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New Jersey State Library

BILL OF COMPLAINT

(Filed, Feb. 26, 1916.)

In Chancery of New Jersey.

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

Complaining shows unto your Honor your orator
John Fraser Kempson, of Maplewood, in the **10**
County of Essex, and State of New Jersey, that:-

1. Your orator is one of the sons of Peter
Tertius Kempson, who departed this life in the
County of Middlesex, New Jersey, on the 25th day
of September, 1890, having first, made, published
and declared his last will and testament, duly ad-
mitted to probate by the Surrogate of the County
of Middlesex, New Jersey, wherein and whereby,
after giving and devising portions of his personal
and real estate, he did, in and by the 9th clause **20**
thereof, direct as follows:-

“From all the provisions of the preceding
“clauses I except my interest in The Insurance
“Times newspaper, its good will, contracts and
“all business therewith or which may become
“connected therewith or so much of such
“business including money in hand or in bank
“and all debts due as I may owe at the time of
“my decease, and I direct that my interest in
“and control of said business pass into the hands **30**
“and charge of my executors, the business to
“remain intact so long as my wife Julia H.
“Kempson may live or remain unmarried, the
“property at her death or remarriage to be sold
“to the highest bidder, or at private sale or
“continued and conducted as my heirs may
“jointly decide, the will of the majority, exclus-
“ive of grand children, ruling, but until such
“time all profits arising from such business are
“to belong to my said wife, with the exception **40**

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“of Eight Twentieths thereof, three-twentieths
 “of which shall be paid semi-annually to my
 “daughter Lucy Clara Pierson; three-twentieths
 “to be paid semi-annually to my son St. George
 “Kempson and two-twentieths thereof to be
 “paid semi-annually to my son John Frazer
 “Kempson. And should my wife again marry
 “I will and direct that all her right and interest
 “in such property shall thereupon terminate.

10 “With regard to my son St. George Kempson’s
 “connection with The Insurance Times, I wish
 “that my wife will continue the arrangement
 “at present existing, and that as soon as it may
 “seem best to my trustees, and Mrs. Kempson
 “some specific arrangement be entered into with
 “my said son St. George Kempson so that he may
 “have a permanent interest in The Insurance
 “Times, of course, under the direction and sub-
 “ject to the control of Mrs. Kempson whenever
 20 “she chooses to exercise that control.

“And with regard to Mr. James A. Van Cleve
 “I hereby desire to express my satisfaction with
 “his conduct of the business under the present
 “arrangement with The Insurance Times and as
 “soon as may be convenient I should wish that
 “Mr. Van Cleve have some interest in the suc-
 “cess and profits of said Insurance Times.

“I wish no power given to any of my children
 “legatees to examine the books or accounts of
 30 “The Insurance Times, but they must be satis-
 “fied to abide by whatever my trustees consider
 “a true and just estimate of the profits arising
 “therefrom.”

and did constitute and appoint Frederick R. Cou-
 dert, of the City of New York, D. A. Heald, Roger
 V. Bonnell and Levi W. Norton, executors and trust-
 ees. A true copy of said will is hereby annexed
 and marked “Schedule A” and made a part hereof.

40 2. None of said trustees or executors qualified

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as such, or accepted the trust, and St. George Kempson, one of the sons of testator and brother of your orator, and James A. Van Cleve were appointed administrators with the will annexed on November 15, 1890.

3. On September 21, 1893, the said Julia H. Kempson, Lucy C. Pierson and your orator filed a bill in this court setting forth that the property of the estate of the said Peter Tertius Kempson, "The Insurance Times", a newspaper devoted to deceased, then consisted chiefly of certain lands and of the property mentioned in said will called the insurance business, carried on and published in the City of New York by said administrators; and further setting forth that under the terms of the will of Peter Tertius Kempson and by the obligation of their appointment the said administrators ought to account for the said estate and pay over the proceeds and balance thereof to the trustees, but that there was no trustee to whom the administrators could account, and they had refused to file their account in the Orphans Court. The said bill prayed the appointment of a trustee or trustees, accounting by said administrators and that the balance due to the trustee, or trustees, by said administrators on such accounting be paid over. Thereupon the said administrators filed answers in said last mentioned cause, annexing thereto their account of the administration of the estate of the said Peter Tertius Kempson, deceased, and their receipts and disbursements from the property called "The Insurance Times", and decree was thereupon made by this court in said cause on the 2nd day of January, 1894, appointing James A. Van Cleve sole trustee to execute the trusts relating to the property called "The Insurance Times" under the will of Peter Tertius Kempson, deceased. A true copy of said decree of appointment is hereto annexed and marked "Schedule B", and made a part hereof.

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4. The said; James A. Van Cleve entered into possession and control of the business of "The Insurance Times" and remained in such possession and control, receiving all the issues and profits thereof and conducting the business of said newspaper as its head from the time of his said appointment to the time of his death, which occurred on November 25, 1915. He never accounted as trustee during his lifetime, and at the time of his death was a resident of Brooklyn, in the County of Kings and State of New York. He died intestate, and Letters of Administration on his personal estate were granted by the Surrogate of the County of Kings, New York, to Charles M. Van Cleve, of the City of Brooklyn aforesaid, December 6, 1915, who is now acting as such administrator.

5. Under the above-stated provision of paragraph 9 of the will of Peter Tertius Kempson, the persons having an interest in the said "The Insurance Times" at the time of his death were Julia H. Kempson, his widow, Lucy Clara Pierson, a daughter, St. George Kempson, a son, and your orator, a son. The said Lucy Clara Pierson departed this life prior to the death of the life tenant, Julia H. Kempson, to wit, on or about May 1, 1897, leaving a will, which was proved and recorded in the office of the Surrogate of Middlesex County, New Jersey, whereby she devised to her husband John N. Pierson all her estate in trust to support her children, and appointed him executor of her will and trustee thereunder, and also appointed him Testamentary Guardian of her children. Said will was admitted to probate by the Surrogate of Middlesex County aforesaid May 13, 1897, and Letters Testamentary were granted by him thereunder to said John N. Pierson on that day. The said John N. Pierson is still acting as executor and trustee under said will. The children of the said Lucy C. Pierson living at the time of her death and still living

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are as follows:—

Lucy C. Hoskins, Truman T. Pierson, Aylin Pierson, Amy Norma Pierson, Esther Noble Pierson, Amie Victoria Pierson and George Alden Pierson, all of whom are of the full age of 21 years, except the said Amie Victoria Pierson, who is 19 years of age, and the said George Alden Pierson, who is 18 years of age. In and by her said will the said Lucy C. Pierson requested that her interest in "The Insurance Times" be not disposed of until her youngest child attains the age of 21 years, and that then such interest be sold and the proceeds divided equally among her children, share and share alike. 10

A true copy of the will of said Lucy C. Pierson is hereto annexed and made a part hereof and marked "Schedule C."

(6) The said St. George Kempson, one of the three sons of the said Peter Tertius Kempson, deceased, by assignment in writing under his hand and seal, dated December 30, 1893, assigned, transferred and set over to Julia H. Kempson and James A. Van Cleve his interest in the said, "The Insurance Times", including the good will, contracts and and other business connected therewith, accounts and bills receivable, and all moneys then on hand earned by said paper, whether in the individual account of the said St. George Kempson or in the joint account of said administrators with the will annexed. 20 30

A true copy of said assignment is hereto annexed and marked "Schedule D."

(7) The said Julia H. Kempson, widow of the said Peter Tertius Kempson, departed this life intestate August 13, 1913, at her residence in Mt. Vernon, in the County of Westchester and State of New York. On September 12, 1915, Letters of Administration upon her personal estate were granted to Edward F. Brush by the Surrogate of that County, and he is now acting as her adminis- 40

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- trator. The said Julia H. Kempson left as her only child and next of kin of her daughter Marian R. Brush, who is the wife of the said Edward F. Brush. By virtue of the said assignment made by the said St. George Kempson the said Marian R. Brush claims to be entitled to the interest in the said, "The Insurance Times", acquired by her mother Julia H. Kempson under said assignment, subject only to the right of the said Edward F.
- 10** Brush to collect such interest in said publication as administrator of her mother. The said Charles M. Van Cleve, administrator of the said James A. Van Cleve, deceased, claims to be entitled, as such administrator, to the interest to which his intestate became entitled in and to said "The Insurance Times" under the provisions of said assignment.
8. The said St. George Kempson departed this life prior to the death of the life tenant Julia H.
- 20** Kempson, to wit, on or about August 12, 1907, having previously made and declared his last will and testament admitted to probate by the Surrogate of the County of New York, in the State of New York, on the 22nd day of January, 1908, wherein and whereby he did give and bequeath to his wife Grace Duffie Boylan Kempson one-half of all and every interest that he had, "be it real estate, publications, printing offices, lands of every character whatsoever", and directed that his
- 30** business be conducted as she should direct, and that one-half of the proceeds thereof should go to her, and the other half of all his estate, personal, real estate or business, should go to his children Gladys, Peter Tertius, Eber H., Julia C., Grover Cleveland, Agnes Emily, John Monroe and Malcolm Boylan Kempson, his step-son. He appointed as executors (styling them "administrators" in his will) William J. Borden of New York State, Alfred E. Pearsall of Westfield, New Jersey,
- 40** John Phin, of Paterson, New Jersey, and his

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wife, Grace Duffie Boylan Kempson. The said John Phin and Grace Duffie Boylan Kempson alone qualified as executors, and afterwards, and at a date unknown to your orator, the said John Phin departed this life, and the said Grace Duffie Boylan Kempson is now sole surviving executrix of the will of St. George Kempson, never having been discharged or removed.

A true copy the the said last will and testament of the said St. George Kempson, deceased, is hereby annexed and marked, "Schedule E." The said Agnes Emily Kempson is an infant eighteen years of age and the said John Monroe Whitman Kempson is an infant seventeen years of age. 10

The said children, Gladys (whose full name was Sarah Adelia Gladys Kempson, and who is now the wife of A. Merwin Halsted), Peter Tertius Kempson, Eber Hall Kempson, Julia Cornelia Kempson (who is now the wife of William Page Carter), Agnes Emily Kempson, Grover Cleveland Kempson, John Monroe Whitman Kempson and Helen Hall Kempson (now the wife of John Henry Mitchell) and said Malcolm Boylan Kempson dispute the claim of the said Charles M. Van Cleve as administrator of the said James A. Van Cleve and of the said Marian R. Brush that under said assignment by St. George Kempson they are entitled to the share of the earnings of the said, "The Insurance Times", and of the share of the proceeds of the sale thereof (in case of sale) to which he would have been entitled were he now living and never made said assignment. The said children claim that they are entitled to such earnings since the death of their father, and to the share he would have been entitled to in the proceeds of sale of said, "The Insurance Times", if sale should be made, to the exclusion of the said Charles M. Van Cleve as administrator of said James A. Van Cleve and of the said Marian R. Brush and Edward F. Brush, administrator of 20 30 40

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Julia H. Kempson, deceased.

The said Grace Duffie Boylan Kempson claims that under the will of the said St. George Kempson she is entitled to one-half the share in the net income or avails of sale of the said, "The Insurance Times", its good will and other business, not only as against the said children of St. George Kempson, deceased, but also as against the said Charles M. Van Cleve, administrator of James A.

10 Van Cleve, deceased, and Edwin F. Brush, administrator of Julia H. Kempson, deceased, and Marian R. Brush.

9. On December 26, 1913, John Noble Pierson, of Metuchen, New Jersey, father of the said Amie Victoria Pierson and George Alden Pierson, was appointed their guardian by the Surrogate of Middlesex County, New Jersey, and duly qualified and is now acting as such guardian; on the 30th day of December, 1913, Helen A. Kempson, mother
20 of the said Agnes Emily Kempson and John Monroe Whitman Kempson, residing at South Orange, Essex County, New Jersey, was appointed their guardian by the Surrogate of Essex County aforesaid, and is now acting as such guardian.

10. Three of the adult children of the said Lucy Clara Pierson, deceased, to wit, Truman T. Pierson, Lucy C. Hoskins and Amy Norma Pierson, have all in writing, under their hands and seals, assigned to Aylin Pierson all their right, title and
30 interest in and to the estate, real and personal, devised and bequeathed to them by their mother, the said Lucy C. Pierson, and also all their right title and interest in and to all the trust estate and fund in the hands and possession of The New Jersey Title Guarantee and Trust Company as trustee, appointed by the Court of Chancery of New Jersey, by its decree dated November 8, 1905.

True copies of the said three assignments are hereto annexed and marked "Schedules E, F and
40 G."

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The said Aylin Pierson claims to have in his possession assignments made by the said Esther Noble Pierson and John Noble Pierson, guardian for the said Amie Victoria Pierson and George Alden Pierson, minors. Your orator has not seen said last mentioned assignments, but is informed by the said Aylin Pierson that under them he claims to be entitled to all the interest of the assigners in and to the estate of the said Lucy C. Pierson, deceased, and by virtue of all the assignments made to him, referred to in this paragraph, the said Aylin Pierson claims to be the owner of the interest in the said, "The Insurance Times", which the said Lucy C. Pierson would have been entitled to if living. Your orator charges that the said assignments made by Truman T. Pierson, Lucy C. Hoskins and Amy Norma Pierson (copies of which are hereto annexed) do not sustain such claim, and your orator has no knowledge as to whether the other assignments do or do not sustain it, but leaves the said Aylin Pierson to his proof.

11. The New Jersey Title Guarantee and Trust Company mentioned in the said assignments was appointed trustee in the place of James A. Van Cleve and J. Bayard Kirkpatrick, to receive from the avails of the sales of personal and real estate of which the said Peter Tertius Kempson died seized. The appointment did not include taking charge or control of "The Insurance Times", as that already had been conferred by decree of this court upon the said James A. Van Cleve, since deceased.

12. Your orator shows that he has been connected with the said, "The Insurance Times", as business manager for upwards of 25 years and is now in possession and control of said business, and conducting the publication of the said, "The Insurance Times", and that he is the only one of the children of the said Peter Tertius Kempson,

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deceased, now living. The will of the said Peter Tertius Kempson provides in and by the 9th clause (set forth in paragraph 1 hereof) that said "The Insurance Times", its good will, contracts and all business therewith be sold at the death of his wife, the said Julia H. Kempson, or continued and conducted as his heirs should jointly decide, the will of the majority, exclusive of the grandchildren ruling

10 Your orator charges that under the provisions of the will of his father, the said Peter Tertius Kempson, deceased, he has the sole right to decide whether the business of the said paper shall be continued or sold; and he further charges that, from his knowledge of the business affairs of the said, "Insurance Times", it is to the advantage of all interested that the publication of the paper should be continued, under the direction of a trustee to be appointed by this Court.

13. Your orator shows that it is necessary that

20 a new trustee should be appointed by this court in place and stead of the said James A. Van Cleve. deceased, to take charge of and conduct the business of "The Insurance Times", and that your orator, as the only surviving son of the said Peter Tertius Kempson, deceased, and having knowledge of the business, and being in charge and control thereof, is entitled to be appointed, to the exclusion of any other beneficiary, none of whom has any knowledge of the business of the said, "The Insurance

30 Times", or has ever been connected with it in its care or management.

16. Your orator further charges that an account of the administration, management, receipts and disbursements of "The Insurance Times" of and by James A. Van Cleve in his lifetime should be made and filed in this court by the said Charles M. Van Cleve as his administrator. Your orator is informed by the said administrator that he is willing to come within the jurisdiction of this court in

40 this cause and make and file such accounting here-

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in.

Your orator therefore prays that the facts, matters and things set forth in this bill be inquired into; that it be determined whether the children of St. George Kempson above named, who are defendants to this suit, have any right, title, interest or claim of, in and to the net income of the said, "The Insurance Times", or the proceeds of sale, if the same be sold, or whether the assignment made by St. George Kempson to said Julia H. Kempson in her lifetime and James A. Van Cleve passed the entire interest in the said, "The Insurance Times", its income or avails of sale, if sold, which the said St. George Kempson would have been entitled to if living to the said Julia H. Kempson and James A. Van Cleve, and if so, whether that interest is now vested in Charles M. Van Cleve as administrator of the said James A. Van Cleve, deceased, Edwin F. Brush as administrator of Julia H. Kempson, deceased, and Marian F. Brush, as only child and next of kin of the said Julia H. Kempson, deceased; that it be determined whether the said Grace Duffie Boylan Kempson, widow of said St. George Kempson, deceased, and Malcolm Boylan Kempson, his stepson, are entitled to any interest in the said, "The Insurance Times", and if so, what interest; that the said Charles M. Van Cleve, administrator of said James A. Van Cleve, deceased, file an account in this Court of the administration, management, receipts and disbursements of, "The Insurance Times", by the said James A. Van Cleve, trustee, during the period of his trusteeship, with a full statement of all receipts and disbursements made by him in connection with the said newspaper; that your orator may be appointed trustee for the said, "The Insurance Times", under the provisions of the will of the said Peter Tertius Kempson, deceased, in the place and stead of the said James A. Van Cleve, deceased; that it may be established by the decree of this court that it is to the inter-

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est of all who may be decreed to have an interest in the said, "The Insurance Times", that its publication should be continued under the direction and management of your orator as trustee; that it may be determined when and under what conditions, if any, the said, "The Insurance Times", its good will and business should be sold, and that the ninth clause of the will of the said Peter Tertius Kempson be construed by this court as to its meaning regarding sale of said publication, its good will and business; that the said Lucy C. Hoskins, Truman T. Pierson, Aylin Pierson, Amy Norma Pierson, Esther Noble Pierson, Amie Victoria Pierson, George Alden Pierson, John Noble Pierson, John Noble Pierson, executor of and trustee under the last will and testament of Lucy C. Pierson, deceased, John Noble Pierson, guardian of Amie Victoria Pierson and George Alden Pierson, St. George Kempson, Sarah Adelia Gladys Halsted, Helen Hall Mitchell, Peter Tertius Kempson, Julia Cornelia Carter, Eber Hall Kempson, Grover Cleveland Kempson, Agnes Emily Kempson, John Monroe Whitman Kempson, Helen A. Kempson, Helen A. Kempson guardian of Agnes Emily Kempson and John Monroe Whitman Kempson, Malcolm Boylan Kempson, Grace Duffie Boylan Kempson individually and as executrix of the last will and testament of St. George Kempson, deceased, Edwin F. Brush, administrator of Julia H. Kempson, deceased, Mar-
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ian R. Brush, and Charles M. Van Cleve, administrator of James A. Van Cleve, deceased, may without oath, answer the premises, and that your orator may have such other and further relief as may be equitable.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena directed to the defendants aforesaid commanding them to appear and answer the premises and abide the order or decree of this Court.

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COLLINS & CORBIN

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Solicitors for and of counsel
with Complainant.

LAST WILL OF P. T. KEMPSON
(SCHEDULE "A")

IN THE NAME OF GOD. AMEN.

I, Peter Tertius Kempson, of Metuchen, Middlesex County, New Jersey, being now of sound mind, and disposing memory, and well knowing the uncertainty of life, and the certainty of death, do hereby make, publish and declare this to be my last will and testament, hereby revoking and annulling all wills heretofore by me made. 10

FIRST: I direct and desire that my executors hereinafter named as soon after my death as the same can be done with a due regard to the interests of my estate to pay all my just debts and funeral expenses as the same may be presented and approved. 20

SECOND: I give, devise and bequeath to my beloved wife, Julia H. Kempson, all my household furniture, books, pictures, plate and articles useful and ornamental, except as hereinafter otherwise devised, together with all horses, carriages, harness and stable equipments, farming tools, and stock of every kind, with all money standing to my credit in the Union Trust Company in the City of New York, and also in the American Exchange Bank, to have and to hold the same, to the said Julia H. Kempson and her heirs forever. 30

THIRD: I give and bequeath to my beloved daughter Lucy Clara Pierson, wife of John Noble Pierson, my piano, one music stool and all my music, bound or unbound, now in my residence in Metuchen, New Jersey, also a small table bought for the purpose of holding music, and standing beside the piano, also the one large photographic portrait of Lucy's mother, to have and to hold the same to her and to her heirs forever. And I fur- 40

Will of P. T. Kempson.

ther give and devise to my said daughter Lucy Clara Pierson, the full sum of six hundred dollars, and direct and request my executors hereinafter named to pay the same into the Seaman's Bank for Savings in the City of New York, in trust for the said Lucy Clara Pierson, and to pay the same to her in half yearly instalments of one hundred dollars with interest earned by the Bank.

10 SIXTH: To my son St. George Kempson, I give and bequeath my watch and its appendages and also my family Bible, and my field glass, as tokens of love and remembrance.

SEVENTH: I give, devise and bequeath to each of my sons, St. George Kempson and John Frazer Kempson, the sum of Five hundred dollars to be paid to them as soon after my decease as can be done with due regard to the interests of my estate, as tokens of love and affection.

20 NINTH: I give, devise and bequeath to Frederick R. Coudert of the City of New York, D. A. Heald of the City of New York, President of the Home Insurance Company, Roger V. Bonnell, of Metuchen, Middlesex County, State of New Jersey, and Levi W. Norton of Rahway, New Jersey, all the rest, residue and remainder of my estate both real and personal not hereinbefore disposed of, or hereinafter specified, to have and to hold the same, in trust, however, for the uses and purposes hereinafter specified and directed.

30 My said executors and trustees shall take and hold all the rest residue and remainder of my estate real and personal, with all the rents, use, interest and profits of the same for the sole use, benefit and advantage of my said beloved wife Julia H. Kempson during her natural life, or so long as she may remain **my widow**, and I enjoin and direct my said executors and trustees named to keep the premises in good repair and condition, and to keep said real estate free and discharged from any and
40 all incumbrances by taxation or assessment.

Will of P. T. Kempson.

On the death or remarriage of my beloved wife Julia H. Kempson, I will and direct that my estate both real and personal, shall be divided share and share alike between Lucy Clara Pierson, St. George Kempson, and John Frazer Kempson, but if any of my children above named shall die before the happening of such event, leaving lawful issue, I then direct that the share to which such deceased widow or child have been entitled if living, to be paid such lawful issue as such deceased widow or child may leave. 10

Whenever in the judgment of my trustees herein named or any two of them it shall be deemed expedient, and for the best interests of my estate, to sell the whole of any part thereof of which I may die possessed, I then authorize and empower my said trustees, or any two of them to sell or dispose of the same, or any part thereof, and to make good and sufficient deeds therefor; but the proceeds of such sales shall be re-invested by said trustees either in good bonds and mortgages upon unincumbered real estate or in bonds of the United States or of the City of New York, the interests and profits thereof to be applied by my said trustees precisely as though no change has been made in said property or estate. If at any time it shall happen that funds belonging to my estate shall be accumulated in the hands of my trustees from any source, they are hereby authorized and required to invest the same upon bond and mortgage upon unincumbered real estate or property that shall be deemed a sufficient security or in United States Government bonds, or in bonds of the City of New York, preference being given to mortgage securities if the same can be obtained, and pay the income as above provided. 20 30

From all the provisions of the preceding clauses I except my interest in The Insurance Times newspaper, its good will, contracts and all business therewith or which may become connect- 40

Will of P. T. Kempson.

ed therewith, or so much of such business, including money in hand or in bank, and all debts due as I may owe at the time of my decease, and I direct that my intrest in and control of said business pass into the hands and charge of my executors, the business to remain intact so long as my wife Julia H. Kempson may live or remain unmarried, the property at her death or remarriage, to be sold to the highest bidder, or at private sale, or continued and conducted as my heirs may jointly decide, the will of the majority, exclusive of grand children, ruling; but until such time all profits arising from such business are to belong to my said wife, with the exception of Eight Twentieths thereof, three twentieths of which shall be paid semi-annually to my daughter Lucy Clara Pierson; three twentieths to be paid semi-annually to my son St. George Kempson, and two twentieths thereof to be paid semi-annually to my son John Frazer Kempson; And should my said wife again marry, I will and direct that all her right and interest in such property shall thereupon terminate.

With regard to my son St. George Kempson's connection with The Insurance Times, I wish that my wife will continue the arrangement at present existing, and that as soon as it may seem best to my trustees, and Mrs. Kempson, some specific arrangement be entered upon with my said son St. George Kempson so that he may have a permanent interest in The Insurance Times, of course under the direction and subject to the control of Mrs. Kempson, whenever she chooses to exercise that control.

And with regard to Mr. James A. Van Cleve, I hereby desire to express my satisfaction with his conduct of the business under the present arrangement with The Insurance Times and as soon as may be convenient I should wish that Mr. Van Cleve have some interest in the success and profits of said Insurance Times.

Will of P. T. Kempson.

I wish no power given to any of my children legatees to examine the books or accounts of The Insurance Times, but they must be satisfied to abide by whatever my trustees consider a true and just estimate of the profits arising therefrom.

LASTLY: I hereby constitute and appoint Frederick R. Coudert, of the City of New York, D. A. Heald, Roger V. Bonnell and Levi W. Norton, above named, Executors and trustees under this my last will and testament. 10

IN WITNESS WHEREOF, I have hereto set my hand and seal this fifteenth day of July, 1890.

(Signed) P. TERTIUS KEMPSON. (Seal)

Signed, sealed, published and declared by the said testator PETER TERTIUS KEMPSON, to be his last will and testament, in the presence of us who at the request of said Testator, and in the presence of each other, and in his presence have hereto subscribed our names and respective places 20 of residence as witnesses thereof, on the day above written.

Anabel Sackett, Metuchen, N. J.

Anna C. Lent, Metuchen, N. J.

(The words printed in bold type are underlined in the original will). 30

DECREE OF 1894.

(SCHEDULE "B")

IN CHANCERY OF NEW JERSEY

	Between	}	On Bill, &c. FINAL DECREE.
	JULIA H. KEMPSON, LUCY C. PIERSON and JOHN FRAZER KEMPSON,		
10	Complainants,		
	and		
	ST. GEORGE KEMPSON and JAMES A. VAN CLEVE,	}	
	Defendants.		

20 This cause coming on to be heard on bill and answer in the presence of Charles L. Corbin, counsel for complainant, C. C. Hommann, counsel for defendant Kempson, and Charles B. Hughes, counsel for defendant Van Cleve, and the pleadings having been read and it appearing that the defendants have annexed to their answers an account of their administration of the estate of Peter Tertius Kempson, deceased, and of their receipts and disbursements from the property called the Insurance Times described in the bill, and that there is

30 in their hands a balance derived from said Insurance Times property of \$76.34 dollars and the defendants waiving all claims for commissions as administrators or trustees in consideration of their salaries received by them as editor and manager of said Insurance Times, and counsel for all the parties consenting to this decree.

40 It is, on this 2nd day of January, Eighteen hundred and ninety-four, on motion of Collins & Corbin, counsel for complainants, ORDERED, adjudged and decreed that said account be allowed and that James A. Van Cleve be and he hereby is

Decree of 1894

appointed sole trustee to execute the trusts relating to the property called the Insurance Times; under the will of Peter Tertius Kempson, deceased, and that the said defendants do turn over and pay to the said trustee the said sum of \$76.34 in their hands and also the Insurance Times property with all appurtenances including good-will, contracts, accounts and bills receivable and money held by them or either of them and that the Trustee give his receipt for the same and upon the filing thereof with the Clerk of this Court, the said administrators shall be discharged so far as relates to any claims upon them of the parties to this suit. 10

And it is further ordered that before entering upon his duties the said Trustee shall give bond to the ordinary in the sum of Ten Thousand dollars for the faithful performance of his duties as trustee, which bond shall be approved by Isaac S. Taylor, one of the Special Masters of this Court. 20

ALEX. T. MCGILL,

C.

I consent to the appointment of a Trustee pursuant to the prayer of the bill in the above entitled cause, and consent to the other terms of the final decree.

C. C. HOMMANN,

Solicitor and Counsel for defendant,

St. George Kempson. 30

CHARLES B. HUGHES,

Solicitor of defendant Van Cleve.

LAST WILL OF LUCY C. PIERSON

(SCHEDULE "C")

IN THE NAME OF GOD, AMEN.

I, Lucy C. Pierson of the Village of Metuchen in the County of Middlesex and State of New Jersey, 40

Will of Lucy C. Pierson.

being of sound mind memory and understanding for which blessing I thank God do make, publish and declare this to be my last will and testament in manner following, that is to say,

It is my will, and I do order and direct all my just debts and funeral expenses for which I am legally liable to be paid and satisfied as soon as conveniently can be after my decease out of the interest arising from the income of my estate.

- 10 I give devise and bequeath to my Trustee herein after named all my estate both real and personal in trust nevertheless, for the benefit support and maintenance of my children.

I direct my said Trustee to sell and dispose of all my real estate if he deems it necessary, and the proceeds thereof to be used by him for the support and maintenance of my said children.

- 20 It is my will and I request that my interest in the "Insurance Times" shall not be disposed of until my youngest child shall have attained the age of twenty-one years, that the said interest be paid to the guardian of my said children for their support and maintenance.

After my youngest child shall have attained the age of twenty-one years, I direct that all of my estate including my interest in the "Insurance-Times" be sold and the proceeds thereof be divided equally among my children share and share alike.

- 30 I hereby nominate constitute and appoint my Husband John N. Pierson, Executor of this my last will and testament and Trustee under this my will and also Guardian of my children.

In witness whereof, I have hereunto set my hand and seal this twenty-first day of April in the year of our Lord One Thousand eight hundred and ninety-seven.

Lucy C. Pierson (L. S.)

- 40 Signed, sealed, published and declared by the

Will of Lucy C. Pierson.

said testatrix to be her last will and testament in the presence of us, who were present at the same time and signed our names as witnesses in the presence of each other, and at the request of and in the presence of the testatrix.

Annie Fields Alden,
Geo. C. Towle.

10

**ASSIGNMENT BY ST. G. KEMPSON
(SCHEDULE "D")**

THIS AGREEMENT made the thirtieth day of December, eighteen hundred and ninety-three, Between **ST. GEORGE KEMPSON** of Perth Amboy, New Jersey, of the one part, and Julia H. Kempson and James A. Van Cleve of the other part:

WHEREAS St. George Kempson and James A. Van Cleve are administrators with the will annexed of the estate of Peter Tertius Kempson deceased, consisting of certain real estate in Metuchen, New Jersey, and of the Insurance Times property in the city of New York, which latter property was devised by his will to Trustee, the income to be paid during the widowhood of Julia H. Kempson as in the said will set forth, and thereafter to be divided, one third to St. George Kempson, one third to Fraser Kempson and one third to Lucy Pierson: AND WHEREAS the parties interested filed a bill in Chancery against the said administrators with the will annexed calling upon them to account for the estate in their hands, and they have filed their answers setting forth an account of said estate, and showing a balance on hand of Seventy-six dollars and thirty-four cents.

20

30

NOW in settlement of the litigation thus pending the parties agree as follows:-

FIRST: All parties agree that a decree may be

40

Assignment by St. G. Kempson

taken by consent allowing the account of the said administrators with the will annexed without commissions and appointing a trustee under the will, to take charge of the Insurance Times and to carry out the trusts of the Will, upon giving security as Trustee, to be fixed by the Court, for the cost of security which he shall be allowed out of the funds which shall come into his hands.

10 **SECOND:** The Insurance Times and all the estate remaining in the custody of the said administrators with the will annexed, except the said lands at Metuchen, shall be turned over to said Trustee, the same being the Insurance Times and the contracts, debts, &c. connected therewith, and the said balance of Seventy-six 34|100 Dollars shown on said account.

20 **THIRD:** There shall be paid by the said Trustee out of the earnings of the Insurance Times one hundred and twenty-five dollars to said James A. Van Cleve and a like sum to said St. George Kempson to reimburse them for the cost of obtaining their bond and they shall make no claims for commission or services as administrators but St. George Kempson shall be entitled when the next dividend is made on the Insurance Times to his three-twentieths share in the profits earned from the date of the last dividend up to the first day of

30 January eighteen hundred and ninety-four.

40 **FOURTH:** The said St. George Kempson hereby assigns sells transfers and sets over to Julia H. Kempson and James A. Van Cleve all his interest in the said Insurance Times including the goodwill, contracts and other business connected therewith, accounts and bills receivable and all moneys now on hand earned by said paper whether in the individual account of said St. George Kempson or in the joint account of said administrators with the will annexed.

Assignment by St. G. Kempson

The interest thus transferred being the right to receive three-twentieths of the profits on hand or which may be earned during the life or widowhood of the said Julia H. Kempson and the undivided one-third of said Insurance Times thereafter to which he may be now or may become entitled under the will of Peter Tertius Kempson deceased, for the sum of five thousand dollars, payable three thousand dollars in cash and two thousand dollars payable on the first day of July, eighteen hundred and ninety-four. **10**

There is reserved from this settlement and left open for further adjustment.

1st. A claim made by St. George Kempson amounting to about Four hundred dollars for commissions which he claims were due to him for services rendered to Peter Tertius Kempson in his lifetime in connection with the Insurance Times, and counter claims made by the Insurance Times which liability said Trustee shall assume payable out of the earnings of the Insurance Times, if the same shall be established as due, or settled. **20**

2nd. A mortgage for Two hundred dollars on lands in Metuchen made by St. George Kempson to Peter Tertius Kempson, which shall be assigned to said Trustee.

Witness our hands and seals the day and year first aforesaid.

ST. GEORGE KEMPSON	(L.S.)	30
JULIE H. KEMPSON	(L.S.)	
JAMES A. VAN CLEVE	(L.S.)	

We assent to the foregoing settlement.

LUCY C. PIERSON and FRASER KEMPSON
By Collins & Corbin.

LAST WILL OF ST. G. KEMPSON

(SCHEDULE "E")

New York, N. Y.

August 9, 1907.

IN THE NAME OF GOD, AMEN.

I declare this my Last Will and Testament, sup-
 erceding any and all others I may have hereto-
 fore made.

I give and bequeath to my wife, Grace Duffie
 10 Boylan Kempson one-half (1/2) of all and every
 interest that I have, be it Real Estate, Pub-
 lications, printing offices, lands of every character
 whatsoever.

I bequeath to her for her life use all personal
 property and one half of all that may accrue from
 all life insurance policies I may have, including
 the Mutual Life Ins. Co. of New York, three polic-
 ies, two (2) for \$1000 each and one (1) for \$2000.
 and two for \$5000. each in the New York Life
 20 Insurance Co. and one for \$1000. in the Berkshire
 Life Ins. Co. and one for \$3000 in the National
 Protective Union (I think that this is the name,
 Dr. Constable is the Secretary) and one half the
 proceeds from all other insurance that may be
 found.

I wish that the business be conducted as as she,
 Grace Duffie Boylan Kempson may direct, and one-
 half the proceeds of the same to go to my wife,
 Grace Duffie Boylan Kempson, and the other half
 30 of all my estate, not hereinabove bequeathed, per-
 sonal, real estate, or business, to go to my children,
 Gladys, Peter, Tertius, Eber H., Julia C., Grover
 Cleveland, Agnes Emily, John Monroe, and Mal-
 colm Boylan Kempson, my step-son.

I wish that \$100 be paid as soon as convenient
 to my nephew Trueman Tertius Pearson, and to
 my nieces May and Rena Kempson, daughters of
 my brother Peter Tertius Kempson, deceased. I
 wish also that \$100 be paid to my brother John
 40 Tertius Kempson of Birmingham, England, whose

Will of St. G. Kempson

address will be found in my papers.

I appoint William J. Borden of New York City, Alfred E. Pearsall, of Westfield, N. J., and John Phin, of Paterson, N. J. and my wife Grace Duffie Boylan Kempson, as administrators of my estate to serve without bond.

This my last Will and Testament, is made just before going on the operating table, and I am fully aware of the importance of its contents, and I have read the same before signing it, that there may be no mistake, there are four pages, each blank on one side numbered one (1) two (2) three (3) and four (4) no writing whatever on the back of any of the pages. 10

I wish to declare here before signing that I have no ill will or hatred towards any one, but forgive all who may have been enemies to me.

ST. GEORGE KEMPSON

Signed in the presence of

BERNARD MURPHY M. D. 20

St. Vincent Hospital, N. Y.

F. W. BALDWIN M. D.

St. Vincents Hospital, N. Y.

ASSIGNMENT OF PIERSON, et als.

(SCHEDULE "F")

KNOW ALL MEN BY THESE PRESENTS

That we, Truman T. Pierson, Lucy C. Hoskins, Amy N. Pierson, three of the children and heirs at law of Lucy C. Pierson, who died testate on April 28th, 1897, for and in consideration of One Dollar, lawful money of the United States and other good and valuable consideration, to us paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over by these presents do sell, assign, transfer and set over unto AYLIN PIERSON of the Borough of Metuchen in the County of Middlesex and State of New Jersey, 30 40

Assignment of Pierson, et als.

his executors, administrators and assigns:

All our right, title and interest in and to all of the estate, both real and personal, devised and bequeathed to us by our mother the said Lucy C. Pierson, by her last will and testament, dated April 21st, 1897, Proved May 13th, 1897, and recorded in the office of the Surrogate of Middlesex County in Book "Q" of Wills on page No. 583 etc.

- Also all our, and each of our, right, title and interest in and to all of the Trust Estate and Fund, and in and to our and each of our, respective distributive shares thereof, (and all accumulated interest thereon) in the hands and possession of The New Jersey Title Guarantee and Trust Company, as Trustee appointed by the Court of Chancery of New Jersey, by its Order or Decree dated November 8th, 1905, in a cause where Julia H. Kempson et als are Complainants, and J. Bayard Kirkpatrick et als., Defendants, and which Trust Estate or
- 20 Fund, now in the hands of said Trustee, represents all that part of the residuary estate of Peter T. Kempson, late of Metuchen, N. J., deceased, bequeathed and devised by him in and by the Ninth Item of his Will, bearing date July 15th, 1890. which is in the hands and possession of the above named Trustee, under and by virtue of its appointment as aforesaid.

- And we do hereby authorize and direct said Trustee, on distribution of said trust estate or
- 30 fund, to pay the full amount of our and each of our, distributive shares thereof to said Aylin Pierson Accordingly.

- And we do hereby constitute to said Aylin Pierson our and each of our Attorney's in our names and for his own use to demand, receive, prosecute, sue for, compound, release and discharge the same, at his own costs and charges, as fully as if we were present acting therein; and we do hereby ratify and confirm all his lawful acts in the premises.

- 40 IN WITNESS WHEREOF WE have hereto set

Assignment of Pierson, et als.

our hands and seals this Eighteenth day of October, A. D., 1913.

SILAS D. GRIMSTEAD.

Signed, sealed and delivered in the presence of—

TRUMAN T. PIERSON (L. S.)

STATE OF NEW JERSEY, }
County of Middlesex, } S S

10

BE IT REMEMBERED, that on this 18th day of October, in the year of Our Lord One Thousand Nine Hundred and thirteen personally appeared Truman T. Pierson, who, I am satisfied, is one—grantors mentioned in the within Deed, and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Silas D. Grimstead,
Master in Chancery.
of New Jersey.

20

ASSIGNMENT OF PIERSON, et als.
(SCHEDULE "G")

KNOW ALL MEN BY THESE PRESENTS

That we, Truman T. Pierson, Lucy C. Hoskins, Amy N. Pierson, three of the children and heirs at law of Lucy C. Pierson, who died testate on April 28th, 1897, for and in consideration of One Dollar, lawful money of the United States and other good and valuable consideration, to us paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over by these presents do sell, assign, transfer and set over unto AYLIN PIERSON of the Borough of Metuchen in the County of Middlesex and State of New Jersey, his executors, administrators and assigns.

30

40

Assignment of Pierson, et als.

All our right, title and interest in and to all of the estate, both real and personal, devised and bequeathed to us by our mother the said Lucy C. Pierson, by her last will and testament dated April 21st, 1897, Proved May 13th, 1897, and recorded in the office of the Surrogate of Middlesex County in Book "Q" of Wills on page No. 583 etc.

10 Also all our, and each of our, right, title and interest in and to all of the Trust Estate and Fund, and in and to our and each of our, respective distributive shares thereof, (and all accumulated interest thereon) in the hands and possession of The New Jersey Title Guarantee and Trust Company, as Trustee appointed by the Court of Chancery of New Jersey, by its Order or Decree dated November 8th, 1905, in a cause wherein Julia H. Kempson et als are Complainants, and J. Bayard Kirkpatrick et als, Defendants, and which Trust Estate or Fund, now in the hands of said Trustee, represents
20 all that part of the residuary estate of Peter T. Kempson, late of Metuchen, N. J., deceased, bequeathed and devised by him in and by the Ninth Item of his Will, bearing date July 15th, 1890, which is in the hands and possession of the above named Trustee, under and by virtue of its appointment as aforesaid.

And we do hereby authorize and direct said trustee, on distribution of said trust estate or fund, to pay the full amount of our and each of
30 our, distributive shares thereof to said Aylin Pierson Accordingly.

And we do hereby constitute to said Aylin Pierson and each of our Attorneys, in our names and for his own use to demand, receive, prosecute, sue for, compound, release and discharge the same, at his own costs and charges, as fully as if we were present acting therein; and we do hereby ratify and confirm all his lawful acts in the premises.

40 IN WITNESS WHEREOF WE have hereto set our hands and seals this Eighteenth day of Octo-

Assignment of Pierson, et als.

ber, A. D., 1913.

LUCY C. HOSKINS (L. S.)

Signed, sealed and delivered
in the presence of—
Silas D. Grimstead.

BE IT REMEMBERED that on this 18th day of
October, in the year of Our Lord One Thousand
Nine Hundred and thirteen personally appeared
Lucy C. Hoskins, who, I am satisfied, is the grant-
ors mentioned in the within Deed, and I having
first made known to her the contents thereof, she
thereupon acknowledged that—— signed, sealed
and delivered the same as her voluntary act and
deed, for the uses and purposes therein expressed.
Silas D. Grimstead,
Master in Chancery
of New Jersey.

STATE OF NEW JERSEY, }
County of Middlesex, } S S 20

ASSIGNMENT OF PIERSON, et als.
(SCHEDULE "H")

KNOW ALL MEN BY THESE PRESENTS
That we, Truman T. Pierson, Lucy C. Hoskins, Amy
N. Pierson, three of the children and heirs at law
of Lucy C. Pierson, who died testate on April 28th,
1897, for and in consideration of One Dollar, lawful
money of the United States and other good and
valuable consideration, to us paid before the seal-
ing and delivery of these presents, the receipt
whereof is hereby acknowledged, have sold, as-
signed, transferred and set over by these presents
do sell, assign, transfer and set over unto AYLIN
PIERSON of the Borough of Metuchen, in the
County of Middlesex and State of New Jersey, his
executors, administrators and assigns;

All our right, title and interest in and to all of 40

Assignment of Pierson, et als.

the estate, both real and personal, devised and bequeathed to us by our mother the said Lucy C. Pierson, by her last Will and Testament dated April 21st, 1897, Proved May 13th, 1897, and recorded in the office of the Surrogate of Middlesex County in Book "Q" of Wills on page 583 etc.

10 Also all our, and each of our, right, title and interest in and to all of the Trust Estate and Fund, and in and to our and each of our, respective distributive shares thereof, (and all accumulated interest thereon) in the hands and possession of The New Jersey Title Guarantee and Trust Company, as Trustee appointed by the Court of Chancery of New Jersey, by its Order or Decree dated November 8th, 1905, in a cause where Julia H. Kempson et als, Complainants, and J. Bayard Kirkpatrick et als, Defendants, and which Trust Estate or Fund, now in the hands of said Trustee, represents all that part of the residuary estate of Peter T. Kempson, late of Metuchen, N. J., deceased, bequeathed and devised by him in and by the Ninth Item of his Will, bearing date July 15th, 1890, which is in the hands and possession of the above named Trustee, under and by virtue of its appointment as aforesaid.

20 And we do hereby authorize and direct said Trustee, on distribution of said trust estate or fund, to pay the full amount of our and each of our distributive shares thereof to said Aylin Pierson Accordingly.

30 And we do hereby constitute to said Aylin Pierson our and each of our Attorney's in our names and for his own use to demand, receive, prosecute, sue for, compound, release and discharge the same, at his own costs and charges, as fully as if we were present acting therein; and we do hereby ratify and confirm all his lawful acts in the premises.

IN WITNESS WHEREOF WE have hereto set our hands and seals this Twentieth day of Oct. A. D., 1913.

40

AMY N. PIERSON (L. S.)

Assignment of Pierson, et als.

Signed, sealed and delivered
in the presence of
G. H. HALE,
Witness.

STATE OF NEW YORK, }
County of Broome, } S S

BE IT REMEMBERED that on this 20th day of
October, in the year of Our Lord One Thousand,
Nine Hundred and thirteen, personally appeared
Amy N. Pierson, who I am satisfied, —the grant-
ors mentioned in the within Deed, and I having
first made known to her the contents thereof,—
thereupon acknowledges that she signed, sealed
and delivered the same as her voluntary act and
deed, for the uses and purposes therein expressed.
(SEAL) G. H. HALE,

Notary Public.

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Answer of S. George Kempson, et als.

George Kempson departed this life prior to the death of the life tenant, Julia H. Kempson, to wit, on or about August twelfth, Nineteen Hundred and Seven, having previously made and declared his last will and testament, admitted to probate by the Surrogate of the County of New York, in the State of New York, on the twenty-second day of January, Nineteen Hundred and Eight, and they admit the allegations of the eighth paragraph of said last will and testament of St. George Kempson. But they deny that Grace Duffie Boylan Kempson was the wife of the said St. George Kempson. The further allegations of the eighth paragraph of said bill of complaint are admitted. 10

9. They admit the facts set forth in the ninth paragraph of the bill of complaint.

10. As to the tenth paragraph of said bill of complaint, these defendants neither admit nor deny the same but leave the complainants, and the defendants therein mentioned to the proof thereof. 20

11. They admit the facts set forth in the eleventh paragraph of the bill of complaint.

12. As to the twelfth paragraph of the bill of complaint, these defendants admit the facts therein set forth, but deny the charges therein contained, to wit, that under the provisions of the will of Peter Tertius Kempson, the complainant now has the sole right to decide whether the business of said newspaper should be continued or sold, and they severally deny that the complainant is a proper person to become or to remain trustee for the conduct of said newspaper, and they severally deny that it is to the advantage of the persons interested therein that the complainant should be constituted or continued as a trustee thereof. These defendants charge on the contrary that according to the true intent and meaning of the provisions of the last will and testament of Peter Tertius Kempson, deceased, in said "The Insurance Times" should have 30 40

Answer of S. George Kempson, et als.

been sold immediately upon the death of the life tenant, Julia H. Kempson, on the thirteenth day of August, Nineteen Hundred and Thirteen; that it should now be ordered to be sold by this Court; and that the said complainant is not a fit and proper person to manage the affairs of said "The Insurance Times", and that it is not to the interest of these defendants or any other defendants that said business should be managed by the said complainant.

10 13. These defendants answering the allegations of the thirteenth paragraph of the bill of complaint severally deny that it is necessary that a new trustee should now be appointed by this Court, but on the contrary they charge that the business of The Insurance Times should now be sold and the proceeds distributed by the Court; and they deny that the complainant is entitled to be appointed as a trustee for conducting the said business.

20 14. They admit the facts set forth in the fourteenth paragraph (erroneously numbered paragraph 16) of the bill of complaint.

30 And these defendants severally join in the prayer of the bill of complaint, except in so far as the same prays for the appointment of the complainant as a trustee to continue the business of Insurance Times. These defendants pray that the said business may now be sold under the order of decree of this Court, and the proceeds of such sale distributed among the persons entitled thereto. And these defendants charge that they are, collectively, vested with a one-third interest in the said business known as "The Insurance Times", such estate having become vested in them upon the death of their father, St. George Kempson, prior to the death of the said life tenant, Julia H. Kempson, under the terms and provisions of the last will and testament of Peter Tertius
40 Kempson, deceased, and are entitled to an ac-

Answer of S. George Kempson, et als.

counting and distribution of profits of said business in the same proportion, since the death of the said St. George Kempson, deceased; and upon the sale of the said property are entitled to be paid, collectively, one-third of the proceeds of such sale. And these defendants therefore jointly and severally pray that this Court may decree that the said assignment, made by St. George Kempson, deceased, to said Julia H. Kempson during her lifetime and said James A. Van Cleve, passed no estate or interest in the said business except the right to receive profits therefrom during the lifetime of the said St. George Kempson, deceased, that the said Charles N. Van Cleve, as administrator of the said James A. Van Cleve, deceased, Edwin F. Brush, as administrator of Julia H. Kempson, deceased, have no interest or estate in and to that undivided one-third part of said business to which these defendants collectively claim to be entitled, or to the undivided one-third part of the profits thereon since the death of the said St. George Kempson, deceased, to which these defendants claim to be entitled; that Grace Duffie Boylan Kempson and Malcolm Boylan Kempson, her stepson, are not entitled to any interest in said business; and these defendants further pray that no trustee be appointed, but that this Court decree a sale of said business; but if this Court shall appoint a trustee, then these defendants pray that the complainant be not appointed such trustee.

SMITH, MABON & HERR,

Solicitors of St. George Kempson, Peter Tertius Kempson; Julia Cornelia Carter; Eber Hall Kempson; Grover Cleveland Kempson; Helen A. Kempson; John Monroe Whitman Kempson and Agnes Emily Kempson, infants, by their guard-

Answer of St. G. Kempson, et als

ian, Helen A. Kempson; Sarah Adelia Gladys Halsted and Helen Hall Mitchell.

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ANSWER OF VAN CLEVE

(Filed April 26, 1916)

Between

JOHN FRASER KEMPSON

Complainant,

and

LUCY C. HOSKINS, and others,

Defendants.

On Bill &c.

ANSWER

of

Defendant

Charles M.

Van Cleve

as ad-

ministrator

10

THE ANSWER OF THE DEFENDANT,
CHARLES M. VAN CLEVE, AS ADMINISTRATOR
OF JAMES A. VAN CLEVE, DECEASED.

This defendant aswering the bill of complaint
says that:

1. Paragraphs 1 to 7 inclusive are admitted.
2. That part of paragraph 8 referring to the
death and will of St. George Kempson is admit-
ted. 20
3. As to that part of said paragraph 8 which al-
leges that the children and widow of said St.
George Kempson dispute the claim of this de-
fendant to a share of the proceeds of The Insur-
ance Times and claim the earnings of such paper
since the death of their said father and husband,
this defendant has no knowledge or information
sufficient to form a belief; but the expressly alleg-
es that they or any of them have no interest 30
whatever in said The Insurance Times.
4. This defendant has no knowledge or in-
formation sufficient to form a belief as to the
statements in paragraphs 9 and 10.
5. Paragraphs 11 to 13 inclusive are admitted.
6. As to paragraph 14 (16) (?) this defendant
admits that he is willing to come within this
Court's jurisdiction and make and file an account
of the administration and management of The 40

ANSWER OF BRUSH, et al.

(Filed April 26, 1916)

THE JOINT AND SEVERAL ANSWER OF MARIAN R. BRUSH, AND OF EDWARD F. BRUSH, ADMINISTRATOR OF JULIA H. KEMPSON, DECEASED, TO THE BILL OF COMPLAINT OF COMPLAINANT.

These defendants respectfully answering say:

1. They admit the whole of Paragraph 1 of the Bill of Complaint.
2. They admit the whole of Paragraph 2 of the Bill of Complaint. 10
3. They admit the whole of Paragraph 3 of the Bill of Complaint.
4. They admit the whole of Paragraph 4 of the Bill of Complaint.
5. They admit the whole of Paragraph 5 of the Bill of Complaint.
6. They admit the whole of Paragraph 6 of the Bill of Complaint and aver that Schedule D, in said Bill mentioned in said Paragraph 6, is a true and correct copy of an assignment made by St. George Kempson to Julia H. Kempson and James A. Van Cleve. 20
7. They admit the whole of Paragraph 7 of the Bill of Complaint and aver that the defendant Marian R. Brush is entitled to the interest in "The Insurance Times" acquired by her mother, Julia H. Kempson, under the assignment, which is Schedule D, of the Bill of Complaint, subject only to the right of the said defendant, Edward F. Brush, to collect such interest in said publication as Administrator of her said mother. 30
8. They admit the whole of Paragraph 8 of the Bill of Complaint, and aver that after the making and giving by St. George Kempson of the assignment known as Schedule D. of the Bill of Complaint, all interest of the said St. George Kempson in the newspaper known as "The Insurance Times" was vested in Julia H. Kempson and James A. Van Cleve, and that the said interest is now vested in the defendant, Charles M. Van Cleve, Adminis- 40

Answer of Brush, et al.

trator of James A. Van Cleve and in these defendants.

9. They admit the whole of Paragraph 9 of the Bill of Complaint.

10. They admit the whole of Paragraph 10 of the Bill of Complaint, but aver that they have no knowledge sufficient to form a belief as to the validity of any of the assignments mentioned therein.

10 11 They admit the whole of Paragraph 11 of the Bill of Complaint.

12. They admit the whole of Paragraph 12 of the Bill of Complaint, except the averment that the Complainant has the sole right to decide whether the business of "The Insurance Times" should be conducted or sold and they pray the decision and decree of this Court upon such question.

20 13. They admit the whole of Paragraph 13 of the Bill of Complaint, except the averment that the complainant is entitled to be appointed, to the exclusion of any beneficiary, as Trustee to conduct the business of "The Insurance Times" and pray the decision and decree of this Court as to the selection of the proper Trustee, in case it should be decreed that said "The Insurance Times" shall be continued to be conducted or shall be sold.

30 14. They admit the whole of Paragraph 16 of the Bill of Complaint, which is the paragraph immediately following Paragraph 13 thereof, and join in the various prayers of said paragraph.

15. They admit and aver that Schedule A. annexed to the Bill of Complaint is a true and correct copy of the Last Will and Testament of Peter Tertius Kempson, deceased, and that by said Will the said testator made no provision as to the disposition of "The Insurance Times" in the event of and after the death or re-marriage of his widow, and that upon the death of said Peter Tertius
40 Kempson, his son, St. George Kempson, became the

Answer of Brush, et al.

owner of a part interest therein, subject to the payment of the profits thereof to Julia H. Kempson and others during her lifetime.

16. They further aver that the assignment set out as Schedule D., annexed to the Bill of Complaint, made by St. George Kempson to said Julia H. Kempson, in her lifetime, and James A. Van Cleve passed the entire interest in the said "The Insurance Times," its income or avails of sale, if sold, which the said St. George Kempson would have been entitled to, if living, to the said Julia H. Kempson and James A. Van Cleve, and that such interest is now vested in Charles M. Van Cleve, as Administrator of the said James A. Van Cleve, deceased, Edward F. Brush, as Administrator of Julia H. Kempson, deceased, and Marian F. Brush as only child and next-of-kin of the said Julia H. Kempson, deceased. 10

17. And these defendants consent that a decree be made by this Honorable Court in accordance with the prayer of the Bill of Complaint and prays that these defendants may be decreed to be the owners of such interest in "The Insurance Times" or in the proceeds of the sale thereof, if sale be made, which St. George Kempson would have been entitled to, if living. 20

JOHN K. ENGLISH,

Solicitor for and of Counsel with defendant, Marian R. Brush, and of defendant, Edward F. Brush, Administrator of Julia H. Kempson, deceased. 30

MEMO. OF LEWIS, V. C.
 (Filed November 19, 1917)
IN CHANCERY OF NEW JERSEY

	Between <div style="text-align: center; padding: 5px 0;"> JOHN FRASER KEMPSON Complainant, and LUCY C. HOSKINS, et als., Defendants. </div>	Memo- randum.
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On Bill for construction, answers, cross-bill and proofs.

Messrs. Collins and Corbin, for the complainant.
 Messrs. Smith, Mabon and Herr, for the children of St. George Kempson, deceased, defendants.

20 Mr. John K. English, for Marion R. Brush, defendant, and Edward F. Brush, administrator of Julia H. Kempson, deceased, defendant.

Mr. John A. Coan, for Aylin Pierson, defendant.

Mr. Charles O. Truex, for Charles M. Van Cleve, administrator, &c., defendant.

LEWIS, V. C.

30 The bill of complaint in this cause was filed February 25, 1916. It was afterwards amended in some trifling particulars. Answers were filed for the defendants, St. George Kempson, Peter Terius Kempson, Julia Cornelia Carter, Eber Hall Kempson, Grover Cleveland Kempson, Helen A. Kempson, John Monroe Whitman Kempson and Agnes Emily Kempson, infants by their guardian, Helen A. Kempson; Sarah Adelia Gladys Halsted and Helen Hall Mitchell, Charles M. Van Cleve, administrator of James A. Van Cleve, deceased, Marian R. Brush, and Edward F. Brush, administrator of Julia H. Kempson, and the defendant
40 Aylin Pierson, who appended to his answer a

Memo. of Lewis, V. C.

cross-bill against the complainant, and to this the complainant filed a special replication.

The bill was taken as confessed against the defendants, Lucy C. Hoskins, Truman T. Pierson, Amy Norma Pierson, Esther Noble Pierson, John Noble Pierson, John Noble Pierson, executor of and trustee under the last will and testament of Lucy C. Pierson, deceased, John Noble Pierson, guardian of Amy Victoria Pierson and George Alden Pierson; and also against Malcolm Boylan Kempson, 10 and against Grace Duffie Boylan Kempson, and against Grace Duffie Boylan Geldhart, individually and as executrix of the last will and testament of St. George Kempson, deceased, by order of this court made on November 15, 1916.

The complainant is one of the sons of Peter Tertius Kempson, who died in the County of Middlesex, New Jersey, on the 25th day of September, 1890, having made his last will and testament, which was admitted to probate by the Surrogate 20 of that county.

The pertinent parts of the will reads as follows: "FIRST: I direct and desire that my executors hereinafter named, as soon after my death as the same can be done with due regard to the interests of my estate to pay all my just debts and funeral expenses, as the same may be presented and approved.

"SECOND: I give, devise and bequeath to my beloved wife, Julia H. Kempson, all my household furniture, books, pictures, plate and articles useful and ornamental, except as hereinafter otherwise devised, together with all horses, carriages, harness, and stable equipments, farming tools, and stock of every kind, with all money standing to my credit in the Union Trust Company in the City of New York, and also in the American Exchange Bank, to have and to hold the same, to the said Julia H. Kempson and her heirs forever. 30 40

Memo. of Lewis, V. C.

- 10 "THIRD: I give and bequeath to my beloved daughter Lucy Clara Pierson, wife of John Noble Pierson, my piano, one music stool and all my music, bound or unbound, now in my residence in Metuchen, New Jersey, also a small table bought for the purpose of holding music, and standing beside the piano, also one large photographic portrait of Lucy's mother, to have and to hold the same to her and to her heirs forever. And I further give and devise to my said daughter Lucy Clara Pierson, the full sum of six hundred dollars, and direct and request my executors, hereinafter named, to pay the same into the Seaman's Bank for Savings in the City of New York, in trust for the said Lucy Clara Pierson, and to pay the same to her in half-yearly instalments of one hundred dollars with interest earned by the Bank.
- 20 "SIXTH: To my son, St. George Kempson, I give and bequeath my watch and its appendages, and also my family Bible, and my field glass, as tokens of love and remembrance.
- "SEVENTH: I give, devise and bequeath to each of my sons, St. George Kempson, and John Fraser Kempson, the sum of Five hundred dollars, to be paid to them as soon after my decease as can be done with due regard to the interests of my estate, as tokens of love and affection.
- 30 "NINTH: I give, devise and bequeath to Frederick R. Coudert of the City of New York, D. A. Heald of the City of New York, President of the Home Insurance Company, Roger V. Bonnell, of Metuchen, Middlesex County, State of New Jersey, and Levi W. Norton of Rahway, New Jersey, all the rest, residue and remainder of my estate both real and personal, not hereinbefore disposed of, or hereinafter specified, to have and to hold the same, in trust however,
- 40 for the uses and purposes hereinafter specified

Memo. of Lewis, V. C.

and directed.

"my said executors and trustees shall take and hold all the rest, residue and remainder of my estate real and personal, with all the rents, use, interest, and profits of the same, for the sole use, benefit and advantage of my said beloved wife Julia H. Kempson during her natural life, or so long as she remain my widow, and I enjoin and direct my said executors and trustees named to keep the premises in good repair and condition, and to keep said real estate free and discharged from any and all incumbrances by taxation or assessment. 10

"On the death or remarriage of my beloved wife Julia H. Kempson, I will and direct that my estate both real and personal, shall be divided, share and share alike between Lucy Clara Pier-son, St. George Kempson and John Frazer Kempson, but if any of my children above named shall die before the happening of such event, leaving lawful issue, I then direct that the share to which such deceased widow or child have been entitled if living, to be paid such lawful issue as such deceased widow or child may leave. 20

"Whenever in the judgment of my trustees herein named, or any two of them, it shall be deemed expedient, and for the best interests of my estate, to sell the whole or any part thereof of which I may die possessed, I then authorize and empower my said trustees, or any two of them, to sell or dispose of the same, or any part thereof, and to make good and sufficient deeds therefor; but the proceeds of such sales shall be re-invested by said trustees either in good bonds and mortgages upon unincumbered real estate or in bonds of the United States or of the City of New York, the interest and profits thereof to be applied by my said trustees precisely as though no change has been made in said property or estate. If at any time it shall happen that 30 40

Memo. of Lewis, V. C.

funds belonging to my estate shall be accumulated in the hands of my trustees from any source, they are hereby authorized and required to invest the same upon bond and mortgage upon unincumbered real estate or property that shall be deemed a sufficient security, or in United States Government bonds, or in bonds of the City of New York, preference being given to mortgage securities if the same can be obtained, and pay the income as above provided.

10 "From all the provisions of the preceding clauses I except my interest in The Insurance Times newspaper its good will, contracts and all business therewith or which may become connected therewith, or so much of such business, including money in hand or in Bank, and all debts due as I may owe at the time of my decease, and I direct that my interest in and control of said business pass into the hands and charge of my

20 executors, the business to remain intact so long as my wife Julia H. Kempson may live or remain unmarried, the property at her death or remarriage, to be sold to the highest bidder or at private sale, or continued and conducted as my heirs may jointly decide, the will of the majority, exclusive of grand children, ruling; but until such time all profits arising from such business are to belong to my said wife, with the exception of Eight Twentieths thereof, three twentieths of which shall be paid semi-annually to my daughter Lucy Clara Pierson; three twentieths to be paid semi-annually to my son, St. George Kempson, and two twentieths thereof to be paid semi-annually to my son John Frazer Kempson; and should my said wife again marry, I will and direct that all her right and interest in such property shall thereupon terminate.

30 "With regard to my son St. George Kempson's connection with The Insurance Times, I wish

40 that my wife will continue the arrangement at

Memo. of Lewis, V. C.

present existing, and that as soon as it may seem best to my trustees, and Mrs. Kempson, some specific arrangement be entered upon with my said son St. George Kempson, so that he may have a permanent interest in The Insurance Times, of course under the direction and subject to the control of Mrs. Kempson, whenever she chooses to exercise that control.

"And with regard to Mr. James A. Van Cleve, I hereby desire to express my satisfaction with his conduct of the business under the present arrangement with The Insurance Times, and as soon as may be convenient I should wish that Mr. Van Cleve have some interest in the success and profits of said Insurance Times. 10

"I wish no power given to any of my children legatees to examine the books or accounts of The Insurance Times, but they must be satisfied to abide by whatever my trustees consider a true and just estimate of the profit arising therefrom. 20

"LASTLY: I hereby constitute and appoint Frederick R. Coudert, of the City of New York, D. A. Heald, Roger V. Bonnell and Levi W. Norton, above named, Executors and Trustees under this my last will and testament."

The prayer of the complainant as prayed by his bill is:-

(1) That this Court determine whether the children of St. George Kempson have any interest in the "Insurance Times," or the proceeds of sale thereof, if sold; or whether the assignment made by him in his lifetime to Julia H. Kempson and James A. Van Cleve passed the entire interest in that paper, its income or avails of sale, and, if so, whether that interest is now vested in Charles M. Van Cleve as administrator of James A. Van Cleve, deceased, and Edward F. Brush as administrator of Julia H. Kempson, deceased, and Marian R. Brush as only child and 30 40

Memo. of Lewis, V. C.

next of kin of Julia H. Kempson, deceased, by reason of said assignment of St. George Kempson to Julia H. Kempson and James A. Van Cleve.

(2) That it be determined whether Grace Duffie Boylan Kempson, widow of St. George Kempson, deceased, and Malcolm Boylan, her son by a former husband and one of the legatees named in St. George Kempson's will, are entitled to any interest in the said "Insurance Times," and, if so, what interest.

10 (3) That Charles M. Van Cleve, administrator of James A. Van Cleve, deceased, file an account in this Court of his administration of the "Insurance Times" during his trusteeship.

(4) That complainant may be appointed trustee for the said "Insurance Times" under the provisions of the will of Peter Tertius Kempson, deceased, in the place and stead of James A. Van Cleve, deceased.

20 (5) That it may be established by decree of this Court whether or not it is to the interest of all who may be decreed to have an interest in the said "Insurance Times" that its publication should be continued under the direction and management of complainant as trustee, and that it may be determined when and under what conditions, if any, the "Insurance Times," its good will and business, should be sold.

30 (6) That the ninth paragraph of the will of Peter Tertius Kempson be construed by this court as to its meaning regarding the sale of said publication, its good will and business.

None of the trustees or executors qualified as such or accepted the trust, and St. George Kempson, one of the sons of the testator, and James A. Van Cleve were appointed administrators with the will annexed on November 15, 1890.

40 On September 21, 1893, Julia H. Kempson, Lucy C. Pierson and the present complainant in this cause filed a bill in this court praying for the

Memo. of Lewis, V. C.

appointment of a trustee or trustees and an accounting by the administrators, and James A. Van Cleve was thereupon appointed sole trustee to execute the trusts relating to "The Insurance Times."

The first question to be decided in this case is whether the testator died intestate so far as the final disposition of "The Insurance Times," after the termination of the particular estate, is concerned.

I have no difficulty in reaching the conclusion that the testator died intestate so far as that is concerned.

Under our intestacy laws his three children would, immediately upon the testator's death, have a vested interest, the enjoyment of which, however, would be postponed until the termination of the particular estate, excepting so far as they were to receive a portion of the profit during their step-mother's lifetime, when the particular estate was to terminate. It therefore follows that the children could at any time after the death of their father, the testator, dispose of all or any portion of their interest. Two of the children of the testator pre-deceased their step-mother. Under their father's will they were to get a certain proportion of the profits from the newspaper during their step-mother's lifetime. The will makes no provision for the disposition of the profits from the newspaper during the period between the death of the children and the step-mother, in case she outlived them. It will be remembered that the testator gave twelve-twentieths of the profits from the newspaper to his wife, and the balance to his children, in the proportions mentioned in the will. Lucy Clara Pierson, the daughter of the testator, died on May 1, 1897. St. George Kempson died on August 12, 1907 and Julia H. Kempson, their step-mother, died August 13, 1913. After the death of any of the children and until the death of

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Memo. of Lewis, V. C.

the step-mother, that is to say the termination of the particular estate, I think that the profits which would have gone to the children of the testator, during the period between their death and that of the step-mother, should go with the principal and be divided among the next of kin, unless the children of the testator had disposed of all of their interest prior to their death, and in that event the person or persons who bought out the interest of the child or children would be entitled to everything to which the child or children would have been entitled. As a result, I find that the assignment by St. George Kempson, one of the children of the testator, in writing, under his hand and seal, dated December 30, 1893, wherein he assigned, transferred and set over to Julia H. Kempson, his step-mother, and James A. Van Cleve, who afterwards became the trustee, his interest in "The Insurance Times," including the good-will, contracts and other business connected therewith, accounts and bills receivable, to have been a valid assignment of all his interest in the same, and I find that his wife and children have no interest whatever, but was vested in the step-mother and the trustee who had purchased his interest for good and valuable consideration, and as the trustee, James A. Van Cleve, and Julia H. Kempson are now dead, the administrator and the only child of Mrs. Julia H. Kempson are entitled to the undivided one-half part of said interest; and the other undivided one half part of such interest belongs to the estate of James A. Van Cleve.

The complainant is the only living child of the testator and he sets up that under the will he has the sole right to decide whether "The Insurance Times" shall be sold or continued. Under the fifth paragraph of the ninth section of the will the testator gives this power to his children to decide for themselves at the termination of the particular estate, the majority ruling. The point has not

Memo. of Lewis, V. C.

been raised by counsel, but I am of the opinion that so far as continuing the paper is concerned it is violative of the rule against perpetuities.

The bill prays that Charles M. Van Cleve, administrator of James A. Van Cleve, file an account in this court of his administration of "The Insurance Times" during his trusteeship. This will be the order.

My conclusion is that there should be a sale of the paper, and a division of its assets among those entitled thereto, and I shall advise a decree to this effect. 10

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FINAL DECREE

(Filed December 17, 1917)

10	Between JOHN FRASER KEMPSON Complainant, and LUCY C. HOSKINS, et als., Defendants.	On Bill &c. FINAL DECREE
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20 This cause coming on to be heard on bill, answers and replications, in the presence of Messrs. Collins and Corbin, solicitors for and of counsel with the complainant; Messrs. Smith, Mabon and Herr, of counsel with defendants St. George Kempson, Peter Tertius Kempson, Julia Cornelia Carter, Eber Hall Kempson, Grover Cleveland Kempson, Helen A. Kempson, John Monroe Whitman Kempson and Agnes Emily Kempson, infants, by their guardian Helen A. Kempson; Sarah Adelia Gladys Halsted and Helen Hall Mitchell; Charles O. Truex, of counsel with the defendant Charles M. Van Cleve, administrator of James A. Van Cleve, deceased; John K. English, solicitor of defendants Marian R. Brush and also of Edward F. Brush, administrator of Julia H. Kempson, deceased, and John A. Coan, of counsel with defendant Aylin Pierson, the complainant's bill having been heretofore taken as confessed against the other defendants; and the pleadings having been read and the proofs and arguments of the respective counsel, both oral and by 30 briefs, having been heard and considered:-

IT IS, on this third day of December, 1917, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED as follows:-

40 **FIRST:** That Peter Tertius Kempson, the testator named in the bill of complaint, who, at the

Final Decree

time of his death on September 25, 1890, was the owner of "The Insurance Times", died intestate, so far as the final disposition of said "The Insurance Times", after the termination of the particular estate given in and by the will of Peter Tertius Kempson to his widow Julia H. Kempson, since deceased, is concerned.

SECOND: That the assignment in writing made by St. George Kempson, one of the children of the said Peter Tertius Kempson, deceased, dated December 30, 1893, wherein he assigned, transferred and set over to Julia H. Kempson, his step-mother, and James A. Van Cleve who afterwards became trustee of the said "The Insurance Times" under an order made by this court, was a valid assignment of all his interest in the said "The Insurance Times", its good will, contracts and other business connected therewith, accounts and bills receivable, and that as the purchasers of said assignment, to wit, Julia H. Kempson and James A. Van Cleve, trustee, are now dead, the defendants Edward F. Brush, administrator of Julia H. Kempson, deceased, and Marian R. Brush, only child of said Julia H. Kempson, are entitled to the undivided one-half part of said interest so assigned, absolutely, and that the other undivided one-half part of such interest belongs to the estate of James A. Van Cleve, deceased.

THIRD: That the defendants Grace Duffie Boylan Geldhart, formerly the wife of St. George Kempson, deceased, and the defendants St. George Kempson, Peter Tertius Kempson, Julia Cornelia Carter, Eber Hall Kempson, Grover Cleveland Kempson, Helen A. Kempson, John Monroe Whitman Kempson, Aenes Emily Kempson, Sarah Adelia Gladys Halsted and Helen Hall Mitchell, children of the said St. George Kempson, deceased, have no interest whatever in said "The Insurance Times".

FOURTH: That the defendant Aylin Pierson is the owner of the undivided one-third interest in

Final Decree

the said "The Insurance Times", its good will, contracts and business, accounts and bills receivable, and that the remaining one-third interest is owned by the complainant John Frazer Kempson.

- FIFTH:** That the said "The Insurance Times", its good will, and any machinery, goods and chattels appurtenant to or used in the business of conducting and publishing the said "The Insurance Times, be sold and the proceeds of sale distributed
- 10 among those entitled thereto as ascertained by this decree, and that such sale be made, subject to confirmation by this Court, by Charles M. Vreeland, one of the Special Masters of this Court, at public vendue, to the highest bidder for cash, and that before making such sale said Master give notice thereof in at least one leading publication in the City of New York other than the said "The Insurance Times", devoted to the insurance business, and also in the "New York Herald", "The New York Times",
- 20 "The Chicago Tribune", and the "Philadelphia Public Ledger", which publication in all of said papers shall be had for at least four weeks, once a week successively, prior to such sale, and that said Master make such sale either on the premises or at such public place or room in the City of New York as he may deem advisable, and before making any actual transfer of the said "The Insurance Times", its good will, machinery, goods and chattels and other effects used in its business and publication,
- 30 he report such sale to this Court, giving the name and address of the purchaser and the amount paid or to be paid by him or it.

AND IT IS FURTHER ORDERED that the complainant and the defendants entitled to shares in the proceeds of sale in "The Insurance Times" be at liberty to obtain a purchaser at private sale, and if one shall be found willing to pay more than the amount bid at public sale for the said "The Insurance Times", its good will, machinery, goods and

40 chattels and other effects used in its business and

Final Decree

publication, the name and address of the purchaser willing to pay such excess, together with the amount he has agreed to pay shall be reported to this Court, and, if approved, the sale made at public vendue shall, on payment forthwith in full by the purchaser at private sale, be deemed null and void and any deposit paid by the purchaser at such public sale shall be forthwith returned to him.

SIXTH: That Charles M. Van Cleve, administrator of James A. Van Cleve, deceased, proceed without delay to file an account in this Court of the administration of "The Insurance Times" by the said James A. Van Cleve during his trusteeship. 10

SEVENTH: That the complainant John Frazer Kempson, after the aforesaid sale shall have been made and confirmed, shall forthwith file his further account in this Court of his administration of the said "The Insurance Times" from the time of his former account on file in this Court to the time of sale and transfer.

AND IT IS FURTHER ORDERED that the complainant have costs, to be paid out of the proceeds of the sale aforesaid, but that the matter of counsel fees stand over until the determination of an appeal now pending from said final decree, and until the said sale shall be completed, at which time any party hereto shall be at liberty to apply on notice for the award of counsel fees to the several parties hereto. 20

Respectfully advised, 30
 VIVIAN M. LEWIS,
 V. C.

E. R. WALKER,
 C.

NOTICE OF APPEAL

(Filed Dec. 28, 1917.)

IN CHANCERY OF NEW JERSEY

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

and

10 GROVER C. KEMPSON, et als,

Defendants-Appellants.

On Bill, &c.
NOTICE
of
APPEAL

20 The defendants, St. George Kempson; Peter Tertius Kempson; Julia Cornelia Carter; Eber Hall Kempson; Grover Cleveland Kempson; Helen A. Kempson; John Monroe Whitman Kempson and Agnes Emily Kempson, infants, by their guardian, Helen A. Kempson; Sarah Adelia Gladys Halsted; and Helen Hall Mitchell, hereby appeal to the Court of Errors and Appeals in the last resort in all causes, from that part of the final decree made in this Court in the above stated cause which adjudges that they, the said appellants, have no estate or interest in the property known as the Insurance Times Newspaper.

Dated, December 27, 1917.

SMITH, MABON & HERR,
Solicitors and of Counsel with

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

DOUGAL HERR,
Of Counsel with Appellants.

A True Copy,

Robert H. McAdams,

Clerk.

PETITION OF APPEAL

(Filed February 5, 1918)

NEW JERSEY COURT OF ERRORS and APPEALS

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

and

GROVER C. KEMPSON. et als,

Defendants-Appellants.

**PETITION
OF APPEAL****10**

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

The petition of St. George Kempson, Sarah A. G. Halsted, Helen H. Mitchell, Peter Tertius Kempson, Julia C. Carter, Eber Hall Kempson, Grover C. Kempson, and Helen A. Kempson, individually and as guardian of Agnes E. Kempson and John Monroe Whitman Kempson, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the thirteenth day of December, 1917, wherein the said John Fraser Kempson was complainant, and your petitioners and others were defendants, in this respect, to wit, that the said decree adjudges and decrees that your petitioners have no estate or interest in the personal property known as the "Insurance Times Newspaper", of which Peter Tertius Kempson, deceased, died possessed. And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for that your petitioners are vested with an undivided one-third interest in and to the said property known as the "Insurance Times Newspaper", and more particularly described in the bill of complaint in said

20**30****40**

Petition of Appeal

cause, and are entitled to a decree that upon the sale of said property, as decreed by said decree, one-third of the proceeds of said sale be paid over to them, as well as one-third of the profits shown upon the accounting to be made in said cause under said decree, earned by the said property known as the "Insurance Times Newspaper", from the date of the death of Julia H. Kempson, life tenant, who died on August 13, 1913. Your petitioners therefore pray that the said decree of the said

- 10 Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

SMITH, MABON & HERR.

Solicitors of and of counsel with
Appellants.

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ANSWERS TO PETITION OF APPEAL

(Filed February 25, 1918)

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

CHARLES M. VAN CLEVE, as administrator of James A. Van Cleve, deceased, et al,

Defendant-Respondent,

and

GROVER C. KEMPSON, et als,
Defendants-Appellants.ANSWER
to
PETITION
of
APPEAL 10

The answer of the above-named respondent, Charles M. Van Cleve, as administrator of James A. Van Cleve, deceased, to the petition of appeal of the above-named appellant.

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This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a final decree was, on the thirteenth day of December 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, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

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CHARLES O. TRUEX,
Sol. of Def't.-Respondent Charles
M. Van Cleve, as administrator
of James A. Van Cleve, deceased.

MARK M. TOWNSEND, Jr.,
Of Counsel with said Def't-Respondent. 40

Answers to Petitions of Appeal
(Filed February 19, 1918)

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

and

GROVER C. KEMPSON, et als,

Defendants-Appellants.

ON APPEAL
ANSWER

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The Answer of Respondents, Marian R. Brush and Edward F. Brush, Administrator of Julia H. Kempson, deceased, to the petition of appeal of the above named Appellants.

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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 thirteenth day of December, 1917, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, which decree, by order of this Court of a later date was amended in regard to the matter of counsel fees only: 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 and order are agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these Respondents.

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JOHN K. ENGLISH,

Solicitor for and of counsel with
Defendants-Respondents, Marian
R. Brush and Edward F. Brush,
Administrator of Julia H. Kemp-
son, deceased.

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Answers to Petition of Appeal
(Filed February 21, 1918)

Between

JOHN FRASER KEMPSON

Complainant-Respondent, ON APPEAL

and ANSWER

GROVER C. KEMPSON, et als,

Defendants-Appellants.

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The answer of Aylin Pierson, defendant-respondent, to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters which in the said petition are contained to be true, for answer thereto nevertheless says and admits that a final decree was made on the 13th day of December last past and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition, as is therein stated; but as to the form and substance thereof this respondent prays to refer thereto when the same shall be produced. **20**

And this respondent is advised and believes that the same is agreeable to equity and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

JOHN A. COAN,
Solicitor of Respondent. **30**

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ANSWERS TO PETITION OF APPEAL

(Filed February 5, 1918)

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

and

GROVER C. KEMPSON, et als,

Defendants-Appellants.

ON APPEAL

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THE ANSWER OF JOHN FRASER KEMPSON, ABOVE NAMED COMPLAINANT-RESPONDENT, TO THE ABOVE NAMED APPELLANTS.

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This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a final decree was made on the 13th day of December last past 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 form and substance thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

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COLLINS & CORBIN,
Solicitors of Respondent.

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THE COURT OF CHANCERY

IN THE MATTER OF THE ESTATE OF

JAMES W. HARRIS

DECEASED

BY WILL

AND

IN TESTAMENTARY TRUST

FOR THE BENEFIT OF

SAYRE HARRIS

AND

THE HARRIS TRUST

AND

THE HARRIS TRUST

AND

THE HARRIS TRUST

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THE HARRIS TRUST

AND

THE HARRIS TRUST

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New Jersey Court of Errors and Appeals

Between

JOHN FRASER KEMPSON

Complainant-Respondent,

and

GROVER C. KEMPSON, et als,

Defendants-Appellants.

On Appeal from Final Decree of the Chancellor.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

This is an appeal from that portion of the final decree of the Chancellor (Lewis, V. C.) herein, which adjudges that appellants have no estate or interest in certain personal property, consisting of a newspaper called the "Insurance Times", belonging to their grandfather, Peter Tertius Kempson, late of Middlesex County, who died September 25, 1890, testate, leaving him surviving his widow, Julia H. Kempson, a daughter, Lucy Clara Pierson, and two sons, John Fraser Kempson (the complainant), and appellants' father St. George Kempson.

On January 2, 1894, the Chancellor appointed James A. Van Cleve sole trustee to execute certain testamentary trusts, contained in Kempson's will, relating to the "Insurance Times". Van Cleve served as trustee until his death on November 25, 1915, without having ever accounted.

This suit was instituted for the purpose of securing an accounting of that trusteeship from Van Cleve's administrator, and to determine whether the "Insurance Times" should be sold or continued, and if sold how the proceeds of sale should be divided.

The decree orders an accounting, provides that the newspaper shall be sold at once, and adjudges that these appellants have no interest or estate in the property.

SPECIFICATION OF THE GROUNDS OF APPEAL

This appeal is taken from that part of the decree only which adjudges these appellants to be without interest or estate.

The single question involved is whether or not the residuary clause of Kempson's will embraces the property in question, or whether Kempson died intestate as to the "Insurance Times". The Vice Chancellor decided that there was an intestacy. In this we think there was error.

The will is printed on pages 13 to 17 of the Case. The residuary clause is the second unnumbered paragraph following the paragraph numbered "Ninth", and reads as follows:—

"On the death or remarriage of my beloved wife Julia H. Kempson, I will and direct that my estate both real and personal, shall be divided, share and share alike between Lucy Clara Pierson, St. George Kempson and John Fraser Kempson, but if any of my children above named shall die before the happening of such event, leaving lawful issue, I then direct that the share to which such deceased widow or child have been entitled if living, to be paid such lawful issue as such deceased widow or child may leave."

While the form of this clause is crude, the meaning of it is clear enough: that if any of testator's children above named should die before his wife's death or remarriage leaving lawful issue, such issue should be paid their deceased parent's share.

The testator's widow never remarried and did not die until August 13, 1913. Meantime, St. George Kempson, one of the three children of the testator and father of these appellants, died August 12, 1907.

Hence, the event occurred for which the testator had provided, and if the residuary clause of

the will operated upon the "Insurance Times", these appellants became entitled upon the widow's death on August 13, 1913, to receive the one-third interest in the property, which was their parent's share. In other words, the estate was vested in St. George Kempson in his lifetime, by virtue of his father's will, subject to be completely divested by his dying during the lifetime of his mother, and by the same event subject to become vested in these appellants, his children, by substitution.

Crane v. Boles, 49 N. J. Eq. 373.

Van Giesen v. White, 53 N. J. Eq. 1.

St. George Kempson on December 30, 1893 assigned such interest and estate as he had in the "Insurance Times" to his mother Julia H. Kempson, the life tenant, and to said James A. Van Cleve, and it is by virtue of this assignment that the representatives of the assignees claimed to be vested, as against appellants, with the one-third interest of St. George Kempson in the newspaper, and so it was adjudged below.

But the conclusion rested upon the ground that the "Insurance Times" was not part of the residuum of the estate of Peter Tertius Kempson; for otherwise it is clear that appellants could not be divested of their estate by any act of their father. They took by substitution directly from Peter Tertius Kempson, and not indirectly through their father, and their interest could not be alienated, subjected to liens, or in any way affected by acts or omissions of their father; their estate vests in them as an original gift to them from their grandfather.

Lafoy v. Campbell, 42 N. J. Eq. 34 (Reversed on other grounds, sub. nom. *Lafoy v. Lafoy*, 43 N. J. Eq. 206).

Baldwin v. Taylor, 37 N. J. Eq. 78 (Aff'd. 38 N. J. Eq. 637).

Meeker v. Forbes, 84 N. J. Eq. 271 (Aff'd. 86 N. J. Eq. 255).

BRIEF OF THE ARGUMENT.

POINT I.

THE RESIDUARY CLAUSE CONTROLS

A. The law presumes that if there be a residuary clause the testator intended to dispose of all his property.

This general principle is too well established to need any authority, but the following among other cases may be cited.

Torrey v. Torrey, 70 N. J. L. 673.

Sanford v. Blake, 45 N. J. Eq. 248.

Barnet v. Barnet, 40 N. J. Eq. 380.

Cook v. Lanning, 40 N. J. Eq. 369.

Huston v. Read, 32 N. J. Eq. 591.

Garthwaite v. Lewis, 25 N. J. Eq. 351.

Macknet v. Macknet, 24 N. J. Eq. 277.

Tindall v. Tindall, 23 N. J. Eq. 244.

Shreve v. Shreve, 17 N. J. Eq. 487.

The specific directions of the testator respecting the newspaper do not undertake to make any disposition whatever of the remainder. Hence, unless there is a clear intention manifested in the will to the contrary, the property is a part of the residuary estate.

B. Reading the will as a whole, the intention appears clearly that the residuary clause shall operate.

An examination of the will reveals the extreme carelessness of the testator. The first three paragraphs are numbered "first", "second", and "third", respectively, but the next paragraph is numbered "sixth". Then comes "seventh", and then "ninth". After the "ninth" come seven unnumbered paragraphs which are followed by a final paragraph entitled "lastly". It is as though the testator had dictated the will from an earlier will which was then before him, saying "Copy the first, second and third paragraphs, omit the fourth and fifth, copy the sixth and seventh, omit the

eighth, copy the ninth, and then add the following paragraphs which I will now dictate". This supposition is strengthened by the fact that all of the paragraphs bearing numbers are well drawn,—grammatical, properly punctuated, and well expressed, apparently the work of a careful lawyer; while the added paragraphs are quite the reverse: for instance, in the second unnumbered paragraph note the grammar in the phrase "I then direct that the share to which such deceased widow or child have been entitled if living, to be paid such lawful issue as such deceased widow or child may leave", and note the fact, in connection with this paragraph, that although the widow gets nothing (except the income while she remains unmarried, by an earlier provision) nevertheless she is here spoken of as though she or her issue (other than testator's issue) had some interest. In the following paragraph, third line, "of" is used instead of "or", "possessed" is used instead of "seized and possessed", and the whole structure of the paragraph is crude and unworkmanlike. The paragraph next following is still more slipshod, and could not possibly have been drafted by a lawyer. Note the phrases "all debts due as I may owe at the time of my decease", "I direct that my interest in and control of said business pass into the hands and charge of my executors", "My heirs may jointly decide". So with the following paragraphs, which are most indefinite and crude. If the numbered paragraphs were drawn by a lawyer, as they evidently were, then the testator took them from an earlier and carefully prepared will, discarding whatever he desired, and adding such new provisions as he wished the will to contain.

It can be fairly argued from these premises that originally the testator's will consisted of ten paragraphs, the ninth being the trust and residuary clause and the tenth the clause nominating executors. The residuary clause would naturally have come after all the provisions of the will except that appointing executors, and a lawyer would

scarcely have followed it with particular devises, bequests or trusts. Testator's original will, therefore, disposed of the newspaper, either in prior paragraphs or in the ninth paragraph. Hence, the position of these paragraphs in the present will, following instead of preceding the residuary clause, should be held to have occurred fortuitously and not through design or for a particular purpose, unless elsewhere in the will testator's intent appears clearly to have been otherwise.

Morton v. Woodbury, 153 N. Y. 243.

Prison Ass'n. v. Russell, 103 Va. 563.

Reeves v. Reeves, 5 Lea. 653.

Respondents maintain that the testamentary intent was to exclude the newspaper property from the operation of the residuary clause, and that that intent is manifested by the language of the "ninth" paragraph in speaking of the estate "not hereinbefore disposed of, or hereinafter specified", and the opening words of the first paragraph relating to the newspaper, "From all the provisions of the preceding clauses I except my interest in The Insurance Times newspaper."

This is a negative argument, in making which respondents ignore many positive indications of a contrary testamentary intention apparent from the will. And respondents do not point to any expressions in the will tending to bear out the meaning they impute to the words of limitation we have quoted. In seeking testator's intent, the will as a whole should be read, and Kempson's will as a whole clearly shows the words of limitation above quoted to have been used in a different and narrower sense than that contended for by respondents.

Following the specific bequests, we find, starting with the "ninth" paragraph, two distinct trusts created—one for all of the testator's residual estate except the newspaper, and the other for the newspaper only. Both of these trusts are expressly limited as to their duration: the one for the life of the widow, the other for the life of the widow

and as long thereafter as a majority of the children shall desire. In all of these provisions the testator had merely temporary dispositions in mind. The residuary clause stands alone in making permanent provision. All of the provisions except the residuary clause are limited by their terms to certain specific properties; the residuary clause is in terms not limited but general in form. Although the residuary clause is placed between the two trust provisions, yet when the testator wrote it he had no distinction in mind between the newspaper and his other properties, as he had when he created the trusts, else he would have expressly limited its operation as he did with the trust provisions.

Moreover, when he dealt with the newspaper property, although his purpose was to create a trust of limited duration, he had always in mind that the residuary clause would operate upon that property. By these paragraphs of the will provision is made for the carrying on of the business after the death of the widow if the "heirs" so decide. He does not say for whose benefit it is to be carried on, yet evidently he had in mind that someone should benefit. Only by the operation of the residuary clause is there a class designated in the will who can benefit by such operation. Again, he provides that if the "heirs" do not so decide, there is to be a sale. But he does not say where the proceeds of sale shall go. He can scarcely be held to have made such a provision without having in mind a benefit to some person: but only in the residuary clause did he designate a class who should so profit.

Why should he, in the trust provision, have given his "heirs" power to decide whether there should be a sale, unless he had also given them some interest in making the decision? Or why should he have forbidden his "children legatees" to question the accounts, if they had no interest in questioning them? And why, if he had intended to die intestate, and if therefore he had in mind

the possibility of collateral kindred inheriting, should he have limited the power and the prohibition to his "heirs" or "legatees" and said nothing of his next of kin, who might in the event have been collateral kindred?

Our contention is that when, in the "ninth" paragraph, the testator excluded from its operation property "hereinafter specified" he meant to exclude the newspaper property, and that when in the fourth succeeding paragraph he excepted the newspaper "from all the provisions of the preceding clauses" he meant to exclude it from the prior trust provisions only.

The trustees are the same for both trusts. So are the beneficiaries. Clearly, the sole purpose testator had in mind was to distinguish between the newspaper and his other property as to the trust provisions only. And this distinction was natural. As a running business the newspaper was more valuable than as a dead venture. Testator's natural pride would have prompted him to leave it as a memorial of his industry and ability. He had this property more particularly in mind than any other residual property, for he made minute requests and directions concerning it in the latter part of his will.

But his intention was to make only a temporary distinction. No testamentary purpose is anywhere disclosed to distinguish permanently. Had he so intended, it would have been natural and easy to provide for the distribution of the proceeds of sale of the newspaper in the paragraph relating to that particular property. There is nothing in the will to defeat the presumption in favor of the residuary legatees.

Analysing respondents' contention that the words of exception in the "ninth" paragraph and in the fourth unnumbered paragraph following, in and of themselves, and in spite of the manifestations of contrary intent elsewhere in the will, disclose a testamentary intent to exclude the newspaper from the operation of the residuary

clause, because that clause happens to be between the two paragraphs in question, it should be noted that the residuary clause is the second unnumbered paragraph following that numbered "ninth", and stands by itself in the will. The "ninth" paragraph, together with the first and third paragraphs following it, constitute one trust; the provisions contained thereafter in the will creating the second trust. Between these two trusts stands the residuary clause, general in form, and unquestionable in effect except for its illogical position in the will.

The burden of respondents' argument is to read into this general, all-embracing residuary clause words of exception or limitation contained in other parts of the will. But these words of limitation were used by the testator in dealing with specific property, as to which he was creating specific trust provisions. The natural construction of them requires that they be restricted to the specific provisions in connection with which they are used. To extend them by implication to the residuary clause would be to force an intestacy by implication, contrary to the presumption of law, contrary to the fairly evident meaning of the testator as gathered from the whole will, and by a perverted application of the theory of implication, in the attempt to restrict general testamentary expressions rather than to give them the broadest construction possible.

Even though the residuary clause itself contained such words of limitation, yet this fact of itself would not exclude the newspaper property from its operation. The expressions "disposed of", "specified", "I except", if contained in the residuary clause, should be held to have been used in the sense of "effectually disposed of", from all the preceding clauses to the extent in which they are operative", &c. It is under this principle that lapsed legacies fall in the residuum. It is as though this testator had said "As to my property, after the specific bequests, there shall be two trusts,

one for the paper and one for the rest of my property. Upon the termination of these trusts the residuary clause is to operate".

This Court in *Tindall's Executors v. Tindall*, 24 N. J. Eq. 512, has reviewed many of the cases, and has settled the rule in this State. In that case, the residuary clause was "whatever of my property shall remain after payment of the above, &c", and it was held to include a lapsed legacy. Among other cases reviewed are:

King v. Woodhull, 3 Edw. Ch. 79, 84, where the form of bequest was "The residue and remainder of my estate, if any there shall be, after the payment of the said \$1000. to the Missionary Society, I give and bequeath to the children of my niece", and it was held broad enough to embrace the legacy to the Society, which was void, and another legacy, which was held to be ineffectual.

Shanley v. Baker, 4 Ves. 732, where the words of the bequest were "all the rest and residue of my estate and effects not by me herein before particularly disposed of", and it was held to include a prior void legacy.

Brown v. Higgs, 4 Ves. 709, to the same effect as *Shanley v. Baker*.

See also the following authorities:

Allen v. Moore, 86 N. J. Eq. 357 (aff'd. 99 Atl. 860.

Re Crane, 2 Root 487.

Wood's Estate, 209 Pa. St. 16, 57. Atl. 1103.

Green v. Dunn, 20 Beav. 6.

Jackson v. Kelly, 2 Ves. Sr. 285.

Floyd v. Carrow, 88 N. Y. 560.

Moffett v. Elmendorf, 152 N. Y. 475.

Roberts v. Cooke, 16 Ves. Jr. 451.

Cunningham v. Cunningham, 18 B. Mon. 19, 68 Am. Dec. 718.

In *Bernard v. Minshall*, Johns (Eng. Ch. 276, 299 cited by this Court with approval in *Tindall's Executors v. Tindall*, ubi supra), Vice Chancellor Wood says: "All you have to consider is whether the property is excepted, in order to take it away,

under all circumstances and for all purposes, from the person to whom the rest of the property is given; or whether it is excepted merely for the purpose of giving it to some else. If the latter, and the gift to somebody else fails, the donees of all except this property are entitled to take the whole."

And if the residuary clause constitutes all of which no effectual disposition is otherwise made (as e. g., a lapsed legacy), a priori will it comprehend all of which no disposition whatever is otherwise made.

To construe the will otherwise would be to do violence to the testamentary intent, presumed and manifested, for a reading of the will as a whole discloses testator's intent to have been to dispose of all his property (except the early specific bequests) in the following manner:

1. To create a trust as to all property except the newspaper, with power of sale in the trustees, for the benefit of the widow during her life or as long as she should remain unmarried.
2. To create a trust as to the newspaper property only, without power of sale in the trustees, for the benefit of the widow and children, during her life or as long as she should remain unmarried, and for as long a time thereafter as the children should desire.
3. To dispose of all the residue of the estate, **without restriction.**

The legal presumption of testacy is aided by much internal evidence to this effect.

We submit that, as it stands, and without any transposition of its clauses, the will clearly shows the testamentary intention to have been to include the newspaper in the residuary clause.

This testamentary intention will become clearer if we transpose the residuary clause and read it after the paragraphs relating to the newspaper, instead of in its present illogical position. And we are justified in making such transposition if otherwise the will be deemed inconsistent and doubt-

ful.

Thus, in the case of *Doe, d. v. Allcock*, 1 B. & Ald. 137, the testator devised all his hereditaments to his sister, A. T. and her two daughters, and their heirs and assigns, equally to be divided between them, in common, for and during the life of A. T., and after her death he devised the third part, so devised to his sister for life, to her two daughters in fee. It was held to give the two daughters a fee-simple in two-thirds, and a remainder in fee of the other third part, after the decease of their mother. Lord Ellenborough said, "The testator has thrown together a heap of words, the sense and meaning of which he did not clearly apprehend; but although the language of this will is confused, and the words are scattered, in such a way, as, if taken in the order in which they stand, they do not convey any meaning, yet in favor of common sense, we may take the liberty of transposing them, according to that order which we may fairly suppose the testator would wish to have adopted, and by which we can best effectuate his intention. **The labor of the argument has been to make the testator dispose of only one-third of his estate, and thereby to compel an intestacy as to the remainder; whereas his meaning evidently was, to dispose of the whole.**" (bold face type ours).

So in *East v. Cook*, 2 Ves. Sen. 30, 32 it is said "The order of words in wills is not considered, if the intent is better answered otherwise." And Sir William Grant, M. R., in *Blamire v. Geldart*, 16 Ves. 316 said "In a will it is not important in what order the clauses are arranged." And it is generally held, as above noted, that the position of the residuary clause at the beginning of a will instead of at the end will not necessarily prevent its covering property devised by subsequent devises or bequests which lapse or are otherwise ineffectual.

The parties to the assignment disclosed by the

language employed in the assignment itself that they so understood the legal situation, in dealing with the property.

By the fourth clause of the assignment, St. George assigned "all his interest in the said Insurance Times" * * "The interest thus transferred being the right to receive three-twentieths of the profits on hand or which may be earned during the life or widowhood of the said Julia H. Kempson and the undivided one-third of said Insurance Times thereafter to which he may be now or may become entitled under the will of Peter Tertius Kempson * * (Case, p. 21). (bold face type ours).

The residuary clause of the will is the only clause in it by virtue of which a division of the property among the children could be made. If this clause did not operate, then St. George had no estate "under the will", and if it did operate, his estate was divested by his decease and vested over in these defendants, free from any effect of the assignment.

The recitals contained in the assignment show that there was no question in the minds of the parties to it that the residuary clause operated, and they show also that the assignees realized that they were buying a defeasible estate. The language of the granting clause is: "The interest thus transferred being * * the undivided one-third * * to which he (St. George Kempson) may be now or may become entitled". If the parties had intended to deal with an **indefeasible** estate this language would naturally have been less hypothetical, as for example "to which he is now or shall become entitled".

But the interest transferred by the assignment was the interest to which St. George Kempson might be or become entitled **under the will** only. The parties did not construe the will in the manner they now ask the Court to construe it. They realized that the residuary clause applied to the Insurance Times property, and that in the unlikely event that St. George Kempson should die be-

fore his mother's death or remarriage the estate would become vested in his children as a direct and original legacy from Peter Tertius Kempson.

A consideration of \$5000.00 is recited in the assignment. For this the assignees bargained to acquire the following rights: (1) All commissions to which St. George Kempson was entitled as administrator. (2) Settlement of pending litigation. (3) St. George Kempson's right to receive three-twentieths of the income until his mother's death or remarriage, which proved to be a period of twenty years. (4) St. George Kempson's defeasible estate in the property. Hence, if it be competent to deduce an intent from the *quantum* of the consideration paid, it cannot be said that the consideration was so large, in view of the various rights acquired, as to lead the Court to the conclusion that the assignees' intent differed from the words of the grant. There is no evidence of what that intent was, save as it is gathered from the language of the assignment itself.

P O I N T I I .

THESE APPELLANTS ARE VESTED WITH AN
UNDIVIDED ONE-THIRD ESTATE IN THE
"INSURANCE TIMES", AND HENCE ARE EN-
TITLED TO ONE-THIRD OF THE PROFITS
SINCE THE DEATH OF THE LIFE TENANT,
JULIA H. KEMPSON, AUGUST 13, 1913.

P O I N T I I I .

THE DECREE IN THE PARTICULARS AFORE-
SAID SHOULD BE REVERSED.

Respectfully submitted
SMITH, MABON & HERR,
Of Counsel with Appellants.

THE STATE OF NEW YORK

IN SENATE

JANUARY 18, 1894

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1893

ALBANY:

WHELAN & COMPANY, PRINTERS

1894

Published by order of the Senate, January 18, 1894.

Statement of the Commissioner

The Commissioner of the Land Office has the honor to acknowledge the receipt of the report of the Board of Land Commissioners, and to state that the same has been read and approved by the Senate on the 18th inst. The Board of Land Commissioners has the honor to acknowledge the receipt of the report of the Commissioner of the Land Office, and to state that the same has been read and approved by the Board on the 18th inst. The Board of Land Commissioners has the honor to acknowledge the receipt of the report of the Commissioner of the Land Office, and to state that the same has been read and approved by the Board on the 18th inst.

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New Jersey Court of Errors and Appeals.

Between

JOHN FRASER KEMPSON,
Complainant-Respondent,

and

GROVER C. KEMPSON, et als,
Defendants-Appellants.

On Appeal
from final **10**
Decree of
Chancellor.

BRIEF FOR RESPONDENT.

CHARLES M. VAN CLEVE,
Administrator of James A. Van Cleve, deceased. **20**

Statement of the Case.

This is an appeal from that portion of the final decree of the Chancellor (Lewis, V. C.) herein, which adjudges that appellants have no estate or interest in certain personal property, consisting of a newspaper called the "Insurance Times," belonging to their grandfather, Peter Tertius Kempson, late of Middlesex County, who died September 25, 1890, testate, leaving him surviving his widow, Julia H. Kempson, a daughter, Lucy Clara Pierson, and two sons, John Fraser Kempson (the complainant), and appellants' father, St. George Kempson. **30**

On January 2, 1894, the Chancellor appointed James A. Van Cleve sole trustee to execute certain testamentary trusts, contained in Kempson's will, relating to the "Insurance Times." Van Cleve served as trustee until his death on November 25, 1915, without having ever accounted. This respondent was appointed administrator of James A. Van Cleve. **40**

This suit was instituted for the purpose of securing an accounting of that trusteeship from Van Cleve's administrator, and to determine whether the "Insurance Times" should be sold or continued, and if sold how the proceeds of sale should be divided.

10 The decree orders an accounting, provides that the newspaper shall be sold at once, and adjudges that the testator died intestate as to the "Insurance Times."

From this decree of partial intestacy, the appellant appeals.

This respondent's intestate and Julia H. Kempson, the testator's widow, acquired the interest of St. George Kempson in the "Insurance Times" by assignment in the latter's lifetime (Schedule D pp. 21-23).

20 The will consists of nine numbered items or paragraphs, the first eight being single paragraphs making *specific bequests*. The ninth section is composed of eight distinct paragraphs, the first four referring to the disposition of the residuary estate and the last four specifically relating to "The Insurance Times" and the conduct of business connected therewith, and is as follows:

30 "NINTH: I give, devise and bequeath to Frederick R. Coudert of the City of New York, D. A. Heald of the City of New York, President of the Home Insurance Company, Roger V. Bonnell, of Metuchen, Middlesex County, State of New Jersey, and Levi W. Norton of Rahway, New Jersey, all the rest, residue and remainder of my estate, both real and personal, *not hereinbefore disposed of, or hereinafter specified*, to have and to hold the same, in trust, however, for the uses and purposes hereinafter specified and directed.

40 "My said executors and trustees shall take and hold all the rest residue and remainder of my estate real and personal, with all the

rents, use, interest and profits of the same for the sole use, benefit and advantage of my said beloved wife, Julia H. Kempson during her natural life, or so long as she may remain my widow, and I enjoin and direct my said executors and trustees named to keep the premises in good repair and condition, and to keep said real estate free and discharge from any and all incumbrances by taxation or assessment.

“On the death or remarriage of my beloved wife Julia H. Kempson, I will and direct that my estate both real and personal, shall be divided share and share alike between Lucy Clara Pierson, St. George Kempson, and John Frazer Kempson, but if any of my children above named shall die before the happening of such an event, leaving lawful issue, I then direct that the share to which *such deceased widow or child* have been entitled if living, to be paid such lawful issue as such deceased widow or child may leave. 10

“Whenever in the judgment of my trustees herein named or any two of them it shall be deemed expedient, and for the best interests of my estate to sell the whole of any part thereof of which I may die possessed, I then authorize and empower my said trustees, or any two of them to sell or dispose of the same, or any part thereof, and to make good and sufficient deeds therefor; but the proceeds of such sales shall be re-invested by said trustees either in good bonds and mortgages upon unincumbered real estate or in bonds of the United States or of the City of New York, the interests and profits thereof to be applied by my said trustees precisely as though no change has been made in said property or estate. If at any time it shall happen that funds belonging to my estate shall be accumulated in the hands of my trustees from any source, they are hereby authorized and required to invest the same upon bond and mortgage upon unincumbered real estate or property that shall be deemed a sufficient security or in United States Government bonds, or in bonds of the City of New York, 20 30 40

preference being given to mortgage securities if the same can be obtained, and pay the income as above provided.

10 "From all the provisions of the preceding clauses I except my interest in *The Insurance Times* newspaper, its good will, contracts and all business therewith or which may become connected therewith, or so much of such business, including money in hand or in bank, and all debts due as I may owe at the time of my decease, and I direct that my interest in and control of said business pass into the hands and charge of my executors, the business to remain intact so long as my wife Julia H. Kempson may live or remain unmarried, the property at her death or remarriage, to be sold to the highest bidder, or at private sale, or continued and conducted as my *heirs* may jointly decide, the will of the majority, *exclusive of grandchildren*, ruling; but until such time all profits arising from such business are to belong to my said wife, with the exception of Eight Twentieths thereof, three twentieths of which shall be paid semi-annually to my daughter Lucy Clara Pierson; three twentieths to be paid semi-annually to my son St. George Kempson, and two twentieths thereof to be paid semi-annually to my son John Frazer Kempson; And should my said wife again marry, I will and direct that all her right and interest in such property shall thereupon terminate.

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30 "With regard to my son St. George Kempson's connection with *The Insurance Times*, I wish that my wife will continue the arrangement at present existing, and that as soon as it may seem best to my trustees, and Mrs. Kempson, some specific arrangement be entered upon with my said son *St. George Kempson so that he may have a permanent interest* in *The Insurance Times*, of course under the direction and subject to the control of Mrs. Kempson, whenever she chooses to exercise that control.

40 "And with regard to Mr. James A. Van-Cleve, I hereby desire to express my satisfaction with his conduct of the business un-

der the present arrangement with The Insurance Times and as soon as may be convenient I should wish that Mr. Van Cleve have *some interest in the success and profits of said Insurance Times.*"

It would seem impossible to use more explicit language to exclude the "Insurance Times" from the provisions applying to the other residue. The phrase "*from all the provisions of the preceding clauses I except my interest in the 'Insurance Times'*" has no meaning if applied to the previous items of the will, numbers 1 to 6, inclusive, as they provide for specific property therein named, in which the Insurance Times is not included. It is, therefore, obvious that the testator referred to the previous subdivisions of paragraph or item "ninth". The residuary clause, notwithstanding the assertion of the appellant's counsel to the contrary, consist of the first four divisions of paragraph "ninth". The testator desired to make doubly sure of excluding the "Insurance Times" from the residuary clause, and therefore prefaced it by excluding "*all of my estate—not hereinbefore disposed of or hereinafter specified.*" We submit that the phrase "hereinbefore mentioned" refers to the specific requests in the preceding paragraphs of which he desired to avoid the risk of being included in the residuary clause. If this is true, it necessarily follows that the same limitation must be given to the words "or hereinafter specified", and inasmuch as the only property specified after leaving the residuary clause, is the "Insurance Times", the testator meant to exclude that from the residuary clause. The ingenuous argument of appellant's counsel that the words of limitation were meant to exclude it ("Insurance Times") from the prior trust provisions only loses sight of the fact that the specific bequests mentioned in the previous paragraphs are excluded from all trusts. That his intention to exclude the Insur-

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ance Times from the residuary clause is further strengthened by the fact that the residuary clause gives the profits of the property contained within it to his wife and upon her death to his three children, Lucy Clara Pierson, John Frazer Kempson and St. George Kempson, to be equally divided between them, and empowers the *trustees* to sell in their discretion; while the clause dealing with the "Insurance Times" directs the business

10 to remain intact until the death or re-marriage of his wife; thereafter the property to be sold or continued and conducted as his heirs (not legatees) by majority vote might decide, exclusive of grandchildren. Furthermore, he desired his son St. George Kempson to have a permanent interest in the paper during the lifetime of his widow. A permanent interest, we submit, meant an interest that St. George Kempson could treat as his

20 own absolute property, with which he could deal, subject to his mother's life estate, as he chose. Apparently, testator had had legal advice and he anticipated the condition which now arises. To place the interpretation that the appellants wish upon this clause would prevent Mr. James A. Van Cleve having any interest in the success and profits of the Insurance Times, notwithstanding testator's announced wish in the seventh subdivision of the paragraph. He clearly differentiates between "heirs and "legatees". "Heirs" in

30 the devolution of personal property means next of kin.

Meeker v. Forbes, 14 Buch., 271.

From this language of the will, the testator meant to make no permanent disposition of the "Insurance Times". Rather, he meant to die intestate. Certainly an ordinary layman, so intending, could hardly be expected to express it in

40 plainer language.

"While it is true that the court leans towards a construction of a will which will prevent intestacy, the will must furnish the basis for such construction and if the testator, through ignorance or inadvertence, fails to dispose of all his estate, the court cannot supply the omissions."

Tyndale v. McLaughlin, (N. J.) 95 Atl. Rep., 117;
Graydon's Exrs. v. Graydon, 23 N. J. E., 229.

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"The presumption against intestacy does not authorize courts to interpolate provisions not contained in a will in order to avoid an intestacy or to disregard express directions of the will or the plain language used."

In re English's Estate (Pa.) 89 Atl. Rep., 680;
Lyon v. Safe Deposit Co. (Mo.) 87 Atl. Rep., 1089;
In re Disney's Will (N. Y.) 82 N. E. Rep., 1093;
In re Goethe's Estate (Pa.) 78 Atl. Rep., 88.

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In view of the plain language used by the testator, excluding the newspaper from the residuary clause, this court should not interpolate provisions into this will so as to avoid intestacy. Rather it is a case where the testator has excluded from the residuary clause this portion of his estate, and therefore the residuary legatees do not take such portion. *Ray v. Monroe*, 47 N. J. E., 363; *Tindall's Exrs. v. Tindall*, 9 C. E. Green, 1512; *In re Alahones Estate*, 5 Buch., 527.

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To construe this will so as to cause the "Insurance Times" to revert to the residuary clause after the termination of the trust provided for it, is to place therein a provision entirely foreign to the will itself and against the expressed words of limitation made by the testator.

Although the appellant contends that the residuary clause should be read last, there is no well-

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established authority in this state or country for such a rule of construction. Although the matter is spoken of in 40 Cyc, p. 1413, it has not received general approval in this state or country. To do so would vitiate the words of limitation used by the testator, as there would be no property "hereinafter specified", or "hereinbefore ^{disposed} ~~mentioned~~ed", which could make them intelligible.

10 The construction that either St. George Kempson or Julia H. Kempson may have placed upon this will in dealing with the assignment is, of course, utterly irrelevant on this appeal.

In view of the above decisions, we cannot conceive that this Court of Equity would look with favor upon such an interpretation of the provisions of the will now brought before it, as would work a most serious injury to innocent parties who in good faith purchased for a valuable and monetary consideration an interest in this
20 newspaper.

We therefore submit that Peter Tertins Kempson, having made no final disposition of "The Insurance Times," died intestate as to that property, subject to his widow's life interest therein; and that St. George Kempson, one of said testator's sons had accordingly a vested and transmissible interest in said newspaper property, which was duly and properly assigned by him
30 to Julia H. Kempson and James A. Van Cleve for a good and substantial consideration by agreement dated December 30, 1893, a copy of which is Schedule D of the bill herein.

The decree of the Court of Chancery should be affirmed.

Respectfully submitted,

CHARLES O. TRUOX, *Solicitor*,
for Defendant-Respondent.

CHARLES M. VAN CLEVE,
Administrator.

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MARK TOWNSEND, JR.
Of Counsel.

New Jersey Court of Errors and Appeals

Between

JOHN FRASER KEMPSON,
Complainant-Respondent,

and

GROVER C. KEMPSON, *et als.,*
Defendants-Appellants.

*On Appeal
from Final
Decree of the
Chancellor.*

Brief on Behalf of Respondents, Marian R. Brush and Edward F. Brush, Administrator of Julia H. Kempson, Deceased.

Peter Tertius Kempson died September 25, 1890, having made a last will and testament and leaving him surviving his widow, Julia H. Kempson, who died August 13, 1913, without having again married, and three children by a former marriage, namely, Lucy Clara Pierson and St. George Kempson, both now deceased, and John Frazer Kempson, still living. St. George Kempson died August 12, 1907, prior to the decease of his stepmother, widow of the testator. John Frazer Kempson is complainant in this suit.

Among the assets of Peter Tertius Kempson was a certain newspaper called "The Insurance Times."

The present contest on appeal is between certain of the defendants in this suit, namely, between, on the one part, the children of St. George Kempson, deceased, who are the appellants, and on the other part, the administrator and the only child of Julia H. Kempson, represented by us, and the administrator of James A.

Van Cleve, represented by Mr. Charles O. Truex, who are respondents.

These respondents claim by virtue of an assignment of a one-third interest in said newspaper made in his lifetime by St. George Kempson to the said Julia H. Kempson and James A. Van Cleve and contend that the said St. George Kempson had a legal right so to dispose of a one-third interest in the newspaper because his father, Peter Tertius Kempson, died intestate as to this particular asset and, therefore, such paper became the property of such assignor and his brother and sister subject, of course, to payments of profits to be made as directed during the lifetime of Mrs. Julia H. Kempson or until she should remarry. The appellants claim that the newspaper was disposed of by the residuary clause of the Will of Peter Tertius Kempson. The validity of the assignment is not in any way attacked, except to the extent that it is claimed that Peter Tertius Kempson had no legal right to make it.

The ninth clause or section of the Will of Peter Tertius Kempson contains some eight or nine unnumbered paragraphs, each commencing with a word written somewhat to the right of the other lines of the Will, thus making the first line of the paragraph shorter than the others and each to some extent dealing with a new subject. Such ninth paragraph, so far as it is pertinent, is as follows:

“NINTH; I give, devise and bequeath to Frederick R. Coudert of the City of New York, D. A. Heald, of the City of New York, president of the Home Insurance Company, Roger V. Bonnell, of Metuchen, Middlesex County, State of New Jersey, and Levi W. Norton, of Rahway, New Jer-

sey, all the rest, residue and remainder of my estate, both real and personal, not herebefore disposed of, or hereinafter specified to have and to hold the same, in trust, however, for the uses and purposes hereinafter specified and directed.

My said executors and trustees shall take and hold all the rest residue and remainder of my estate, real and personal, with all the rents, use, interest and profits of the same, for the sole use, benefit and advantage of my said beloved wife Julia H. Kempson during her natural life, or so long as she may remain *my widow* and I enjoin and direct my said executors and trustees named to keep the premises in good repair and condition, and to keep said real estate free and discharged from any and all incumbrances by taxation or assessment.

On the death or remarriage of my beloved wife Julia H. Kempson, I will and direct that my estate both real and personal, shall be divided, share and share alike between Lucy Clara Pierson, St. George Kempson and John Fraser Kempson, but if any of my children above named shall die before the happening of such event, leaving lawful issue, I then direct that the share to which such deceased widow or child would have been entitled if living to be paid such lawful issue as such deceased widow or child may leave.

Whenever in the judgment of my trustees herein named, or any two of them it shall be deemed expedient, and for the best interests of my estate, to sell the whole or any part thereof of which I may die possessed I then authorize and empower my said trustees, or any two of them, to sell or dispose

of the same, or any part thereof, and make good and sufficient deeds therefor; but the proceeds of such sales shall be re-invested by said trustees either in good bonds and mortgages upon unincumbered real estate or in bonds of the United States or the City of New York, the interests and profits thereof to be applied by my said trustees precisely as though no change has been made in said property or estate. If at any time it shall happen that funds belonging to my estate shall be accumulated in the hands of my trustees from any source, they are hereby authorized and required to invest the same upon bond and mortgage upon unincumbered real estate or property that shall be deemed a sufficient security, or in United States Government bonds, or in bonds of the City of New York, preference being given to mortgage securities if the same can be obtained, and pay the income as above provided.

From all the provisions of the preceding clauses I except my interest in The Insurance Times newspaper, its good will, contracts and all business therewith or which may become connected therewith, or so much of such business, including money in hand on in bank, and all debts due as I may owe at the time of my decease, and I direct that my interest in and control of said business pass into the hands and charge of my executors, the business to remain intact so long as my wife, Julia H. Kempson, may live or remain unmarried, the property at her death or remarriage, to be sold to the highest bidder or at private sale, or *continued and conducted, as my heirs jointly*

decide, the will of the majority, exclusive of grandchildren, ruling; but until such time all profits arising from such business are to belong to my said wife, with the exception of eight-twentieths thereof, three-twentieths of which shall be paid semi-annually to my daughter, Lucy Clara Pierson; three-twentieths to be paid semi-annually to my son, St. George Kempson, and two-twentieths thereof to be paid semi-annually to my son, John Fraser Kempson; and should my said wife again marry, I will and direct that all her right and interest in such property shall thereupon terminate."

Then follow other paragraphs making other provisions not pertinent to the present issue.

POINT I.

It is not incumbent upon us to prove that Mr. Kempson died intentionally intestate as to his newspaper. Partial intestacy usually is the result of forgetfulness or lack of care.

POINT II.

The fact that he who gave the assignment of a one-third interest in The Insurance Times believed that he had acquired such interest "under the will" of his father, if true, would not make the assignment less valid. A specific thing was bargained for and paid for. If his title was valid, his interest passed. Moreover he had acquired "under the will" a portion of what he assigned, namely, his right to a portion of the profits during Mrs. Kempson's life.

POINT III.

The fact that testator declared that his "children legatees" should not examine the books and accounts of the newspaper does not militate against our contention. Such children were legatees of a portion of the income from the paper and we believe that he meant that they should not interfere during the lifetime of their stepmother. The decision as to continuance of the business was to be made by the "heirs." Such persons could not properly arrive at a decision without having access to the books. The word "heirs," when used in reference to personal property, means next-of-kin. It is never construed to mean legatees.

POINT IV.

There is no authority for adopting the suggestion of appellants to change the order and position of the clause relating to The Insurance Times so that it shall be the first item in the Ninth Clause or shall take its place in the Will prior to the Ninth Clause. Unless its position is so changed, then there is no merit whatever in the contention of our opponents.

POINT V.

To change the position of the item relating to The Insurance Times in such manner that it would precede the first portion of the ninth clause, *i. e.*, the item relating to the residuum, would give it no meaning whatsoever. It would be absurd for the testator to have excepted the newspaper from "all the provisions of the preceding clauses" if such preceding clauses related only to the payment of debts and of specific legacies. Moreover, if the order were so

changed, then there would be no property which the residuary clause properly could refer to as property "hereinafter specified."

POINT VI.

The residuary clause contains no words declaring that it shall relate to all property not thereafter or otherwise disposed up, as indicated by appellants' brief. This clause simply gives to the trustees the residuum estate "not hereinbefore disposed of or hereinafter specified." The property thereinbefore disposed of consisted of specific legacies. The only property thereafter specified was The Insurance Times. It is very evident that the testator used the words "hereinafter specified" solely for the purpose of preventing any possible misunderstanding as to whether or not The Insurance Times should be included with what he called the "residue."

POINT VII.

The decision upon the question now under discussion must relate to the interpretation to be given to the word "clauses," which is the last word in the first line of the fifth paragraph of the ninth section. If the testator by the word "clauses" indicated only the sentences or subdivisions thereof in the fourth paragraph of Section Nine, then The Insurance Times is disposed of under paragraph three of section nine, but if by such word he indicated all of the paragraphs of section nine, or all of the preceding sections (usually called clauses) in the will, then he made no final disposition of The Insurance Times, but simply indicated in paragraph five of section nine what should be done

with the profits thereof so long as Mrs. Kempson should remain alive and unmarried.

The word "clause" has a definite and well understood technical meaning when applied to a last will and testament. It refers to the various divisions of the will, every one of which usually is preceded either by the word "item," or by a number. Usually it does not refer to a subdivision of one of such divisions. The second definition of the word "clause," as given by the Standard Dictionary, has to do with its non-legal meaning and distinguishes it from "phrase." The first and third definitions given are as follows:

"1. A distinct part of a composition, paragraph, or sentence, especially one having complete sense in itself.

"3. Law.—A distinct statement, stipulation, or proviso in a legal or state document; a separate or separable portion of an instrument, record or statute; as, a clause in an indictment or a will; an enacting clause."

The definition of the word "clause," given by "Words and Phrases," with the authorities therefor, are as follows:

"A 'clause' is one of those distinct and generally numbered subdivisions into which wills are frequently apated, or an entire unconnected provision making disposition of property. *Appeal of Miles*, 36 Atl. 39, 41; 68 Conn., 237; 36 L. R. A., 176.

"'Clause,' as used in Code, art. 93, §302, providing that no devise, in writing, of lands, tenements, or hereditaments or any clause thereof, shall be revocable except in the manner designated, means one of the subdivisions of the instrument, and hence the names of one or two devisees did not

constitute a clause of the will. *Eschbach v. Collins*, 61 Md. 478, 499; 48 Am. Rep., 123."

We are aware of the many decisions of this State to the effect that if a provision of a will is capable of two meanings, one of which shall bring it about that the testator died testate as to all of his property, and the other of which shall make it necessary to declare that he died intestate as to either a portion or the whole thereof, then that meaning must be given which will result in the declaration that he died testate as to all and it may be claimed, therefore, with some color of reasoning, that if there were nothing else in the will to guide us, it would be necessary to follow this principle of law and to declare that the word "clauses" was used not in its technical sense, but simply as indicating certain sentences or subdivisions thereof, even though in so doing we would need to ignore all definitions as to the meaning of the word "clause," when it refers to a portion of a will or other legal instrument.

However, this rule applies only when there is nothing definite or absolute to guide the Court and when, as a matter of fact, the language is capable of two or more constructions. In the present case this is not true.

It will be noted that in the second paragraph of Section Nine, the testator directs that the "rest, residue and remainder of my estate real and personal, with all the rents, use, interest and profits of the same," be held "for the sole use, benefit and advantage of my said beloved wife, Julia H. Kempson, during her natural life, or so long as she may remain my widow." It will be noted also that the fifth paragraph of said Section Nine gives to the widow of the testator not the whole, but only twelve-twentieths

of the profits of The Insurance Times, eight-twentieths of such profits being directed to be paid to the testator's three children. Therefore, we need not guess as to whether the testator wished to make some disposition of The Insurance Times different from that which he had made concerning his residuum estate. We know absolutely that he did except the profits which The Insurance Times was expected to earn from the provisions of the second paragraph of the ninth section. Therefore, we know that when he wrote "from all the provisions of the preceding clauses I except my interest in The Insurance Times newspaper, etc.," he ~~expected~~^{accepted} such newspaper from the provisions of paragraph two of Section Nine. Of course, it would be folly for any one to contend that the testator excepted the newspaper from the provisions of the second paragraph and not from the third paragraph, which makes provision for the ultimate disposition of his residuum estate, and from the fourth paragraph, which gives power of sale to his trustees. Therefore, we think that there can be no doubt that by the word "clauses," the testator indicated at least all of the preceding paragraphs of Section Nine, all of which properly are a portion of one clause, namely, clause nine, and, indeed, that the word was used in its technical sense and indicated all the preceding sections or clauses of the will. It will be noticed that sections prior to Section Nine relate to other subjects and that so far as the present contention is concerned, it makes no difference whether the word "clauses" relates to the whole of Section Nine or to the whole of the will from its very beginning up to the fifth paragraph of Section Nine.

In addition to the above argument, it may be stated that the fifth paragraph of Section Nine declares that the newspaper business shall remain intact so long as Mrs. Kempson may live or remain unmarried. Therefore, we know certainly that testator meant to except the newspaper from the fourth paragraph of Section Nine, which gives to the trustees power to sell the residuum. Can any one claim that the testator intended to except it from the provisions of paragraph two and paragraph four, but still to leave the newspaper subject to the provisions of paragraph three of Section Nine?

The decree of the Court of Chancery should be affirmed.

Respectfully submitted,

JOHN K. ENGLISH,
Solicitor for and of Counsel with Re-
spondents, Marian R. Brush and Ed-
ward F. Brush, Administrator of
Julia H. Kempson, deceased.

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