contracts or engagements or liens or attachments by reason of the same; and upon her death, then in trust to pay said principal sum and undistributed income thereon to the house of St. Michael and all

Sarah E. Batterson.

Angels, now situate at No. 613 North Forty-third Street, Philadelphia, its successors and assigns, to be applied for the general purposes of said institution.

62. I give and bequeath to my said Trustee its successors and assigns, the sum of Eight thousand dollars in trust to invest and reinvest the same at pleasure and the income arising therefrom to collect and receive and the net income thereof to pay periodically to Mary C. Farnum, widow of the late Francis D. Farnum, for and during the term of her natural life for her own separate use and enjoyment, free and clear of any from all liability for her debts, contracts or engagements or liens

or attachments by reason of the same; and upon the death of the said Mary C. Farnum, then in trust to pay and divide said principal sum together with the undistributed income thereon to and among her child or children then living and the issue of deceased children share and share alike, the issue of a deceased child taking the same share its parent would have taken if living, and in default of child or children or the issue of a deceased child or children her surviving, then in trust to dispose of the same in the way and manner herein provided with regard to the residue of my estate.

10 63. I give and bequeath to my Trustee, its successors and assigns, the sum of twelve thousand dollars in trust to invest and reinvest the same at pleasure and the income arising therefrom to collect and receive the net income thereof to pay periodically to my goddaughter, Sarah K. Ege, now residing at Carlisle, Pennsylvania, for and during the term of her natural life, for her own separate use and enjoyment, free and clear of and from all liability for her debts, contracts or engagements or
20 liens or attachments by reason of the same, and upon her death then in trust to pay the said principal sum with the undistributed income thereon to Mrs. Charles R. Ege, absolutely.

64. I give and bequeath to the Royal Grammar School of Guildford, Surrey, England, its successors and assigns, the sum of Five hundred dollars, to be applied by said School in the erection of a

30 Sarah E. Batterson.

suitable tablet to the memory of my said husband.

65. I give and bequeath to Nashotah House, now situate at Nashotah, Wisconsin, the sum of Eighteen thousand dollars in trust to invest and reinvest the same at pleasure and the net income arising therefrom to pay and apply to and for the maintenance of free

scholarships in said institution to be known as "The Batterson Scholarships."

66. I give and bequeath to the General Theological Seminary now situate in New York City, the sum of Ten thousand dollars in trust nevertheless to invest and reinvest the same at pleasure and the net income arising therefrom to pay and apply to and for the maintenance of free scholarships in said seminary to be known as "The Batterson Scholarships".

67. I give and bequeath to the Rector, Church Wardens and Vestrymen of the Church of St. James the Less, situate on Nicetown Lane, Philadelphia, the sum of Twenty-five hundred dollars to be invested and kept invested by them, and out of the income arising therefrom to pay and apply so much thereof as may be necessary to the perpetual maintenance, organization and repair of my burial lot in the yard of said church, for the planting of rose bushes therein and for supplying flowers on all the graves in said lot on Christmas and Easter Day and on All Saints' Day, and on the anniversaries of the death of my husband and myself; any balance of income remaining to be added to said principal sum. 10 20

68. It is my desire that certain pictures, plate, silverware, jewelry, and other articles of personal use and ornament shall be delivered to certain particular persons. It is my intention in the near future to make a list of such articles with the names of the persons whom I wish to receive the same. I will leave this list in an envelope addressed to my Executor, and I will and direct that the articles named in said list shall be distributed to the persons therein named with the same force and effect as if specifically mentioned herein. Any of such articles not so disposed of shall be sold and the proceeds thereof distributed under the residuary clause of my said will. 30

Sarah E. Batterson.

69. Any beneficiary under this will or codicil thereto which I may hereafter make, or any person or persons whosoever, who shall attempt to or shall actually dispute or contest the validity of my said will or codicil or codicils, or any part thereof, shall by such act be debarred from participating in my estate or in any benefit in said will and codicils, and the devises and bequests in such contestant's favor shall become null and void and pass under the general residuary clause of my said will.

10 70. I direct that all the bequests made in this will and in any codicil or codicils which I may hereafter make shall be paid to the persons entitled to receive the same without deductions for any cause whatsoever, and that any collateral inheritance tax or other taxes imposed thereon shall be paid out of the residue of my estate.

20 71. I hereby authorize and empower my Executor and trustee herein named and its successors in this trust to sell either at public or private sale all or any part of any real estate of which I may die seized for the best price or prices that can reasonably be obtained therefor, and to grant and convey the same to the purchaser or purchasers thereof freed, cleared and discharged of and from the terms, limitations, conditions and trusts of this my will, without any liability on the part of the purchaser or purchasers thereof to see to the application of the purchase moneys, and with the like power of sale and conveyance over any real estate
30 acquired in the execution of this will. I also authorize my said Trustee to invest and reinvest the moneys bequeathed to them in trust in other than so-called legal securities, using, however, due care and caution in so doing.

72. Wherever I have made a bequest to a person, association or institution for a particular use, it is my desire and I so direct that my said Executor shall not be

required to see that such bequest is applied to the use or purpose for which the same was given, but that the payment by my said Executor of such bequests, to the person, association or institution designated, shall be a complete release and discharge of said Executor of and from all liability and responsibility touching or affecting the same.

Sarah E. Batterson.

73. One-half of all the rest, residue and remainder of my estate, real, personal and mixed, including that over which I have or may have a power of appointment, I give, devise and bequeath to the Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, and his successors in said office, to be used for missionary work in his district, and the remaining one-half of said rest, residue and remainder I give, devise and bequeath to the following named societies, persons, institutions and corporations in the proportion mentioned, viz:—

Five thousand dollars (\$5000) to the Bishop White Prayer Book Society of Philadelphia, clear of all tax, whether collateral or otherwise, whatsoever, and which tax I authorize and direct my executors to pay out of my estate,—and the balance remaining I direct shall be divided equally among the following,—

The said Rev. Dr. George McClellan Fiske, Clarence P. Weld; the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America; Nashotah House, situate at Nashotah, Wisconsin; the Corporation for the Relief of the Widows and Children of Clergymen in the Communion of the Protestant Episcopal Church in the Commonwealth of Pennsylvania for the general purposes of the Society; and the Rector, Church Wardens and Vestrymen of Christ Cathedral, Salina, Kansas, to hold the same in trust as an endowment fund for said Cathedral, and the same to invest and reinvest at pleasure and the net in-

come arising therefrom to pay and apply for such uses and purposes in connection with the work of said Cathedral as to the Rector, Church Wardens and Vestrymen thereof seem fit and proper with power to allow the income to accumulate and either add such accumulation of income to the principal fund or to expend such accumulations for enlarging said Cathedral or making repairs or improvements to the same.

- LASTLY, I Hereby nominate, constitute and appoint the Pennsylvania Company for Insurances on Lives and
- 10 Granting Annuities of the City of Philadelphia, to be the Executor of this my last will and testament and Trustee hereunder.

Sarah E. Batterson.

In WITNESS WHEREOF, I have hereunto set my hand and seal this Second day of February in the year of our Lord, One thousand nine hundred and twelve (1912).

SARAH E. BATTERSON (SEAL)

- 20 Signed, sealed, published, and declared by the above named Testatrix, Sarah E. Batterson, as and for her last will and testament in the presence of us who at her request and in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

R. J. TRICKER
ALLEN W. KRAFT

-
- 30 I, SARAH E. BATTERSON, of the City of Philadelphia, Widow of Hermon C. Batterson, do hereby make, publish and declare this as and for a codicil to my last will and testament bearing date the 2nd day of February 1912, to wit:

FIRST. I hereby revoke the Fourth Item in my said will in which I have given and bequeathed to Lydia Tif-

fany the sum of Forty thousand (\$40,000.) Dollars, and I hereby give and bequeath to the said Lydia Tiffany the widow of the late William L. Tiffany, the sum of Fifty Thousand (\$50,000.) Dollars absolutely.

SECOND. I hereby revoke the gift of Two thousand (\$2,000.) Dollars under the item Eleven in my said will to the Rt. Rev. Frank Millspaugh, Bishop of Kansas, and I do hereby give and bequeath to him the sum of One thousand (\$1,000.) Dollars absolutely.

THIRD. I do hereby revoke the gift of One thousand (\$1,000.) Dollars to Clarence P. Weld under Item Thirteen of my said Will, and I do hereby give and bequeath to the said Clarence P. Weld the sum of Twenty-five hundred (\$2,500.) Dollars absolutely. 10

FOURTH. I do hereby revoke the gift to Sarah Donaldson under Item Twenty Three of my said will in the sum of Two thousand (\$2,000.) Dollars, and I hereby give and bequeath to the said Sarah Donaldson the sum of One thousand (\$1,000.) Dollars absolutely. 20

FIFTH. Katharine A. Taylor to whom I bequeathed the sum of Five Hundred (\$500) Dollars under Item Twenty-four of my said will having died, I do hereby revoke the bequest undersaid item and direct that the same shall form a part of my residuary estate to be distributed thereunder.

SIXTH. In addition to the bequest to the Rev. Joseph Sherlock of the sum of Two thousand (\$2,000.) Dollars bequeathed under Item Twenty-six of my said will, I do hereby give and bequeath to the said Rev. Joseph Sherlock the sum of Five hundred (\$500.) Dollars thus increasing the amount of said gift to Twenty-five hundred (\$2,500.) Dollars. 30

SEVENTH. Whereas by the Twenty-ninth Item of my said Will I have given and bequeathed to the Right Rev. S. M. Griswold of Salina, Kansas, the sum of Ten thou-

said (\$10,000.) Dollars I now revoke said gift and direct that the said sum of Ten thousand (\$10,000.) Dollars shall

Sarah E. Batterson.

10 be held by The Pennsylvania Company for Insurance on Lives and Granting Annuities as Trustee under my said will and the said fund invested in such securities as my said Trustee may determine, without being confined in any way to what are known as "Legal Investments," and that they shall pay the net income derived from said fund to the said Right Rev. S. M. Griswold for and during the term of his natural life free and clear of all taxes of every description whether the same be due and payable under the laws of the State of Pennsylvania or the laws of the United States of America, and that upon his decease the said sum of Ten thousand (\$10,000.) Dollars, shall revert to and form a part of my residuary estate.

20 EIGHTH. Whereas by Item Thirty-six of my said will I have given to the Rector, Church Wardens and Vestrymen of the Church of Saint John Chrysostom of Philadelphia the sum of Three thousand (\$3,000.) Dollars I now give and bequeath in addition thereto the sum of Five Thousand (\$5,000.) Dollars to the said Rector, Church Wardens and Vestrymen of the Church of Saint John Chrysostom of Philadelphia so that the gift to said church under my said will and this my codicil shall be in all Eight thousand (\$8,000.) Dollars.

30 NINTH. I hereby revoke the gift of Two thousand (\$2,000.) Dollars to the Convent of Saint Mary, Burlington Lane, Chiswick, London, and I hereby give and bequeath to said Convent the sum of One thousand (\$1,000.) Dollars absolutely.

TENTH. I also revoke the bequest to the Day Nursery of Two thousand (\$2,000.) Dollars under item Fifty-one of my said Will and I hereby give and bequeath to said

Day Nursery the sum of One thousand (\$1,000.) Dollars absolutely.

ELEVENTH. Whereas by Item Sixty-seven of my said will I have bequeathed to the Rector, Church Wardens and Vestrymen of the Church of Saint James the Less, the sum of Twenty-five hundred (\$2,500.) Dollars for the purposes therein stated, I hereby revoke said bequest and give and bequeath in lieu thereof to the Rector, Church Wardens and Vestrymen of the Church of Saint James the Less the sum of Fifteen hundred (\$1,500.) Dollars for investment and the income arising therefrom I direct shall be applied as I have provided in the said item No. sixty-seven of my said Will. 10

TWELFTH. Whereas by Item Seventy-three of my said will I have given one-half of the residue of my estate to

Sarah E. Batterson.

the Right Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, and his successor or successors in said office for Missionary work and the remaining one-half of said residuary estate after the payment of Five thousand (\$5,000.) Dollars to the Bishop White Prayer Book Society of Philadelphia clear of all taxes to the several individuals, societies, corporations, etc., as therein set forth, I now revoke such part of the direction as therein contained providing for a division of the same to the Rev. Dr. George McClellan Fiske, and Nashotah House situate at Nashotah, Wisconsin and I direct that in lieu of the direction that both of the above shall participate in said division that Bessie Penreath shall be a residuary legatee under the said Item of my Will and that she shall receive an equal share of my said residuary estate together with the others mentioned in said Item as fully and completely as she would have been had her name been included among the list of individuals, societies, corporations, etc., as set forth in said Item of my will. 30

THIRTEENTH. I hereby repeat the directions given under item Seventy of my said will that all the bequests made in my Will and in this Codicil as well as any subsequent Codicil which I may hereafter make, shall be paid to the persons entitled to receive the same without any deduction for any cause whatever, and that any collateral inheritance tax or other tax or taxes imposed thereon whether payable to the State of Pennsylvania, or to the United States of America or any State of the United States imposed by any law of any of the above in force or effective at the time of the distribution of my estate or of any particular fund mentioned in my said will, shall be paid by my Executors out of the residue of my estate.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 23rd day of April in the year of our Lord, One thousand nine hundred and thirteen (1913).

SARAH E. BATTERSON (SEAL)

20 Signed, sealed, Published and Declared by the above named Testatrix Sarah E. Batterson, as and for a Codicil to her last Will and Testament in the presence of us, who at her request and in her presence and in the presence of each other have hereunto subscribed our names as attesting witnesses.

Witnesses

R. J. TRICKER
ALLEN W. KRAFT

30

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

I, SARAH E. BATTERSON, of the City of Philadelphia, widow of Rev. Hermon G. Batterson, being of sound and

disposing mind and memory, do hereby make, publish and declare this as and for a second codicil to my last will and testament bearing date the 2nd day of February A. D. 1912, to wit:

1. I hereby revoke the Twelfth Item in my said will, in which I have given and bequeathed the sum of Fifteen Hundred Dollars to Rev. J. S. Miller of Newark, New Jersey.

2. I hereby revoke the gift of Five Thousand Dollars to the Rector, Church Wardens, and Vestrymen of St. James' Church of Washington, D. C., under the Thirty-second Item in my said will. 10

3. I hereby revoke the gift of Three Thousand Dollars to the Rector, Church Wardens, and Vestrymen of the Church of the House of Prayer of Newark, New Jersey, under the Thirty-seventh Item in my said will.

4. I hereby revoke the gift of One thousand Dollars to the Home for Aged Couples, situate at Seventeenth and Francis Streets, in the City of Philadelphia, under the Fifty-sixth Item in my said Will. 20

5. I hereby revoke so much of the Sixtieth Item of my said will as bequeaths, upon termination of the trust therein set forth, the principal sum therein named and the undistributed income thereof unto the right Rev. the Protestant Episcopal Bishop of Los Angeles, California, and the Right Rev. the Protestant Episcopal Bishop of Fond du Lac, Wisconsin, in equal shares; and I now give and bequeath said principal sum and the undistributed income thereof to the Right Rev. the Protestant Episcopal Bishop of Milwaukee, Wisconsin, and to the Right Rev. the Protestant Episcopal Bishop of Fond du Lac, Wisconsin, in equal portions to be used by them respectively for missionary work in their respective dioceses. 30

6. I do hereby revoke all of Item Sixty-eight in my

said Will; and I give and bequeath unto Miss Florence M. Moberly, who lives with me at No. 156 West Seventy-third Street, New York, all the furniture, pictures, silver, jewels and jewelry, and clothing belonging to me therein contained, with the request that she will dispose of them in accordance with the instructions thereto relating and signed by me and placed in an envelope by me and addressed to Miss Moberly, and having disposed of said articles as requested by me, Miss Moberly shall have for herself absolutely any or all of the remaining articles as she may select and desire.

7. Whereas by the First Item in the first codicil to my said will, I gave and bequeathed unto Lydia Tiffany, now residing in Germany, and the widow of the late William L. Tiffany, the sum of Fifty Thousand Dollars, I now revoke said gift, and direct that the said sum of Fifty Thousand Dollars shall be held by the Pennsylvania Company for Insurances on Lives and Granting Annuities as Trustee under my said will, and that they shall pay the net income derived from said fund to the said Lydia Tiffany, for and during the term of her natural life free and clear of all taxes of every description, and upon her decease the said sum of Fifty Thousand Dollars shall revert to and form a part of my residuary estate.

8. I hereby revoke the gift of One Thousand Dollars, as made by me in the Ninth Item in said first codicil to my said will, to the Convent of Saint Mary, Burlington Lane, Chiswick, London.

9. I hereby revoke all the provisions of Item Seventy-three in my said will and all the bequests therein contained and I also revoke all the provisions of Item Twelve in said first codicil to my said will and all the bequests therein contained.

10. I give and bequeath unto Dr. J. S. Simonson of New York, N. Y., the sum of Five Thousand Dollars

absolutely, in grateful remembrance and appreciation of his kind and unvarying attention to me in sickness.

11. I give and bequeath unto Rev. Charles le V. Brine, of Portsmouth, New Hampshire, the sum of Five Thousand Dollars, absolutely, as a well deserved recognition and remembrance of his faithful and watchful care of and service to the parish of Christ Church, in said Portsmouth.

12. I give and bequeath unto the Rector, Church Wardens, and Vestrymen of Christ Church, Portsmouth, New Hampshire, the sum of Five thousand dollars, absolutely, for the use of said church. 10

13. Out of the rest, residue and remainder of my estate, I give and bequeath unto Bessie Pentreath of New York, N. Y., the sum of Two Hundred Fifty Dollars, absolutely; unto Mary Maynard, of New York, N. Y., the sum of Two Hundred Fifty Dollars, absolutely; unto Josephine Paxton of New York, N. Y., the sum of Two Hundred Fifty Dollars, absolutely; and unto Annie T. Mold of New York, N. Y. the sum of One Hundred Fifty Dollars, absolutely. 20

14. I give and bequeath one-fourth of said rest, residue, and remainder of my estate unto the Right Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, and his successor or successors in said office, for missionary work.

15. I give and bequeath one-fourth of said rest, residue and remainder of my estate unto the corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, to be used for the purposes of said Corporation. 30

16. Whereas, by Item Two, of this, the second codicil to my said will, I revoked the gift of Five Thousand Dollars to the Rector, Church Wardens, and Vestrymen of St. James' Church of Washington, D. C. under the Thirty-second Item in my said Will, I now give and bequeath unto the Rector, Church Wardens, and vestrymen of St.

James' Church of Washington, D. C. aforesaid, the sum of Five Thousand Dollars, absolutely, for the use of said church, said sum to be paid out of my residuary estate.

17. Out of said rest, residue, and remainder of my estate I give and bequeath unto Mrs. J. C. Honeybourne, of Guilford, England, the sum of Five Hundred Dollars, absolutely; and unto Miss Margaret Sheehan, of New York, N. Y., the sum of Two Hundred Dollars, absolutely.

10 18. All the rest, residue, and remainder of my estate remaining I give, bequeath, and devise unto Miss Florence M. Moberly, who lives with me, absolutely.

19. I hereby repeat the directions given under Item Seventy of my said will that all bequests made in my will and all codicils thereto, shall be paid to the persons entitled to receive the same without any deduction for any cause whatever, and that any collateral inheritance tax or other tax or taxes imposed thereon whether payable to the
20 State of Pennsylvania, or to the United States of America, of any State thereof imposed by any law of any of the above in force or effective at the time of the distribution of my estate or of any particular fund mentioned in my said will, shall be paid by my Executor out of the residue of my estate.

In witness whereof I have hereunto set my hand and seal this 15th day of October, A. D. 1914, at Portsmouth, in the State of New Hampshire.

30

SARAH E. BATTERSON (SEAL)

Signed, sealed, published and declared by the above named Testatrix, Sarah E. Batterson, as and for the second Codicil to her last Will and Testament in the presence of us, who at her request and in her presence and in

the presence of each other have hereunto subscribed our names as attesting witnesses.

BENJAMIN C. WOODBURY, JR.,
Residence: 43 Middle St., Portsmouth, N. H.

THOMAS B. RUXTON,
Residence: 20 Columbia St., Portsmouth, N. H.

SAMUEL W. EMERY,
Residence: 42 Middle St., Portsmouth, N. H.

R. J. Tricker and Allen W. Kraft the subscribing witnesses to will (dated February 2nd 1912 and Codicil dated April 23rd, 1913) of Sarah E. Batterson deceased Sworn July 8th, 1915. 10

H. C. BROOMALL
Deputy Register.

Samuel W. Emery and Thomas B. Ruxton the subscribing witnesses to Codicil (dated October 15th, 1914) to will of Sarah E. Batterson deceased Sworn July 15th, 1915. 20

H. C. BROOMALL
Deputy Register.

Jay Gates Vice President of The Pennsylvania Company for Insurances on Lives and Granting Annuities the Executor named in the will of Sarah E. Batterson deceased Sworn July 15th, 1915. And Letters Testamentary granted unto it the said Testatrix died on the 27th day of June A. D. 1915 at 11.50 o'clock A. M. 30

H. C. BROOMALL
Deputy Register.

Decree of Probate entered this 15th day of July A. D. 1915.

JAMES B. SHEEHAN,
Register.

COPIES OF WILL AND CODICIL OF JAMES EDWARD
FARNUM, REFERRED TO IN THE FOREGOING BILL.

I JAMES EDWARD FARNUM of Delaware County, Penn-
sylvania do make this, my last Will and Testament.

I give and devise to my wife, Eliza L. Farnum, my
farm in said Delaware County on which I now reside,
called and known as "The Acres" and also my house and
lot No. 1031 Spruce Street in the City of Philadelphia
10 to her heirs and assigns forever.

I give and bequeath to her, my said wife, all articles
of furniture and ornament at said farm and in said house
No. 1031 Spruce Street, all books, statues, pictures, wines,
china, glass, silver plate and plated ware, household,
stable, garden and farm tools and utensils, carriages,
sleighs, wagons, horses, cows, household and stable sup-
plies and generally all articles whatever at said farm and
at said house belonging to or used in connection there-
with or proper or necessary for the furnishing, equipping
20 stocking or supplying the same.

I give my Executrix and Trustees hereinafter named
power at their discretion to sell all or any part of my real
estate at such times in such manner and at such prices as
they may deem best and to execute good and sufficient
deeds, conveyances and assurances to the purchaser or
purchasers thereof, who shall not be liable for any un-
faithfulness or default of my said executrix or trustees or
bound in any manner to see to the application of the pur-
30 chase money.

I give and bequeath to such of the children of my half
brother William L. Tiffany of his own blood as may be
living at the time of my death the sum of five thousand
dollars (\$5000.00) to be equally divided between them.

I direct that as soon as possible after my death and out
of the first moneys that may come to her hands my execu-

trix hereinafter named shall pay to the Pennsylvania Company for Insurances on Lives and Granting Annuities the sum of One hundred thousand dollars (\$100,000.00) free and clear of all taxes charges and assessments whatever to be held by them and their successors upon the following trusts, viz:—in trust to invest said sum in legal securities, and from time to time in their discretion to call in or sell such securities and reinvest the proceeds and keep said sum thus invested and productive, and the net income thereof to pay to my said wife Eliza L. Farnum for and during the term of her natural life into her own hands, upon her own receipt, for her own sole and separate use and so that neither the principal of the said trust fund nor any right, title or interest of my said wife therein nor said income before the same shall be actually paid to and received by her shall be subject to her order by way of anticipation or otherwise or liable for any of her debts, contracts or engagements or be in any wise under her power or control, and from and after her death I give and bequeath the securities which may then form the capital or principal of my said trust estate to such person or persons as she my said wife may, by will, appoint, and in default of such appointment to such person or persons as would take the same by, from, through or under me, under the intestate laws of the commonwealth of Pennsylvania, if I had lived till then and then died intestate possessed of or owning the same.

The foregoing devise of my said farm and house in Spruce Street and the foregoing bequest in trust to and for the use of my said wife in lieu of her dower and interest under the Intestate Act and of any right or rights, interest or interests, provision or provisions whatever that she may or might otherwise have by law in from or out of my estate or any part of the same. Said bequest in trust to be preferred to all other bequests and is not to abate or be in any wise reduced or diminished unless such abatement, reduction or diminution be rendered necessary for the payment of debts.

I direct my executrix as soon as possible after my death to divide all the residue of my estate real and personal into as many parts or shares as there may be children of mine or issue of a deceased child or children living at the time of my death, such issue collectively taking a parent's share, and the share or shares of such issue of a deceased child or children to grant, assign pay and deliver to them severally and respectively their heirs executors, administrators and assigns; and the share or shares respectively
10 of any child or children of mine so living at the time of my death, to grant, assign pay and deliver to the Pennsylvania Company for Insurances on Lives & Granting Annuities in trust to invest the same if it or they be personally in legal securities and from time to time call in or sell any securities and reinvest the proceeds, or if it or they be real estate to keep the same productive and hold such share or shares in trust for such child or children severally and respectively for his, her or their sole and separate use, free from his her or their debts liabilities or engagements
20 and if a daughter from the debts, liabilities and engagements of any husband she may have or take and so that the same shall not be subject to levy or execution therefor and as to the income of each of said shares to pay one third of the same to my said wife for the maintenance and education of such child, without any duty however, on her part to account for the same if she receives it in full for such maintenance and education, and as to the remaining two thirds of such income to accumulate the same into capital until such child shall be twenty one
30 years of age, and from and after that time to pay all income accruing on such capital to such child, for his or her own use and as to the principal or capital of each of said shares, if such child be a son to grant assign pay and deliver one third thereof to such son at each of the several ages of twenty one, twenty five and thirty respectively, and as to the principal or capital of each of such shares if such child be a daughter to hold the same in trust for said

daughter during her natural life for her sole and separate use so that the same shall not be subject to her debts liabilities or engagements or the debts, liabilities or engagements of any husband she may have or take, paying the income thereof into her own hands upon her own receipt, and in trust at her death to grant assign pay and deliver the principal of the share of such daughter to such person or persons as she may by will have appointed and in default of such appointment to such person or persons as would then take the same by from through or under me if I had died intestate owning the same. 10

I appoint my said wife Eliza L. Farnum guardian of my children and sole executrix of this my will.

In Testimony Whereof I have hereunto set my hand and seal this twenty seventh day of March—A. D. 1874.

Signed, sealed, published and declared by James Edward Farnum the above named Testator as and for his last Will and Testament in the presence of us, who have at his request, in his presence and in the presence of each other, hereunto set our hands as attesting witnesses, the day and year last above written.

JAMES EDWARD FARNUM
(SEAL) 20

G. HEIDE NORRIS
ROBERT H. NEILSON
LUTHER E. HEWITT 30

I JAMES EDWARD FARNUM do make and publish this Codicil to my Will which is dated the twenty seventh day of March A. D. 1874:

FIRST Inasmuch as my personal estate is composed in part of stocks and securities which are not accounted

legal investments of trust funds, and many of which it would be advantageous for the trustees appointed by my Will to retain, I hereby authorize and empower my Executrix to assign transfer and deliver to said trustees, and the said trustees to accept and in their discretion to retain such stocks and securities aforesaid as I may die possessed of without responsibility for error in the exercise in good faith of their discretion respecting the acceptance sale or retention thereof. The said trustees may in like manner in their discretion accept any stock
10 dividend or subscribe pay for and retain stock allotted to them as stockholders in any distribution of stock by a corporation, at a price below the market value thereof.

SECOND Having by my said will directed the shares devised and bequeathed to my sons to be transferred and paid to them respectively at the ages therein mentioned, I hereby modify said provisions and direct that Twenty
20 Thousand dollars of the share of each son shall be retained and held by said trustees in trust for my said sons respectively during their respective natural lives upon the same and like trusts as are declared by my said will of and concerning the shares of my sons prior to the payment to them as aforesaid of said shares.

Upon the decease of each of my said sons I give and bequeath the said trust funds of Twenty thousand dollars each so held in trust for them respectively to such person or persons and for such estates as the son so dying shall by will direct limit and appoint, and in default of
30 such appointment I give and bequeath the same to the children then living of such son and the issue of any child or children who may then be deceased their executors administrators and assigns in equal shares, the issue of any deceased child taking a parents share,—and in default of such children and issue of any son so dying living at the time of his death, and of such appointment, I give and bequeath said trust fund to such person or persons as

would take the same through or under me had I then died intestate owning the same—

THIRD I also modify the provisions of my said will respecting the shares of my daughters and do will and direct that the trustees of their shares shall upon the arrival of each of my daughters at the age of twenty one years, pay assign transfer and set over to such daughter out of her share the sum of Twenty thousand dollars absolutely or if any daughter shall have arrived at that age before the payment to the trustees aforesaid of her share of my estate I direct that my Executrix shall make such payment and transfer of said sum of Twenty thousand dollars to her directly. I further will and direct that the residue of the shares of my said daughters remaining in trust as provided by my said will during their respective natural lives shall upon their respective decease go and be disposed of to and among their appointees by will or their issue or otherwise in a similar manner in all respects as is hereinbefore provided with reference to the trust funds of twenty thousand dollars each directed by this Codicil to be held in trust for my sons. 10 20

FOURTH I will and direct that in the distribution of my estate or any part thereof or in setting apart any trust fund or funds under the provisions of my will or of this codicil, my Executrix or the said Trustees as the case may be may assign and deliver the securities in which my estate may be invested at the market value thereof at the time of such distribution or setting apart as aforesaid, my wife however to have the first choice of said securities with respect to the legacy of One hundred thousand dollars bequeathed to her by my said will— 30

In all other respects I ratify and confirm my said will—

IN WITNESS WHEREOF I have hereunto set my hand and seal this twenty-third day of December in the year of our

Lord one thousand eight hundred and eighty-one
(1881)—

Signed sealed published and
declared by the testator J.
Edward Farnum as and for
a Codicil to his Will in the
presence of us who at his
request and in the presence
of each other subscribed
our names as witnesses—

J. EDW FARNUM (SEAL)

10

A. LEWIS SMITH
C. B. WILKINSON

[5794T]

20

30

(Filed April 3, 1915.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

J. EDWARD FARNUM AND
GEORGE L. FARNUM, AD-
MINISTRATORS, &C.,

Complainants,

AND

THE PENNSYLVANIA COM-
PANY FOR INSURANCE ON
LIVES AND GRANTING AN-
NUITIES, ET ALS.,

Defendants.

ON BILL, &C.

ANSWER OF THE PENN-
SYLVANIA COMPANY,
&C., DEFENDANT,

10

AND

COUNTER-CLAIM OF THE
PENNSYLVANIA COM-
PANY, &C., DEFEND-
ANT.

The answer of The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with the appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, and the answer and counter-claim of The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. Farnum Batterson, deceased.

20

This defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with the appreciation and accumulations thereon under the trust created under the last will and testament of Paul Farnum, deceased, answering the bill of complaint, says that:

30

1. Paragraphs 1 to 5 inclusive are admitted, except as to the accuracy of copies of exhibits therein referred to, as to which this defendant requires the complainants to make such proof as they may be able.

10 2. Paragraph 6 is denied insofar as it alleges that Sarah E. Farnum Batterson died without having exercised the power of disposition or appointment in respect to the trust fund created for her benefit in the will of the said Paul Farnum, deceased, and insofar as it alleges that she died without having by any instrument appointed the person or persons to whom the principal sum of said trust fund, with accumulations of interest, should be paid over. This defendant denies that the principal and accumulated interest of said bequest fell into and became a part of the residuary estate of the said Paul Farnum, deceased. The rest of said Paragraph 6 is admitted.

20 3. The said Sarah E. Farnum Batterson exercised the power of appointment created by the will of the said Paul Farnum, deceased, in regard to the said trust fund, and disposed of said fund to such persons and in the manner as set forth in her said will and codicils, what purports to be copies thereof being annexed to the said bill of complaint.

4. This defendant has no knowledge or information sufficient to form a belief as to the statements in Paragraphs 7 and 8.

30 5. Paragraphs 9 and 10 are admitted, except so much thereof as alleges that this defendant is in doubt as to the disposition which should be made of the said trust fund, which is denied. This defendant says that said fund should be disposed of in accordance with the will and codicils of Sarah E. Farnum Batterson.

6. Paragraph 11 is admitted except as to so much thereof as charges that the claims of the residuary legatees under the will of the said Sarah E. Farnum Bat-

terson, deceased, and in said paragraph mentioned, are inequitable, unjust and contrary to the laws of the State of New Jersey, which is denied; and except as to so much thereof as charges that this defendant has sufficient assets of the estate of the said Sarah E. Farnum Batterson to pay the general and specific legacies bequeathed under the said will and codicils of said Sarah E. Farnum Batterson, and in part the legacies directed to be paid out of her residuary estate, which is denied.

7. Paragraph 12 is denied.

8. Paragraph 13 is admitted except in so far as it states that this defendant is not an unprejudiced trustee, which is denied, and except in so far as it states that said trust fund, after an accounting, will be found to be due to complainants. 10

9. This defendant, acting under advice of counsel, had prepared and executed on the 11th day of December, 1915, which this defendant afterwards learned was the date that the bill of complaint was filed, its account of the said trust fund, which it was about to file in Burlington County Orphans Court, but which, having learned of the filing of the said bill of complaint, this defendant has not filed. This defendant is ready and willing to account for said fund in this Court, and hereby submits itself to the jurisdiction of this Court as to the accounting of the said trust fund and the disposition of the same. 20

This defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the Last Will and Testament and Codicils of Sarah E. Farnum Batterson, deceased, says that: 30

1. Paragraphs 1 to 5 inclusive are admitted, except as to the accuracy of copies of exhibits therein referred to, as to which this defendant requires the complainants to make such proof as they may be able.

2. Paragraph 6 is denied insofar as it alleges that Sarah E. Farnum Batterson died without having exercised the power of disposition or appointment in respect to the trust fund created for her benefit in the will of the said Paul Farnum, deceased, and insofar as it alleges that she died without having, by any instrument, appointed the person or persons to whom the principal sum of said trust fund, with accumulations of interest, should be paid over. This defendant denies that the principal and accumulated interest of said be-
 10 quest fell into and became a part of the residuary estate of the said Paul Farnum, deceased. The rest of said Paragraph 6 is admitted.

3. The said Sarah E. Farnum Batterson exercised the power of appointment created by the will of the said Paul Farnum, deceased, in regard to the said trust fund, and disposed of said fund to such persons and in the manner as set forth in her will and codicils, what purports to be copies thereof being annexed to the said bill of complaint.

20 4. This defendant has no knowledge or information sufficient to form a belief as to the statements in Paragraphs 7 and 8.

5. Paragraphs 9 and 10 are admitted, except so much thereof as alleges that this defendant is in doubt as to the disposition which should be made of the said Trust Fund, which is denied. This defendant says that said Fund should be disposed of in accordance with the will and codicils of Sarah E. Farnum Batterson.

30 6. Paragraph 11 is admitted, except as to so much thereof as charges that the claims of the residuary legatees under the will of the said Sarah E. Farnum Batterson, deceased, and in said paragraph mentioned, are inequitable, unjust and contrary to the laws of the State of New Jersey, which is denied; and except as to so much thereof as charges that this defendant has sufficient assets of the estate of the said Sarah E. Farnum

Batterson to pay the general and specific legacies bequeathed under the said will and codicils of said Sarah E. Farnum Batterson, and in part the legacies directed to be paid out of her residuary estate, which is denied.

7. Paragraph 12 is denied.

8. Paragraph 13 is admitted, except insofar as it states that this defendant is not an unprejudiced Trustee, which is denied, and except insofar as it states that said Trust Fund, after an accounting, will be found to be due to complainants.

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By way of counter-claim against complainants, this defendant says that:

The said Sarah E. Farnum Batterson exercised the power of appointment conferred upon her by the said will of Paul Farnum, as set out in Paragraph 3 of this answer, and that this defendant should be awarded the said Trust Fund upon the accounting to be had in this Court, and that this defendant should be directed to dispose of said Trust Fund in accordance with the residuary clauses of the will and codicils of the said Sarah E. Farnum Batterson, which are set forth in said bill of complaint.

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This defendant therefore prays:

1. That said complainants, J. Edward Farnum and George L. Farnum, and the said defendants, Bessie Pentreath, Mary Maynard, Josephine Paxton, Annie T. Mold, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, The Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, the Rector, Church Wardens and Vestrymen of St. James Church of Washington, D. C., Virginia Honeybourne, Margaret Sheehan and Florence M. Moberly, may answer this counter-claim, without oath, and each statement herein made.

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2. That said last will and testament of the said Sarah E. Farnum Batterson and the codicils thereto, all as set out in said bill, may be construed by this Honorable Court, and that it may be decreed that the said Sarah E. Farnum Batterson, in her said will and codicils, exercised the power conferred upon her by the last will and testament of Paul Farnum, deceased.

3. That said Trust Fund may be decreed to be paid over to this defendant as Executor and Trustee under the last will and testament of the said Sarah E. Farnum Batterson, deceased.

GREY & ARCHER,

Solicitors for and of counsel with defendant. The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with the appreciation and accumulations thereon under the trust created under the last will and testament of Paul Farnum, deceased; and The Pennsylvania Company for Insurance on Lives and Granting Annuities as Executor and Trustee under the last will and testament and codicils thereto, of Sarah E. Farnum Batterson, deceased.

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(Filed April 3, 1915.)

IN CHANCERY OF NEW JERSEY.

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| BETWEEN | ON BILL, &c. |
| J. EDWARD FARNUM AND GEORGE L. FARNUM, AD- MINISTRATORS, &c., | Answer and Counter-claim of the Defendants BES- SIE PENTREATH, RT. REV. S. M. GRISWOLD, 10 Missionary Bishop of Salina, Kansas; THE |
| Complainants, | CORPORATION FOR THE RELIEF OF WIDOWS AND CHILDREN OF CLERGYMEN OF THE PROTESTANT EPISCO- PAL CHURCH in the State of New York, and |
| AND | FLORENCE MOBERLY. 20 |
| THE PENNSYLVANIA COM- PANY FOR INSURANCE ON LIVES AND GRANTING AN- NUITIES, ET ALS., | |
| Defendants. | |

The Answer and Counter-claim of Bessie Pentreath, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas; the Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, and Florence Moberly, defendants.

These defendants, answering the bill of complaint, say: 30

1. Paragraphs 1 to 5, inclusive, are admitted, except as to the accuracy of copies of exhibits therein referred to, in respect to which these defendants have no knowledge or information sufficient to form a belief.

2. Paragraph 6 is denied in so far as it alleges that Sarah E. Farnum Batterson died without having exer-

cised the power of disposition or appointment in respect to the Trust Fund created for her benefit in the will of the said Paul Farnum, deceased, and in so far as it alleges that she died without having, by any instrument, appointed the person or persons to whom the principal sum of said Trust Fund, with accumulations of interest, should be paid over. These defendants deny that the principal and accumulated interest of said bequest fell into and became a part of the residuary estate of the said Paul Farnum, deceased. The rest of said Paragraph 6
10 is admitted.

3. The said Sarah E. Farnum Batterson exercised the power of appointment created by the will of the said Paul Farnum, deceased, in regard to the said Trust Fund, and disposed of said fund to such persons and in the manner as set forth in her said will and codicils, what purports to be copies thereof being annexed to the said bill of complaint.

4. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraphs 7, 8, 9 and 10.
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5. Paragraph 11 is admitted except as to so much thereof as charges that the claims of the residuary legatees under the will of the said Sarah E. Farnum Batterson, deceased, and in said paragraph mentioned, are inequitable, unjust and contrary to the laws of the State of New Jersey, which is denied; and except as to so much thereof as charges that the Pennsylvania Company for Insurance on Lives and Granting Annuities, Executor of and Trustee in and under the last will and testament and codicils of Sarah E. Farnum Batterson, deceased, has sufficient assets of the estate of the said Sarah E. Farnum Batterson to pay the general and specific legacies bequeathed under the said will and codicils of said Sarah E. Farnum Batterson, and in part the legacies directed to be paid out of her residuary estate, as to which these defend-
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ants have no knowledge or information sufficient to form a belief.

6. Paragraph 12 is denied.

7. Paragraph 13 is admitted except so much thereof as states that the Pennsylvania Company for Insurance on Lives and Granting Annuities is not an unprejudiced Trustee, which is denied, and except in so far as it states that said Trust Fund, after an accounting, will be found to be due to complainants.

By way of counter-claim against the complainants, these defendants say:

The said Sarah E. Farnum Batterson exercised the power of appointment conferred upon her by the said will of Paul Farnum, as set out in Paragraph 3 of this answer, and these defendants are respectively entitled to the legacies bequeathed to them by the codicil to the will of the said Sarah E. Farnum Batterson, dated February 2, 1912, by the 13th, 14th, 15th and 18th clauses thereof respectively, and said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. Farnum Batterson, deceased, should be directed to dispose of said Trust Fund of \$100,000, with the appreciation and accumulations thereon, in accordance with the said respective clauses of said codicil of the said Sarah E. Farnum Batterson, deceased, which are set forth in said bill of complaint.

These defendants therefore pray:

1. That the complainants, J. Edward Farnum and George L. Farnum, and the defendants, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Far-

num, deceased, and The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. Farnum Batterson, deceased; Mary Maynard, Josephine Paxton, Annie T. Mold, the Rector, Church Wardens and Vestrymen of St. James' Church, of Washington, D. C.; Virginia Honeybourne, and Margaret Sheehan may answer this counter-claim, without oath, and each statement herein made.

10 2. That said last will and testament of the said Sarah E. Farnum Batterson and the codicils thereto, all as set out in said bill, may be construed by this Honorable Court, and that it may be decreed that the said Sarah E. Farnum Batterson, in her said will and codicils, exercised the power conferred upon her by the last will and testament of Paul Farnum, deceased.

20 3. That said Trust Fund may be decreed to be paid over to the said defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto, of Sarah E. Farnum Batterson, deceased, to be disposed of in accordance with the terms of the said will and codicils of the said Sarah E. Farnum Batterson, deceased.

30 Solicitors for and of Counsel with the Defendants,
 Bessie Pentreath, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas; The Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, and Florence Moberly.

(Filed April 20, 1916.)

IN CHANCERY OF NEW JERSEY.

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| BETWEEN J. EDWARD FARNUM AND GEORGE L. FARNUM, AD- MINISTRATORS, &C., Complainants, AND THE PENNSYLVANIA COM- PANY FOR INSURANCE ON LIVES AND GRANTING AN- NUITIES, ET ALS., Defendants. | } | ON BILL &C. Replication of defendant, THE PENNSYLVANIA Co., &c., to Answer and Counter-claim of De- fendants, BESSIE PEN- TREATH, ET ALS. | 10 |
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Replication of defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, and The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils there-
 to of Sarah E. Farnum Batterson, deceased, to the
 answer and counter-claim of Bessie Pentreath, Rt.
 Rev. S. M. Griswold, Missionary Bishop of Salina,
 Kansas, The Corporation for the Relief of Widows
 and Children of Clergymen of the Protestant Epis-
 copal Church in the State of New York, and Flor-
 ence Moberly.

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As to the counter-claim contained in the answer of said defendants, this defendant says that it admits the allegations contained in said counter-claim.

GREY & ARCHER,

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Solicitors for and of counsel with The Pennsylvania Company for Insurance on Lives and Granting Annuities as Trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, and The Pennsylvania Company for Insurance on Lives, etc., as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. Farnum Batterson, deceased.

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(Filed April 7, 1916.)

IN CHANCERY OF NEW JERSEY.

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| J. EDWARD FARNUM AND GEORGE L. FARNUM, AD- MINISTRATORS, &C., Complainants, AND THE PENNSYLVANIA COM- PANY FOR INSURANCE ON LIVES AND GRANTING AN- NUITIES, ET ALS., Defendants. | } | ON BILL &C. Replication to Answer and 10 Counter-claim of the Defendant PENNSYL- VANIA COMPANY, &C. |
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The complainants join issue on the answer of the de-
 fendant, The Pennsylvania Company for Insurance on 20
 Lives and Granting Annuities, as Trustee of the Trust
 Fund of \$100,000, with the appreciation and accumula-
 tions thereon, under the trust created under the last will
 and testament of Paul Farnum, deceased, and the answer
 of said company, as Executor and Trustee under the last
 will and testament and codicils there to of Sarah E. Far-
 num Batterson, deceased.

As to the counter-claim of the defendant, The Pennsyl-
 vania Company for Insurance on Lives and Granting An- 30
 nuities, as Executor and Trustee under the last will and
 testament and codicils thereto, of Sarah E. Farnum Bat-
 terson, deceased, contained in said answer, complainants
 say: They deny the statements set forth in said counter-
 claim and each answer thereof.

MCDERMOTT & ENRIGHT,
 Solicitors of Complainants.

(Filed April 7, 1916.)

IN CHANCERY OF NEW JERSEY.

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| 10 | J. EDWARD FARNUM AND GEORGE L. FARNUM, AD- MINISTRATORS, &C., Complainants, vs. THE PENNSYLVANIA COM- PANY FOR INSURANCE ON LIVES AND GRANTING AN- NUITIES, ET ALS., Defendants. | } | ON BILL, &C. Replication to Answer and Counter-claim of the De- fendants BESSIE PEN- TREATH and others. |
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20 The complainants join issue on the answer of the defendants, Bessie Pentreath, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas; the Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, and Florence Moberly.

As to the counter-claim contained in said answer complainants say: They deny the statements set forth in said counter-claim and each and every thereof.

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MCDERMOTT & ENRIGHT,
 Solicitors of Complainants.

IN CHANCERY OF NEW JERSEY.

BETWEEN

J. EDWARD FARNUM AND
GEORGE L. FARNUM, AS
ADMINISTRATORS, &C.,

Complainants,

AND

THE PENNSYLVANIA COM-
PANY FOR INSURANCE ON
LIVES AND GRANTING AN-
NUITIES, ET AL.,

Defendants.

ON BILL, &C.

STIPULATION.

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It is hereby stipulated and agreed by and between the solicitors of the complainants, the solicitors of the answering defendants and the solicitor of the defendant, 20
The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, that on the hearing in above entitled cause, to take place on October 24, 1916, or on any day to which it may be adjourned, before Hon. John H. Backes, Vice Chancellor, the account of the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, of its administration of the Trust Fund of \$100,000, set forth in the second paragraph of the last will and testament of Paul Farnum, deceased, produced before 30
and presented to the Court of Chancery at the hearing on June 13, 1916, and the memorandum supplemental to the said account, verified by Jay Gates August 14, 1916, and produced in this Court August 15, 1916, may be introduced in evidence by any of the parties to this stipulation, without objection, and that any of said parties may introduce in evidence, without objection and without certifica-

tion, a copy of the lease dated May 4, 1871, made by and between the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, filed in the office of the Secretary of State, at Trenton, May 20, 1871.

And that it will be admitted as a fact that the dividends provided to be paid by said lease were in fact paid to the accounting Trustee, and by it paid over (less commissions) to Mrs., Batterson.

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Solicitors for Complainants.

GREY & ARCHER,
Solicitors for Answering Defendants.

MCDERMOTT & ENRIGHT,
Solicitors for Defendant, Domestic and Foreign
Missionary Society of the Protestant Episcopal
Church in the United States of America.

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IN CHANCERY OF NEW JERSEY.

BETWEEN

J. EDWARD FARNUM AND
GEORGE L. FARNUM, AD-
MINISTRATORS, &C.,

Complainants,

AND

THE PENNSYLVANIA COM-
PANY FOR INSURANCE ON
LIVES AND GRANTING AN-
NUITIES, ET ALS.,

Defendants.

ON BILL, &C.

TESTIMONY.

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Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the thirteenth day of June, 1916, at 11.30 A. M.

20

BEFORE HON. JOHN H. BACKES, VICE CHANCELLOR.

Appearances:

MCDERMOTT & ENRIGHT, ESQS., by MR. FRANK P. MCDERMOTT and MR. MEYER EICHMANN, and MR. LEWIS LAWRENCE SMITH, of the Philadelphia Bar, for Complainants.

GREY & ARCHER, by MR. NORMAN GREY; and MAURICE BOWER SAUL, ESQ., of the Philadelphia Bar, for the above named Defendant and the Defendant, the Seaside Hotel; 30

NELSON B. GASKILL, ESQ., for the Defendant, the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States;

THOMAS B. GILCHRIST, ESQ., of the New York Bar, for the Defendants, The Sisterhood of St. Mary's and St. Mary's Free Hospital for Children;

FRANK M. JONES, ESQ., of the Delaware Bar, for the Defendant, Annie B. Moore.

10 Mr. McDermott: I offer in evidence a certified copy of the will of Paul Farnum.

(Said will is marked "Exhibit C-1.")

Mr. McDermott: I offer in evidence an exemplified copy of the letters of administration *de bonis non* to J. Edward Farnum and George L. Farnum, of the estate of George W. Farnum, deceased.

(Said copy is marked "Exhibit C-2.")

20 Mr. McDermott: I offer an exemplified copy of the will of James Edward Farnum, and the codicil thereto attached, and letters of administration on the unadministered estate of J. Edward Farnum.

Mr. Grey: That is objected to.

Mr. McDermott: This is to show these gentlemen are the administrators.

30 The Court: Do you admit the official capacity of the complainants in this case and the relation of the defendants to the fund in the case?

Mr. Grey: Yes, sir.

The Court: And the execution of the wills as annexed to the bill?

Mr. Grey: Yes, sir.

Complainants rest.

JAY GATES, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

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By Mr. Grey:

Ques. Mr. Gates, where do you live?

Ans. 108 West Moreland Avenue, Chesterfield.

Ques. How long have you been connected with the Pennsylvania Company for Insurance on Lives and Granting Annuities?

Ans. Since February 15, 1910.

Ques. In what capacity or capacities?

Ans. I first went there as Assistant Trust Officer, 20 then became trust officer, and subsequently I was elected vice-president.

Ques. Did you know Mrs. Batterson?

Ans. I did.

Ques. When did you first know her, and under what circumstances?

Ans. I first met her in January, 1912, when she came to the office, saying she had been referred to the company—

30

Mr. McDermott: That is objected to.

The Court: Objection overruled.

Ans. (Continued)—upon the advice of Judge Charles T. Gummey.

Ques. What was the purpose of the visit?

Ans. To arrange for a new will to be drawn.

Ques. What did you do in the matter?

Ans. She brought with her the will that Judge Gumme had prepared for her before his elevation to the Bench; I went over the will with her carefully, and she added to that will some legacies and decreased some legacies and increased others, and I prepared a draft of the will along the lines of her instructions, and submitted it to her.

Ques. To Mrs. Batterson?

10 Ans. Yes; she called in several times.

Ques. Did this conference result in the execution of the will here in evidence of February 2, 1912?

Ans. Yes, sir.

Ques. Did she make any statement to you as to the amount of her estate?

*Mr. McDermott: Objected to.

20 The Court: Objection overruled.

Ans. Yes, sir.

Ques. What was it, Mr. Gates?

Mr. McDermott: I object to any statement made by Mrs. Batterson to the witness, as incompetent, irrelevant and immaterial.

30 Ans. Before the will was signed, Mrs. Batterson asked very particularly as to whether the amount of the legacies mentioned in her will and the Trust Funds, etc., were covered by her own estate, or that estate which the company held as her attorney-in-fact, and the estate which the company held as Trustee under the will of Paul Farnum, and of which she was the life beneficiary and had the power of appointment. I went to the asset books of the company and made a calculation as to the amount of her individual property and the trust

property, and I told her there was ample in both of those, the Trust Fund and the attorney's account, to pay all of the legacies in full, with the expenses, and to leave something over besides for the residuary estate; the total amount of the trust assets was originally about \$100,000, and that increased somewhat until it was \$125,000, or thereabouts.

Mr. McDermott: I move to strike out the answer as incompetent, irrelevant and immaterial.

10

The Court: Motion denied.

Mr. McDermott: Will you allow me to put an objection on the record? I wish to object to all statements made by Mrs. Batterson to this witness or any other witness in relation to the will and the codicil, or her intention in the making of the will, or in making any one or both of the codicils, and any declaration being made by her in that relation; and I wish to object also to what this witness said to her.

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The Court: I will allow you to have that objection on the record.

Ans. I told her that if both the Trust Fund, the amount in the Trust Fund, and the amount in her attorney account, were included together as one estate, there would be ample to pay all the legacies which she had provided for the payment of in her will, and also the expenses of administration, the executor's fees, and leave a residuary estate.

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Ques. Did you mention to her any figures in the two funds to which you refer?

Ans. Yes.

Ques. What were they?

Ans. I told her the Trust Fund was \$100,000.

Ques. What fund do you refer to?

Ans. Under the will of Paul Farnum, that it would amount to more than that, because there were some stocks there which were carried on the books at par, and I told her the fund we held for her as attorney amounted to upwards of \$290,000, but that that would amount to more, taking the stocks, etc, at their appraised value.

Ques. What was the fund you carried for her as attorney; was it her separate property?

Ans. Her own separate property.

10 Ques. Then the will was executed?

Ans. Then the will was executed.

Ques. Did you have a conference with her further with regard to, and preliminary to, the first codicil?

Ans. I have, and she was very particular at that time to inquire again as to whether or not I was sure that there was sufficient in both the estates to pay all the legacies provided for.

Ques. Did you prepare the first codicil?

Ans. I prepared the first codicil.

20 Ques. And the will?

Ans. And the will.

Ques. You said you told her about the amounts in these two funds; did you make any calculation with her as to the amount of the bequests in the will?

Ans. Yes; I took that out and had one of the book-keepers make calculations of the tabulated—

Ques. What did you tell her with regard to the total amount of those legacies in the will; did you discuss the amount of those legacies with her?

30 Ans. Yes.

Ques. What was the amount of the legacies you mentioned together?

Ans. They amounted to something like about \$360,000, I think; that is, in the will and the two codicils.

Ques. Well, now, in regard to the first codicil, was there any conversation between you in regard to the execution of that power in her father's will; was that mentioned?

Ans. Yes, sir.

Ques. What was said about that?

Ans. She always spoke—

Mr. McDermott: That is objected to.

The Court: Strike it out.

Ques. Tell us what she said.

Ans. She said she wished to combine the two es- 10
tates in the gifts under her will and to include not only
that which she owned and possessed in her own right,
but that over which she had the power of appointment
under her father's will.

Ques. The second codicil is dated October, 1914; did
you have any conversation with her after that in regard
to that codicil, and in regard to her estate?

Ans. I did.

Ques. When and where was it, and what was said? 20

Mr. McDermott: That is objected to. This is some
conversation after the codicil was made.

The Court: Objection overruled.

Ans. It was during the month of May, 1915, Mrs. Bat-
terson came to the office, and she told me of the execu-
tion of the second codicil while she was at Portsmouth,
New Hampshire, and asked me if the company had re-
ceived it by mail; I told her we had and it had been filed. 30
She again asked if I was sure that she had sufficient
estate, both that in her own right and over which she had
the power of appointment under her father's will, to pro-
vide for the payment of all the legacies. I said, "Yes,"
unless she had very materially increased the amount of
the legacies in that will and the codicil. She said she had
not. I told her there would be sufficient to pay all lega-
cies in full and leave an estate besides.

Ques. At that time, did you look up the books of the company again, and give her any figures as to what the two estates amounted to?

Ans. I went over again the asset books and calculated the totals of the two funds, and gave her an idea of what they were.

Ques. What did you say to her they were, if you said anything?

10 Ans. I told her there would be a surplus of approximately \$75,000 to \$100,000 after the payment of all of the specific legacies, and the costs of administration and taxes.

Ques. And were you referring to both funds, or one fund, or what?

Ans. Both funds.

Ques. At that time, did you have any calculation made on paper of the exact amount of the two funds?

Ans. I did, taking the securities at par.

Ques. Did you state then to her what those amounts were?

20 Ans. Yes, sir.

Ques. You told her that?

Ans. I gave her that information.

Ques. What did you say they were?

Ans. I told her that the amount of the estate held in trust under the will of Paul Farnum was \$100,000 and upwards, and that her own estate, at par, amounted to about \$300,000.

Ques. When did you first see Codicil No. 2?

30 Ans. After the death of Mrs. Batterson.

Ques. After her death?

Ans. Yes, the will and both codicils were on file at the office, and were taken from the vault and filed with the register subsequent to her decease.

Ques. Did Mrs. Batterson say anything to you in the conversation with regard to her second codicil, in regard to there being a residue?

Ans. Yes, sir.

Ques. What did she say about that?

Ans. Well, she said that she had made provision for the distribution of her residuary estate, and that she was anxious that those she had named as residuary legatees should receive some share of her estate.

Mr. McDermott: I move to strike out the last answer.

The Court: Motion denied.

10

Ques. Mr. Gates, do you know whether Mrs. Batterson executed any wills prior to the will of February 2, 1912?

Ans. I have knowledge of at least two wills.

Ques. Have you those in your possession here?

Ans. I have.

Ques. Will you produce them, please?

Ans. (Witness produces papers).

Ques. Produce the earlier one of those wills.

Ans. (Witness produces paper).

20

Ques. What is the date of that?

Ans. That is dated the 26th day of May, 1903.

Ques. Is that Mrs. Batterson's signature to the will, to the paper?

Ans. It is.

Ques. Who are the witnesses?

Ans. The witnesses were Jarvis Mason, L. C. Clemann, C. F. Gummey.

Ques. Do you know their signatures?

Ans. I do.

30

Ques. Are those their signatures?

Ans. They are.

Ques. Does that paper contain an exercise of the power of appointment under the Farnum will by Mrs. Batterson, and if so, what clause?

Mr. McDermott: That is objected to.

Ans. In the 18th clause.

Mr. Grey: I offer the paper in evidence.

Mr. McDermott: It is objected to as incompetent, irrelevant and immaterial.

The Court: I will admit it.

(Said paper is marked "Exhibit D-1").

10

Ques. Where are the subscribing witnesses?

Ans. Mr. Mason is dead, Mr. Clemann is dead, and Judge Gummey is alive.

Ques. Where?

Ans. In Philadelphia.

Ques. Mr. Gates, you have a paper dated there, what?

Ans. The 3rd day of May, 1909.

Ques. Signed by whom?

20

Ans. Sarah E. Batterson.

Ques. Who are the witnesses?

Ans. N. Hampton Todd, 21 Spruce street, Philadelphia; Charlotte M. Breese, Villanova, Pennsylvania; Charles Francis Gummey, 2126 Locust Street, Philadelphia.

Ques. Do you know the signatures of those persons?

Ans. Of M. Hampton Todd and Charles Francis Gummey.

Ques. And are those their signatures on that paper?

30

Ans. Yes.

Ques. That is Mr. Todd's signature?

Ans. Yes, sir.

Ques. And Mr. Gummey's?

Ans. It is.

Ques. You know they live in Pennsylvania, do you?

Ans. Yes.

Ques. Point out the clause in that paper referring to the exercise of the power.

Ans. Clause 75.

Mr. Grey: I offer the paper in evidence.

Mr. McDermott: Objected to as incompetent, irrelevant and immaterial.

The Court: I will admit it.

(Said paper is marked "Exhibit D-2").

Mr. Grey: I call for the two accounts, one of the Farnum Estate, the other of the Batterson Estate, which were served under oath on Mr. McDermott, in answer to his interrogatories. 10

Mr. McDermott: Counsel is mistaken about that.

Mr. Grey: I will reframe my demand; they are inventories and appraisements.

Mr. McDermott: I haven't got them; nothing was served on me of that kind. 20

Ques. Mr. Gates, have you here an inventory and appraisal of the \$100,000 Trust Fund under Paul Farnum's estate?

Ans. I have a copy of an account that was prepared, which includes the inventory of the personal estate.

Ques. Will you produce it, please?

Ans. (Witness does so).

Ques. What is that paper? (handing witness a paper). 30
Look at the end of the paper.

Ans. That is a copy of the account of the Pennsylvania Company.

Ques. See if it is not the original.

Ans. —for Insurance on Lives and Granting Annuities, Trustee under the will of Paul Farnum, deceased, for Sarah E. Farnum, now Batterson, now deceased.

Ques. Is that account executed?

Ans. This account is executed by the Pennsylvania Company, by myself as vice-president, and sworn to.

Ques. What date?

Ans. Under date of December 11, 1915.

Ques. That is the original account?

Ans. That is the original account.

Ques. Was that account prepared by your company to be filed in the Burlington County Orphans' Court?

10 Ans. This account was prepared by the company, to be filed in the Burlington County Orphans' Court.

Ques. Have you an account of your company as executor of the estate of Mrs. Batterson?

Ans. I have a preliminary account that has been made up.

Ques. Was there any inventory and appraisement made and filed of that estate?

Ans. Yes, sir.

Ques. Where was it filed and when?

20 Ans. It was filed with the Register of Wills for the County of Philadelphia.

Ques. I show you a paper, and ask you if you can verify that?

Ans. That is a certified copy of the inventory and appraisement filed in the estate of Sarah E. Batterson, and of which the Pennsylvania Company for Insurance on Lives and Granting Annuities is executor.

Ques. On what date was it filed?

Ans. The 22nd day of September, 1915.

30 Mr. Grey: I offer it in evidence.

Mr. McDermott: It is objected to as incompetent, irrelevant and immaterial; I do not object because it is only a certified copy.

Mr. Grey: The object is to verify the statement of the witness as to the amount of the estate.

Ques. Have you the preliminary account there, or a copy of it there, of the Pennsylvania Company?

Ans. I have a preliminary account that was made up.

Ques. Has it been filed?

Ans. No, it has not been filed.

Ques. Does it disclose, to your knowledge, the condition of the estate?

Ans. It does.

Mr. Grey: I offer the papers in evidence.

10

Mr. McDermott: They are objected to.

(Said copy of inventory and appraisalment, and the preliminary account, are marked "Exhibits D-3" and "D-4," respectively).

Recess until 1.30 P. M.

20

AFTER RECESS.

SAMUEL W. EMERY, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Grey:

30

Ques. Where do you live?

Ans. Portsmouth, New Hampshire.

Ques. What is your business?

Ans. Lawyer.

Ques. How long have you been a lawyer?

Ans. 11 years.

Ques. Are you a member of the Bar of New Hampshire?

Ans. Yes.

Ques. Did you know Mrs. Batterson?

Ans. Yes, sir.

Ques. Where did you first meet her?

Ans. In the summer of 1914, when I was called to the place where she was stopping to take her acknowledgment as a Notary to some papers which she had to send to the Pennsylvania Company.

10 Ques. Did you meet her with reference to preparing a codicil to her will?

Ans. In October, 1914, she sent for me to come to the place she was stopping, and draft a second codicil to her will.

Ques. Where was she stopping?

Ans. Portsmouth, New Hampshire.

Ques. What occurred at that interview?

20 Mr. McDermott: I object to the question and to all statements made by Mrs. Batterson to this witness, and all statements made by him to her.

Ques. What occurred?

30 Ans. Mrs. Batterson stated that she wished a second codicil to her will to be drawn; she had some persons in mind to whom she desired to leave her property, and that there were some changes in her will, and the first codicil which she desired to be made; and at that time she spoke particularly of the disposition of her personal effects at her residence in New York. She didn't go into the details of the changes at that time, but made an appointment for two days later, when I wanted upon her again.

Ques. What occurred at that interview?

Ans. When I came there, she first showed me the will and the first codicil and desired me to read them through. She had already in lead pencil marked the margin of each

of those two instruments, with some notes as to the changes she desired to have made. Before going any further into the details of the new disposition of her property, she said that having read the will and the first codicil I might wonder why her relatives were not remembered; and she stated then that she felt that they had a sufficient sum; she said, "My property, as nearly as I can find out, is about \$400,000; I have \$300,000 of my own, and I have a fund in the Pennsylvania Company of about \$100,000, which was left me for life from my father, and over which I have a power of disposal at my death." She said, "These figures. \$400,000, probably may be a little less than the whole amount," she said, "but that is my last information from the company, and" she said, "I regard that as substantially correct, \$300,000 of my own, and \$100,000 in the trust fund." She then said, "This trust fund, there are some people who are interested in it, and who would like to receive that money, but" she said "they are young men and they have plenty, or should have plenty" she said, "and if they have not, it is their own fault, and I don't wish them to have anything because I don't consider them worthy; I consider that they would waste it, because," she said, "I understand they have already wasted the money which they have had left them." She stated they were nephews, whether her own nephews or grand-nephews, she didn't say. She then went into the details of the disposition of her property. She desired me to provide in the second codicil a bequest of \$5,000 for Dr. Simonson, and a bequest of \$5,000 to Christ Church, Portsmouth, New Hampshire, and a similar bequest to the Rector. She desired to make a change in the disposition of a bequest of \$50,000 to Lydia Tiffany. That was a change of the same sum, in trust, which would revert back at the time of her death to her residuary estate. She changed all the previous dispositions of her residuary estate, leaving out some people, as I recall it, and changing the amounts given to others, and putting in some new

beneficiaries; she stated that she wished me to draw the codicil so that all her property, both the property which she had of her own, and the trust fund, should be included in the disposition of her estate, so that, as she said, there would be, as she understood the amount of her property, a substantial residue, and particularly for Miss Moberly. She then stated, as she understood her property, Miss Moberly would receive a substantial sum, considering the way in which she had disposed of her estate. I spent three hours with her at that time, making notes of the various changes, and presented myself to her with a draft of the will one day later, the following day.

10

Ques. You mean the day after the codicil?

Ans. The day after she talked with me about the codicil. She repeated her statement as to her desires about the disposition of this trust fund, that it should not, under any circumstances, go to the people for whom she said she didn't have any favor or liking, and whom she considered unworthy. She then changed one bequest, which she had instructed me to revoke, and placed it again in the will. The 73rd section of the will and section 12 of the first codicil, I revoked. In the second codicil which I drew, revoking there, according to her instructions, all bequests and provisions for the different persons receiving the property. The following day, I came again and went over the codicil again with her, briefly, and made arrangements for the signing the following day, and the production of the witnesses there. The next day, an hour before the time set for the appearance of the witnesses, I took the completed second codicil, read it over to her, and she read it over herself and asked me if what I had drawn included her own property and the trust fund, saying that that was what she desired. I told her it did, and she said that she was satisfied with the codicil as drawn, and then, when the witnesses came, she signed it.

20

30

Ques. Did you know where Mrs. Batterson resided, what State she resided in?

Ans. She told me she had a home in New York, but that her legal residence was Philadelphia.

Ques. Did you make any examination of the laws of Pennsylvania in regard to methods of exercising a power of appointment before you prepared and she executed the codicil?

Mr. McDermott: That is objected to.

The Court: Objection overruled.

10

Ans. I did.

Ques. What did you find the law to be?

Ans. I found that the Pennsylvania statute which provided—

Mr. McDermott: I object to his statement of the law of Pennsylvania.

The Court: Objection sustained.

20

Ques. As a result of what you found, you prepared the codicil the way you did, and she executed it the way she did, the way you prepared it?

Mr. McDermott: That is objected to.

The Court: Objection overruled.

Ans. She did.

30

Ques. And what did you do with the codicil after it was executed?

Ans. At her instructions I mailed it to Mr. Gates, Vice President of the Pennsylvania Company.

Mr. McDermott: I move to strike out all this testimony, so far as it relates to statements she made to him.

The Court: Motion denied.

Ques. Did you find the Pennsylvania statute on the subject?

Ans. In the books to which I referred I found reference to the law of Pennsylvania on the subject of the exercise of power by a general residuary clause in the will.

Ques. Can you refer us to the statute; what was the book?

10 Ans. I looked in the American and English Encyclopedia, the second edition—I can't give you the page—under the head of "Powers," and the Encyclopedia of Law and Procedure, under the head of "Wills and Powers."

By the Court:

Ques. You didn't find the statute itself?

Ans. No, sir; I found reference stating what it was.

20

MAURICE BOWER SAUL, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Grey:

30 Ques. Mr. Saul, where do you reside?

Ans. At Philadelphia.

Ques. What is your business?

Ans. Rose Valley; it is a suburb.

Ques. What is your business?

Ans. I am a member of the Bar of Pennsylvania.

Ques. For how long have you been a member of the Bar?

Ans. Upwards of ten years.

Ques. Are you familiar with the law of Pennsylvania with regard to the execution of powers of appointment?

Ans. I know of the statute on the subject.

Ques. Will you refer to the statute on the subject?

Ans. The Act of 1879, Pamphlet Laws '88, which I have in my hand, approved the 4th day of June, 1879, is an Act, a supplement to an Act relating to last wills and testaments, and this has reference to the execution of powers, of general powers, by a residuary clause.

Ques. Will you give us the date of the Act?

10

Ans. The 4th day of June, 1879.

Ques. Where is it found?

Ans. In the Pamphlet Laws of Pennsylvania; this is an official book; it is issued by the State.

Ques. For the year what?

Ans. 1879.

Ques. What page?

Ans. 88.

Mr. Grey: I offer it in evidence.

20

Mr. McDermott: It is objected to as irrelevant and immaterial.

(Said book is designated "Exhibit D-5.")

By the Court:

Ques. The law has not been repealed?

Ans. Not repealed or modified.

Ques. Or amended?

Ans. No, sir.

30

Ques. Is that a supplement to it?

Ans. No, sir.

Cross-examination.

By Mr. McDermott:

Ques. That was a radical change in the law, was it not?

Mr. Grey: Objected to.

The Court: Objection sustained.

Mr. McDermott: I wish to offer in evidence the answers to the interrogatories which were served by the defendant.

(Said paper is marked "Exhibit C-3.")

10 Mr. Grey: I move to amend the answers I filed for the various defendants whom I represent, and set up in the answers the existence of the Statute of Pennsylvania, Laws of 1879, which was referred to in the testimony of Mr. Saul as an exercise of the power in conjunction with the will that has been offered in evidence.

The Court: The amendment will be allowed.

20 Both sides rest.

EXHIBIT C-1.

This exhibit is certified copy of will of Paul Farnum, deceased, and is attached to complainant's bill, and appears on page 18 of this State of the Case.

EXHIBIT C-3.

IN CHANCERY OF NEW JERSEY.

| | | |
|---|---|---|
| BETWEEN J. EDWARD FARNUM AND GEORGE L. FARNUM, AD- MINISTRATORS, &C., Complainants, AND THE PENNSYLVANIA COM- PANY FOR INSURANCES ON LIVES AND GRANTING AN- NUITIES, ET ALS., Defendants. | } | ON BILL, &C. 10 ANSWER TO INTERROGA- TORIES. |
|---|---|---|

Answer of the defendant, The Pennsylvania Company 20
 for Insurances on Lives and Granting Annuities, Execu-
 tor and Trustee under the last will and testament and
 codicils thereto of Sarah E. Farnum Batterson, deceased,
 to interrogatories of complainants, dated May 27th, 1916,
 and served on defendant.

Answer to first interrogatory. An inventory was duly
 prepared, sworn to and filed on September 22nd, 1915,
 with the Register of Wills of this city, a certified copy of
 which we will later forward to you. 30

Answer to second interrogatory. The inventory and
 appraisalment was prepared at the request of this com-
 pany by appraisers duly selected therefor.

Answer to third interrogatory. The inventory was
 full and complete and embraced all of the assets of the
 decedent or personal estate, there being no real estate.

Answer to fourth interrogatory. Only one inventory was filed and it embraced all the assets of the estate at their fair and reasonable value.

Answer to fifth interrogatory. The inventory was prepared by direction of the company as Executor by the appraisers mentioned and at the request of the company, and filed on the date aforesaid.

10 Answer to sixth interrogatory: Yes. It embraces all the personal assets at a fair and reasonable value. Decedent had no real estate.

Answer to seventh interrogatory. On October 5th the Executor received the sum of \$85.07 standing to the credit of the decedent in her bank account and which was not included in the inventory filed as referred to above.

Answer to eighth interrogatory. None.

20 Answer to ninth interrogatory. None.

Answer to tenth interrogatory. None.

THE PENNSYLVANIA COMPANY FOR INSURANCES
ON LIVES AND GRANTING ANNUITIES,
By

30 STATE OF }
COUNTY OF } ss.

being duly sworn according to law, on his oath deposes and says, that he is of the Pennsylvania Company for Insurances on Lives and Granting Annuities, Executor and Trustee under the last will and testament, and codicils thereto, of Sarah E. Farnum Batterson, deceased; that he is the person actually in charge of and familiar

with said estate for said Executor; that he has read the answers to the interrogatories dated May 27th, 1916, which were served by complainants, and that the same are true.

Sworn and subscribed before me this day of June, A. D. 1916.

10

EXHIBIT D-3.

CITY AND COUNTY OF PHILADELPHIA, SS.

Personally came before me, Register of Wills in and for said City and County, Edward A. Groves and Charles A. Robbins, who upon their solemn affirmation did say that at the request of the Executor they did "well and truly and without prejudice or partiality, value and appraise the goods and chattels, rights and credits" which were of Sarah E. Batterson, deceased, "and in all respects perform their duties as appraisers to the best of their skill and judgment."

20

Affirmed and subscribed this }
22nd day of Sept., 1915, } EDW. A. GROVES,
before me } CHARLES A. ROBBINS.

H. C. BROOMALL,
Deputy Register.

INVENTORY AND APPRAISEMENT of the goods and chat-
tels, rights and credits, which were of Sarah E. Batterson,
late of Philadelphia, taken and made in conformity with
the above deposition.

30

| | | |
|--|------------|------------|
| 11000 Southern Rwy. Co. 1st Consol. Mtg. 5s, due 1 | | |
| July, 1994 |@ 99¾ | \$10972 50 |
| 5000 Lower Merion Township Sch. Disct. 4s, due | | |
| 1 Jan., 1939 |@ 100 | 5000 00 |

| | | |
|----|--|----------|
| | 7000 Michigan City Gas & Electric Co. 1st Consol. Mtge. 5s, 1 Jan., 1937.....@ 95 | 6650 00 |
| | 5000 Harwood Electric Co. 1st Mtge. 5s, 1 July, 1938@ 100 | 5000 00 |
| | 1000 Union Traction Co. of Indiana General Mtge. 5s, due 1 July, 1919@ 90 | 900 00 |
| | 10000 Phila. & Garrettford St. Rwy. Mtge 5s, due 1 Aug., 1955@ 90 | 9000 00 |
| | 10000 Ontario Power Co. of Niagara Falls 1st Mtge. 5s, due 1 Feb., 1943@ 94 | 9400 00 |
| | 12000 Clyde Steamship Co. 1st Mtge. 5s, due 1 Feb., 1931@ 90 | 10800 00 |
| 10 | 5000 Pitt., Cincin., Chic. & St. Louis Rwy. Co. Consol. Mtge. 4½s (Ser. 1), due 1 Aug., 1963..@ 100 | 5000 00 |
| | 5000 Southern Rwy. Equip. Trust 5s, due 15 Feb., 1922@ 101 | 5050 00 |
| | 12000 Kentucky Traction & Terminal Co. 1st & Refund- ing Mtge. 5s, due 1 Feb., 1951.....@ 74 | 8880 00 |
| | 18000 Penna. R. R. Consol. Mtge. 5s, due 1 Sept, 1919@ 102½ | 18450 00 |
| | 7000 Keystone Coal & Coke Co. 1st & Ref. Mtge. 6s, due 1 March, 1928@ 101¾ | 7122 50 |
| | 1000 Wm. Cramp & Sons Ship & Engine Bldg. Co. 1st Mtge. 5s, due 1 March, 1929.....@ 101 | 1010 00 |
| 20 | 1000 Lehigh & New England Equip. Tr. 4½s, due 1 Mch., 1920@ 98¾ | 987 50 |
| | 26000 Kansas City Southern Rwy. 1st Mtge. 3s, 2 April, 1950@ 67½ | 17550 00 |
| | 11000 Public Service Corporation Gen. Mtge. 5s, due 1 Oct., 1959@ 87 | 9570 00 |
| | 4000 Terre Haute, Indiana & Eastern Traction Co. 1st & Ref. Mtge. 5%, due 1945.....@ 93 | 3720 00 |
| | 5000 Northern Indiana Gas & Electric Co. 1st & Ref. Mtge. 5s, due 1 Apl., 1929.....@ 85 | 4250 00 |
| | 5500 Penn Central Light & Power Co. 1st & Ref. Mtge. 5s, due 1 Apl., 1950.....@ 99½ | 5472 50 |
| 30 | 1500 Steubenville Traction & Light Co. 1st Mtge. 5s, due 1 May, 1926.....@ 72 | 10800 00 |
| | 3000 Virginia Rwy. 1st. Mtge. 5s, due 1 May, 1962 @ 95 | 2850 00 |
| | 3000 Nashville Gas & Heating Co. 1st Mtge. 5s, due 1 May, 1937@ 101 | 3030 00 |
| | 5000 Southern Rwy. Equip. Tr. 4½s, due 1 Dec., 1918@ 99 | 4950 00 |
| | 500 Zoological Society of Phila.....@ 0 | 0 00 |
| | 10000 Bond & Mtge. Harry K. Cummings, 240 Tulpe- hocken St., Gmtn.@ 100 | 10000 00 |

| | | |
|--|--------------------|----|
| 1200 Mortgage of South Jersey Realty Co., Stone Harbor, Cape May, N. J.@ 100 | 1200 00 | |
| 100 shs. Elmira & Williamsport R. R. preferred.@ 67 | 6700 00 | |
| 200 shs. Farmers and Mechanics Natl. Bank..@ 133 | 26600 00 | |
| 140 shs. Minehill & Schuylkill Haven R. R. Co..@ 57 | 7980 00 | |
| 1000 shs. National Automatic Co.value uncertain | 0 00 | |
| 100 shs. Penna. Co. for Ins. on Lives and Granting Annuities@ 610 | 61000 00 | |
| 24 shs. Penna. Warehousing and Safe Dep. Co. Common@ 80 | 1920 00 | |
| 12½ shs. Philadelphia Mortgage and Trust Co..@ 10 | 125 00 | |
| 2000 shs. Phila. Burrows Gas Light Co.....@ 0 | 0 00 | |
| 354 shs. United Gas Improvement Co.....@ 84 | 29736 00 | 10 |
| 400 shs. Philadelphia Company 6% preferred @ 40 | 16000 00 | |
| Accrued Income on above Securities to date of death, per statement | 3132 73 | |
| Household effects, furniture, silverware, etc., at late residence, 156 West 73rd St., New York, including jewelry deposited with Corn Exchange Bank of New York..... | 2752 75 | |
| Balance on deposit with Corn Exchange Bank of New York | 934 51 | |
| Balance to credit of decedent in Deposit Acct. with Pennsylvania Company for Insurances on Lives & Granting Annuities..... | 43849 47 | 20 |
| Balance to credit of decedent in Agent & Attorney Account with the Pennsylvania Company for Insurance on Lives and Granting Annuities | 2440 13 | |
| Cash found in house of decedent | 260 00 | |
| Total | \$381045 59 | |

COMMONWEALTH OF PENNSYLVANIA, }
 CITY AND COUNTY OF PHILADELPHIA. }ss.

30

Register's Office, June 6, 1916.

I, JAMES B. SHEEHAN, Register of Wills and ex-officio Clerk of the Orphans' Court for the City and County of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a full and complete copy of inventory and appraisement on the estate of Sarah E. Batterson, deceased, filed in this office by the Executor,

on the 22nd day of September, A. D. 1915, as the same remains on file and of record in this office.

[SEAL] In Testimony Whereof, I have hereunto set my hand and official seal at Philadelphia the date above.

JAMES B. SHEEHAN,
Register of Wills and ex-officio Clerk of the Orphans' Court.

10

EXHIBIT D-4.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON
LIVES AND GRANTING ANNUITIES
EXECUTOR

(LETTERS TESTAMENTARY GRANTED 1915, JULY 15TH)

(ANCILLARY LETTERS GRANTED IN NEW YORK)

In account with Estate of SARAH E. BATTERSON,
deceased,

Dr.

20

PRINCIPAL

The Accountant charges itself

With the Inventory and Appraisement filed with the
Register of Wills, valued at..... \$381,045 59

And as follows:

1915

July 15 To cash from The Pennsylvania
Company for Insurances on
Lives and Granting Annuities,
to close deposit account..... \$43,849 47

30

(Included in the Inventory).

15 To cash from The Pennsylvania
Company for Insurances on
Lives and Granting Annuities,
to close Agents and Attorney
account 2,440 13

(Included in the Inventory).

23 To cash from Florence Moberly,
cash found in house of de-
cedent 260 00

(Included in the Inventory).

Oct. 5 To cash from The Pennsylvania
Company for Insurances on
Lives and Granting Annuities,
balance to credit of decedent
in principal of Attorney
account 85 07
(Not included in the Inven-
tory) 10

Nov. 8 To cash from Wyngate & Cul-
len, Attorneys, balance to
credit of decedent in Corn Ex-
change National Bank, New
York 934 51

(Included in the Inventory).

1916

Feb. 3 To cash account principal \$1,200
bond and mortgage on prem-
ises 96th Street, Stone Harbor,
N. J. 200 00 20

(Included in the Inventory).

To 6¼ shares Philadelphia
Mortgage & Trust Co., received
September 26th, 1915, in lieu
of 12½ shares of said stock,
included in the inventory.

30
\$381,130 66

Cr.

AND CLAIMS CREDIT

1915
July 7 By cash paid Register of Wills,
letters testamentary and ten
short certificates \$30 50
16 By cash paid W. D. Grindrod,
decorations for grave..... 28 00

| | | | |
|---------|----|---|--------|
| | 19 | By cash paid Samuel W. Emery, expenses in matter of probat- ing Will | 118 74 |
| | 20 | By cash paid half expenses to New York | 3 00 |
| | 20 | By cash paid N. A. Cushman, bread to 6/30..... | 3 48 |
| | 20 | By cash paid B. Solomon Sons, produce to 6/30..... | 25 00 |
| | 20 | By cash paid Sheffield Farms, dairy supplies 6/20..... | 11 50 |
| 10 | 20 | By cash paid Parkview Livery Stable, carriage hire to 1st July | 17 00 |
| | 20 | By cash paid New York Times, advertising death notice..... | 12 55 |
| | 20 | By cash paid Public Ledger, ad- vertising death notice..... | 1 00 |
| | 20 | By cash paid H. W. Nickerson, undertaker's bill | 327 00 |
| | 20 | By cash paid J. Hirsch, fish and oysters to 7/1..... | 4 57 |
| 20 | 23 | By cash paid Florence M. Moberly, account of household expenses | 260 00 |
| | 23 | By cash paid Rev. Edwin Ritchie, Rector of Church of St. James the Less, services of choir at funeral..... | 22 50 |
| | 24 | By cash paid T. B. Ruxton, ex- penses in proving Will..... | 36 40 |
| | 30 | By cash paid Park & Telford, groceries | 35 37 |
| | 30 | By cash paid D'Auria & Bros., fruit, &c. | 19 22 |
| 30 Aug. | 3 | By cash paid Corn Exchange Bank of New York, rent of box containing jewelery..... | 75 |
| | 3 | By cash paid expenses to New York | 6 50 |
| | 4 | By cash paid 2 months rent 156 West 73rd St., N. Y., for July and August..... | 300 00 |
| | 7 | By cash paid R. R. Bringhurst & Co., funeral expenses..... | 58 50 |

| | | | | |
|-------|----|---|-----------|----|
| | 10 | By cash paid exemplified copy of Will | 10 10 | |
| | 12 | By cash paid postage for mailing copies of Will..... | 4 00 | |
| | 12 | By cash paid Secretary of the Commonwealth, certificate to exemplified copy of Will..... | 1 00 | |
| | 14 | By cash paid Acton, printing copies of Will..... | 57 50 | |
| | 17 | By cash paid Florence M. Moberly, account of household expenses | 200 00 | |
| | 18 | By cash paid J. T. Simonson, M. D., professional services to 1st August..... | 60 00 | 10 |
| | 20 | By cash paid acknowledgement application for granting ancillary letters in State of New York and prothonotary's certificate | 1 10 | |
| | 21 | By cash paid E. Hoffstretter, & Co., cleaning rugs 156 West 73rd St., New York, and fur storage | 35 80 | |
| | 31 | By cash paid one month's rent 156 West 73rd St., N. Y., due 1st September advance..... | 150 00 | 20 |
| Sept. | 17 | By cash paid Inventory and Appraisalment and filing the same | 79 00 | |
| | 27 | By cash paid Register of Wills, collateral inheritance tax..... | 17,049 82 | |
| | 30 | By cash paid 1 mo. rent, 156 W. 73rd St., N. Y., due 10/1.. | 150 00 | |
| Oct. | 5 | By cash paid Florence M. Moberly, account of household expenses | 300 00 | 30 |
| | 28 | By cash paid acknowledgment to consent and designation for appointment as ancillary administrator in New York and prothonotary's certificate. | 1 10 | |
| | 29 | By cash paid 1 mo. rent 156 W. 73rd St., N. Y., due 11/1..... | 150 00 | |

| | | | |
|----|---------|--|---------------------------|
| | Nov. 1 | By cash paid Samuel W. Emery, expenses in re probate of Will. | 131 74 |
| | | 1 By cash paid Lawyers Advertising Co., advertising, Surrogate citation | 9 95 |
| | | 1 By cash paid John P. Day, appraising personal estate in New York | 100 00 |
| | 29 | By cash paid 1 mo. rent 156 W. 73rd St., N. Y., due 12/1..... | 150 00 |
| | Dec. 3 | By cash paid Public Ledger, advertising letters | 6 00 |
| 10 | | 3 By cash paid Evening Bulletin, advertising letters..... | 6 00 |
| | | 9 By cash paid Legal Intelligencer, advertising letters... | 3 50 |
| | 17 | By cash paid Wingate & Cullen, for deposit with Comptroller of State of New York in matter of assessment of tax on property of decedent in New York at time of her death | 80 00 |
| 20 | 31 | By cash paid 1 mo. rent 156 W. 73rd St., N. Y., due 1/1..... | 150 00 |
| | 1916 | | |
| | Jan. 12 | By cash paid estate of Wm. D. Grindrod, flowers at grave... 73rd St., N. Y., due 2/1..... | 7 00 150 00 |
| | Feb. 28 | Balance carried forward..... | 360,755 47 |
| | | | <hr/> |
| | | | \$381,130 66 \$381,130 66 |
| | | | <hr/> |
| | 1916 | | |
| | Feb. 28 | To balance brought forward..... | \$360755 47 |
| 30 | | <i>The above balance is composed of—</i> | |
| | 11000 | Southern Rwy. Co. 1st Cons. Mge. 5%, due 1 Jul., 1934..... | \$10972 50 |
| | 5000 | Lower Merion Twp. Sch. Dist. 4%, due 1 Jan., 1939 | 5000 00 |
| | 7000 | Michigan City Gas & Elec. Co. 1st Consol. Mge. 5%, due 1st Jan., 1937 | 6650 00 |
| | 5000 | Harwood Electric Co. 1st Mge. 5% due 1 Jul., 1938 | 5000 00 |

| | | |
|--|----------|----|
| 1000 Union Traction Co. of Indiana General Mge. 5%, due 1st July, 1919 | 900 00 | |
| 10000 Phila. & Garrettford St. Rwy. Mge. 5%, due 1st August, 1955..... | 9000 00 | |
| 1000 Ontario Power Co. of Niagara Falls 1st Mge. 5%, due 1st Feb., 1943 | 9400 00 | |
| 12000 Clyde Steamship Co. 1st Mge. 5%, due 1st Feb., 1931 | 10800 00 | |
| 5000 Pgh., Cin., Chic. & St. Louis Rwy. Co. Consol. Mge. 4½%, due 1st Aug., 1963 | 5000 00 | |
| 5000 Southern Rwy. Equip. Trust 5%, due 15 Feb., 1922 | 5050 00 | 10 |
| 12000 Kentucky Traction & Terminal Co. 1st & Ref. Mge. 5%, due 1951.... | 8880 00 | |
| 18000 Penna. R. R. Consol. Mge. 5%, due 1st Sept., 1919 | 18450 00 | |
| 7000 Keystone Coal & Coke Co. 1st & Ref. Mge. 6%, due 1st March, 1928 | 7122 50 | |
| 1000 Wm. Cramp & Sons Ship & Engine Bldg. Co. 1st Mge. 5%, due 1st March, 1929 | 1010 00 | |
| 1000 Lehigh & New England Equip. Trust 4½%, due 1st March, 1920 | 987 50 | |
| 26000 Kansas City Southern Rwy. 1st Mge. 3%, due 2nd April, 1950 | 17550 00 | 20 |
| 11000 Public Service Corporation Genl. Mge. 5%, due 1st October, 1959.. | 9570 00 | |
| 4000 Terre Haute, Indianapolis & Eastern Trae. Co. 1st & Ref. Mge. 5%, due 1945 | 3720 00 | |
| 5000 Northern Indiana Gas & Electric Co. 1st Mge. Ref. 5%, due Apr., 1929 | 4250 00 | |
| 5500 Penn Central Light & Power Co. 1st & Ref. Mge. 5%, due 1st Apr., 1950 | 5472 50 | 30 |
| 15000 Steubenville Traction & Light Co. 1st Mge. 5%, due 1st May, 1926. | 10800 00 | |
| 3000 Virginia Rwy. 1st Mge. 5%, due 1st May, 1962 | 2850 00 | |
| 3000 Nashville Gas & Heating Co. 1st Mge. 5%, due 1st May, 1937..... | 3030 00 | |
| 5000 Southern Rwy. Equipment. Trust 4½%, due 1 Dec., 1918..... | 4950 00 | |
| 500 Zoological Society of Philada..... | | |

| | | |
|----|---|-------------|
| | 10000 Bond & Mortgage of Harry K. Cummings, 240 Tulpehocken St., Germantown, Pa. | 10000 00 |
| | 1000 Bond & Mortgage of South Jersey Realty Co., Stone Harbor, Cape May, N. J. | 1000 00 |
| | 100 shs. Elmira & Williamsport R. R. Preferred | 6700 00 |
| | 200 shs. Farmers & Mechanics National Bank | 26600 00 |
| | 140 shs. Minehill & Schuylkill Haven R. R. Co. | 7980 00 |
| 10 | 1000 shs. National Automatic Co. (Uncertain) | |
| | 100 shs. Penna. Co. for Ins. &c. | 61000 00 |
| | 24 shs. Penna. Whse. & Safe Deposit Co. Common | 1920 00 |
| | 6¼ shs. Philada. Mortgage & Trust Co. | 125 00 |
| | 2000 shs. Philada. Burrows Gas Light Co. | |
| | 354 shs. United Gas Improvement Co. | 29736 00 |
| | 400 shs. Philadelphia Co. 6% Preferred | 16000 00 |
| | Accrued income on above securities to date of death, per statement. . | 3132 73 |
| 20 | Household effects, furniture, silverware, &c., at late residence, 156 West 73rd St., New York, including jewelry deposited with Corn Exchange National Bank. | 2752 75 |
| | Cash | 27393 89 |
| | | <hr/> |
| | | \$360755 47 |

INCOME

| | | DR |
|------|--|----------|
| 1915 | | |
| 30 | Aug. 2 To Cash, 6 mo. int. 12000 Kentucky Trac. & Term. 5s | \$300 00 |
| | To Cash, 6 mo. int. 1000 Phila. & Garrettsford St. Rwy. 5s | 250 00 |
| | 3 To Cash, 6 mo. int. 12000 Clyde Steamship Co. 5s. | 300 00 |
| | To Cash, 6 mo. int. 10000 Ontario Power Co. 5s | 250 00 |
| | To Cash, 6 mo. int. 5000 Pgh., Cin., Chic. & St. Louis 4½s | 112 50 |

| | | | | |
|-------|----|--|--------|----|
| | 11 | To Cash, 6 mo. int. 5000 Southern Rwy. Co. 5s | 125 00 | |
| | 20 | To Cash, 6 mo. int. 10000 Mge., 240 W. Tulpe- hocken St., due 18th..... | 270 00 | |
| Sept. | 1 | To Cash, 6 mo. int. 1000 Wm. Cramp & Sons 5s | 25 00 | |
| | | To Cash, 6 mo. int. 7000 Keystone Coal & Coke 6s | 210 00 | |
| | | To Cash, 6 mo. int. 1000 Lehigh & New Eng- land 4½s | 22 50 | |
| | | To Cash, 6 mo. int. 18000 Penna. R. R. Co. 5s | 450 00 | |
| | 22 | To Cash, 6 mo. int. 1200 Mge. Stone Harbor, New Jersey, due 8-1..... | 36 00 | |
| Oct. | 1 | To Cash, 6 mo. int. 5500 Penn Central Light & Power, 5s | 137 50 | 10 |
| | | To Cash, 6 mo. int. 4000 Terre Haute, Indpls. & Eastern 5s | 160 00 | |
| | | To Cash, 2½% div. 24 shs. Penna. Warehous- ing Co. | 30 00 | |
| | 2 | To Cash, 6 mo. int. 26000 Kansas City Southern Rwy. 3s | 390 00 | |
| | | To Cash, 6 mo. int. 5000 Northern Indiana Gas & Elec. 5s | 125 00 | |
| | | To Cash, 6 mo. int. 11000 Public Service Cor- poration 5s | 275 00 | |
| | 4 | To Cash, 6% div. 100 shs. Penna. Co. &c... | 600 00 | 20 |
| | 15 | To Cash, 2% div. 354 shs. United Gas Im- provement Co. | 354 00 | |
| Nov. | 1 | To Cash, 6 mo. int. 3000 Nashville Gas & Heating 5s | 75 00 | |
| | 3 | To Cash, 6 mo. int. 3000 Virginia Rwy. Co. 5s | 75 00 | |
| | | To Cash, 3% div. 400 shs. Philada. Co. Pre- ferred | 600 00 | |
| | 5 | To Cash, 6 mo. int. 15000 Steubenville Trac. & Light Co. 5s | 375 00 | |
| | 11 | To Cash, 3½% div. 200 shs. Farmers & Me- chanics National Bank | 700 00 | 30 |
| | 30 | To interest allowed by Accountant to date.. | 574 79 | |
| Dec. | 1 | To Cash, 6 mo. int. 5000 Southern Rwy. Co. 4½s .. | 112 50 | |
| | 21 | To Cash, 2½% div. 24 shs. Penna. Warehous- ing Co. | 60 00 | |
| | | 1916 | | |
| Jan. | 3 | To Cash, 6 mo. int. 5000 Harwood Electric Co. 5s | 125 00 | |

| | | | |
|------|----|---|------------|
| | | To Cash, 1 $\frac{3}{4}$ div. 100 shs. Elmira & William- sport R. R. | 158 00 |
| | | To Cash, 7% div. 100 shs. Penna. Co. &c..... | 700 00 |
| Jan. | 4 | To Cash, 6 mo. int. 11000 Southern Rwy. Co. 5s | 275 00 |
| | | To Cash, 6 mo. int. 1000 Union Traction Co. Indiana 5s | 25 00 |
| | 5 | To Cash, 6 mo. int. 5000 Lower Merion Twp. 4s | 100 00 |
| | 7 | To Cash, 6 mo. int. 7000 Michigan Gas & Elec. Co. 5s | 175 00 |
| 10 | 15 | To Cash, 2% div. 354 shs. United Gas Im- provement Co. | 354 00 |
| | 17 | To Cash, 2 $\frac{1}{2}$ % div. 140 shs. Minehill & Schuylkill Haven | 175 00 |
| Feb. | 1 | To Cash, 6 mo. int. 12000 Kentucky Trac. & Term. 5s | 300 00 |
| | | To Cash, 6 mo. int. 10000 Philada. & Gar- rettsford St. Rwy. 5s..... | 250 00 |
| | 2 | To Cash, 6 mo. int. 12000 Clyde Steamship Co. 5s | 300 00 |
| | | To Cash, 6 mo. int. 10000 Ontario Power Co. 5s | 250 00 |
| 20 | | To Cash, 6 mo. int. 5000 Pgh., Cin., Chic. & St. Louis 4 $\frac{1}{2}$ s | 112 50 |
| | 15 | To Cash, 6 mo. int. 5000 Southern Rwy. Co. 5s | 125 00 |
| | | | <hr/> |
| | | | \$10359 29 |

CR.

| | | | |
|----|------|----|---|
| | 1915 | | |
| | Nov. | 29 | By Cash pd. revenue stamps in transferring stocks of the American Rwy. Co. in name of Florence M. Moberly..... |
| 30 | | | 36 |
| | 1916 | | |
| | Feb. | 28 | Commision on 10359.29 @ 5%.... |
| | | | 517 96 |
| | | | Balance carried forward |
| | | | 9840 97 |
| | | | <hr/> |
| | | | \$10359 29 \$10359 29 |
| | | | <hr/> <hr/> |
| | 1916 | | |
| | Feb. | 28 | To balance brought forward |
| | | | \$9840 97 |

EXHIBIT D-5.

A SUPPLEMENT

To an act relating to last wills and testaments, approved the eighth day of April, one thousand eight hundred and thirty-three, providing for the time from which wills shall speak and take effect, for the vesting of lapsed or void devises of real estate in the residuary devisee, and for the execution of powers over real and personal estate by the person in whom such powers are vested. 10

When Wills to be construed to take effect.

SECTION 1. Be it enacted, &c., That every will shall be construed with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. 20

Lapsed and void devises, to be included in residuary devise.

SECTION 2. That unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. 30

Execution of powers over real and personal estate by persons in whom vested.

SECTION 3. That a general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of the personal estate of the testator, or any bequest of personal property described in a general manner shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

When to take effect.

SECTION 4. This act shall operate upon and go into effect as to the wills of all persons who shall die after the date of the act.

APPROVED—The 4th day of June, A. D. 1879.

HENRY M. HOYT.

LAWS OF PENNSYLVANIA 1879—P. L. 88.

BURLINGTON COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE }
 OF PAUL FARNUM, deceased. } ACCOUNT.

The account of The Pennsylvania Company for Insurances on Lives & Granting Annuities, Trustee under the will of Paul Farnum, deceased, for Sarah E. Farnum (now Batterson), now deceased.

10

This accountant charges itself as follows:

Principal account.

1860

| | | | |
|----------|--|------------|-------------|
| Apr. 12 | With securities and cash received from the executors of the Estate of Paul Farnum, deceased, composing the \$100,000 fund to be held in Trust in accordance with the provisions in the Will of the Testator, and the income thereof paid to Sarah E. Farnum (not Batterson) during life, as follows, viz.: | | |
| 440 shs. | Morris Canal & Banking Co. Preferred Stock.....@ 109¾ | \$48290 00 | |
| 12000 | Morris Canal & Banking Co. 1st Mge. 6% Coupon Bonds@ 89½ | 10740 00 | 20 |
| 12000 | Delaware R. R. 6% Coupon Bonds (guaranteed by Phila. & Baltimore R. R. Company)@ 87 | 10440 00 | 30 |
| Cash | | 30530 00 | |
| | | <hr/> | \$100000 00 |

And as follows:

1867

| | | | |
|---------|---|---------|---------|
| Apr. 13 | To cash Principal 76.20 Penna. 5% Loan..... | \$76 92 | |
| | An Investment of 1862, Mar. 28th, cost..... | 64 00 | |
| | | <hr/> | \$12 92 |

| | | | | |
|------|---------|---|------------|---------|
| 1875 | | | | |
| July | 1 | To cash Principal 12000 Delaware R. R. 6%..... | \$12000 00 | |
| | | Included in above charge...@ | 10440 00 | |
| | | | <hr/> | 1560 00 |
| 1876 | | | | |
| Apr. | 1 | To cash Principal 12000 Morris Canal & Banking Company 6s | \$12000 00 | |
| | | Included in above charge...@ | 10740 00 | |
| | | | <hr/> | 1260 00 |
| 1878 | | | | |
| 10 | July 13 | To cash Principal 14000 Mortgage of Charles H. Siddall.... | \$4000 00 | |
| | | An Investment of 1876, Apr. 26th, cost..... | 3920 00 | |
| | | | <hr/> | 80 00 |
| | 20 | To cash Principal 4000 Mortgage of Charles H. Siddall, collected through John G. Johnson, Esq..... | \$4000 00 | |
| | | An Investment of 1876, Apr. 26th, cost..... | 3920 00 | |
| | | | <hr/> | 80 00 |
| 1885 | | | | |
| 20 | Dec. 31 | To cash Principal 10000 Bond & Mortgage of John H. Goldbeck | \$10000 00 | |
| | | An Investment of 1875, Oct. 9th, cost..... | 9900 00 | |
| | | | <hr/> | 100 00 |
| 1889 | | | | |
| | Nov. 11 | To cash Principal of 4000 Bond & Mortgage of Charles H. Siddall | \$4000 00 | |
| | | An Investment of 1876, Apr. 26th, cost..... | 3920 00 | |
| 30 | | | <hr/> | 80 00 |
| 1897 | | | | |
| | May 6 | To cash Received in settlement for Policy of Insurance No. 6325 United Firemens Insurance Co., same having been collateral with mortgage of J. E. Little..... | | 40 00 |

1911

| | | | |
|---------|---|------------|-------------|
| Apr. 11 | To cash Proceeds of sale of 440 shs. Morris Canal and Banking Co., Preferred Stock, received as follows: 1911, Mar. 9th, Proceeds of 20 shs..... | \$3494 50 | |
| | April 11th, proceeds 420 shs.. | 71400 00 | |
| | | <hr/> | |
| | | \$74894 50 | |
| | Included in above charge..@ | 48290 00 | |
| | | <hr/> | 26604 50 10 |
| | | | <hr/> |
| | | | \$129817 42 |

Cr.

And Claims Credit

1860

| | | | |
|--------|--|------------|----|
| May 16 | By cash paid for Investment in 30000 Bond & Mortgage of B. Patterson and G. Patterson on premises S. W. Corner 8th & Chestnut Sts..... | \$30000 00 | 20 |
| | Received Principal 1876, March 31st..... | 30000 00 | |
| | | <hr/> | |

| | | | |
|---------|--|--------|----|
| Nov. 26 | By cash paid for Investment in 300 Phila. 6% Loan due 1882. | 300 75 | |
| | Received principal 1882, Jan- uary 5th..... | 300 00 | |
| | | <hr/> | 75 |

1867

| | | | |
|---------|---|----------|------|
| Apr. 13 | By cash paid for Investment in 100 Penna. 6% loan..... | \$101 38 | |
| | Received principal 1881, Jan- uary 19th..... | 100 00 | 30 |
| | | <hr/> | 1 38 |

1875

| | | | |
|---------|--|-----------|-------|
| Nov. 20 | By cash paid for Investment in 2000 Pittsburgh 6% Gold loan due 1879 | \$2020 00 | |
| | Received principal 1879, Oct. 4th | 2000 00 | |
| | | <hr/> | 20 00 |

| | | | | |
|----|-------|----|--|------------|
| | 1876 | | | |
| | Mar. | 31 | By cash paid for Investment in 28000 Pittsburgh 6% Gold Loan due 1880..... | \$28140 00 |
| | | | Received Principal 1880, April 5th | 28000 00 |
| | | | | <hr/> |
| | | | | 140 00 |
| | Apr. | 8 | By cash paid for Investment in 1700 Phila. 6% Loan due Jan. 1st, 1903 | \$1817 02 |
| | | | Received Principal 1902, De- cember 31st..... | 1700 00 |
| 10 | | | | <hr/> |
| | | | | 117 02 |
| | | | | <hr/> |
| | | | | \$279 15 |
| | | | | |
| | 1878 | | | |
| | July | 13 | By cash paid for Investment in 4000 Bond & Mortgage of Samuel E. Cavin at 6%..... | 4000 00 |
| | | | Received Principal 1881, Octo- ber 8th..... | 4000 00 |
| | | | | |
| | | 20 | By cash paid John G. Johnson, Esq., fee in matter of fore- closure of Mortgage of Charles H. Siddall..... | 40 00 |
| 20 | | | | |
| | | | | |
| | 1878 | | | |
| | Sept. | 13 | By cash paid for investment in 3700 United States 5% Loan due 1874 to 1904..... | 3934 96 |
| | | | Principal called, 1879, July 24th | 3700 00 |
| | | | | <hr/> |
| | | | | 234 96 |
| | | | | |
| | 1879 | | | |
| 30 | Sept. | 27 | By cash paid expense of peti- tion and certificate authoriz- ing Investment in United States Loan..... | 4 13 |
| | | | | |
| | Oct. | 4 | By cash paid expenses in con- nection with collection of Principal of 2000 Pittsburgh 6% Loan..... | 1 50 |

| | | | |
|---------|---|----------------|-----------------|
| 17 | By cash paid for Investment in United States 5% Funded Loan of 1881, as follows: | | |
| | 1879, July 22d..... | \$3600 00 | \$3631 50 |
| | Oct. 17th..... | 2000 00 | 2015 00 |
| | | <u>5600 00</u> | <u>5646 50</u> |
| | 1881, June 22d, above \$5600 United States 5% Loan surrendered in exchange, receiving in lieu thereof 5600 United States 3½% Loan. | | 10 |
| | 1882, Sept. 16th, above \$5600 United States 3½% Loan, surrendered in exchange, receiving in lieu thereof 5600 United States 3% Loan. | | |
| | 1886, Oct. 14th, Received Principal of above 3% Loan..... | \$5600 00 | 46 50 |
| 1880 | | | |
| Apr 5 | By cash paid expenses in matter of collection of principal of 28000 Pittsburgh 6% Loan... | | 20 50 20 |
| 1882 | | | |
| Feb. 1 | By cash paid for Investment in 29600 Penna. 4% Loan due 1912 | \$32228 48 | |
| | Proceeds of sale received as follows: | | |
| | 1891, May 27. \$300 | \$350.88 | |
| | 1896, Jan. 4. . 10050 | 11256.00 | |
| | 1906, Dec. 27. 19250 | 20597.50 | |
| | | <u>29600</u> | <u>32204 38</u> |
| | | | 24 10 30 |
| 1885 | | | |
| Jan. 15 | By cash paid for Investment in 9100 Pittsburgh 4% Improvement Loan due 1915..... | \$9975 87 | |
| | Proceeds of sale, 1891, June 1st | 9805 25 | 170 62 |

| | | | | |
|----|-------|----|---|----------------|
| | 1887 | | | |
| | Feb. | 7 | By cash paid for Investment in 5000 Bond & Mortgage on premises 204-6 Frankstown Avenue, Pittsburgh, for 5 years @ 4½%..... | \$5000 00 |
| | 1890 | | | |
| | Feb. | 7 | By cash paid for Investment in 4500 Bond & Mortgage of R. C. Ware, Wayne, Delaware County, Penna., for 3 years @ 5% | 4500 00 |
| 10 | | | Received Principal on Account as follows, viz.: | |
| | | | 1896, Aug. 1st..... | \$500 00 |
| | | | 1899, June 19th.... | 500 00 |
| | | | 1913, Dec. 15th.... | 3500 00 |
| | | | | <u>4500 00</u> |
| | 1891 | | | |
| | June | 1 | By cash paid for Investment in 10000 Robert H. Coleman 5½% bonds | \$10000 00 |
| 20 | | | Received Principal 1896, March 3rd | 10000 00 |
| | 1892 | | | |
| | Oct. | 17 | By cash paid for Investent in 100 Phila. 3% Serial Loan due 1902 | \$100 50 |
| | | | Received Principal 1902, De- cember 31st | 100 00 |
| | | | | <u>50</u> |
| | 1895 | | | |
| | Sept. | 28 | By cash paid for Investment in 10000 Pittsburgh 4% Bridge Loan due 1916..... | \$11119 00 |
| 30 | | | | |
| | 1896 | | | |
| | Mar. | 14 | By cash paid for Investment in 2000 Pittsburgh 4% Bridge Loan due 1901..... | \$2061 20 |
| | | | Received Principal 1901, May 3rd | 2000 00 |
| | | | | <u>61 20</u> |

| | | | |
|---------|---|-----------|-------|
| Dec. 10 | By cash paid for Investment in 2000 Allegheny City 4% School District Loan due 1908 | \$2038 32 | |
| | Received Principal 1908, De- cember 3rd | 2000 00 | |
| | | <hr/> | 38 32 |

1896

| | | | |
|---------|--|-----------|----|
| Dec. 21 | By cash paid for Investment in 6000 Bond and Mortgage of J. L. Marshall on premises 212 Grant Ave., Pittsburgh, for 5 years @ 5% | \$6000 00 | 10 |
| | Received Principal, 1899, De- cember 18th..... | 6000 00 | |
| | | <hr/> | |

1897

| | | | |
|---------|--|----------|-------|
| July 27 | By cash paid for Investment in 500 Phila. 3½% Loan due 31st Dec. 1914..... | \$520 00 | |
| | Received Principal 1914, De- cember 31st | 500 00 | |
| | | <hr/> | 20 00 |

1899

| | | | |
|---------|---|--|----|
| Dec. 27 | By cash paid Notary fees— acknowledgment to Power of Attorney to satisfy Pittsburgh Mortgage | | 20 |
| | | | 75 |

1900

| | | | |
|---------|--|-----------|----|
| June 30 | By cash paid for Investment in 6800 Phila. 3% Water Loan due 1930..... | \$6921 78 | |
| | | <hr/> | 30 |

1902

| | | | |
|---------|--|-----------|--|
| Oct. 21 | By cash paid for Investment in 2000 Bond & Mortgage on premises 326 Catherine St. for 5 years @ 4½% | \$2000 00 | |
| | Received Principal, 1909, De- cember 13th | 2000 00 | |
| | | <hr/> | |

| | | | |
|----|---------|---|------------|
| | 1903 | | |
| | Feb. 26 | By cash paid for Investment in 1500 Bond & Mortgage on premises 1020 Ellsworth St. for 5 years at 4½%..... | \$1500 00 |
| | | Received Principal, 1908, Feb- ruary 27th | 1500 00 |
| | | | <hr/> |
| | 1906 | | |
| | Dec. 27 | By cash paid for Investment in 9000 Allegheny County Jail & Court House 4s due 1926... | \$9333 00 |
| 10 | | | <hr/> |
| | 31 | By cash paid for Investment in 11000 Allegheny County Jail & Court House 4s due 1926.... | \$11407 00 |
| | | | <hr/> |
| | 1908 | | |
| | Oct. 1 | By cash paid for Investment in 1000 John Wanamaker 1st Mortgage 5s due 1913..... | \$1000 00 |
| | | Received Principal, 1913, April 2nd | 1000 00 |
| | | | <hr/> |
| 20 | 1909 | | |
| | Feb. 11 | By cash paid for Investment in 2000 Phila. 4% Loan due 1938. | \$2092 50 |
| | | | <hr/> |
| | 1910 | | |
| | June 1 | By cash paid for Investment in 600 Pittsburgh 4% Loan due 1915 | \$600 00 |
| | | | <hr/> |
| | Aug. 19 | By cash paid for Investment in 2500 Bond & Mortgage on premises 920 So. 20th St. for 3 years @ 5 4/10..... | \$2500 00 |
| 30 | | | <hr/> |
| | 1911 | | |
| | Mar. 23 | By cash paid for Investment in 3000 Bond & Mortgage on premises 1214 No. 52nd St. for 3 years @ 5%..... | \$3000 00 |
| | | Received Principal, 1913, June 5th | 3000 00 |
| | | | <hr/> |

| | | | |
|---------|--|------------|----|
| Apr. 25 | By cash paid for Investment in 13000 Pittsburgh 4% Loan due 1913 | \$13000 00 | |
| | Received Principal, 1913, May 1st | 13000 00 | |
| | | <hr/> | |
| 25 | By cash paid for Investment in 5000 Sharpless Bros. 4½% Mortgage | \$5000 00 | |
| | | <hr/> | |
| May 15 | By cash paid for Investment in 30000 Bond & Mortgage on premises 1321-5 Carson St., Pittsburgh for 3 years @ 5 4/10% | \$30000 00 | 10 |
| | Received Principal as follows: 1914, May 9th..... \$20000 00 1915, May 11th.... 10000 00 | <hr/> | |
| | | \$30000 00 | |
| | | <hr/> | |
| June 2 | By cash paid for Investment in 23000 D. C. Folwell Mge. 4½% | \$23000 00 | |
| | | <hr/> | |
| Oct. 24 | By cash paid for Investment in 400 Phila. 3% Loan due 31st December, 1917 | \$379 00 | 20 |
| | | <hr/> | |
| 1913 | | | |
| Apr. 2 | By cash paid for Investment in 1000 John Wanamaker 1st Mge. 5% due 1923..... | \$1000 00 | |
| | | <hr/> | |
| May 20 | By cash paid for Investment in 4000 John Wanamaker 1st Mge. 5% due 1923..... | \$4000 00 | |
| | | <hr/> | |
| June 2 | By cash paid for Investment in 5000 S. P. Wetherill 1st Mge. 5% due 1918..... | \$5000 00 | 30 |
| | | <hr/> | |
| 28 | By cash paid for Investment in 1000 George B. Wilson 1st Mortgage 4½% due 1914..... | \$1000 00 | |
| | Principal received 1915, March 31st | 1000 00 | |
| | | <hr/> | |

| | | | |
|----|---------|--|-----------|
| | 5 | By cash paid for Investment in 4000 S. W. Foster 5% 1st Mortgage due 1918..... | \$4000 00 |
| | 28 | By cash paid for Investment in 1000 D. C. Folwell 1st Mort- gage 4½% due 1914..... | \$1000 00 |
| | 1913 | | |
| | Jun 28 | By cash paid for Investment in 1000 Frank B. Off 1st Mge. 4½%, due 1914 | \$1000 00 |
| 10 | 28 | By cash paid Notary Acknowl- edgment to Power of Attorney to satisfy Mortgage, Wayne, Pennsylvania | |
| | 1914 | | |
| | Jan. 2 | By cash paid for Investment in 3500 Phila. Rapid Transit 5%, due 1919..... | \$3500 00 |
| | | Received Proceeds of sale, 1915, April 15th..... | 3500 00 |
| 20 | May 5 | By cash paid for Investment in 8000 part of 175,000 Bond & Mortgage on premises 1605 Chestnut St. for 5 years @ 5% | \$8000 00 |
| | 13 | By cash paid for Investment in 5000 Adelpia Hotel Co. 1st Mge. 5%, due 1917..... | \$5000 00 |
| 30 | 22 | By cash paid for Investment in 1000 part of 100,000 Bond & Mortgage on premises 805- 13 Walnut St. for 5 years @ 5-4/10% | \$1000 00 |
| | Jun. 10 | By cash paid for Investment in 6000 Bond & Mortgage on premises 2234 No. Front St. for 3 years @ 5-4/10%..... | \$6000 00 |

| | | |
|--|------------|-------|
| Received on account of Principal, 1914, Nov. 2nd | \$4500 00 | |
| Balance remaining | \$1500 00 | |
| 10 By cash paid for Investment in 2500 part of 25000 Bond & Mortgage on premises 218 So. Front St. for 5 years @ 5-4/10% | \$2500 00 | |
| Dec. 3 By cash paid for Investment in 2000 John Wanamaker 1st Mge. 5s, due 1923 | \$2000 00 | 10 |
| 1915 | | |
| Mar. 12 By cash paid for Investment in 500 Phila. 3½s, due 1931.... | \$470 27 | |
| Apr. 15 By cash paid for Investment in 4500 Phila. Rapid Transit 6s, due 1925 | \$4500 00 | |
| May 24 By cash paid Acknowledgment to Power of Attorney to satisfy Mortgage, Pittsburgh, Pa.... | | 20 |
| June 4 By cash paid for Investment in 8000 Bond & Mortgage on premises 4003 Market St. @ 5-4/10% | \$8,000 00 | 50 |
| Aug. 18 By cash paid Notary fee, acknowledgment to account filed | | 50 |
| | | <hr/> |
| | \$943 73 | 30 |

INCOME ACCOUNT.

From February 4th, 1914, to which date it was paid in full to Sarah E. Batterson, who was entitled to the entire income, viz.:

| | | |
|--------|--|---------|
| 1914 | | |
| Feb. 4 | To Cash, 6 mo. int. 1000 Geo. B. Wilson 4½s.. | \$22 50 |
| 5 | To Cash, 6 mo. int. 5000 Mge. 204-6 Frankstown Ave., Pitts., 5th | 135 00 |

| | | | |
|-------|------|--|--------|
| | 19 | To Cash, 6 mo. int. 2500 Mge. 920 So. 20th St., due 19th | 67 50 |
| Apr. | 2 | To Cash, 6 mo. int. 5000 John Wanamaker 5s.. | 125 00 |
| | | To Cash, 6 mo. int. 5000 Sharpless Bros 4½s | 112 50 |
| | 3 | To Cash, 6 mo. int. 20000 Allegheny Co. 4s.. | 400 00 |
| May | 2 | To Cash, 6 mo. int. 10000 Pittsburgh 4s..... | 200 00 |
| | 9 | To Cash, 6 mo. int. 30000 Mge. 1321-7 E. Carson St., Pitts., due 11..... | 810 00 |
| | 30 | Interest allowed by Accountant to date..... | 45 25 |
| Jun. | 1 | To Cash, 6 mo. int. 24000 D. C. Folwell 4½s.. | 540 00 |
| | 2 | To Cash, 6 mo. int. 600 Pittsburgh 4s..... | 12 00 |
| | 4 | To Cash, 6 mo. int. 1000 Frank B. Off 4½s.. | 22 50 |
| | | To Cash, 6 mo. int. 5000 S. P. Wetherill 5s.. | 125 00 |
| | 5 | To Cash, 6 mo. int. 4000 S. W. Foster 5s.... | 100 00 |
| | 29 | To Cash, 6 mo. int. 7200 Philadelphia 3s..... | 108 00 |
| | | To Cash, 6 mo. int. 500 Philadelphia 3½s.... | 8 75 |
| | | To Cash, 6 mo. int. 2000 Philadelphia 4s..... | 40 00 |
| | 30 | To Cash, 6 mo. int. 3500 Philadelphia Rapid Transit 5s | 87 50 |
| Jul. | 3 | To Cash 90 das. int. 5000 Adelphia Hotel 5s.. | 62 50 |
| Aug. | 4 | To Cash, 6 mo. int. 1000 Geo. B. Wilson 4½s. | 22 50 |
| | 5 | To Cash, 6 mo. int. 5000 Mge. 204-6 Franks-town Ave., Pitts., 5th | 135 00 |
| Sept. | 21 | To Cash, 6 mo. int. 2500 Mge. 920 So. 20th St., due 8-19 | 67 50 |
| 20 | Oct. | 1 To Cash, 6 mo. int. 5000 Sharpless Bros. 4½s | 112 50 |
| | | 2 To Cash, 6 mo. int. 5000 John Wanamaker 5s | 125 00 |
| | | 3 To Cash, 6 mo. int. 20000 Allegheny County 4s | 400 00 |
| | 16 | To Cash, 6 mo. int. 8000 Mge. 1605 Chestnut St., due 15th | 200 00 |
| Nov. | 2 | To Cash, 6 mo. int. 10000 Pittsburgh 4s..... | 200 00 |
| | | To Cash, interest from June 10th on 6000 Mge. 2234 No. Front Street..... | 95 85 |
| | 10 | To Cash, 6 mo. int. 10000 Mge. 1321-7 E. Carson St., Pitts., 11th..... | 270 00 |
| 30 | 18 | To Cash, 5 mo. 29 das. int. 1000 Mge. 805-13 Walnut St., due 21 | 26 85 |
| | 30 | To interest allowed by Accountant to date | 27 56 |
| Dec. | 1 | To Cash, 6 mo. int. 24000 D. C. Folwell 5s.... | 600 00 |
| | | To Cash, 6 mo. int. 600 Pittsburgh 4s..... | 12 00 |
| | | To Cash, 6 mo. int. 1000 Frank B. Off 5s.... | 25 00 |
| | 2 | To Cash, 6 mo. int. 5000 S. P. Wetherill 5s.. | 125 00 |
| | 3 | To Cash, 6 mo. int. 4000 S. W. Foster 5s.... | 100 00 |
| | 28 | To Cash, 6 mo. int. 7200 Philadelphia 3s.... | 108 00 |

EXHIBIT D-5.

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| | | | |
|------|--|--------|----|
| | To Cash, 6 mo. int. 500 Philadelphia 3½s.... | 8 75 | |
| | To Cash, 6 mo. int. 2000 Philadelphia 4s..... | 40 00 | |
| 1915 | | | |
| Jan. | 4 To Cash, 6 mo. int. 5000 Adelphia Hotel 5s. | 125 00 | |
| | 7 To Cash, 6 mo. int. 3500 Philadelphia Rapid Transit 5s | 87 50 | |
| Feb. | 1 To Cash, 6 mo. int. 1000 Geo. B. Wilson 5s.. | 25 00 | |
| | 4 To Cash, 6 mo. int. 5000 Mge. 204-6 Franks-town Ave., Pitts., 5th..... | 135 00 | |
| Mar. | 8 To Cash, 3 mo. 28 das. int. 2500 Mge. 218 S. Front St., due 8th..... | 44 25 | |
| | 17 To Cash, 6 mo. int. 2500 Mge. 920 S. 20th St., due 2-19 | 67 50 | 10 |
| | 31 To Cash, accd int. from Feb. 1st on 1000 Geo. B. Wilson 5s..... | 8 05 | |
| Apr. | 1 To Cash, 6 mo. int. 5000 Sharpless Bros. 4½s. | 112 50 | |
| | 3 To Cash, 6 mo. int. 5000 John Wanamaker 5s | 125 00 | |
| | To Cash, 6 mo. int. 2000 John Wanamaker 5s | 50 00 | |
| | 5 To Cash, 6 mo. int. 20000 Allegheny County 4s | 400 00 | |
| | 15 To Cash, 6 mo. int. 8000 Mge. 1605 Chestnut St., due 15th | 200 00 | |
| | To accd int. from 12-29-14 on 3500 Philadelphia Rapid Transit 5s | 52 01 | |
| May | 4 To Cash, 6 mo. int. 10000 Pittsburgh 4s..... | 200 00 | 20 |
| | 11 To Cash, 6 mo. int. 10000 Mge. 1321-7 E. Carson St., Pitts., 1st..... | 270 00 | |
| | 20 To Cash, 6 mo. int. 1000 Mge. 805-13 Walnut St., due 21st | 27 00 | |
| | 31 To interest allowed by Accountant to date.... | 42 70 | |
| Jun. | 2 To Cash, 6 mo. int. 24000 D. C. Folwell 5s.. | 600 00 | |
| | To Cash, 6 mo. int. 600 Philadelphia 4s..... | 12 00 | |
| | 3 To Cash, 6 mo. int. 1000 Frank B. Off 5s.... | 25 00 | |
| | To Cash, 6 mo. int. 5000 S. P. Wetherill 5s.. | 125 00 | |
| | 5 To Cash, 6 mo. int. 4000 S. W. Foster 5s.... | 100 00 | |
| | 29 To Cash, 6 mo. int. 7200 Philadelphia 3s.... | 108 00 | |
| | To Cash, 6 mo. int. 500 Philadelphia 3½s.... | 8 75 | 30 |
| | To Cash, 6 mo. int. 2000 Philadelphia 4s..... | 40 00 | |
| Jul. | 2 To Cash, 6 mo. int. 5000 Adelphia Hotel 5s.. | 125 00 | |
| Aug. | 6 To Cash, 6 mo. int. 5000 Mge. 204-6 Franks-town Ave., Pitts., 5th | 135 00 | |
| | 18 To Cash, from principal account refunding amount received from Income 1867, April 13th, to adjust the accounts..... | 24 21 | |

\$8999 98

| | | CREDIT. | |
|-------|--|---|-----------|
| 1914. | | | |
| May | 5 | By Cash Pd. Acct. Int. from March 31st on Investment this date in 5000 Adelphia Hotel Co. 5s..... | \$29 86 |
| | 14 | By Cash Pd. Acct. Int. Apr. 15th, 1915, on 8000 Mge. 1605 Chestnut Street | 22 22 |
| Jun. | 22 | By Cash Pd. State Tax, 1914..... | 330 00 |
| Dec. | 3 | By Cash Pd. Acct. Int. from Oct. 1st on Investment this date in 2000 John Wanamaker 5s..... | 17 22 |
| 1915. | | | |
| 10 | Mar. 12 | By Cash Pd. Acct. Int. from Jan. 1st on Investment this date in 500 Philadelphia 3½s | 3 45 |
| | Jun. 4 | By Cash Pd. Acct. Int. from May 24th on Investment this date in 8000 Bonds & Mge., 4003 Market St. | 12 00 |
| | 16 | By Cash Pd. Income Tax, 1914.... | 5 09 |
| | 23 | By Cash Pd. State Tax, 1915 | 330 00 |
| | | | \$749 84 |
| 20 | Credit is asked in Distribution Account for the payment of the Following amounts to Sarah E. Batterson on account of income, viz.: | | |
| | | 1914, Aug. 4th..... | \$2490 00 |
| | | 1915, Feb. 2nd..... | 2750 00 |
| | | | 5240 00 |
| | | | \$5989 84 |

The foregoing balance of Principal Account is Composed of:

| | | | |
|----|-------|--|------------|
| | 20000 | Allegheny County Jail & Court House 4s, 1926.. | \$20740 00 |
| | 5000 | Sharpless Bros. 1st Mge. 4½s..... | 5000 00 |
| 30 | 23000 | D. C. Folwell 1st Mge. 4½s..... | 23000 00 |
| | 1000 | D. C. Folwell 1st Mge. 4½s | 1000 00 |
| | 6800 | Phila. 3% Water Loan, due 1st Jul., 1930..... | 6921 78 |
| | 2000 | Phila. 4% Loan, due 1st July, 1938..... | 2092 50 |
| | 10000 | Pittsburgh 4% Bridge Loan, due 1916-25..... | 11119 00 |
| | 600 | Pittsburgh 4% Improvement Loan, due 12-1-15.. | 600 00 |
| | 400 | Phila. 3% Loan, due 31st Dec., 1917..... | 379 00 |
| | 1000 | John Wanamaker 1st Mge. 5s, due 1923..... | 1000 00 |
| | 4000 | John Wanamaker 1st Mge. 5s, due 1923..... | 4000 00 |
| | 5000 | S. P. Wetherill 1st Mge. 5s, due 1918..... | 5000 00 |
| | 4000 | S. W. Foster 1st Mge. 5s, due 1923..... | 4000 00 |

| | | |
|---|-------------|-------|
| 1000 Frank B. Off 1st Mge. 4½s..... | 1000 00 | |
| 5000 Adelpia Hotel Co. 1st Mge. 5s, due 1917..... | 5000 00 | |
| 2000 John Wanamaker 1st Mge. 5s, due 1923..... | 2000 00 | |
| 500 Phila. 3½% Loan, due 1st July, 1931..... | 470 27 | |
| 4500 Phila. Rapid Transit Co. Mge. 6s..... | 4500 00 | |
| 5000 Bond & Mortgage 204-6 Frankstown Ave., Pgh. @ 5-4/10% | 5000 00 | |
| 2500 Mortgage, 920 So. 20th St. @ 5-4/10%..... | 2500 00 | |
| 8000 Part of Mortgage, 1605 Chestnut St. @ 5%..... | 8000 00 | |
| 1000 Part of Mortgage, 805-13 Walnut St. @ 5-4/10% | 1000 00 | |
| 1500 Part of Mortgage, 2234 N. Front St. @ 5-4/10% | 1500 00 | |
| 2500 Part of Mortgage, 218 S. Front St. @ 5-4/10% | 2500 00 | |
| 8000 Mortgage, 4003 Market St. @ 5-4/10%..... | 8000 00 | 10 |
| Cash | 2551 14 | |
| | | <hr/> |
| | \$128873 69 | |

SUMMARY.

| | | |
|---|--------------|----|
| Amount of principal received...\$129,817 42 | | |
| Amount of principal disbursed.. 943 73 | | |
| | <hr/> | |
| Balance of principal in hand..... | \$128,873 69 | |
| Amount of income received..... | \$8,999 98 | |
| Amount of income disbursed.... 5,989 84 | | |
| | <hr/> | |
| Balance of income in hand..... | 3,010 14 | 20 |
| | <hr/> | |
| Total amount in hands of Accountant..... | \$131,883 83 | |
| From which Accountant prays allowance for disbursements made as follows: | | |
| Trustee's commission: | | |
| 5% on \$8,999.98 Income | | |
| % on \$129,817.42 Prin. | | |
| Proctor's fee: | | |
| Surrogate's fee on accounting, recording releases | | |
| Amount left in hands of Trustee to cover estimated cost of filing supplemental account, showing distribution of balance | | 30 |
| | <hr/> | |
| Balance in hands of accountant for dis- tribution | \$ | |

THE PENNSYLVANIA COMPANY
for Insurances on Lives and Granting Annuities
JAY GATES,
Vice President.

STATE OF PENNSYLVANIA, }
 COUNTY OF PHILADELPHIA. } ss.

JAY GATES, being duly sworn, according to law, on his oath says, that he is Vice President of The Pennsylvania Company for Insurance on Lives & Granting Annuities, a corporation organized under the laws of the State of Pennsylvania, Trustee named in the foregoing account; that deponent has knowledge of the facts and statements therein set forth; that the foregoing account is in all things
 10 just and true both as to the charge and discharge thereof, according to the best of his knowledge and belief.

Sworn and subscribed before me this }
 11th day of December, A. D. 1915. } JAY GATES.

HARRY BOWER,
 Notary Public.

Commission expires Jan. 28, 1917.

I am not a stockholder, director or officer
 of the within mentioned corporation.

20

Prothonotary's certificate attached and revenue stamp cancelled.

30

Submitted, July 15, 1916. Decided, July 27, 1916.

IN CHANCERY OF NEW JERSEY.

BETWEEN

J. EDWARD FARNUM AND
GEORGE L. FARNUM, AD-
MINISTRATORS, &C.,

Complainants,

AND

THE PENNSYLVANIA COM-
PANY FOR INSURANCE ON
LIVES AND GRANTING AN-
NUITIES, ET ALS.,

Defendants.

10

CONCLUSIONS.

For the Complainants:

MESSRS. MCDERMOTT & ENRIGHT.

20

For the Defendants:

MESSRS. GRAY & ARCHER and MR. NELSON B.
GASKILL.

BACKES, V. C.:

This is a bill for an accounting. Paul Farnum, domi-
ciled in Burlington County, died in 1859, leaving a last
will and testament executed in 1856, and admitted to
probate, in and by which he bequeathed: 30

“In addition to the House and lot of land in Arch
Street, Philadelphia, in the hands of a trustee for
the use of my Daughter Sarah E. Farnum, I give
and bequeath unto the Pennsylvania Company for
Insurance on Lives and Granting Auunities, lo-

10 cated in the City of Philadelphia, Pa., one hundred thousand dollars in bonds or stocks, my said daughter's choice of such as I may die possessed, (Except Bank Stock which I divide between my sons) in trust Nevertheless for the use of my said Daughter Sarah E. Farnum, the interest or dividends arising therefrom to be paid by said Company to the *sole order of my said daughter* semi-annually during the term of her natural life, and not be liable for the debts nor affected by the extravagance or misfortunes of any husband she may Marry. And at the death of my said Daughter the principal *sum* and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company or trustees to pay over to such person or persons as my said Daughter by any instrument of writing in the nature of a Will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct, limit and appoint, or designate My will and design
20 is that the House and lot in Arch Street shall pass in like manner to such person or persons as she may designate, (Provided however that I give the said Company my said trustee to Change any of the securities deposited with them whenever they may think proper during the life time of my aforesaid Daughter."

30 The administrators c. t. a. of Paul Farnum, deceased, claim that Sarah E. Farnum failed to exercise the power of appointment conferred upon her and filed this bill to recover the trust fund.

Sarah E. Farnum married one Batterson, in 1866, and from that time on was a resident of Philadelphia, Pa. She died June 27, 1915, leaving a last will and testament supplemented by two codicils, which were duly admitted to probate by the Register of Wills of Philadelphia County. The will bears date February 2, 1912,

the first codicil April 23, 1913, and the second, October 15, 1914. By the 73rd item of the will, she bequeathed as follows:

“One-half of all the rest, residue and remainder of my estate, real, personal and mixed, including that over which I have or may have a power of appointment, I give, devise and bequeath to (naming beneficiary) and the remaining one-half of said rest, residue and remainder I give, devise and bequeath to the following-named societies, persons, institutions and corporations in the proportions mentioned, viz. (naming beneficiaries.)” 10

By the twelfth item of the first codicil she substituted some of the residuary beneficiaries. The ninth paragraph of the second codicil reads as follows:

“9. I hereby revoke all the provisions of Item Seventy-three in my said will and all the bequests therein contained and I also revoke all the provisions of Item Twelve in said first codicil to my said will and all the bequests therein contained.” 20

The remaining pertinent items of the second codicil are as follows:

“13. Out of the rest, residue and remainder of my estate, I give and bequeath unto (naming beneficiaries and amounts).”

“14. I give and bequeath one-fourth of said rest, residue and remainder of my estate unto (naming beneficiary).” 30

“15. I give and bequeath one-fourth of said rest, residue and remainder of my estate unto (naming beneficiary).”

“17. Out of said residue and remainder of my estate I give and bequeath unto (naming beneficiaries and amounts).”

"18. All the rest, residue and remainder of my estate remaining, I give, bequeath and devise unto Miss Florence M. Moberly, who lives with me, absolutely."

Mrs. Batterson died possessed of personal property in her own right inventoried at \$381,130.66. By her will she made absolute bequests aggregating \$339,250. By her first codicil she increased the legacies \$11,500; and as her will stood after the execution of the second
10 codicil and at the time of her death, the absolute bequests amounted to \$295,850, and bequests for life of \$60,000 with reverter to the residue, amounting in the whole to \$355,850. Inheritance tax and costs of administration deducted may leave the personal assets a shade short to meet, presently, the legacies, but upon the termination of the life-interest legacies there will be a substantial balance to be divided under the residuary clauses. To this balance is to be added the house referred to in Paul Farnum's will. There it is implied
20 that this house was held in trust for Sarah E. Farnum. According to the statement contained in the brief of counsel, it was in fact held by her in fee. There is no proof of this, but as counsel have exchanged briefs, and there is no denial, it will be assumed to be an admitted fact.

The question presented for decision is, does the will of Mrs. Batterson execute the power? It is argued by defendant's counsel that inasmuch as Mrs. Batterson was domiciled in Pennsylvania and because the trust fund is
30 in, and the trustee is a corporation of, that Commonwealth, the point at issue ought to be decided according to the laws of the State, where the statute directs that a general bequest should be construed to include personal property, of which the testator had power to appoint generally, and to operate as an execution of such power, unless the contrary intention appeared by the will (P. L. 1879, p. 88). The donor, at the time of the creation of the

power, was a resident of New Jersey. So was the donee. The power was created and exists by virtue of the laws of this State, and it is settled law that the exercise of powers conferred by will is controlled by the laws of the testator's domicile, both as to the execution of the power and the interpretation of it. *Rosenbaum vs. Garrett*, 57 N. J. Eq., 186; *Bingham's Appeal*, 64 Pa. St., 345; *Sewall vs. Wilmer*, 132 Mass., 131; *Tudor vs. Vail*, 195 Mass., 18; *Cotting vs. De Sartiges*, 17 R. I., 668; 16 L. R. A., 367; *Lane vs. Lane*, 64 L. R. A., 849; *In re Philbrick*, 209 N. Y., 585; *Prince De Bearn vs. Winans*, 111 Ed., 434; *Rhode Island Hospital Trust Co. vs. Dunnell*, 83 Atl., 858. The selection of a foreign trustee and possession of the fund outside of the State, does not affect the rule, for the reason that the property belongs to the estate of a testator domiciled here, and is to be administered according to our laws, under the supervision of our courts, to which the trustee is amenable. 10

Whether Mrs. Batterson executed the power in the manner prescribed depends upon her intention to exercise it, which intention, in some form of expression, must be found in her will. The intention to execute a power must always appear in its execution, either by express terms or recitals or by necessary implication. A reference to the instrument by which the power is given is indeed not necessary to demonstrate the intention to execute such a power, but it must appear from the will that the intention existed. It need not appear by express terms or recitals in the instrument; it is sufficient if the act shows that the donee had in view the subject of the power. (*Meeker vs. Breintnall*, 38 N. J. Eq., 345.) If the quest were to be confined to an inspection and consideration of the will and codicils, there would be no difficulty in reaching the conclusion that they evince no intention to dispose of the property, the subject of the power. No allusion whatever is made in the many items of the will and codicils to the fund or the testatrix's con- 20 30

trol over it. By each of the items a specified sum of money is bequeathed, referable *prima facie* to her own private fortune, and by the residuary clauses "the rest, residue and remainder of *my* estate" is disposed of. A general devise or bequest by the donee of a power in which the testator refers to the property devised or bequeathed as his property, has been repeatedly held not to be an exercise of the power. *Wooster vs. Cooper*, 59 N. J. Eq., 204; *Meeker vs. Breintnall*, *supra*; *Ackerman vs. Ackerman*, 81 N. J. Eq., 437; *Lee vs. Simpson*, 134 U. S., 572; *Patterson vs. Wilson*, 64 Md., 193.

At the hearing the defendants were given the widest latitude to prove intention. All of the testimony, aside from that which shows the condition of the testatrix's estate and of the Trust Fund—the actual conditions as distinguished from what she thought they were from representations made to her—was clearly inadmissible, and will be disregarded. This testimony is to the effect that just before she made her will Mrs. Batterson inquired of Mr. Gates, an official of the Trustee (the Trustee was also her attorney in fact, managing her private estate), what property she had individually and what the Trust Fund amounted to, and was informed that the former amounted to about \$290,000 and the latter over \$100,000, and that if the two funds were taken as one estate there would be ample funds to pay all the legacies which she had provided for and the expenses of the administration, Executors' fees, &c., leaving a residuary estate.

Before executing the first codicil she again interviewed Mr. Gates and inquired whether there was sufficient in both estates to pay all the legacies provided for, saying that she wished to combine the two estates in the gift made under her will, and to include not only that which she owned in her own right but that over which she had power of appointment under her father's will. While this evidence was illegal, it was not harmful, because the sentiment is reflected by the will. The second codicil was

made in Portsmouth, New Hampshire. It was drawn by one Emery, a member of the Bar of that State, who testified that he had three or four interviews with Mrs. Batterson, and that at the second one she told him that her property, as nearly as she could find out, amounted to \$400,000, of which \$300,000 was her own and over \$100,000 of which she had a power of disposal at her death from her father. She further told him, he says, that other young men were interested in that fund and would like to receive it; that they were her nephews and that they had already had money which they had wasted. 10
He says that she instructed him to draw the codicil so that all of her property, both the property which she had of her own and the Trust Fund, would be included in the disposition of her estate, so that there would be a substantial residue and particularly for Miss Moberly. He further testified that upon submitting the draft of the codicil for execution she repeated her statement that the Trust Fund should not, under any circumstances, go to the people she had mentioned, and after reading it she asked him if what he had drawn included her own property and the Trust Fund, which he says he answered in the affirmative. 20
The document was forwarded to the Trustee for safe-keeping, and in May following, shortly before her death, Mrs. Batterson again asked Mr. Gates if she had sufficient estate, both in her own right and that over which she had power of appointment by her father's will, to provide for the payment of all legacies, and was told that she had, unless she had very materially increased the legacies, which she said she had not. 30
Mr. Gates got his information of the standing of both estates from the books of the company, and told her that there were \$100,000 and upwards of the Farnum fund and of her own estate about \$300,000, and that there would be a surplus of from \$75,000 to \$100,000 after payment of all specific legacies, costs of administration, taxes, &c. Mrs. Batterson also told him that she had made provision for

the distribution of her residuary estate and that she was anxious that those she had named as residuary legatees should receive some share of her estate. Now, it may have been Mrs. Batterson's intention to execute the power, and it may have been her understanding that she had done so, but it is not our privilege to go beyond her testament for demonstrations. Parol evidence of a testator's declarations, or of representations made to him, tending to show his meaning and intention or understanding of his will, different from its legal significance and effect, has been uniformly rejected by the courts as incompetent. By law, wills must be in writing, signed and published by the testator in the presence of witnesses; and it would be inconsistent with that law to permit parol proof to be introduced to contradict, add to, or explain their contents. The principle requires an inflexible adherence to it, even if the consequence should be a partial, or even total, failure of the testator's intention. The formalities so carefully provided would be of no value; the statute itself would be virtually repealed, if when the written instrument is supposed not to express the clear intention of the testator, the deficiency may be supplied and its mistakes corrected by extrinsic evidence. No principle connected with the law of wills is more firmly established or more familiar in its application than this; and it seems to have been acted upon by judges, of early and of later times as well, with a cordiality and steadiness which shows how entirely it coincided with their own views. A firm adherence to the rule is necessary to avoid the consequences of misapprehension of the witness, and the danger of offering temptation to perjury. *Nevius vs. Martin*, 30 N. J. L., 405. See also *Cleveland vs. Havens*, 13 N. J. Eq., 101; *Heater vs. Hockenbery*, 14 N. J. Eq., 159; *Leigh vs. Sawidge*, 14 N. J. Eq., 124; *Burnet vs. Burnet*, 30 N. J. Eq., 595; *Griscom vs. Evens*, 40 N. J. L., 402; *Archer vs. Morris*, 61 N. J. Eq., 152; *Zabriskie vs. Huyler*, 62 N. J. Eq.,

697; *Aff'd*, 64 N. J. Eq., 794; *Hammel vs. Barrett*, 79 N. J. Eq., 96; *Vrooman vs. Virgil*, 81 N. J. Eq., 301.

Just a few words as to the testimony of Mr. Emery, the Portsmouth lawyer. If it were competent it would be risky to rely upon it. When he drew the second codicil he says he knew that Mrs. Batterson had authority to appoint her father's estate, and that his instructions were to make the appointment. He had before him her will in which the power was clearly exercised, and it is difficult to understand why, if the testatrix's intention in this respect had not changed, the words of appointment were not repeated. His explanation for omitting them was that he found in the American and English Encyclopedia a reference stating what the law of Pennsylvania was relating to the exercise of the powers, and he perhaps regarded the formula of the will as useless surplusage. No reflection upon his veracity is meant, but it is incomprehensible why he should have gambled with his client's interests and why he should have banked upon his very meagre knowledge of the laws of a foreign State to accomplish that which a few plain words would have expressed. The credibility of this testimony is not under consideration, and it is adverted to only to emphasize the wisdom of the rule which requires its exclusion.

The general residuary bequests are of "my estate." This, in the absence of some controlling incident, is to be regarded as relating to the testatrix's own property, and if the general bequests stood alone in the will, the terms used would permit of no explanatory proof that they were meant to include her father's estate. *Griscom vs. Evans*, *supra*; 2 *Jarman on Wills*, 275. Nor, can anything be gleaned from the numerous special bequests indicating that the testatrix had the appointment in mind and from which could be inferred that she intended to pass the subject of the power by the residuary clauses, as in *Blagge vs. Miles*, 1 *Story*, 426; *White vs. Hicks*, 33 N. Y., 383; *Munson vs. Berdan*, 35 N. J. Eq., 376.

It remains to be considered whether, upon a comparison of the amount of the estate of the testatrix with the sum total of the money bequests, an intention to exercise the power must necessarily be inferred. For this purpose, extrinsic evidence of the testator's circumstances, at the time of the making of the will is admissible. *Massaker vs. Massaker*, 13 N. J. Eq., 264; *Griscom vs. Evens*, *supra*; *Burnet vs. Burnet*, *supra*; *White vs. Hicks*, *supra*; *Hutton vs. Benkard*, 92 N. Y., 295. The burden is upon the party claiming under the power, and the proof must be such as to clearly raise the presumption to the exclusion of all other rational inferences. At the time of the making of the second codicil, and that time is all important, the personal assets of the testatrix exceeded by \$25,000 the amount necessary to satisfy all of the legacies. This, it is true, is based upon an inventory of the estate made eleven months afterwards; but if there was any material change during that period, it was for the defendants to show. Payment of collateral inheritance tax and other necessary disbursements reduced the estate to \$360,755, and administration expenses will further deplete to the extent of some \$20,000. Counsel, in his claim that there would be a deficiency of about \$15,000, and nothing left to pass under the residuary bequests, overlooked the fact that the income during the year of administration will equal the costs of administration. He also failed to include in his calculation the value of the Philadelphia house and did not take into consideration \$60,000 remainder money, all of which will contribute to the residue and eventually pass to the general legatees. This state of affairs manifestly precluded the one and only inference upon which the claim of the defendants in this respect is predicated. And even if it were conceded that a trifling deficiency existed, such an inference would not be imperative and it would be straining judicial limitations to raise from this circumstance alone a positive legal presumption of the execution of the power. The predicament, if it exists,

and upon which the defendants rest their principal argument, sprung up in a measure *post-mortem*, and it is reasonable to assume that it was not foreseen. Taking into consideration all of the admissible circumstances surrounding the execution of the second codicil, it certainly cannot be said that Mrs. Batterson contemplated that at the time of her death her large and growing estate would not equal her bounties. The fact that it did and exceeded them, is proof to the contrary. There is no evidence to show how old she was or her condition of health and although it appears that she died shortly after the execution of the last codicil, there is nothing in the case from which it can be assumed that she anticipated an early demise. In *Bingham's Appeal, supra*, cited on the briefs of both counsel, Judge Agnew says: "The mere fact that the bequests in a will exceed the testator's estate cannot draw after it an intention to execute the power. The excess may arise from a mistaken estimate, or from changes in the testator's property—a mistake common to that numerous class who keep no accounts, or imperfect ones, of their affairs. The evidence of this is the common occurrence of the abatement of legacies. In the present case, Alexander Baring Bingham had a large estate of his own, too large to make the inference clear that he must have intended to execute the power contained in the will of William Bingham. * * * It is possible, but not certain, that he intended an execution of the power. It must not be forgotten, when handling such a question, that we are dealing with the property of another, and not with that of the donee of the power. In the donee it is but a trust, and those interested in the estate of William Bingham have a right to know that the will of their testator has been actually executed as he intended by the donee of his power. Hence, they are entitled to certainties, not mere conjectures or possibilities." And in *Cotting vs. De Sartiges, supra*, it is said: "The fact that at the time of his (the testator's) death his estate was somewhat less

than his bequests is not significant; for evidently he was not a close financier, and gave little heed to the depreciation of his estate. The deficiency, however, is not so marked as to raise a presumption in favor of the execution of the power, even if we could properly look to that fact for that purpose."

Kent in his Commentaries, Vol. 4, p. 335, lays down the rule, which may be found in almost all of the cases on this topic, that "If the will be made without any reference to the power, it operates as an appointment
10 under the power, provided it cannot have operation without the power. The intent must be so clear that no other reasonable intent can be imputed to the will; and if the will does not refer to a power, or the subject of it, and if the words of the will may be satisfied without supposing an intention to execute the power, then, unless the intent to execute the power be clearly expressed, it is no execution of it."

A prominent index of intention is to be found in the fact that the testatrix, by her codicil, deliberately re-
20 voked the execution of the power which she had previously on three different occasions exercised. This naturally leaves the impression that her own estate being sufficient to meet the demands of her will, she intended to withhold the appointment and to allow the Trust Fund to devolve under her father's will. The correctness of this deduction, of course, is not essential to this decision, for in whatever aspect the act be viewed, it is at least to be regarded as neutralizing any inference in opposition. A similar situation was ap-
30 proached and treated from another, and perhaps the correct angle in *Wilkins vs. Pryer*, 55 L. J. Chan., 598. There the testatrix exercised a power of appointment and in subsequent wills, without referring to the appointed property by a general clause, revoked all former wills and testamentary disposition which was held to revoke the appointment. In dealing with the subject, the Court said: "I should have thought that it was

impossible for the Court to come to any other conclusion, because it would have to be arrived at upon the merest possible speculation; and how, as I have asked more than once during the argument, can the Court know that it was not the deliberate intention of the testatrix to revoke the testamentary appointment of 1866 and to allow the estate to devolve as in default of appointment under the settlement of 1834? If I cannot tell, it is obvious that if I were to hold that the words which *prima facie* are quite sufficient to revoke the testamentary appointment did not have that operation, I 10 could only arrive at that result by speculating as to what was the intention of the testatrix, and such a speculation might lead the Court into complete error. It may have been the intention of the testatrix to allow the property to devolve under the trust in default of appointment, and if I were to hold that the words of revocation, which may have been designedly inserted for that very purpose, are not to have any operation, I might be defeating instead of carrying out her intention." 20

My conclusion, from the foregoing observations, is that the power of appointment was not exercised and that the Trust Fund falls into the residue of the estate of Paul Farnum. A decree will be advised directing the trustee to account and to pay over the property to the complainants.

(Filed July 11, 1917.)

IN CHANCERY OF NEW JERSEY.

10 J. EDWARD FARNUM and GEORGE L. FARNUM
as Administrators de bonis non with Will
annexed of PAUL FARNUM, deceased; J. ED-
WARD FARNUM and GEORGE L. FARNUM,
as Administrators de bonis non with Will
annexed of JAMES EDWARD FARNUM, de-
ceased, and as Administrators de bonis non
of GEORGE W. FARNUM, deceased,

Complainants,

vs.

20 THE PENNSYLVANIA COMPANY FOR INSUR-
ANCE ON LIVES AND GRANTING ANNUITIES,
as Trustees of the Trust Fund of \$100,000
with appreciation and accumulations there-
on, under the trust created under the last
Will and Testament of PAUL FARNUM, de-
ceased; THE PENNSYLVANIA COMPANY FOR
INSURANCE ON LIVES AND GRANTING AN-
NUITIES, as Executor and Trustee under the
last Will and Testament and Codicils thereto
of SARAH E. (FARNUM) BATTERSON, de-
ceased; BESSIE PENTREATH; MARY MAY-
NARD; JOSEPHINE PAXTON; ANNIE T.
MOLD; RT. REV. S. M. GRISWOLD, Mission-
ary Bishop of Salina, Kansas; THE CORPO-
RATION FOR THE RELIEF OF WIDOWS AND
30 CHILDREN OF CLERGYMEN OF THE PROTES-
TANT EPISCOPAL CHURCH in the State of
York; the RECTOR, CHURCH WARDENS and
VESTRYMEN of St. James' Church of Wash-
ington, D. C.; MRS. J. C. (VIRGINIA)
HONEYBOURNE; MARGARET SHEEHAN;
FLORENCE M. MOBERLY; and DOMESTIC
AND FOREIGN MISSIONARY SOCIETY OF THE
PROTESTANT EPISCOPAL CHURCH in the
United States of America,

Defendants.]

40-746.

ON
BILL, &C.
FINAL
DECREE.

This cause coming on to be heard on the amended bill of complaint with amendments thereto; the answer and counter-claim of the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased; the answer and counter-claim of the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. (Farnum) Batterson, deceased; the answer and counter-claim of the defendants, Bessie Pentreath, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, The Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, and Florence M. Moberly, the said counter-claims being exhibited against the complainants, and the replications thereto; in the presence of McDermott & Enright, solicitors for and of counsel with the complainants; Grey & Archer, solicitors for and of counsel with the defendants, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000, with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, and The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Executor and Trustee under the last will and testament and codicils thereto of Sarah E. (Farnum) Batterson, deceased, Bessie Pentreath, Rt. Rev. S. M. Griswold, Missionary Bishop of Salina, Kansas, the Corporation for the Relief of Widows and Children of Clergymen of the Protestant Episcopal Church in the State of New York, and Florence M. Moberly; and Nelson B. Gaskill, solicitor for and of counsel with the defendant, Domestic and Foreign Missionary Society of

the Protestant Episcopal Church in the United States of America; the complainants' bill having been heretofore taken as confessed against the defendants, Mary Maynard, Josephine Paxton, Annie T. Mold, the Rector, Church Wardens and Vestrymen of St. James' Church, of Washington, D. C., Mrs. J. C. (Virginia) Honeybourne and Margaret Sheehan; and the pleadings having been read and the proofs having been taken, and the arguments of the respective counsel having been heard; and the Court having duly considered the said pleadings, proofs and arguments; and it appearing to the Court, among other things, that Paul Farnum departed this life on or about October 10, 1859, having been at the time of his death a resident of the Township of Willingborough, in the County of Burlington and State of New Jersey, leaving in force and unrevoked a last will and testament bearing date May 28, 1856, and a codicil thereto bearing date February 28, 1857, copies of which are annexed to and made a part of the bill of complaint in this cause; which said last will and testament and codicil thereto were afterward duly proved before and admitted to probate by the Surrogate of the County of Burlington aforesaid, and recorded in the said Surrogate's office in Book 1 of Wills for said county, on pages 358, etc.; in and by which said last will and testament the said Paul Farnum did, among other things, give, bequeath and direct as follows, viz.:

30 "In addition to the House and lot of Land in Arch Street, Philadelphia, in the hands of a trustee for the use of my Daughter, Sarah E. Farnum, I give and bequeath unto the Pennsylvania Company for Insurance on Lives and Granting Annuities, located in the City of Philadelphia, Pa., one hundred thousand dollars in bonds or stocks, my said Daughter's choice of such as I may die possessed (Except Bank Stock which I divide be-

tween my sons) in trust Nevertheless for the use of my said Daughter Sarah E. Farnum, the interest or dividends arising therefrom to be paid by the said Company to the *Sole order of my said Daughter* semi-annually during the term of her natural life, and not to be liable for the debts nor effected by the extravagance or misfortunes of any husband she may Marry. And at the death of my said Daughter the principal sum and such interest as may have accumulated and not paid, my mind and will is, and I direct said Company or trustees to pay over to such person or persons as my said Daughter by any instrument of writing in the nature of a Will executed under her hand and seal in the presence of two or more subscribing witnesses shall direct, limit and appoint, or designate My will and design is that the House and lot in Arch Street shall pass in like manner to such person or persons as she may designate, (Provided, however, that I give the said Company my said Trustee to Change any of the securities deposited with them whenever they may think proper during the life time of my aforesaid Daughter.”

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And it further appearing that the Trustee named in the foregoing extract from said last will and testament, (the true name of which is The Pennsylvania Company for Insurance on Lives and Granting Annuities, a corporation of the State of Pennsylvania), after the probate of said last will and testament and codicil thereto, on or about April 12, 1860, took into its charge the bequest of \$100,000 mentioned in said will, and has held and retained said sum of \$100,000 in trust under said will, which said fund has since increased through accumulations of interest and appreciation in the stocks and bonds in which same was invested;

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And it further appearing that in the year 1866 the said Sarah E. Farnum named in said last will and tes-

tament inter-married with one Herman G. Batterson, who died in the year 1902, or thereabouts;

And it further appearing that on or about June 27, 1915, the said Sarah E. (Farnum) Batterson, the daughter of said Paul Farnum, deceased, and the person for whose benefit for life the trust was created in his said last will and testament, died leaving no issue, leaving in force and unrevoked a last will and testament bearing date February 2, 1912, and a codicil thereto, dated April 23, 1913, and a second codicil thereto, bearing
10 date October 15, 1914, true copies of which are annexed to the bill of complaint; and that said will and codicils were thereafter, on July 15, 1915, proved and approved by H. C. Broomall, Deputy Register for the Probate of Wills and Granting Letters of Administration in and for the City and County of Philadelphia, in the Commonwealth of Pennsylvania, and that letters testamentary were thereon issued to The Pennsylvania Company for Insurance on Lives and Granting
20 Annuities, the executor and trustee in the said last will and testament mentioned and appointed; which said last mentioned instrument or will of Sarah E. (Farnum) Batterson, and the codicils thereto attached, were thereupon duly recorded in the office of the Register for the Probate of Wills and Granting Letters of Administration in and for the City and County of Philadelphia, in the Commonwealth of Pennsylvania, in Book 371 of Wills for said city and county, on pages 42, etc.;

And it further appearing that the said Sarah E. (Farnum) Batterson died without having exercised the power
30 of disposition or appointment in respect to the Trust Fund created for her benefit in the will of the said Paul Farnum, deceased, under which she was a life beneficiary of said Trust Fund, and without having by any instrument or writing in the nature of a will executed under her hand and seal in the presence of two or more subscribing witnesses directed, limited, appointed or designated the person or persons to whom the said principal

sum of said Trust Fund, together with such interest as may have accumulated and not been paid, should be paid over by said Trustee named in the said last will of the said Paul Farnum, deceased, in the foregoing recited paragraph thereof, as directed in his last will and testament in the said recited paragraph; and it further appearing that the principal, appreciation and accumulated interest of said bequest fell into and became a part of the residuary estate of said Paul Farnum, deceased, and that the complainants, as administrators *de bonis non* with will annexed of the said Paul Farnum, deceased, are entitled to have the said principal of said fund of \$100,000, with the appreciation and accumulated interest thereon, paid to them for distribution under the terms of the will of said Paul Farnum, deceased; 10

And it further appearing that said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the said Trust Fund, has not filed in the Orphans' Court of the county of Burlington, in the State of New Jersey, the domicile of said Paul Farnum before and at the time of his death an account of the said Trust Fund held by it under the terms of trust set forth in said will of Paul Farnum, deceased, in the foregoing recited paragraph thereof, and that the said Trustee should account therefor in this Court and the said Trustee be directed as to the distribution of said Trust Fund; 20

And it further appearing that said The Pennsylvania Company for Insurance on Lives and Granting Annuities, pursuant to the prayer of the bill of complaint, produced before and presented to this Court an account of its administration of the trust set forth in the foregoing recited paragraph of the will of Paul Farnum, deceased, under which said account brought down to the date of this decree there appears to be in the hands of said Trustee, representing the principal and interest of said Trust Fund after deducting commissions on same, and 30

the allowances and taxed costs heretofore ordered paid to the several solicitors appearing in this cause, the sum of \$118,259.36;

And it further appearing that the Executor under the last will and testament of Sarah E. Batterson, deceased, claims that there should be paid to it the sum of \$3,472.55, representing the interest or dividends arising from the said Trust Fund earned during the lifetime of said Sarah E. Batterson and not paid over to her, and complainants contending that there should be deducted from said amount the sum of \$1,654.35, representing premiums paid by the Trustee of said Trust Fund in the purchase of securities at above par, having a definite time to run and bearing a fixed rate of interest and afterwards matured and paid, or converted below the purchase price, less the discount below par in the purchase of certain other securities which subsequently matured or were sold above the purchase price, and the Court finding that said sum of \$1,654.35 should be deducted from said sum of \$3,472.55 and that the net balance of \$1,818.20 is payable to said Executor out of the said sum of \$118,259.36;

And it appearing that said account should stand, be allowed and confirmed, and no cause appearing to the contrary:

It is thereupon, on this eleventh day of January, 1917, (as of the sixteenth day of October, 1916) by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said Sarah E. (Farnum) Batterson died without having exercised the power of disposition or appointment in respect to the trust fund created for her benefit in the will of the said Paul Farnum, deceased, under which she was the life beneficiary of said trust fund, and without having by any instrument of writing in the nature of a will executed under her hand and seal, in the presence of two or

more subscribing witnesses, directed, limited, appointed or designated the person or persons to whom the said principal sum of said trust fund, together with such interest as may have accumulated and not been paid, should be paid over by said Trustee named in the said last will of the said Paul Farnum, deceased, in the foregoing recited paragraph thereof, as directed in his last will and testament in the said recited paragraph; and that thereupon the principal, appreciation and accumulations of interest of said bequest, less the sum of \$1,818.20 found to be payable to the executor of Sarah E. Batterson, deceased, as aforesaid, fell into and became a part of the residuary estate of said Paul Farnum, deceased, and that the complainants, as administrators *de bonis non* with the will annexed of Paul Farnum, deceased, are entitled to have the said fund as invested in the securities exhibited in the accounts filed in this Court in this cause with interest and accumulations thereon (less said sum of \$1,818.20 and other sums heretofore ordered paid out of same) transferred and paid over to them for distribution under the will of said Paul Farnum, deceased; 10 20

And it is further ordered, adjudged and decreed, that the defendant, The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee of the Trust Fund of \$100,000 with appreciation and accumulations thereon, under the trust created under the last will and testament of Paul Farnum, deceased, has accounted in this Court for all money and property in its hands for which it is accountable, and that its said accounts be and the same are hereby settled and allowed as rendered to this Court and filed herein, representing the principal and interest of the said trust fund; 30

And it is further ordered that the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, Trustee aforesaid, transfer and pay over the cash and securities constituting the balance remaining in its hands to the said complainants, J. Edward Farnum and

George L. Farnum, as administrator *de bonis non* with will annexed of Paul Farnum, deceased, upon the execution of a proper receipt and release by them;

And it is further ordered, that on such payment and transfer being made to said complainants they execute to the Ordinary of the State of New Jersey a further bond as such administrators in the penal sum of \$25,000 conditioned for the due performance of their duties as such administrators, to be approved by one of the special masters of this Court and filed herein.

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E. R. WALKER,

C.

Respectfully advised,

JOHN BACKES,

V. C.

A true copy.

ROBERT H. McADAMS,

Clerk.

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