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Complaint.

In Chancery of New Jersey

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

The complainant, Mamie E. Pedrajas, of the Town of Bloomfield, in the County of Essex and State of New Jersey, respectfully shows that:

1. Raphael Isidoro Pedrajas, husband of complainant, died in the Town of Bloomfield, County of Essex and State of New Jersey, on the twenty-fifth day of July 1905, testate, and his Will was duly probated in the Surrogate's Office of Essex County on the twenty-sixth day of October, 1905, a copy of which said Will is hereto annexed and made a part of this Bill of Complaint.

2. Under the terms of said Will Louis A. Sussdorf and Ernesto de Zaldo were duly nominated and appointed executors and trustees, for the purpose of administration of said estate and carrying out the terms of the trust therein provided.

3. From the records of the Surrogate's Office of Essex County, it appears that the said Louis A. Sussdorf and Ernesto de Zaldo, so named as executors and trustees under said Will and Testament, were discharged as such, by order of the Orphans' Court of Essex County, dated October 9th, 1908, and by said Order Allison Dodd was appointed executor and trustee in the place and stead of said Sussdorf and Zaldo, and further by order of said Orphans' Court dated November 25, 1925, the said Allison Dodd was relieved from

the duties of executor and trustee under said Will and by said last mentioned order the Bloomfield Trust Company was appointed executor and trustee under said Will in the place and stead of Allison Dodd, and the said Bloomfield Trust Company has continued to act as said trustee under said Will from the date of its appointment, as aforesaid, down to the present time and is now acting as such trustee; that at all times the estate in the hands of any and all such trustees, was personal property.

4. Only one child was born of the marriage between complainant and the said Rafael Isidoro Pedrajas, namely, a son, Rafael Louis Pedrajas, who, at the death of his father was thirteen years of age, and that at the death of the said Rafael Isidor Pedrajas, complainant and said son were his only next kin and heirs at law, as the said testator had no other children nor children of any deceased child, living at the time of his death.

5. Under the terms of the Will of Rafael Isidoro Pedrajas, he gave, devised and bequeathed his entire estate, both real and personal, to his executors and trustees, in trust, and directed that his entire estate be sold and that the income and profits thereof be paid to his wife, complainant, during her life, and upon her death the trustees were directed to pay over and deliver said trust estate to the son of testator, Rafael Louis Pedrajas, provided said son shall have reached the age of twenty-five years, and if complainant should die before their said son should arrive at the age of twenty-five years, then so much of the income of said trust as in the judgment of the Trustees should be necessary for the support and maintenance of said son shall be paid to him until he

should arrive at the age of twenty-five years, and in the event that complainant and said son should both die before said son reached the age of twenty-five years, and the son should leave issue him surviving, then such issue was to receive the principal of said estate at the time said son would have reached the age of twenty-five years. And said Will further provided that the principal of said trust estate be paid to the sister of testator, Lilla Palomino, in the event complainant and her said son should both die before the said son should arrive at the age of twenty-five years, without issue of said son. For the exact wording and legal effect of all which provisions of said Will, complainant refers to the Will itself, as annexed hereto.

6. That Rafael Louis Pedrajas, the son of the marriage between complainant and the testator, and being the son mentioned as the remainderman under said Will, died, intestate, on the eighteenth day of June, 1926, at the age of thirty-four years, he never having married during his lifetime, and he so having died without issue, and complainant was and is the only next of kin and heir-at-law of her said son Rafael Louis Pedrajas.

7. That said Will of Raphael Isidoro Pedrajas specifically directed his executors and trustees, to sell any and all real estate of which he might die seized as soon as might be practicable after his death, said Will also containing a further and broader power of sale. (See copy annexed hereto.) That such trustees obeyed the direction of the Will and actually converted the real estate into personalty as therein directed; so that the entire estate was personal property.

8. That the life estate provided for complainant in the Will of her husband, as aforesaid, had no restrictions upon the same and was based upon no conditions that would in any way prevent said life estate merging with the remainder, so that complainant, upon inheriting the remainder from her son, became entitled to the said trust estate absolutely and is entitled to the possession and enjoyment of the same.

9. That according to the terms of said trust, as set forth in said Will, Rafael Louis Pedrajas, son of the testator, became vested of the principal of said trust at the death of his father.

10. That as Rafael Louis Pedrajas lived to be thirty-four years of age, and having at the time of his death been vested with the principal of said trust fund, and having died intestate, and complainant having survived her said son, and she being his next kin and heirs-at-law, and the said trust estate or the corpus thereof consisting of personal property only, therefore and by reason of the above facts, complainant became vested of the principal of said trust fund, and estate, and the same merged with the life estate complainant held in said estate, and therefore complainant is now entitled to the complete ownership, possession and enjoyment of said estate absolutely, for her own use and benefit forever.

11. That because of the fact that complainant has so become vested with the remainder of said estate combined with her life estate, and because she is thus entitled to the complete ownership, possession and enjoyment of said estate absolutely, she has asked the Bloomfield Trust Company, the present trustee of said trust, to make a final accounting of said trust to her and to turn

over to her by assignment or otherwise, the possession of all the assets and property making up the principal of said trust fund, but the said Bloomfield Trust Company, trustee as aforesaid, refuses to comply with her request, and advises her that she has only a life estate, or income for life, in said trust estate.

12. That Rafael Isidoro Pedrajas at the time of his death, as complainant has already alleged, left as his only next of kin and heirs at law, his widow, complainant, and one son, Rafael Louis Pedrajas, there being no other child of said testator, and no children of any deceased child, but at the time of his death, the testator left him surviving the following sister, namely—Lilla Palomino, residing at River Edge, New Jersey, there being no children of any deceased brother or sister of testator, which sister is made a party defendant to this action, as she may claim some right, title or interest in said trust fund.

13. That the Bloomfield Trust Company, of Bloomfield, New Jersey, is made a party defendant as it now is the sole trustee of the trust established and created in said last Will and Testament of Rafael Isidoro Pedrajas, deceased.

14. That because of the refusal of the said trustee, the Bloomfield Trust Company, to account for and transfer and assign unto complainant the possession of the assets and property of said trust estate, complainant filed this Bill.

15. In consideration whereof, and forasmuch as complainant is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are properly cognizable and relievable, and to the end—

(a) That the defendants the Bloomfield Trust Company and Lilla Palomino, and each of them, may answer this Bill of Complaint and each statement made therein.

(b) That the Will of Rafael Isidoro Pedrajas may be construed by this Court, and that this Court may decree that the life estate and remainder of the trust created under the Last Will and Testament of Rafael Isidoro Pedrajas has merged and the entire estate vested in complainant because the life estate so created by said Will was for the sole benefit of complainant and by reason of the vesting of the remainder of said trust estate in Rafael Louis Pedrajas, son of testator, at the death of testator, and by reason of the fact that the principal of said trust fund at all times consisted and consists of personal property, and because the said Rafael Louis Pedrajas, after attaining the age of twenty-five years and at the age of thirty-four years, died intestate, leaving complainant as his only next of kin and heirs at law.

(c) That the defendant the Bloomfield Trust Company, the trustee under the Last Will and Testament of Rafael Isidoro Pedrajas, may be ordered and decreed to make a final accounting in this court of the entire trust estate, and further that said Bloomfield Trust Company, as said trustee, may be ordered to assign and transfer all the securities and assets and property constituting said trust fund, and the principal thereof, over to complainant, and further that this court by its decree shall terminate the trust created under the Last Will and Testament of Rafael Isidoro Pedrajas, so that your complainant may have present complete ownership, possession and absolute right

and enjoyment of said trust fund, and the principal thereof.

And that complainant may have such further or other relief as the nature of her case requires, and as may be agreeable to equity.

May it please your Honor to grant unto your complainant the State's Writ of Subpoena, issuing out and under the seal of this Court, to be directed to the Bloomfield Trust Company, and to Lilla Palomino, commanding them, and each of them, to appear before your Honor in this Court, then and there to answer the premises and to stand to, abide by and perform such order and decree as your Honor shall make therein, and complainant will ever pray &c.

GEORGE B. ASHLEY,
Solicitor for and of Counsel with
Complainant.

Will, Annexed to Complaint.

COPY.

I, RAFAEL ISIDORO PEDRAJAS publish and declare this to be my last will and testament:

FIRST: I direct my executors and trustees hereinafter named, as soon as may be practicable after my death, to sell and convey any and all real estate or interests therein of which I may die seized or possessed. I authorize and empower my said executors and trustees to sell and dispose of any real estate or interest therein which may at any time come to their hands, at public or private sale, at such times, upon such terms, and in such manner as to them shall seem advisable; and to execute any and all instruments of conveyance thereof, with warranty or otherwise, as may be necessary.

SECOND: I give, devise and bequeath unto my executors and trustees hereinafter named all my property, real and personal, and wheresoever situated, in trust, for the following uses: To collect the income and profits thereof and pay the same to my wife Mamie E. Pedrajas for and during the term of her natural life.

THIRD: Upon the death of my said wife Mamie E. Pedrajas, I direct my said executors and trustees to pay over, transfer and deliver my estate then in their hands to my son Rafael Louis Pedrajas, provided, however he shall have reached the age of twenty-five years. In the event of the death of my said wife, leaving my said son, then I direct that so much of the income of my estate, as in their judgment is necessary,

be applied by my said trustees for the support and maintenance of my said son until he shall have arrived at the age of twenty-five years. In the event of my said son leaving issue him surviving, such issue is to receive the principal of my estate at the time my son would have reached the age of twenty-five years. In the event of the death of my said son before reaching the age of twenty-five years, leaving no issue him surviving, then I direct my said executors and trustees to pay over, transfer and deliver all my said estate to my sister Lilla Palomino, wife of Rafael de Castro Palomino, or in the event of her prior death, leaving issue, to such issue per stirpes.

FOURTH: Upon the death of my said wife I hereby commit the guardianship of my said son unto my said sister Lilla Palomino.

FIFTH: I hereby authorize my said executors and trustees hereinafter named to invest money or property which may come to their hands in such manner as may seem to them advisable for the carrying out of this my will, my intention being to give my said executors and trustees the fullest power as to investments compatible with the exercise of a sound discretion.

I hereby authorize my executors and trustees in their discretion, to leave in the business of Sussdorf Zaldo & Company, such interest as I may have therein at the time of my death, upon such terms as may be agreed upon with the surviving partners.

SIXTH: I hereby nominate and appoint my friends Louis A. Sussdorf and Ernesto de Zaldo

as the executors and trustees of this my will, and request that no bonds or other security be required of them.

In witness whereof, I have hereunto subscribed my name and affixed my seal this 16th day of May, 1902.

Rafael Isidoro Pedrajas (L. S.)

The foregoing instrument was subscribed, Sealed, published and declared by the said Rafael Isidoro Pedrajas as and to be his last will and testament, in our presence, and we at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses with our addresses the day and year above written.

Frederick B. Campbell; 713 Park Avenue, Manhattan, New York City, N. Y.

Samuel M. Chestnut, 2656—8th Ave., New York City, N. Y.

Answer of Defendant Lilla Palomino.

IN CHANCERY OF NEW JERSEY.

Between

Mamie E. Pedrajas,
Complainant,

and

Bloomfield Trust Company,
et al.,
Defendants.

Answer of Defendant Lilla Palomino.

Lilla Palomino, by Besson, Alexander & Stevens her solicitors answering the bill of the Complaint herein respectfully shows as follows:

1. She admits the allegations set forth in Sections 1, 2, 3, 4, 6, 7, 12 and 13.

2. She denies the allegations in Section 5 of the bill so far as they vary from the provisions of the will of Raphael Isidoro Pedrajas.

3. She denies the allegations in Section 8 of the bill and shows that the remainder interest created by said will in favor of Rafael Louis Pedrajas was a contingent remainder and not a vested remainder and that upon the death of the said Rafael Louis Pedrajas the said remainder became vested in this defendant, Lilla Palomino.

4. She denies the conclusion set forth in Sections 9 and 10 of the bill and charges that upon the death of the son, Rafael Louis Pedrajas, that this defendant became vested and entitled to the

remainder of the estate of Rafael Isidoro Pedrajas, subject to the trust created in the second paragraph of his will, that is to say, "to collect the income and profits thereof and pay the same to my wife, Mamie E. Pedrajas, for and during the term of her natural life".

This defendant, Lilla Palomino, further answering by way of counter-claim against the said complainant says: That by virtue of the third paragraph of the last will and testament of the said Raphael Isidoro Pedrajas upon the death of the son, Rafael Louis Pedrajas, she became and now is vested in all of the estate of the said Raphael Isidoro Pedrajas, aforesaid, subject to the collection of the income and profits thereof during the natural life of the widow, namely, Mamie E. Pedrajas.

This defendant therefore prays that this court decree that this defendant is vested with all the estate of the said Raphael Isidoro Pedrajas, subject to the trust in the Bloomfield Trust Company to collect the income and profits thereof and pay the same to the complainant, Mamie E. Pedrajas, for and during the term of her natural life, and that the bill of the Complainant be dismissed.

Besson, Alexander & Stevens
Solicitors for defendant - Lilla Palomino -

J. W. Rufus Besson
of Counsel

Stipulation.

IN CHANCERY OF NEW JERSEY.

Between

MAMIE E. PEDRAJAS,
Complainant,

and

BLOOMFIELD TRUST COMPANY,
et al.,
Defendant.

On Bills, Etc.

For the purpose of the final hearing herein:

It is hereby stipulated between the parties complainant and defendants, that the following facts are true:

1. Raphael Isidoro Pedrajas was married to the Complainant, Mamie E. Pedrajas, and they were husband and wife, living together as such at the time of the death of Raphael Isidoro Fedrajas, July 25th, 1905, and were residents of the Town of Bloomfield, County of Essex and State of New Jersey.

2. That one child was born of the said marriage between Raphael Isidoro Pedrajas and the Complainant, Mamie E. Pedrajas, namely, Rafael Louis Pedrajas.

3. That said son, Rafael Louis Pedrajas, died intestate on the 18th day of June, 1926, at the age of thirty-four years.

Stipulation.

4. That Raphael Isidoro Pedrajas died at and as a resident of the Town of Bloomfield, County of Essex and State of New Jersey, July 25th, 1905, testate, and his Will was duly probated in the Surrogate's Office of Essex County, October 26th, 1905, and a copy of said Will annexed to the said Bill of Complaint in this cause is a true copy of the Last Will and Testament of Raphael Isidoro Pedrajas.

5. That the records of the Essex County Surrogate's office show:

a. That Louis A. Sussdorf and Ernesto de Zaldo were named as Executors and Trustees under the Will of Raphael Isidoro Pedrajas and they qualified as such.

b. That the said Louis A. Sussdorf and Ernesto de Zaldo were discharged as such Executors and Trustees by order of the Essex County Orphan's Court, dated October 9th, 1908, and by said order Allison Dodd was appointed Executor and Trustee of the Will of Raphael Isidoro Pedrajas, in the place and stead of Sussdorf and de Zaldo.

c. That by order of the Essex County Orphan's Court, dated November 25th, 1925, the said Allison Dodd was discharged as said Executor and Trustee of said Will and by said last named order the Bloomfield Trust Company was substituted Executor and Trustee of the Will of Raphael Isidoro Pedrajas and the said Bloomfield Trust Company has been acting as such Executor and Trustee from the date of its appointment, aforesaid, up to the present time and is still acting as such.

Stipulation.

6. That the testator's, Raphael Isidoro Pedrajas, widow, the Complainant of this cause and their only child (being the only child of said Testator, Raphael Isidoro Pedrajas) both survived the said testator; the testator, Raphael Isidoro Pedrajas, left no other children, nor no children of any deceased child.

7. That Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, was never married and never had any children, and his mother, the Complainant in this cause, is his only next of kin and heir at law.

8. That the Complainant, Mamie E. Pedrajas, widow of Raphael Isidoro Pedrajas, and mother of Rafael Louis Pedrajas, is alive at the present time and has never been remarried.

9. That the real estate of which the said Raphael Isidoro Pedrajas died seized was sold by the Executor and Trustee under the provisions of the Will of Raphael Isidoro Pedrajas shortly after the death of Raphael Isidoro Pedrajas.

10. That Lilla Palomino, sister of Raphael Isidoro Pedrajas, deceased, is alive and is one of the Defendants in this cause, and that she was the only sister of the deceased, and that she has issue living.

GEORGE B. ASTLEY,
Solicitor for the Complainant,
Mamie E. Pedrajas.

ROBERT M. BOYD,
Solicitor for the Defendant,
Bloomfield Trust Company.

BESSON, ALEXANDER & STEVENS,
Solicitors for the Defendant,
Lilla Palomino.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between

MAMIE E. PEDRAJAS,
Complainant,

and

BLOOMFIELD TRUST COMPANY,
et als.,
Defendant.

GEORGE B. ASTLEY, Esq., for Complainant.

ROBERT M. BOYD, Jr., Esq., for Bloomfield Trust Company. (No brief filed.)

BESSON, ALEXANDER & STEVENS, for Lilla Palomino.

CHURCH, V. C.

This is a bill for the construction of the will of Raphael Isidoro Pedrajas.

The facts as stipulated by counsel are as follows:

1. Raphael Isidoro Pedrajas was married to the Complainant, Mamie E. Pedrajas, and they were husband and wife, living together as such at the time of the death of Raphael Isidoro Pedrajas, July 25th, 1905 and were residents of the Town of Bloomfield, County of Essex and State of New Jersey.

2. That one child was born of the said marriage between Raphael Isidoro Pedrajas and the Complainant, Mamie E. Pedrajas, namely, Rafael Louis Pedrajas.

3. That said son, Rafael Louis Pedrajas died intestate on the 18th day of June, 1926, at the age of thirty four years.

4. That Raphael Isidoro Pedrajas died at and as a resident of the Town of Bloomfield, County of Essex and State of New Jersey, July 25th, 1905 testate, and his will was duly probated in the Surrogate's Office of Essex County October 26th, 1905 and a copy of said will annexed to the said bill of complaint in this cause is a true copy of the last will and testament of Raphael Isidoro Pedrajas.

5. That the records of the Essex County Surrogate's Office show:

a. That Louis A. Sussdorf and Ernesto de Zaldo were named as Executors and Trustees under the will of Raphael Isidoro Pedrajas and they qualified as such.

b. That the said Louis A. Sussdorf and Ernesto de Zaldo were discharged as such executors and Trustees by order of the Essex County Orphans' Court, dated October 9th, 1908, and by said order Allison Dodd was appointed Executor and Trustee of the Will of Raphael Isidoro Pedrajas, in the place and stead of Sussdorf and de Zaldo.

c. That by order of the Essex County Orphan's Court, dated November 25th, 1925, the said Allison Dodd was discharged as said Executor and Trustee of said will and by said last named order

the Bloomfield Trust Company was substituted Executor and Trustee of the will of Raphael Isidoro Pedrajas and the said Bloomfield Trust Company has been acting as such Executor and Trustee from the date of its appointment, aforesaid, up to the present time and is still acting as such.

6. That the testators, Raphael Isidoro Pedrajas, widow, the complainant of this cause and their only child (being the only child of said testator, Raphael Isidoro Pedrajas) both survived the said testator; the testator, Raphael Isidoro Pedrajas, left no other children, nor no children of any deceased child.

7. That Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, was never married and never had any children, and his mother, the complainant in this cause, is his only next of kin and heir at law.

8. That the complainant, Mamie E. Pedrajas, widow of Raphael Isidoro Pedrajas, and mother of Rafael Louis Pedrajas, is alive at the present time and has never been remarried.

9. That the real estate of which the said Raphael Isidoro Pedrajas died seized was sold by the executor and trustee under the provisions of the will of Raphael Isidoro Pedrajas, shortly after the death of Raphael Isidoro Pedrajas.

10. That Lilla Palomino, sister of Raphael Isidoro Pedrajas, deceased, is alive and is one of the defendants in this cause, and that she was the only sister of the deceased; and she has an adult daughter living.

The clauses of the will that are in dispute are "Second: I give, devise and bequeath unto my executors hereinafter named, all my property,

real and personal, and wheresoever situated, in trust for the following uses: To collect the income and profits thereof and to pay the same to my wife, Mamie E. Pedrajas, for and during the term of her natural life." "Third: Upon the death of my said wife, Mamie E. Pedrajas, I direct my said executors and trustees to pay over, transfer and deliver my estate then in their hands, to my son Rafael Louis Pedrajas, provided however he shall have reached the age of twenty-five years. * * * In the event of the death of my said son before reaching the age of twenty-five years, leaving no issue him surviving, then I direct my said executors and trustees to pay over, transfer and deliver all my said estate to my sister, Lilla Palomino, wife of Raphael de Gustav Palomino, or in the event of her prior death leaving issue, to such issue *per stirpes.*"

The first section of the will directs the executors to sell the real estate "as soon as may be practicable after my death". This as was admitted on the argument converted the estate into personalty. See *Fidelity Union Trust Co.* v. *Green,* 98 N. J. Equity 538 at 542 where it is stated "In Dutton *v.* Pugh, 45 N. J. Equity 426, the Court held 'The direction to the executors to sell the residue of the estate is positive. They are allowed full discretion as to the manner of sale and not limited as to the time of making it. Under the circumstances the land must be considered as converted into money from the death of the testator. However, it is only a conversion for the purposes of the will. Moore *v.* Robbins, 53 N. J. Equity 137.' "

Defendant, Lila Palomino, contends that the trust should be continued until the death of the life tenant for her benefit or that of her issue. I

cannot see that she now has any interest in the estate. The will left the property to the son provided he reached the age of twenty-five years subject only to the life estate of the mother.

"Where the time of payment is postponed only for the purpose of letting in a life interest, the remainder interests vest immediately on the death of the testator." *Redmond* v. *Gummere,* 94 N. J. Equity 216 at p. 217, and cases cited. *Sampson* v. *Sampson,* 124 Atlantic, 708. Rafael therefore took a vested interest at his father's death subject to its being divested should he die before reaching the age of twenty-five years. He lived to be thirty-four.

It is admitted in the stipulation that the mother of Rafael is his only next of kin. Complainant prays that the Court decree that the estates bequeathed to mother and son have merged and that she is now the absolute owner in fee. I believe the estates have merged.

In 21 Corpus Juris 1036 it is stated "Whenever a particular estate for life and the next vested estate in remainder or reversion expectant thereon meet in the same person, the former estate is merged provided (as in this case) the estate in remainder or reversion is as large as the preceding estate." Numerous authorities are cited.

In *Bowen* v. *Driggers,* 138 Ga. 398, the Court held where a testator devised a tract of land to his wife for life and at his death there was no other heir, the two estates merged into a fee simple.

In *Holcomb* v. *Lake,* 24 N. J. Law, 686 at 693, the Supreme Court held "Now it is well settled as a general rule that (quoting from 2 Black Com. 177) whenever a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or in the law phrase is said to be merged, that is, sunk or drowned in the greater." This was affirmed in 25 N. J. Law 605. See also *Wills* v. *Cooper,* 25 N. J. Law 137 at 149. And *L'Hommedien* v. *L'Hommedien,* 98 N. J. Equity 554.

As Vice Chancellor Leaming said in the case of *Brooks* v. *Davis,* 82 Equity 118 "The entire estate having at this time become vested in complainant there can be no doubt of the jurisdiction of this Court to grant the relief sought." (Terminating the trust.)

I will advise a decree according to the prayer of the bill.

Decree.

IN CHANCERY OF NEW JERSEY.

62—380

Between

MAMIE E. PEDRAJAS,
Complainant,

and

BLOOMFIELD TRUST COMPANY,
et als.,
Defendants.

On Bill, Etc.
Decree.

This cause having been regularly brought on for final hearing and duly heard in the presence of George B. Astley, Esq., of Counsel with the Complainant, and Robert M. Boyd, Jr., Esq., of Counsel with the defendant, Bloomfield Trust Company, and J. W. Rufus Besson, Esq., of Counsel with the defendant, Lilla Palomino, and the Court having duly considered the same and being of the opinion that the Complainant is entitled to the relief prayed for by her in her bill.

And it satisfactorily appearing to the Court that by virtue of the provisions of the Last Will and Testament of Raphael Isidoro Pedrajas and the trust therein created, that trust estate consisted entirely of personalty: that Rafael Louis Pedrajas, son of the testator, became vested of the remainder of said trust as of the time of testator's death, subject to the life estate of complainant and subject to the said son living until

he became twenty-five years of age; that said son died on June 18th, 1926, at the age of thirty-four years; that the complainant, Mamie E. Pedrajas, widow of Raphael Isidoro Pedrajas, was given the life estate of said trust; that said son being so vested of the remainder of said trust died intestate and without issue, and his mother, the complainant, was his only next of kin and heir at law, whereby complainant became vested of the remainder of said trust estate and whereas she is also the life tenant of said trust, the said life estate and remainder merged on the death of the son of the complainant.

It is on this 3rd day of May, 1927, on motion of George B. Astley, Esq., solicitor for and of Counsel with the complainant, ORDERED, ADJUDGED and DECREED, that the life estate and remainder of the trust created under the Last Will and Testament of Raphael Isidoro Pedrajas have merged, and the entire estate is vested in the complainant, Mamie E. Pedrajas, and the said complainant is entitled to the complete ownership, possession and enjoyment of the assets of the said trust estate.

Further decreed that the trust created under the Last Will and Testament of Raphael Isidoro Pedrajas is terminated and at an end.

Further decreed that the defendant, the Bloomfield Trust Company, the trustees of the trust created under the Last Will and Testament of Raphael Isidoro Pedrajas, do transfer, assign and deliver unto the complainant, Mamie E. Pedrajas, all the assets making up said trust estate, upon the passing of the final account in this matter.

Further decreed that the defendant, the Bloomfield Trust Company as such trustee does make and file with this Court its final account covering the point since the last accounting of said trust,

which said final account shall be filed with this Court within thirty days from the date of this decree; and that thereupon the complainant or the defendant Bloomfield Trust Co., trustee, may apply at the foot of this decree for directions as to further proceedings if necessary under such accounting, upon five days' notice by either party to the other.

Be it further ordered that solicitors for the defendant Lilla Palomino be allowed a Counsel fee of Two hundred dollars.

Respectfully advised,

ALONZO CHURCH,
V. C.

Above decree approved as to form.

ROBERT M. BOYD,
Solicitor of the defendant Bloomfield Trust Company.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Between

MAMIE E. PEDRAJAS,
Complainant,

and

BLOOMFIELD TRUST COMPANY and LILLA PALOMINO,
Defendants.

On Bill, etc.

The defendant, LILLA PALOMINO, hereby appeals from the final decree made in this Court in the above stated cause to the Court of Errors and Appeals in the last resort in all causes.

The above mentioned decree was made by the Chancellor on the advice of Vice-Chancellor Alonzo Church.

Dated, May 6th, 1927.

BESSON, ALEXANDER & STEVENS,
Solicitors of Defendant,
Lilla Palomino.

J. W. RUFUS BESSON,
of Counsel.

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

J. W. RUFUS BESSON,
of Counsel with Defendant,
Lilla Palomino.

Petition.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MAMIE E. PEDRAJAS,
Complainant-Respondent.

and

BLOOMFIELD TRUST COMPANY,
et als.,
Defendants-Appellants.

On Bill, etc.,

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

The petition of LILLA PALOMINO, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the third day of May, nineteen hundred and twenty-seven, wherein your petitioner was defendant, and Mamie E. Pedrajas, was complainant, in this respect, to wit—

That the said decree orders, adjudges and decrees that the life estate and remainder of the trust created under the Last Will and Testament of Raphael Isidore Pedrajas have merged, and the entire estate is vested in the complainant, Mamie E. Pedrajas, and the said complainant is entitled to the complete ownership, possession and enjoyment of the assets of the said trust estate.

Further decreed that the trust created under the Last Will and Testament of Raphael Isidore Pedrajas is terminated and at an end.

Further decreed that the defendant, the Bloomfield Trust Company, the trustees of the trust created under the Last Will and Testament of Raphael Isidore Pedrajas, do transfer, assign and deliver unto the complainant, Mamie E. Pedrajas, all the assets making up said trust estate, upon the passing of the final account in this matter.

The Chancellor should have by his decree determined that the remainder of the Trust created under the Last Will and Testament of Raphael Isidore Pedrajas, was and is vested in the defendant Lilla Palomino and that the complainant's bill should be dismissed.

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

BESSON, ALEXANDER & STEVENS,
Solicitors of Defendant-Appellant,
Lilla Palomino.

J. W. RUFUS BESSON,
of Counsel with Appellant,
Lilla Palomino.

(Common joinder of issue filed.)

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New Jersey Court of Errors and Appeals

Between

MAMIE E. PEDRAJAS,
Complainant-Respondent,

and

BLOOMFIELD TRUST CO. and
LILLA PALOMINO,
Defendants-Appellants.

ON BILL, ETC. ON APPEAL FROM FINAL DECREE IN CHANCERY.

BRIEF FOR LILLA PALOMINO, DEFENDANT-APPELLANT.

This matter came on to be heard on the Bill of Complaint (page 1 of case). Answer and Counterclaim of defendant Lilla Palomino (page 11 of case) and stipulation of facts (page 13 of case).

Facts.

When the will was executed there were three individuals who were the objects of the testator's bounty.

(1) Mamie E. Pedrajas, his wife, the complainant herein.

(2) Rafael Louis Pedrajas, his son, an infant of about ten years of age.

(3) Lilla Palomino, his sister, the defendant herein.

The son, Rafael Louis Pedrajas, lived to be thirty-four years of age and died before the death of his mother, leaving no issue.

The testator by the second section of his will provided for his wife, as follows—

> "Second: I give, devise and bequeath unto "my executors and trustees hereinafter "named, all my property real and personal, "and wheresoever situated, IN TRUST, for the "following uses: To collect the income and "profits thereof and pay the same to my wife, "Mamie E. Pedrajas, for and during the term "of her natural life."

This section of the will shows that it was the clear intention of the testator that the wife's interest should be limited to a life interest, otherwise he would have so provided.

The third section of the will provides for the two other objects of his bounty, his son (2) and his sister (3), as follows—

> "Third: *Upon the death of my said wife,* Mamie E. Pedrajas, I direct my said executors and trustees to pay over, transfer and deliver my estate then in their hands to my son, Rafael Louis Pedrajas, provided, however, he shall have reached the age of twenty-five years. In the event of the death of my said wife, leaving my said son, then I direct that so much of the income of my estate, as in their judgment is necessary, be applied by my said trustees for the support and maintenance of my said son until he shall have arrived at the age of twenty-five years.
>
> "In the event of my said son leaving issue him surviving, such issue is to receive the principal of my estate at the time my son would have reached the age of twenty-five years.
>
> "In the event of the death of my said son before reaching the age of twenty-five years, leaving no issue him surviving, then I direct my said executors and trustees to pay over, transfer and deliver all my said estate to my sister Lilla Palomino, wife of Rafael de Castro Palomino, or in the event of her prior death, leaving issue, to such issue *per stirpes.*"

The whole of this section is predicated on the first words of the section.

"Upon the death of my said wife."

Law.

It is also a general rule that all parts of a will are to be construed in relation to each other, so as if possible, to form one consistent whole.

28 R. C. L., p. 207, Sec. 167.

The intention will control any arbitrary rule, however ancient may be its origin.

28 R. C. L., p. 214, Sec. 173.

No part of the instrument is to be discarded unless in conflict with some other part, in which case, that part will be enforced which expresses the intention of the testator.

The Courts will seize upon the slightest indications of that intention which can be found in the will to determine the real objects and subjects of the testator's bounty.

28 R. C. L., p. 218, Sec. 177.

The clear intention of the testator should prevail, although it would require some departure from the literal construction of one of the clauses in the will.

28 R. C. L., p. 218, Sec. 178.

The general pervading purpose of the testator may override any inconsistent special provisions found in the will, and it has been held that the testator's particular intent, as shown by a single provision standing by itself, must yield to the general leading intent as manifested in the whole instrument.

A general intent is of weight in determining what was intended by particular devices or bequests which may admit of enlarged or limited constructions. In the interpretation of a will the dominant or primary intention, gathered from the whole thereof and all its provisions, must be allowed to control, and a particular and *minor intent is never permitted to frustrate a general and ulterior object of paramount consideration.*

Accordingly in interpreting wills, favor will be accorded to those beneficiaries who appear to be the special objects of the testator's bounty.

28 R. C. L., p. 210, Sec. 178.

Words which import a contingency may be so explained and controlled by the context of the will as not to prevent the legacy from vesting, the *intention* of the testator predominating over *technical words* and expressions, when either declared or apparent *from a sound construction* of the will.

Corbin v. *Wilson,* 2 Ashm. (Pa.) 178.

All rules of construction are designed to ascertain and give effect to the intention of the testator, for the very purpose of the construction of a will is to ascertain the intention of the testator as expressed in the will viewed in the light of the attending circumstances.

28 R. C. L., p. 204, Sec. 165.
2 L. R. A. (*New Series*), 443.

It is judicial duty, whenever properly invoked, to discover, if practicable, the real intent expressed in a will and enforce it.

In Re Estate of Plankington, 152 Wis. 275;
48 L. R. A. (New Series), 1004;
Pennington v. *Excr's of Van Houten, et al.,* 8 N. J. Equity, 272-274.

"In determining the question presented by this appeal the intention of the testator must prevail, and that intention must be gathered from the four corners of the will."

In Re Collins Estate, 133 At. Rep., page 188 at page 190.

In Re McGill v. *The Trust Company of New Jersey,* 94 N. J. Eq., page 657, at page 674:

"The test is, as always, *testator's intent.* In the *Graves Case* testator himself expressed his main purpose and intent as being to accomplish an illegality—the tying up of the estate for the benefit of great grandchildren. In this case it is to my mind impossible to conclude otherwise than that Dr. McGill's main purpose and intent (aside from the benefit to Alexander himself) was to benefit Alexander's children by the income for their lives."

No mention of an estate for life in the grandchildren is made in the will. The trust created for them was declared void as against the rule against perpetuities.

In *Pennington* v. *Ex'rs. of Van Houten, et al.,* 8 N. J. Equity, pp. 272-274, the Chancellor says:

"If the intention can be satisfactorily gathered from the *frame and provisions of the will* and the language and construction of the

particular clause, *it is the duty of the Court* to declare that intention."

In affirming this decision in 8 N. J. Equity 745, at page 749, GREEN, C. J. says:

> "The power of the court to effectuate the manifest intent of the testator by inserting omitted words, by altering the collocation of the sentences, or even reading the will directly contrary to its primary signification, is well established. By so doing the courts do not purpose to alter the will, to substitute their will for the will of the testator, but merely *to prevent* the intention of the testator from being defeated by a mistaken use of language. It is a question simply whether the courts will execute the clear *intent of the* testator not fully or clearly expressed in the will, or whether, by a strict technical adherence to the form of words and their literal meaning they will suffer the intention of the testator to be defeated. Upon this point the law is well settled both in regard to real and personal property."

Vice Chancellor Berry in *In re Collins Estate,* 133 Atlantic Reporter, page 188 at page 190, says:

> "In determining the question presented by this appeal the intention of the testator must prevail, and that intention must be gathered from the four corners of the will. All rules of construction are designed to determine that intention, and may be totally disregarded where their application would do violence to the plain intent of the testator, as disclosed by the language of the will. No rule of construction can be invariably applied to a certain word formula."

Argument.

The will as a whole clearly shows that the testator's intention was to take care of the three individuals who alone were the sole objects of and entitled to his bounty as follows:

> HIS WIFE: He took care of her by creating a trust by which she was to be provided for during her natural life.
>
> HIS SON: Who was to have the estate if he survived his mother, but was not to have control of the principal of the estate until after he reached the age of twenty-five years.
>
> HIS SISTER: After the life estate in his wife and if the son predeceased his mother without issue.

Having in mind that the son was not to have control until after he was twenty-five years of age, the scribe of the will inadvertently repeated the words "before reaching the age of twenty-five years," in each of the four clauses making up the third section of the will and the use of these words was inadvertently inserted in four clauses in repetition of the previous clause is clearly indicated by reason of the fact that by the fourth clause of third section of the will (page 8 of case, line 30) and following through the nineteenth line of page 9 he provides that his sister, Lilla Palomino, is to receive the estate eventually, "or in the event of her prior death, leaving issue, to such issue *per stirpes,*" really indicating that he wished his branch of the family to receive the benefit of his bounty, at all events.

In order to carry this clear intention of the testator it is demonstrated that the words "before reaching the age of twenty-five years" in the last

clause of the third section was inadventently used and had no logical meaning and was inserted in repetition.

Having provided for his wife, as long as she lives, and having provided for his son in case he survive his mother, and then having mentioned his sister and "her issue *per stirpes*" can there be any question that it was the intention of the testator that if the son did not live to enjoy the benefit of the estate that it was he intention of the testator that his sister, the only other blood relation he had, should enjoy it, no matter at what age the son died.

He certainly declared his intention that he did not want it to go to his wife's relations whom he may never have known. If he had any such desire he would have so provided at the end of the second section by adding the words "if she should survive my son and his issue if any, then she shall have my entire estate". To give the estate to the wife at this time violates the expressed intention of the testator.

The learned Vice-Chancellor dismissed the contention of the defendant Lilla Palomino with these words. See Case, page 19, line 38, as follows:

> "Defendant, Lilla Palomino, contends that the trust should be continued until the death of the life tenant for her benefit or that of her issue. I cannot see that she now has any interest in the estate. The will left the property to the son provided he reached the age of twenty-five years subject only to the life estate of the mother."

Indicating that no consideration was given to the fact that there were only three persons who were the subjects of the bounty of the testator; that he attempted to provide for all three in their regular order; and that in mentioning his sister,

Lilla Palomino he also provided ultimately for "her issue *per stirpes*"—but read the first and last clauses of the third section literally without applying the laws of construction of wills established in the court so lucidly set out by Chief Justice Green in *Pennington* v. *Ex'rs of Van Houten* in 8 N. J. Equity, p. 745-749, above set out.

The brief for the Complainant is based on the assumption that the last clause of the third section of the will must be read literally without giving any consideration to the clear intent of the testator as shown clearly on the face of the will in reference to those who were the sole objects of his bounty.

We respectfully submit that the decree of the Court of Chancery should be reversed and that this honorable court decree that the prayer of the cross bill filed by the defendant be granted and that it be decreed that the defendant, Lilla Palomino, is vested with all the estate of the said Raphael Isidoro Pedrajas, subject to the trust in the Bloomfield Trust Company, to collect the income and profits thereof and pay the same to the complainant, Mamie E. Pedrajas, for and during her natural life and that the Bill of the Complainant be dismissed with costs and reasonable counsel fee.

Respectfully submitted,

BESSON, ALEXANDER & STEVENS,
Solicitors for Defendant-Appellant
Lilla Palomino.

J. W. RUFUS BESSON,
Of Counsel.

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To be argued by
Wm. Hamilton Osborne.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between: MAMIE E. PEDRAJAS, Complainant-Respondent, and THE BLOOMFIELD TRUST COMPANY, impleaded with LILLA PALOMINO, Defendant-Appellant.	On appeal from Chancery.

BRIEF OF COMPLAINANT-RESPONDENT.

This appeal by Lilla Palomino, defendant, is from Chancery final decree advised by Vice Chancellor Church construing will of Raphael Isidoro Pedrajas, decreeing a merger of life estate and remainder in the trust under the will, giving complainant-respondent complete title and enjoyment thereof, directing transfer of principal to her, directing accounting by Bloomfield Trust Co., trustee; and necessarily cutting off the appellant, Lilla Palomino, who was to take only on the happening of a contingency that cannot now happen.

Facts.

This is an action on bill by Mamie E. Pedrajas, the widow, and life tenant of the trust created in the will of Raphael Isidoro Pedrajas, who died a resident of Bloomfield, Essex County, New Jersey; by his last will and testament he created a trust estate and therein directed that his real estate be sold by his trustees and to invest the proceeds of any such sale with the rest of his estate in trust and to pay the income therefrom to his wife, the complainant during her lifetime and at her death to pay the remainder to his son, Rafael Louis Pedrajas, provided the said son had reached the age of twenty-five years, and if said son should not reach the age of twenty-five years at the death of his mother, then to pay the income of said trust to said son until he had arrived at the age of twenty-five years, at which time the corpus of said trust was to be paid son, and if both the widow and the son should die before the son arrived at the age of twenty-five years then the corpus of the trust was to be paid to the issue of said son, and if the widow and son should die before the son reached the age of twenty-five years, without issue, then the corpus of said trust was to be paid to the defendant, Lilla Palomino, the sister of the decedent.

The testator at the time of his death left his widow and only one child, namely, the said Rafael Louis Pedrajas, there being no other child nor any children of any deceased child of testator.

The assets of the estate consisted of personal property and one piece of real estate, and under the terms of his will the trustees were directed, as soon as practicable after the death of testator to sell and convey any and all real estate or interest therein of which he may die seized, giving the trustees full power and authority to make said sale, and directing them to make the same as aforesaid, and the trustees in accordance with the directions of the said will sold the real estate shortly after the death of the testator.

That the entire assets of the testator's estate made up the trust in question in this cause.

The widow is still alive and is the party complainant in this cause, and the life estate which the widow received under the will aforesaid, was so made to her with no restrictions or qualifications and in no way could be classed or termed as a spendthrift trust.

That Rafael Louis Pedrajas, the son and remainderman under the trust in question, was thirteen years of age at the death of his father and that said son lived to be thirty-four years of age and died on June 18, 1926, he never having married and therefore having no issue and his only next of kin and heir at law at the time of his death being his mother, the complainant in this cause.

The following facts in this cause have been stipulated and agreed to between the parties complainant and defendant:

1. Raphael Isidoro Pedrajas was married to the complainant, Mamie E. Pedrajas, and they were husband and wife, living together as such at the time of the death of Raphael Isidoro Pedrajas, July 25th, 1905, and were residents of the Town of Bloomfield, County of Essex and State of New Jersey.

2. That one child was born of the said marriage between Raphael Isidoro Pedrajas and the complainant, Mamie E. Pedrajas, namely, Rafael Louis Pedrajas.

3. That said son, Rafael Louis Pedrajas, died intestate on the 18th day of June, 1926, at the age of thirty-four years.

4. That Raphael Isidoro Pedrajas died at and as a resident of the Town of Bloomfield, County of Essex and State of New Jersey, July 25th, 1905, testate, and his will was duly probated in the Surrogate's Office of Essex County October 26th, 1905, and a copy of said will annexed to the said bill of complaint in this cause is a true copy of the last will and testament of Raphael Isidoro Pedrajas.

5. That the records of the Essex County Surrogate's office show:

(a) That Louis A. Sussdorf and Ernesto de Zaldo were named as executors and trustees under the will of Raphael Isidoro Pedrajas and they qualified as such.

(b) That the said Louis A. Sussdorf and Ernesto de Zaldo were discharged as such executors and trustees by order of the Essex County Orphan's Court, dated October 9th, 1908, and by said order Allison Dodd was appointed executor and trustee of the will of Raphael Isidoro Pedrajas, in the place and stead of Sussdorf and de Zaldo.

(c) That by order of the Essex County Orphan's Court, dated November 25, 1925, the said Allison Dodd was discharged as said executor and trustee of said will and by said last

named order, the Bloomfield Trust Company was substituted executor and trustee of the will of Raphael Isidoro Pedrajas, and the said Bloomfield Trust Company has been acting as such executor and trustee from the date of its appointment, aforesaid, up to the present time and is still acting as such.

6. That the testator's, Raphael Isidoro Pedrajas, widow, the complainant of this cause, and their only child (being the only child of said testator, Raphael Isidoro Pedrajas) both survived the said testator; the testator, Raphael Isidoro Pedrajas, left no other children, nor no children of any deceased child.

7. That Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, was never married and never had any children, and his mother, the complainant in this cause, is his only next of kin and heir at law.

8. That the complainant, Mamie E. Pedrajas, widow of Raphael Isidoro Pedrajas, and mother of Rafael Louis Pedrajas, is alive at the present time and has never been remarried.

9. That the real estate of which the said Raphael Isidoro Pedrajas died seized was sold by the executor and trustee under the provisions of the will of Raphael Isidoro Pedrajas shortly after the death of Raphael Isidoro Pedrajas.

10. That Lilla Palomino, sister of Raphael Isidoro Pedrajas, deceased, is alive and is one of the defendants in this cause, and that she was the only sister of the deceased, and she has an adult daughter living.

Contentions of Complainant-Respondent.

Because of the facts aforesaid and the law hereinafter set forth this complainant claims:

1. That the defendant, Lilla Palomino, sister of Raphael Isidoro Pedrajas, is entitled to no right, title or interest in the trust in question, due to the fact that Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, lived to be over twenty-five years of age and died in his thirty-fourth year.

2. That the proceeds from the sale of the real estate in said trust became personal property and is to be considered as such.

3. That Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, at the time of the death of his father became vested of the corpus of the trust, subject to:

(a) The life estate of his mother.

(b) A divesting if he and his mother were to both die before he reached the age of twenty-five years without leaving issue.

4. That at the death of Rafael Louis Pedrajas, at the age of thirty-four years, he was unconditionally vested with the corpus of the trust in question, subject to the life estate of his mother.

5. That the life estate of the complainant was in no way restricted so as to consider the same as in the nature of a spendthrift trust, so as to prevent said life estate merging with the remainder of the trust.

6. That as the said Rafael Louis Pedrajas

was so vested with the corpus of said trust at the time of his death, and the fact that said trust consisted of personal estate only, and the fact that he died intestate, leaving as his only next of kin and heir at law his mother, the complainant in this cause, that the remainder and life estate of said trust merged and became vested in complainant, by reason of which she is entitled to the possession and full enjoyment of the said trust fund and the assets making up the same.

Law.

1. That the defendant, Lilla Palomino, is entitled to no right, title or interest in the trust fund in question.

This contention is based upon the fundamental principle of law as applied to the facts in this case and the terms of the will in question.

Lilla Palomino was only to participate in the remainder of the trust fund, according to the terms of the will, upon the following condition: That the complainant, widow of Raphael Isidoro Pedrajas, should die before her son and that Rafael Louis Pedrajas, her son and the son of Raphael Isidoro Pedrajas, should die, without issue, before he arrived at the age of twenty-five years.

As the widow of Raphael Isidoro Pedrajas is still living and the son in question, Rafael Louis Pedrajas, lived to be thirty-four years of age, the condition under which Lilla Palomino was to participate in this trust never happened, and, therefore, she has no interest in the trust.

2. That the proceeds from the sale of the real estate under said trust became personal estate.

At the death of the testator in our case the corpus of the trust consisted of personal property and one piece of real estate, the trustees proceeded to sell the real estate at once for the sum of $14,000.

The will in question provides: "*I direct* my executors and trustees hereinafter named, *as soon as may be practicable after my death,* to sell and convey any and all real estate or interest therein of which I may die seized or possessed, I authorize and empower my said executors and trustees to sell and dispose of any real estate or interest therein which may at any time come to their hands, at public or private sale, at such time, upon such terms, and in such manner as to them shall seem advisable; and to execute any and all instruments of conveyance thereof, with warranty or otherwise, as may be necessary." Thus there is an express direction to the executors and trustees to sell the real estate, and where in a will it provides for the direction of the sale of real estate, upon its sale the proceeds become personal property.

Redmond vs. Gummere, 94 N. J. Eq. 216 (at 217).
Cook vs. Cook, 20 N. J. Eq. 375.
Crane vs. Bolles, 49 N. J. Eq. 373.
Camden Safe Deposit Co. vs. Guerin, 89 N. J. Eq. 556 (at page 558).
Cranston vs. Westendorf, 91 N. J. Eq. 34 (at page 26).
Leiplett vs. Ivins, 112 Atl. Rep. 509 (page 510).

3. That Rafael Louis Pedrajas, son of Raphael Isidoro Pedrajas, at the time of the death of his father became vested of the corpus of the trust fund subject to his mother's life estate.

In the present case the son was given the remainder of the trust subject to his mother's life estate, there were contingencies provided in the will to apply upon the happening of certain events, namely, the death of the life tenant and the remainderman before the remainderman attained the age of twenty-five years, but as the remainderman lived to be thirty-four years of age these contingencies never developed and therefore cannot at this time be taken into consideration. As to the vesting of the corpus of the trust in the remainderman at the time of his father's death see decision Court of Errors and Appeals in the case of *Redmond vs. Gummere,* 94 N. J. Eq. 216 (at page 217):

> "Ordinarily the vesting of such gift would not take place until the arrival of the time for distribution, but where the time of payment is postponed only for the purpose of letting in a life interest, the remainder interest vests immediately on the death of the testator. *Post vs. Herbert,* 27 N. J. Eq. 540, followed by a long line of subsequent cases, among the more recent of which may be mentioned *Cranston vs. Westendorf, supra* (page 37); *Freund vs. Freund,* 91 N. J. Eq., page 80; *Shephard vs. Davis,* 91 N. J. Eq., page 468 (at page 471)."

This case further says:

> "This is precisely the situation in the case at bar. The distribution to the ultimate beneficiary is postponed to a time subsequent to the death of the testator, only for the purpose of letting in the intermediate estate. This intermediate estate is an estate of but one life. It is the typical case of a remainder after a life estate and subject to no uncertainty

except the precise time of the certain termination of the preceding life estate."

In the case of *Redmond vs. Gummere* we have a parallel case to the one in question and according to the decision in that case there appears to be no question as to the corpus of the estate vesting in the son at the death of the father. In the case of estate of Ellen M. Collins, the Perogative Court (decided May 6, 1926), Berry, V. C., held that the remainder vested at the time of the death of the testator, and upon the death of the life tenant should be paid to the representative of the remainderman (N. J. Advance Sheets reported May 22, 1926, Vol. IV, No. 21, page 813). Also see cases of

Fidelity Union Trust Co. vs. Rowland, et als. (N. J. Advance Reports, Vol. IV, No. 14, at page 603);
Post vs. Herbert's Ex. (Court of Errors and Appeals, 27 N. J. Eq. 540. This last case was an affirmance of the case of 26 N. J. Eq. 298);
Wells' Ex. vs. Kate Amelia Bennett, et als., Trustees (N. J. Court of Appeals, Vol. IV, N. J. Advance Sheets No. 46, page 1897, decided Oct. 27, 1926).

The Supreme Court of New Jersey in *Armon vs. Murray, et als.*, 68 Atlantic 164, has held a trust created by deed and all interest joined to terminate said trust, the same can be so terminated.

With these authorities there is no question that the corpus of the trust in this case vested in the son at the time of his father's death.

4. That the complainant, mother of Rafael Louis Pedrajas, inherited the remainder of the trust fund.

It is admitted as a fact that the son, Rafael Louis Pedrajas, died intestate June 18, 1926, thirty-four years of age, leaving as his only next of kin at law his mother, the complainant. Therefore the corpus of this trust fund is to be considered personally for the reasons aforesaid and the son became vested of the same for the reasons aforesaid at the time of his father's death. Therefore at the son's death, he leaving no issue, or no wife, or no brothers or sisters, or children of any deceased brothers or sisters, the mother inherited his estate (*Laws of 1914,* page 71, par. III; also *Orphan's Court Act,* page 2629 of the 1911-1924 Cumulative Supplement, pars. 146-149, Sub. III).

5. That the life estate of the complainant was in no way restricted and therefore could merge with the remainder of the trust.

There is nothing in the will in question that restricts the life estate to the wife so as to create a spendthrift trust, thus avoiding voluntary alienation, therefore the life estate is assignable and in view of this fact the life estate and the remainder can merge, and thus work a termination of the trust.

The case of *L'Hommedieu vs. Same,* 131 Atl. Rep. 302, holds that where the will splits up the estate into a life estate and remainder, the remainderman on acquiring a life estate is entitled to present enjoyment of testator's estate; except where the life estate is in the nature of a spendthrift trust.

In the last mentioned case the Court holds that a spendthrift trust is not necessarily to denominate the beneficiary as a spendthrift, but

some indication must be given of the intent to restrict it to the beneficiary's personal benefit without recourse to creditors or assigns. In the case now in question there was no such limitation placed on the life estate of the complainant, for the same could be reached by creditors and there is nothing to be found in the will whereby the life estate in question could be construed as a spendthrift trust.

Spendthrift trust is the term commonly applied to those trusts which are created with a view of providing a fund for the maintenance of another and at the same time securing it against his improvidence or incapacity for his protection. Provisions against alienation of the trust fund by the voluntary act of the beneficiary or by his creditors are the usual incidents appearing.

Bennett vs. Bennett, 66 Ill. App. 28.
Words and Phrases, Vol. 7, page 6609.

For the reason aforesaid there is no question that the remainder and life estate under the trust in question merged.

6. The Court of Chancery, upon proper application, can terminate a trust, call for final accounting of trustees and order the entire estate turned over to the party holding all the interests.

This contention is supported in the case of *Brooks vs. Davis,* 88 Atl. Rep. 178, 82 N. J. Eq. 118.

Our Answer to Arguments of Counsel for Appellant.

Counsel for appellant cited *Swetland,* 4 Advance Reports, pages 1788-1800, to the effect that where there is a *defective* expression of the testator's intention the Court will arrive at the real intention, notwithstanding the use of inapt words. This doctrine does not apply to the present case. *The will in the present case is clearly drawn.* Our contention is that it gives the son an absolutely vested estate, certainly if he survives the age of twenty-five. The best way to test the testator's intention is to determine how many testators would draw a will in any other way than this, if he intended to give the remainder of his estate to his son. The object of carving the life estate out of the whole was not only for the benefit of the wife but was to benefit the son by giving him an absolute estate if he reached the age of twenty-five years. To hold in this case that the son did not have a vested estate in the remainder would be to revise every decision in the State of New Jersey on the subject and would further make it impossible for a man to draw a will by the use of the customary technical phrases. If it had been the intention for the sister or her issue to have this remainder on the death of the son at any time, the testator would have clearly expressed himself and would not have mentioned the age of twenty-five years. Considering how well the will is drawn, the fact that there is no clear intention to vest his sister, except under the contingencies mentioned in the will, negatives any intention on the part of the testator to do other

than he has done. The instant that the son arrived at twenty-five years of age there was no contingency left which could become operative. Mr. Besson's suggestion that the testator desired to benefit his own collateral blood relatives, rather than to give to his son an absolute estate which could be transferred or devised, is not tenable.

His desire was to provide for his wife and for his son and particularly for his son. Three times in the will does he particularly mention this son. Upon the death of his wife his son is to take the remainder if twenty-five years of age. If the son is under twenty-five when the wife dies, then he is to have the income until the age of twenty-five, which age is the period first fixed for him to have the fee. If the son should die before twenty-five but leaving issue, then the issue were to take at the time when the son would have arrived at the age of twenty-five years. *In one event only can the sister take and that is upon the death of the son before reaching the age of twenty-five without issue.* This latter provision is a not uncommon provision found in wills of people who are so farsighted that they desire to provide for almost any contingency. Only one of these provisions in favor of the son was needed and that was the first paragraph of the third clause of the will, but the testator made it trebly clear that he meant that the age of twenty-five was the age which should fix his son's property rights in his estate. The son could have sold his vested remainder in this estate, creditors could have attached it because it was an asset belonging to the son, even though the mother still lived, and that ownership after the age of twenty-five was not subject to any

condition whatever and was subject only to his mother's life estate. It is the simplest kind of a case of vested remainder.

As to any contention that because the testator might have intended his wife to have a life estate and not the principal and therefore she should be prevented from enjoying the principal, we have to say, as we have already said, that the Courts of the State of New Jersey are very clear in their distinction between an ordinary trust estate for life and what is known as spendthrift trust. The idea of a spendthrift trust is an unusual provision which prevents creditors from taking the income and prevents the life estate from being alienated, its whole purpose being indicated by the name, spendthrift trust. There can be no doubt that under this will the widow could sell, assign or transfer to anybody her estate for life. Certainly, there is nothing to prevent her from inheriting the vested estate from her son. Under the cases above cited in this brief, this present case is the clearest kind of case and must result in effecting merger of the life estate with the remainder.

Anticipating a possible suggestion that the daughter of the testator's sister (since she has one child, an adult daughter) should be made a party to this suit, we say that cannot be necessary since any right, title or interest which the sister might claim to have by this will construed resides in the sister and not in her children. We think, therefore, that there is nothing in this point, that it has nothing to do with the merits of the case, nor is this action prematurely brought. On the hearing it was claimed that it could not be ascertained until the death of the wife whether the sister was living or dead at

that time and whether the sister on the one hand or her issue on the other hand were the parties to be considered. The difficulty with his suggestion lies in the fact that the period of absolute vesting is when the son attains the age of twenty-five years. He did attain this age. There can be no contingency thereafter and the interest of the sister was completely wiped out upon his arriving at that age. But even though the sister's interest was not so wiped out, this suit is not prematurely brought for the case of *Doremus vs. Dunham,* 55 N. J. Eq. 511, holds that "an estate limited over to persons not *in esse* are represented by the living owner of the first estate of inheritance" (several cases cited), and in this matter Lilla Palomino, the sister of decedent, would be the living owner of the first estate of inheritance (as between herself and her children), if any such estate existed, and a decree of this Court would be binding upon Lilla Palomino and also upon her issue.

We rely also upon the cases cited in the opinion of Vice Chancellor Church herein.

The decree should be affirmed.

Respectfully submitted,

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