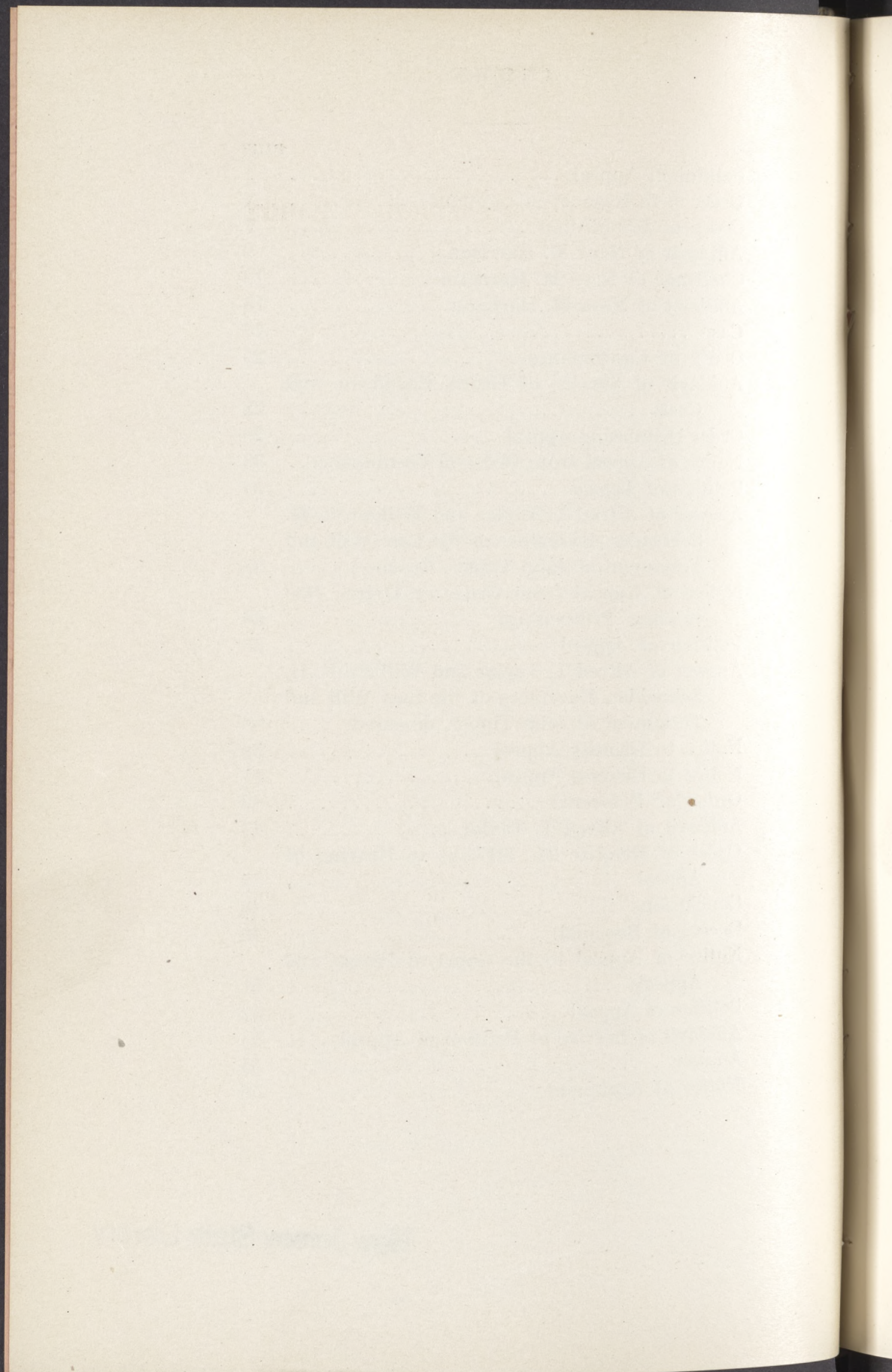


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Bergen County Surrogate's Court

In the Matter
of
The Estate of JOHN TIPPER.

On Appeal from
Probate of Will
by Surrogate.

10

Petition of Appeal.

To the Surrogate of the County of Bergen:

The petition of appeal of Neva M. Harrison, Administratrix of the Estate of Lottie Lee Tipper of the City of Englewood, in the County of Bergen and State of New Jersey, respectfully shows that:

20

1. Your petitioner is the Administratrix of the Estate of Lottie Lee Tipper, late of the County of Bergen, deceased, who died on the nineteenth day of December, 1916, leaving her surviving as her sole next of kin one sister, to wit, Mary Louise Harrison.

30

2. The said Lottie Lee Tipper, deceased, was the widow of John Tipper, who predeceased the said Lottie Lee Tipper, said John Tipper dying on the fifth day of December, 1916, leaving no children or any legal representative of them.

3. On the nineteenth day of December, 1916, one Alfred T. Taylor, and one William E. H.

40

Petition of Appeal.

10 Schneider, produced before the Surrogate of the County of Bergen for probate a paper writing purporting to be the last will and testament of the said John Tipper, deceased, wherein the said Alfred T. Taylor and the said William E. H. Schneider, were named as executors thereof, and the said Surrogate thereupon on the day last mentioned made his order admitting the said paper writing to probate, as and for the last will and testament of the said John Tipper, deceased, and granting letters testamentary thereon to the said Alfred T. Taylor and the said William E. H. Schneider, which letters were duly issued on the day last aforesaid.

20 4. Your petitioner complains and alleges that the whole and every part of the said order of the said Surrogate, admitting the said will to probate, and issuing letters testamentary thereon to the said Alfred T. Taylor and the said William E. H. Schneider, as aforesaid, is erroneous, improper and contrary to law, and that your petitioner as Administratrix of the estate of the said Lottie Lee Tipper, deceased, representing the next of kin of the said Lottie Lee Tipper, is aggrieved thereby.

30 5. Your petitioner alleges for grounds of appeal as follows:

(a) At the time of the making and of the supposed execution of the said paper writing, and for a long time prior thereto, the said John Tipper was of unsound mind, and as such incapable of disposing of his estate by will.

40 (b) At the time of the making and of the supposed execution of the said paper writing,

Petition of Appeal.

and for a long time prior thereto, the said John Tipper did not have sufficient mind and memory to intelligently understand the nature of the business in which he was engaged, or to comprehend generally the nature and extent of the property which constituted his estate, and which he intended to dispose of, or to re-collect the objects of his bounty. 10

6. The names of all persons concerned in this proceeding are as follows:

(a)

EXECUTORS.

Alfred T. Taylor, Englewood, N. J.
William E. H. Schneider, Englewood, N. J. 20

(b)

LEGATEES.

Alfred T. Taylor, Englewood, N. J., individually and as trustee for Lottie Tipper.
William E. H. Schneider, Englewood, N. J., individually and as trustee for Lottie Tipper.
Mrs. Joseph H. Elliott, 195 Juniper Street, Atlanta, Ga.
Mrs. William G. Argabrite, Louisburg, W. Va. 30
Mrs. Mary F. Martin, 38 Palisade Avenue, Englewood, N. J.
Isabelle Unkles, 111 W. 72nd Street, New York, N. Y.
Irene Unkles, 111 W. 72nd Street, New York, N. Y.
Mrs. Willard Cass, 98 James Street, Englewood, N. J.
Ethel B. Taylor, New York, N. Y.

40

Petition of Appeal.

Hazel D. Taylor, 1600 People Street, Troy,
N. Y.

Lottie Tipper Taylor, Tenafly, N. J.

Katherine Taylor, Tenafly, N. J.

James Nelson Taylor, Tenafly, N. J.

10 Mrs. Robert B. Taylor, R. F. D. No. 3, Balston
Spa, N. Y.

Robert W. Taylor, Balston Spa, N. Y.

To the now living infant son of Alfred T.
Taylor, Chester Place, Englewood, N. J.

Mrs. J. Kline, Corning, Cal.

Mrs. Lillie Rogers, New York, N. Y.

Ellen McKinney, R. F. D. No. 2, Halstead, Pa.

Mrs. Katherine Barto, 95 W. Palisade Avenue,
Englewood, N. J.

20 Tuskan Lodge No. 155, F. & A. M., Englewood,
N. J.

Englewood Free Public Library, Englewood,
N. J.

St. Paul's Church, Englewood, N. J.

Lydia Stafford (Lillie S.) Harrison, 138 Engle
Street, Englewood, N. J.

Englewood Hospital Association, Englewood,
N. J.

30 Clinton D. Harrison, 138 Engle Street, Engle-
wood, N. J.

Neva M. Harrison, 138 Engle Street, Engle-
wood, N. J.

Mrs. Isabelle Cass, Englewood, N. J.

Mrs. G. M. Harrison, Pearl River, N. Y.

Mrs. James Taylor, Tenafly, N. J.

Mary Louise Harrison, 138 Engle Street, Engle-
wood, N. J.

Lottie Lee Tipper, Englewood, N. J.

Petition of Appeal.

(c)

HEIRS.

- Mary Martin, Palisade Avenue, Englewood, N. J.
 Jennie Nash, 671 45th Street, Brooklyn, N. Y.
 Francis Gilmartin, 431 West 49th Street, New York, N. Y. 10
- Margarina Bruley, 54 Cottage Place, Englewood, N. J.
- Jane Lumer, 4524 Richardson Avenue, Wakefield, Bronx, N. Y.
- Mrs. W. T. Argabrite, Louisburg, W. Va.
- Mrs. Willard Cass, 98 James Street, Englewood, N. J.
- Robert Taylor, The Crossways, R. F. D. No. 3, Ballston Spa, N. Y. 20
- James Taylor, Tenafly Road & Westervelt Avenue, Tenafly, N. J.
- Mrs. J. H. Elliott, 195 Juniper Street, Atlanta, Ga.

(d)

NEXT OF KIN.

Lottie Lee Tipper, Englewood, N. J.

Your petitioner, therefore, prays that the above named persons concerned in this proceeding, and each of them, may be cited to appear in the Orphans' Court, pursuant to the rules and practice thereof, and that the aforesaid order of the Surrogate and proceedings thereon may be reversed and set aside by the said Orphans' Court, and that the letters testamentary issued to the

30

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Petition of Appeal.

said Alfred T. Taylor and the said William E. H. Schneider may be revoked.

Dated, Jersey City, N. J.,

March 13th, 1917.

10 NEVA M. HARRISON,
Administratrix of the Estate of Lottie Lee Tipper,
Petitioner.

State of New Jersey, }
County of Hudson, } ss.:

20 Neva M. Harrison, of full age, being duly sworn, according to law, upon her oath, deposes and says that she is the petitioner in the foregoing petition named, and that the matters and things therein contained are true to the best of her knowledge and belief.

NEVA M. HARRISON.

Sworn to and subscribed at }
Jersey City, this 13th day }
of March, 1917, before me. }

EDWARD A. MARKLEY,
Master in Chancery of N. J.

AFFIDAVIT.

30 State of New Jersey, }
County of Hudson, } ss.:

40 Edward A. Markley, of full age, being duly sworn according to law, on his oath says, that he is a counselor of the State of New Jersey, associated with Messrs. Collins & Corbin, proctors for the petitioners above named, and that he is in charge of said matters; that the citations in said causes on said appeals have not been issued because negotiations have been pending for the past two weeks with counsel for the

Order as to Issuance of Citations.

executors of the last will and testament of the said John Tipper, said counsel being Adolf L. Engelke, said negotiations looking toward a possible settlement of the matters involved. This was the only reason for delaying the issuance of citations.

10

EDWARD A. MARKLEY.

Sworn to and subscribed at }
 Jersey City, this 28th day }
 of March, 1917, before me, }

DAVID A. NEWTON,
 Master in Chancery,
 of New Jersey.

Order.

20

Upon application duly made and after having read the affidavit of Edward A. Markley, and having considered the same, it is on this 28th day of March, 1917,

Ordered that the appellant, Neva M. Harrison, have until April 7th in which to cause the citations to be issued to all persons concerned herein.

W. M. SEUFERT,
 Judge.

30

I consent to the entry of the above order.

ADOLF L. ENGELKE,
 Proctor of and of Counsel with
 Alfred T. Taylor and William
 E. H. Schneider, Executors
 of the Last Will and Testa-
 ment of John Tipper.

Order of Publication.

Process of citation having been issued in the above matter and it having been made to ap-

40

Order of Publication.

pear to the satisfaction of the Court that Mrs. Joseph H. Elliott, Mrs. William G. Argabrite, Isabelle Unkles, Irene Unkles, Ethel B. Taylor, Hazel B. Taylor, Mrs. Robert B. Taylor, Robert W. Taylor, Mrs. J. Kline, Mrs. Lillie Rogers, 10 Ellen McKinney, Mrs. G. M. Harrison, Jennie Nash, Francis Gilmartin, Jane Leumer, Mrs. W. T. Argabrite and Robert Taylor, persons against whom such citation has been issued reside out of this State.

It is thereupon, on this 30th day of April, 1917,

Ordered that the said Mrs. Joseph H. Elliott, Mrs. William G. Argabrite, Isabelle Unkles, Irene Unkles, Ethel B. Taylor, Hazel B. Taylor, Mrs. Robert B. Taylor, Robert W. Taylor, Mrs. J. 20 Kline, Mrs. Lillie Rogers, Ellen McKinney, Mrs. G. M. Harrison, Jennie Nash, Francis Gilmartin, Jane Leumer, Mrs. W. T. Argabrite and Robert Taylor do appear in the aforesaid matter on the 6th day of June, 1917, and in default thereof such proceedings will be had against them as if they had appeared in said suit or proceeding, it is further ordered that notice of this order as prescribed by the rules of the Court of Chancery shall within ten days hereafter be served personally upon the said absent defendants by the 30 delivery of a copy thereof to each of them personally, or in default of such service that said notice be published within the said ten days in Englewood Press, a public newspaper printed at Englewood, N. J., in the County of Bergen, in this State, for four weeks successively at least once in each week, and in case of such publication that a copy thereof be also mailed within 40 the same time to the said absent defendants, directed to their post office addresses, if the same

Affidavit of Neva M. Harrison.

can be ascertained, in the manner prescribed by law and the rules of the Court of Chancery.

W. M. SEUFERT,
Judge.

Affidavit.

10

BERGEN COUNTY ORPHANS' COURT.

In the Matter

of

The Estate of JOHN TIPPER.

On Appeal from
Probate of Will
by Surrogate.

State of New Jersey, }
County of Hudson, } ss.:

20

Neva M. Harrison, being duly sworn according to law, on her oath says that she is the appellant, as administratrix of Lottie Lee Tipper, deceased, in the above matter; that her proctors in said matter were Messrs. Collins & Corbin of Jersey City, of which firm Mr. George S. Hobart had the personal charge of same, and that this deponent expected said Hobart to be able to try said matter for her in court. On June 23, 1917, deponent received from Mr. Hobart a letter, a copy of which is hereto annexed. After receiving the same, deponent had hoped that Mr. Gilbert Collins of said firm would be able to handle the matter in the place of Mr. Hobart and in his absence, but has recently learned that he will not be able to do so and thereupon deponent sought to obtain other counsel in the matter and through advice of Mr. John P. Stockton, she consulted with Mr. Warren Dixon, of

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Affidavit of Neva M. Harrison.

Jersey City, on the 6th day of July, 1917. Deponent and Mr. Stockton went over the matter with Mr. Dixon and he expressed his willingness to take care of the interests of this deponent in this litigation, but stated that it would be impossible for him to thoroughly master the case so as to be able to properly present it before the Court on July 11th, 1917. Deponent says there is a large mass of testimony to be considered and a number of witnesses whose presence must be secured, and among said witnesses is one whose name was Anna Wildhagen, who lived in the house with the deceased for a period of several months before he died and who was in the house after his death and who has made statements to this deponent and to Mr. Stockton and to Dr. Lansing concerning the health, conduct and mental attitude of the said deceased, whose will is under consideration in this case; that this witness was living in the house of deceased until the month of March, 1917, when without any knowledge upon the part of this deponent, said Anna Wildhagen left the said house and left no information yet obtainable by deponent as to her whereabouts. On the night before she left said house this deponent, having heard rumors that the executors named in the will of Mr. Tipper were intending to close the house, telephoned to said Anna Wildhagen and told her what deponent had heard and asked if it were so and if she expected to leave, and the said Anna Wildhagen informed deponent that it was not so and that she did not expect to leave. On the next day deponent learned that she had left the house early in the morning. This knowledge was brought to deponent through Mr. Schneider, one of the executors, by tele-

Letter of George S. Hobart.

phone. Deponent further says that she verily believes that she can obtain information as to the whereabouts of the said Anna Wildhagen and procure her testimony by the next term of this Court, and deponent further says that she has explained the nature of this testimony to her proctors and counsel and that she is advised by her said proctors and counsel that said testimony of said Anna Wildhagen is material and that she cannot safely go to trial at this time without the same. 10

NEVA M. HARRISON.

Subscribed and sworn to before me }
this 6th day of July, 1917. }

Michael J. King,
Attorney at Law, 20
of New Jersey.

COLLINS & CORBIN,
Counsellors at Law,
No. 243 Washington Street.
Jersey City, N. J., June 23, 1917.

In re Tipper Appeal.

Miss Neva M. Harrison,
138 Engle St., 30
Englewood, N. J.

Dear Madam:—

Your favor of the 19th inst. received and contents noted. I am very sorry that I shall be unable personally to attend the hearing of the above matter due to ill health. The doctor's orders are that I must take an immediate rest and I shall be away from the 1st for a month or two.

The hearing of the appeal has been set down 40

Challenge of Neva M. Harrison.

for June 25th and 26th, but due to the inability
of this firm to try the case at that time motion
was made to adjourn the hearing and it has
been adjourned over by Judge Seufert until July
11th and 12th. I assure you that the preparation
10 of the case will be thorough and no avenue of
inquiry that can be made will be left uninvesti-
gated.

Very truly yours,

GEO. S. HOBART.

GSH/LC.

Challenge of Neva M. Harrison.

BERGEN COUNTY ORPHANS' COURT.

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In the Matter
of
The ESTATE OF JOHN TIPPER.

On Appeal from
Probate of Will
by Surrogate.
Challenge.

30

Neva M. Harrison, the appellant herein, as
administratrix of the estate of Lottie Lee Tipper,
deceased, hereby files this challenge to and pro-
test against the above case being heard by the
Honorable William M. Seufert, Judge of the Or-
phans' Court of Bergen County, on the ground
that said Judge is in such way connected with or
interested in the said litigation or the outcome
thereof that he is disqualified from sitting as
Judge therein. That this challenge is based on
the facts set forth in the affidavits hereto at-
tached.

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Dated, July 6th, 1917.

NEVA M. HARRISON.

Affidavit of Neva M. Harrison.

BERGEN COUNTY ORPHANS' COURT.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p>The ESTATE OF JOHN TIPPER.</p>	}	<p>On Appeal from Probate of Will by Surrogate. Affidavit.</p>	10
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State of New Jersey,)
County of Hudson, { ss.:

Neva M. Harrison, being duly sworn according to law, on her oath says that she is the appellant in the above matter, as administratrix of the estate of Lottie Lee Tipper, deceased. That deponent is informed in such way that she believes it to be true, that the said John Tipper, late of Englewood, whose will of September 25, 1916, is under review and attacked by this deponent, made a former will about the year 1914, which said will was drawn by William M. Seufert, the present Judge of the Bergen County Orphans' Court. That deponent is not at present informed as to the whereabouts of said will or whether it is in existence, nor as to its contents, but that in the event of the present will under attack being declared invalid, the question of the existence and contents of said prior will will become of moment in the distribution of the estate of said John Tipper. Deponent further says that she has been credibly informed and verily believes that the said William M. Seufert and Mr. Alfred T. Taylor, and Mr. William E. H. Schneider, executors of the will of said John Tipper, are and for a long time have been members of Tuscan Lodge, No. 115, F. & A. M., and that Mr.

Case.

10 Alfred T. Taylor is the present Master thereof. That the said Tuscan Lodge, No. 115, F. & A. M., is a legatee and beneficiary named in the 20th clause of said will, to which the said will purports to bequeath the sum of five hundred dollars, toward the erection or furnishing or of Masonic Hall Building or Temple.

NEVA M. HARRISON.

Subscribed and sworn to before me, }
this 6th day of July, 1917. }

Michael J. King,
Attorney at Law,
of New Jersey.

BERGEN COUNTY ORPHANS' COURT.

20 Before—Hon. WILLIAM M. SEUFERT, Judge.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p style="text-align: center;">The Estate of JOHN TIPPER, deceased.</p>	}	<p>On Appeals by Neva M. Harrison, Admx. of the Estate of Lottie Lee Tipper, Jane Leumer, Jennie Nash, Francis Gilmartin and Margarina Bruley.</p>
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For the appellant, NEVA M. HARRISON,
WARREN DIXON, MICHAEL J. KING, of
Counsel.

For the Executors of the estate of John
Tipper, deceased, A. L. ENGELKE.

For the Englewood Hospital, St. Paul's
Church, Englewood, and the Englewood
Free Public Library, ALBERT I.
40 DRAYTON.

Mr. King: I appear on behalf of Mr. Dixon,

Case.

and ask for an adjournment. My reasons for adjournment are based on an affidavit which I will read to your Honor, if your Honor will permit. It is entitled in this case.

Mr. King then read the affidavit of Miss Neva M. Harrison, printed on pages 9, ~~12~~ *supra*, and the letter of Mr. Hobart, printed on pages 11-12, *supra*.

10

The Court: You knew this on the 6th.

Mr. King: I understand Mr. Dixon had his first interview with Miss Harrison on the 6th.

The Court: Was any communication given to the other side with reference to a request for adjournment?

Mr. Engelke: No, your Honor, although I tried to find out.

20

The Court: Mr. Stockton saw me last night about the proposition. I told him I would not consider it until this morning. What have you to say about it, Mr. Engelke?

Mr. Engelke: It seems to me, your Honor, this matter was originally set by your Honor for the 25th and 26th of June, and at that time when your Honor set these special days, you suggested, in case any adjournment was wanted after those days, a week's notice be given your Honor. Your Honor will recall that we were before you, that is, a representative of the office of Collins & Corbin and myself were before your Honor, on Thursday, the 21st of June, and at that time they stated very similar to the affidavit read here today, that this Anna Wildhagen was a witness they wanted to get located, and your Honor will recall that at that time you stated that any testimony that was taken, what was to be taken, of that sort, should be taken before the day set

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Case.

10 out, and your Honor then set July 10th and 11th, and it was made clear to the young man—in fact, I went down to the train with him and told him at that time I could not consent, and would not consent to any further postponement in the matter. It seems to me that they had notice on June 23rd from Mr. Hobart that he could not try the case. There are plenty of counsel in the State who could have tried the case and mastered it within that time. Mr. Dixon is engaged or otherwise would have mastered the details from the 6th of July until to-day, the 10th. That is not the fault of the proponents. No notice was given to me of the matter. I can say this: Yesterday evening Mr. Markley, of the firm of Collins & Corbin, telephoned me that the firm of Collins & Corbin were definitely out of the case, that they had on Thursday—that would be the 6th—turned over to Mr. Stockton the exceptions which they had prepared in this matter, and that for more than a week, I believe his words were, they had been out of the case. Now, it seems to me, under the circumstances, where I have gone to the trouble of subpoenaing witnesses—we have Dr. Evans here, ready to meet the issue—it would be a hardship upon us at this time. There is nothing in the affidavit stating that this Anna Wildhagen has been located.

20

30

The Court: That is immaterial. The only question that I am considering at all is the question of substitution of counsel. Of course Mr. Hobart has been sick.

Mr. Engelke: They have known that, your Honor.

The Court: Yes.

40

Mr. Engelke: Since June 23rd, which was even prior to the time the case was originally set.

Case.

There are plenty of other counsel they could have engaged.

The Court: If this is to go off at all, it will only go off with the costs of the day. That is because of the fact that no notice has been given to the other side and information has been in the possession of the caveators or the appellant since the 6th of July, and the respondents having come into court with all their witnesses, why, of course, necessarily, if it goes off at all, it must go off on terms. 10

Mr. King: I regret that Mr. Engelke and the other counsel in the case have not been notified, but I have been simply retained in this matter to represent Mr. Dixon, to come out here this morning. I understand from Mr. Dixon and from Mr. Stockton, that Miss Harrison had expected Judge Collins to handle the case. 20

The Court: Why, your own papers show that you knew of this since the 6th of July, when it was transferred into Mr. Dixon's hands. To-day is the 10th. There was ample time, even yesterday or the day before, to notify counsel on the other side that you were going to apply for an adjournment, to say the least.

Mr. King: Were you notified yesterday, Mr. Engelke? 30

Mr. Engelke: I was told by Mr. Markley yesterday noon that they were out of the case. I said to him, "Well, what position am I in?" He said laughingly, "I really don't know." But, he said, "Don't take anything that I say for granted, that you should not prepare." He said, "If I were you, I would prepare." I did prepare. In fact, I was prepared at that time.

Mr. King: At this moment, I do not know whether they are out of the case or not. I do 40

Case.

not know that any formal substitution has been given.

Mr. Engelke: There is no formal substitution given, then—

10 The Court: It is immaterial as to whether you knew that an application would be made for an adjournment here some days ago.

Mr. King: The whole trouble has been due to the ill health of Mr. Hobart.

20 The Court: That might be so, but the only point now is that the Court will not grant an adjournment without terms and without imposing upon the appellants the costs of the day, and the question is as to whether you want to continue your application for an adjournment upon that basis.

Mr. King: Well, I want an adjournment, and I leave it with your Honor to impose conditions or not.

Mr. Engelke: I wish your Honor would take into consideration that not only I and Mr. Drayton are concerned in this matter, but that we have gone to considerable trouble.

30 The Court: There is no question about that, but unfortunately, when the cases are in this condition, and they frequently arise, where new counsel are brought into the cases, where, on account of the sickness of other counsel, why, of course, they are entitled to a reasonable time for preparation.

40 Mr. Engelke: But I feel in this instance, your Honor, that the appellant had from June 23rd to secure other counsel, and where she waited until July 6th to inform herself as to the other counsel, and moreover, it seems that Mr. Stockton is the one who is engineering the whole matter—why must he have associate counsel? It seems unnecessary.

Case.

The Court: All that I am talking about is that the attorneys of record are certain people—

Mr. Engelke: The attorney of record, as far as the record discloses—I do not know as to that. I was told that Collins & Corbin had given substitution. May I ask the Clerk as to whom appears of record? 10

The Clerk: Collins & Corbin.

Mr. Engelke: There appears to be no substitution. Now we are confronted with a situation from which we are suddenly plunged into another adjournment. That may be the tactics of the appellants, to just keep us moving. The estate is, in the meantime, quiescent; can do nothing to dispose of the property. We are paying experts in addition. 20

The Court: Suppose the appeal was dismissed. Would there be any prohibition against their filing another appeal, some other appellant? I want to get the case disposed of in the quickest possible manner.

Mr. Engelke: That is undoubtedly so, to have it disposed of. Has not their time for appeal elapsed?

The Court: Has it?

Mr. Engelke: It has long ago. The appeal was taken on the very last day on which it could be taken. 30

The Court: It was?

Mr. Engelke: It was. The will was probated and had to remain probated without attack for at least forty days. This was the first intimation I had there would be an attack, and I believe the petition was filed, if not on the last, at least the last two or three days within the time in which appeal was taken. So a dismissal of it is the end of it. 40

Mr. King: My understanding is the appeal was

filed within three months as to residence and six months as to non-residence.

Mr. Engelke: I do not say it was not filed within time. It was filed on time, but it was very close to the expiration of time.

10 The Court: I am inclined, Mr. Engelke, to put this down for another date, on payment of the costs of the day.

Mr. Engelke: Does that mean the payment of our expert witness?

The Court: I think so.

Mr. King: If your Honor please—

The Court: Why not?

Mr. King: The expert witness is called here to-day. I do not think that it is quite fair to the appellants to have the fees of the expert witnesses taxed. Counsel, I believe, were notified. He had every reason to believe that matters were going on, I think. He could have telephoned to his witnesses, at least his expert witnesses, and have them remain away to-day.

20 The Court: I see no reason why the estate should be charged with the incidental expenses and disbursements and costs of this day, which would include the fee that they would have to pay the expert, because it is absolutely a loss to the estate. Why should it be charged with it? They have to pay it.

30 Mr. King: Well, in view of the peculiar circumstances surrounding the acts of counsel in this case, your Honor, as far as the appellants are concerned, I do not think it is quite fair to the appellants to be taxed with the costs of the expert witnesses. Mr. Hobart was suddenly taken ill. His doctors advised him to leave the office.

40 The Court: It would not be fair for the coun-

Case.

sel for the appellant, had he notified the other side, so as not to have had them here, but they had plenty of time to do it.

Mr. King: I appreciate that, your Honor. I do not want to endeavor to excuse them whatever.

10

The Court: How about the date?

Mr. Engelke: That is in your Honor's hands.

The Court: Well, it is going to be fixed in a short time, two weeks at the outside.

Mr. King: Do I understand your Honor is going to insist on fees of the experts?

The Court: Yes. There is no question about it.

Mr. King: How many experts have you got here, Mr. Engelke?

Mr. Engelke: We are confronted with this situation, your Honor. Dr. Evans says he is going away, and we cannot get him.

20

The Court: I cannot help that.

Mr. Engelke: I realize that, but we are here and ready and I understood that the matter was set down at that time. I know that Collins & Corbin knew it was set down peremptorily for to-day.

The Court: That undoubtedly is so, but I must recognize this legal situation, out of more or less courtesy to the bar, that is, the fact that, as the letter explains, the letter of Mr. Hobart, I think, showed an intention on his part to go on with the case and it develops since that, on July 6th, that he is unable to go on with it, which has compelled a substitution of other counsel, and that other counsel should have a reasonable time in which to prepare and try the case. That is a question of courtesy that would be extended to any counsel, where the circumstances were unavoidable.

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Case.

10 Mr. Engelke: If your Honor please, the letter of June 23rd, Mr. Hobart to Miss Harrison, says this: "I am very sorry to say I shall be unable personally to attend the hearing of the above matter due to ill health." That is June 23rd. Now, it seems to me that the appellant has been very lax in trying to get other counsel.

The Court: I know, but the latter part of the letter indicates that the firm is going to try the case.

20 Mr. Engelke: "The hearing of the appeal has been set down for June 25th and 26th, but due to the inability of this firm to try the case at that time, motion was made to adjourn the hearing, and it has been adjourned over until July 11th and 12th. I assure you that the preparation of the case will be thorough and no fact of inquiry that can be made will be left uninvestigated." That does not say he would try it. It does not say anybody else of the firm would try it.

The Court: It indicates that at the time the firm was going to try the case, because there is nothing in the letter that indicates they would be unable to try the case.

30 Mr. Engelke: There is nothing in here, your Honor, that I remember, that Mr. Hobart became ill subsequent to that. It does not appear when; simply as recently learned that he will not be able to do so; and thereupon sought to obtain other counsel in the matter, and through advice of Mr. John P. Stockton she consulted Mr. Warren Dixon on July 6th. And she says that Mr. Dixon expressed his willingness to take care of the interest of this litigation. If he were unable to appear here on the 10th, he should have said he was unwilling to appear, unwilling to take the case in hand and

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Case.

appear for them. He should have sent them to other counsel. It might be appellant could have obtained such counsel who are not so busy. By a constant change of counsel, we will never get to a hearing.

The Court: As I say, the next hearing will be absolutely peremptory. 10

Mr. Engelke: Dr. Evans says he can make it a week from today, the 17th.

Mr. King: The time is too short, your Honor, in view of the fact that witnesses will have to be interviewed by Mr. Dixon. I think the matter should go over until September.

The Court: The 17th will be fixed peremptorily. The costs of the day will be allowed.

Mr. King: If your Honor please, do I understand that the expert witnesses will be paid for by the appellant? 20

The Court: One, I understand. The cost of the day.

Mr. King: Can I get an approximate cost?

Mr. Engelke: \$100. That is right, is it not, Doctor? \$100 and expenses is what we have to pay.

Mr. King: If your Honor please, I now withdraw my consent to the taxation of the costs of the day, conditional on the adjournment. I do not think it is fair to the appellant to be taxed with the cost of the expert. 30

The Court: Why should it be fair for the estate to pay for it?

Mr. King: As I explained a minute or two ago, I think Mr. Engelke had an opportunity of notifying his expert yesterday afternoon.

The Court: Why, on what basis?

Mr. King: He was notified—

The Court: What basis of information did he have? 40

Mr. King: He said to Mr. Markley—unfortu-

Case.

nately there is not anyone here from Collins & Corbin.

The Court: Well, that is the disposition of the Court.

10 Mr. Engelke: If the Court please, I should like to ask if that is the disposition, that these costs be paid now.

The Court: The costs will be paid within five days.

Mr. King: If your Honor please, I must again renew my objection to the taxation of costs of the expert.

The Court: You have heard the decision of the Court.

20 Mr. King: Then, if your Honor please, I wish to present this challenge as to the right to your Honor's decision in this case. Shall I read it?

The Court: You can read it, yes.

Mr. King: Then read the challenge of Miss Harrison printed on page 12, *supra*, and her affidavit printed on pages ~~9~~ 13, *supra*.

The Court: Why did you not present that first?

30 Mr. King: I felt, your Honor, that your Honor was disposed to grant an adjournment, while the matter of the challenge would be taken up with you later on and also with counsel.

The Court: Do you not think it should have been taken up first?

Mr. King: That I do not know, your Honor.

The Court: It is held now. You have heard it. The order of the Court is in. Disposition has been made, and counsel may enter a rule to that effect.

Mr. King: I am simply acting under instructions, your Honor, from Mr. Dixon.

40 The Court: I care nothing about that. You may prepare the rule and submit it. The 17th will be fixed as the date.

Order of Continuance.

Mr. Engelke: Within five days the taxation of the costs of the day and expert witness' fees, plus expense?

The Court: Yes.

 BERGEN COUNTY SURROGATE'S OFFICE.

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State of New Jersey,)
 County of Bergen,) ss.:

I, J. Blauvelt Hopper, Surrogate and Clerk of the Surrogate's Court of the said County of Bergen, in said State, do hereby certify that I have compared the annexed copy of the testimony in the Matter of the Estate of John Tipper, deceased, with the record thereof now on file in this office and have found the same to be a true transcript therefrom.

20

In testimony whereof, I have hereunto set my hand and affixed my official seal this fifth day of February, A. D., one thousand nine hundred and eighteen.

[SEAL.]

J. BLAUVELT HOPPER,
 Surrogate and Clerk of
 the Surrogate Court.

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Order of Continuance.

BERGEN COUNTY ORPHANS' COURT.

In the Matter
 of
 The Estate of John Tipper, de-
 ceased.

On Appeal by Neva
 M. Harrison,
 Admx. of the
 Estate of Lottie
 Lee Tipper from
 Probate of Will
 by Surrogate.

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The hearing of the above named appeal having

Order of Continuance.

10 been regularly set for this day, and the matter
being opened to the Court by Adolf L. Engelke,
proctor of the estate of John Tipper, deceased,
and of the respondents Alfred T. Taylor and
William E. H. Schneider, executors of the last
will and testament of John Tipper, and in the
presence of Albert I. Drayton, proctor for the
respondents Englewood Hospital Association, St.
Paul's Church, Englewood, New Jersey, and
Englewood Free Public Library, and Michael J.
King, Esq., representing Warren Dixon, Esq.,
and the said Michael J. King, Esq., representing
Warren Dixon, Esq., stating to the Court that
a substitution of proctors for the appellant Neva
M. Harrison, administratrix as aforesaid, was
20 about to be given to the said Warren Dixon, and
further stating that the said Warren Dixon, Esq.,
had gone over the case of the appeal for the
said appellant and had expressed his willingness
to take care of her interests in this litigation and
that it would be impossible for him to thoroughly
master the case and secure the material wit-
nesses so as to properly present it before the
Court on July 11, 1917, and reading an affidavit
of the said Neva M. Harrison, administratrix as
30 aforesaid, stating some or all of the facts afore-
said, and it appearing to the Court that no notice
of an application for a continuance had been
given to either of the proctors of the above
named respondents, who were ready to proceed
with the hearing and had summoned numerous
witnesses, and it being represented to the Court
that the estate would be put to considerable ex-
pense in the payment of fees to an expert wit-
ness;

40 And upon the filing of said affidavit and the

Order of Continuance.

hearing of argument by the proctor for the respondents estate of John Tipper and the executors aforesaid, and Michael J. King, representing Warren Dixon, Esq., and application having been made by the said Michael J. King, Esq., representing Warren Dixon, Esq., for a continuance of the hearing of the appeal of the said appellant, Neva M. Harrison, administratrix as aforesaid, and the Court having considered the said application and the argument of the respective proctors thereon;

10

It is, on this tenth day of July, 1917, ordered that the hearing of the appeal of Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, from the probate of the will of John Tipper, deceased, by the Surrogate of Bergen County, be and the same is hereby continued until Tuesday, July 17, 1917, at the Court House, Hackensack, New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard upon the following terms: That the said Neva M. Harrison, administrator, as aforesaid, appellant, pay on or before July 16, 1917, at twelve o'clock noon, to the respondents Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of, and representing the estate of, John Tipper, deceased, or to their proctor for them, and to the above named respondents, Englewood Hospital Association, St. Paul's Church and Englewood Free Public Library, or to their proctor for them, who appeared at the hearing of this appeal on this day, their respective costs of the day for such appearances at that time, and also pay to the proctor of the said executors representing the said estate of the said John Tipper, deceased, the expenses for the attendance of such expert

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Affidavit of Service of Order, etc.

witness who had been engaged by said estate in this appeal for said hearing, the amount of such expense to be certified to said Warren Dixon, Esq., under the hand of the proctor of said estate;

10 And upon the said Neva M. Harison, administratrix as aforesaid, failing to make all of said payments of said costs and expenses on or before the time hereinbefore stated, it is further ordered that the said appeal of the said Neva M. Harison, administratrix as aforesaid, shall be dismissed;

20 And it is further ordered that the matter of costs and counsel fees on the dismissal of said appeal shall abide the further order of the Court.

And it is further ordered that a copy of this order which need not be certified be served upon Warren Dixon, Esq., by leaving the same at his law office in Jersey City within two days from the date hereof.

W. M. SEUFERT,
J.

**Affidavit of Service of Order, Certificate
and Costs.**

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State of New Jersey,)
County of Hudson, { ss. :

Adolf L. Engelke, being duly sworn according to law, on his oath deposes and says:

(1) That he is the proctor for the respondents, Alfred T. Taylor and William E. H. Schnieder, executors of and representing the estate of, John Tipper, deceased;

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(2) That on Thursday, July 12, 1917, he served an order made in the above entitled appeal on

Order Dismissing Appeal.

July 10, 1917, upon Warren Dixon, Esq., by leaving a true copy of said order at his office with a person in charge thereof, who promised to deliver the same to the said Warren Dixon; that at the same time he left with the person in charge of the said office, a certificate under his hand and seal, directed to the said Warren Dixon, Esq., certifying the amount of the expenses of the expert witness engaged by the said estate for the hearing on July 10th, 1917; 10

(3) That on Saturday, July 14, 1917, deponent served a copy of the costs of the day, July 10, 1917, as taxed by the Clerk of the Bergen County Orphans' Court, on the said Warren Dixon, Esq., by leaving the same at his law office in Jersey City; 20

(4) That the said Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, has not, nor has anyone for her, paid to deponent the amount of the costs taxed by the Clerk of the Orphans' Court or the amount of the expenses of the expert witness, or any part thereof, as required by the order of July 10, 1917, nor has said order been complied with in any respect. 30

ADOLF L. ENGELKE.

Subscribed and sworn to before
me this sixteenth day of July. }
A. D. 1917, at 3.50 P. M.

William E. Ellis,
Master in Chancery of N. J.

Order Dismissing Appeal.

The hearing of the above named appeal having been continued by order of July 10, 1917, to July 17, 1917, at the Court House, Hacken- 40

Order Dismissing Appeal.

10 sack, New Jersey, at ten o'clock in the forenoon of that day, upon condition that the said Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, deceased, pay on or before July 16, 1917, at twelve o'clock noon, to the respondents, Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament and representing the estate of John Tipper, deceased, or to their proctor for them, and to the respondents Englewood Hospital Association, St. Paul's Church, Englewood, New Jersey, and Englewood Free Public Library, or to their proctor for them, their respective costs of the hearing held or to be held July 10, 1917, and also

20 pay to the proctor of the said executors representing the said estate of John Tipper, deceased, the expenses of the attendance of the expert witness who had been engaged by said estate and who appeared at said hearing, the amount of such expenses to be certified to Warren Dixon, Esq., under the hand of the proctor of the said estate, and it appearing by said order of July 10, 1917, that if the said Neva M. Harrison, administratrix as aforesaid, should fail to make all

30 of said payments of said costs and expenses on or before the time stated in said order, the said appeal of the said Neva M. Harrison, administratrix as aforesaid, should be dismissed;

And it further appearing in and by said order, that the matter of costs and counsel fees on the dismissal of said appeal should abide the further order of the Court, and it further appearing in and by said order that a copy of said order, not certified, be served upon Warren Dixon, Esq., by leaving the same at his law office, in

40 Jersey City, within two days from the date thereof, and it further appearing by affidavit of Adolf

Order Dismissing Appeal.

L. Engelke, proctor of the said estate of said John Tipper, deceased, and of the respondents, the executors of the said last will and testament of said John Tipper, deceased, that a copy of said order of July 10, 1917, together with a certificate exhibiting the expenses of the expert witness engaged by the said estate for the hearing on July 10, 1917, was served on Warren Dixon, Esq., by leaving the same at his law office in Jersey City on July 12, 1917, as required by said order, and that a copy of the costs of the day, July 10, 1917, as taxed by the Clerk of the Bergen County Orphans' Court, was served on the said Warren Dixon, Esq., by leaving the same at his law office in Jersey City, on July 14, 1917;

And it further appearing by the affidavits of Adolf L. Engelke, proctor as aforesaid, and Albert I. Drayton, proctor for the respondents Englewood Hospital Association, St. Paul's Church, Englewood, New Jersey, and Englewood Free Public Library, that the said Neva M. Harrison, administratrix as aforesaid, has not paid any or all of said costs and expenses as required in and by said order of July 10, 1917;

It is, on this 17th day of July, 1917, ordered that the appeal of the said Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, deceased, from the probate of the last will and testament of John Tipper, deceased, be and the same is hereby dismissed, with costs to the respective proctors of the respondents to be taxed;

And it is further ordered that the proctor of the respondents, Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of John Tipper, deceased, be allowed a counsel fee of eleven hundred dollars, to be paid out of the said estate;

Certifications of Surrogate and Judge.

And it is further ordered that the proctor of the respondents Englewood Hospital Association, St. Paul's Church, Englewood, New Jersey, and Englewood Free Public Library, be allowed a counsel fee of three hundred dollars, to be paid out of the said estate.

W. M. SEUFERT,
Judge.

State of New Jersey, }
Bergen County, } ss.:

I, Robert A. Sibbald, Surrogate of the County of Bergen, do hereby certify that I have compared the foregoing copy of the transcript of proceedings in the matter of the appeal of Neva M. Harrison, from the probate of the will of John Tipper, deceased, with the original record thereof now remaining in my office, and have found the same to be a correct transcript therefrom, and the whole of such original record.

Witness my hand and seal of office, at Hackensack, this thirteenth day of August A. D., nineteen hundred and seventeen.

ROBT. A. SIBBALD,
Surrogate.

State of New Jersey, }
Bergen County, } ss.:

I, William M. Seufert, presiding Judge of the Orphans' Court of the County of Bergen, do hereby certify that the foregoing exemplification of the transcript of proceedings in the matter of the appeal of Neva M. Harrison, from the probate of the will of John Tipper, deceased, is authenticated in due form of law, and in such manner that the same would be received in evidence in all the courts of this State.

Notice of Appeal.

And I do further certify, that Robert A. Sibbald, the officer who signed said certificate, is the Surrogate of the said County of Bergen and Clerk of the Orphans' Court, and that the seal affixed thereto is the official seal of this Court, and the signature thereto is in his own proper handwriting. 10

In testimony whereof, I have hereto set my hand and caused the seal of said Orphan's Court to be affixed this thirteenth day of August A. D., nineteen hundred and seventeen.

WM. M. SEUFERT,
Presiding Judge.

State of New Jersey, }
Bergen County, } ss. :

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I, Robert A. Sibbald, Surrogate and Clerk of the Orphan's Court of said County of Bergen, do hereby certify that William M. Seufert, whose name is subscribed to the foregoing certificate, is Presiding Judge of said Orphans' Court, duly commissioned and sworn and that the signature of said Judge to said certificate is genuine. 30

Witness my hand and seal of office this thirteenth day of August, A. D., nineteen hundred and seventeen.

ROBERT A. SIBBALD,
Clerk and Surrogate.

Notice of Appeal.

Neva M. Harrison, Administratrix of the estate of Lottie Lee Tipper, deceased, hereby appeals to the Prerogative Court from the order 40

Petition of Appeal.

entered herein on the tenth day of July, nineteen hundred and seventeen continuing the hearing to July seventeenth, nineteen hundred and seventeen, upon certain terms and conditions therein specified, and from every part thereof.

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Dated, Jersey City, N. J., August 7, 1917.

WARREN DIXON,
Proctor for Appellant.

Petition of Appeal.

To the Ordinary of the State of New Jersey:

The petition of Neva H. Harrison, Administratrix of the estate of Lottie Lee Tipper, deceased, of Englewood, in the County of Bergen and State of New Jersey, respectfully shows:

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1. Petitioner, as Administratrix of the estate of Lottie Lee Tipper, late of the County of Bergen, deceased, represents the next of kin of said Lottie Lee Tipper, who died on the nineteenth day of December, nineteen hundred and sixteen, leaving her surviving as her sole next of kin one sister, to wit, Mary Louise Harrison; said Lottie Lee Tipper at the time of her decease then being the widow of John Tipper, who died on the fifth day of December, nineteen hundred and sixteen, leaving no children nor any legal representative of them.

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2. On the nineteenth day of December, nineteen hundred and sixteen, the Surrogate of Bergen County admitted to probate a certain paper writing purporting to be the last will and testament of the said John Tipper, deceased.

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3. In March, nineteen hundred and seventeen, your petitioner duly appealed from the said order of said Surrogate admitting said paper to probate, to the Orphans' Court of Bergen County.

Answer of Executors.

4. On the tenth day of July, nineteen hundred and seventeen, said Orphans' Court of Bergen County made an order of continuance of hearing of said appeal taken by this petitioner, upon certain terms and conditions therein imposed illegally upon this petitioner.

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5. Your petitioner claims and alleges that the whole and every part of the aforesaid order made on July tenth, nineteen hundred and seventeen, imposing said conditions upon this petitioner in order to secure said continuance, and the said continuance for the time therein fixed, is erroneous, improper and illegal and that your petitioner was and is aggrieved thereby.

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

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WARREN DIXON,
Proctor for Appellant.

Answer of Alfred T. Taylor and William E. H. Schneider, Executors of the Last Will and Testament of John Tipper, Deceased.

(Filed September 13, 1917.)

30

The answer of Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of John Tipper, deceased, to the petition of appeal of Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, deceased, from an order of the Orphans' Court of Bergen County, made on the tenth day of July, nineteen hundred and seventeen.

1. These respondents answering say, that they have no knowledge sufficient to form a belief as to the statements contained in paragraph 1 of the petition of appeal filed herein.

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Notice of Appeal.

2. These respondents admit the allegations contained in paragraphs 2 and 3 of the petition of appeal filed herein.

10 3. These respondents admit the allegations contained in paragraph 4 regarding the making of the said order, but deny that the terms and conditions were illegally imposed upon the petitioner.

4. These respondents are advised, believe and submit that said order is just and in accordance with the law, and deny that said order or any part thereof is erroneous, improper or illegal, but on the contrary allege that said order in every part thereof is legal, proper and correct.

20 They therefore pray that the said order may be in all things affirmed, with costs to be adjudged to these respondents.

ADOLF L. ENGELKE,

Proctor for and of Counsel with Alfred T. Taylor
and William E. H. Schnieder, executors of
the last will and testament of John Tipper,
Deceased.

Notice of Appeal.

30 Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, deceased, hereby appeals to the Prerogative Court from the order or decree dismissing proceedings brought by said Neva M. Harrison, administratrix, &c., made on July seventeenth, nineteen hundred and seventeen, and from every part thereof.

Dated, Jersey City, N. J., August 7, 1917.

40 WARREN DIXON,
Proctor for Appellant.

Petition of Appeal.

To the Ordinary of the State of New Jersey:

The petition of Neva M. Harrison, administratrix of the estate of Lottie Lee Tipper, deceased, of Englewood, in the County of Bergen and State of New Jersey, respectfully shows:

1. Petitioner, as administratrix of the estate of Lottie Lee Tipper, late of the County of Bergen, deceased, represents the next of kin of said Lottie Lee Tipper, who died on the nineteenth day of December, nineteen hundred and sixteen, leaving her surviving as her sole next of kin one sister, to wit, Mary Louise Harrison; said Lottie Lee Tipper at the time of her decease then being the widow of John Tipper, who died on the fifth day of December, nineteen hundred and sixteen, leaving no children nor any legal representative of them. 10
2. On the nineteenth day of December, nineteen hundred and sixteen, the Surrogate of Bergen County admitted to probate a certain paper writing purporting to be the last will and testament of the said John Tipper, deceased. 20
3. In March, nineteen hundred and seventeen, your petitioner duly appealed from the said order of said Surrogate admitting said paper to probate, to the Orphans' Court of Bergen County. 30
4. On the seventeenth day of July nineteen hundred and seventeen, said Orphans' Court of the County of Bergen made an order or decree dismissing the said appeal and proceedings thereon taken by your petitioner, with costs.
5. Your petitioner complains and alleges that the whole and every part of the aforesaid order or decree of July seventeenth, nineteen hundred and seventeen, dismissing said proceedings and petition of appeal is erroneous, improper and 40

Answer of Executors.

illegal and that your petitioner is aggrieved thereby.

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

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Dated, Jersey City, N. J., August 31, 1917.

WARREN DIXON,
Proctor for Appellant.

Answer of Alfred T. Taylor and William E. H. Schneider, Executors of the Last Will and Testament of John Tipper, Deceased.

(Filed Sept. 13, 1917.)

20

The answer of Alfred T. Taylor and William E. Schneider, executors of the last will and testament of John Tipper, deceased, to the petition of appeal of Neva M. Morrison, administratrix of the estate of Lottie Lee Tipper, deceased, from an order of the Orphans' Court of Bergen County, made on the seventeenth day of July, nineteen hundred and seventeen.

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1. These respondents answering say that they have no knowledge sufficient to form a belief as to the statements contained in Paragraph 1 of the petition of appeal filed herein.

2. These respondents admit the allegations contained in Paragraphs 2, 3 and 4 of the petition of appeal filed herein.

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3. These respondents are advised, believe and submit that said order is just and in accordance with the law, and deny that said order or any part thereof is erroneous, improper or illegal, but on the

Notice to Dismiss Appeal.

contrary allege that said order in every part thereof is legal, proper and correct.

They therefore pray that the said order may be in all things affirmed with costs to be adjudged to these respondents.

ADOLF L. ENGELKE,
Proctor for and of Counsel with
Alfred T. Taylor and William E.
H. Schneider, Executors of the
Last Will and Testament of
John Tipper, deceased.

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Notice to Dismiss Appeal.

(Filed Oct. 29, 1917.)

NEW JERSEY PREROGATIVE COURT.

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In the Matter
of
The Appeal of NEVA M. HARRI-
SON, Administratrix, &c., of
Lottie Lee Tipper, from an or-
der of the Orphans' Court of
Bergen County continuing the
hearing of said cause upon cer-
tain terms and conditions
therein specified, made on the
tenth day of July, nineteen
hundred and seventeen.

On Petition
of Appeal.

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Sir:

Please take notice that I shall apply to the Ordinary, at the State House, in Trenton, on the twenty-third day of October, instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be

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Notice to Dismiss Appeal.

heard, for an order that the appeal heretofore taken in this cause, be dismissed with costs, for want of prosecution.

Dated October 18, 1917.

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ADOLF L. ENGELKE,
Proctor for and of Counsel with
Alfred T. Taylor and William E.
H. Schneider, Executors of the
Last Will and Testament of
John Tipper, deceased.

To

Warren Dixon, Esq.,
Proctor of Appellant.

20

State of New Jersey, }
County of Hudson, } ss. :

Adolf L. Engelke, being duly sworn, on his oath deposes and says that on Thursday, October eighteenth, 1917, he served the within notice upon Warren Dixon, Esq., proctor of appellant, by leaving a true copy thereof at the office of the said Dixon, No. 1 Montgomery Street, Jersey City, with the person in charge thereof, who promised to deliver the same to the said Dixon.

30

ADOLF L. ENGELKE.

Sworn and subscribed to before me this }
twenty-second day of October, A. D. 1917. }

Daniel P. Byrnes,
Master in Chancery of New Jersey.

40

Notice to Dismiss Appeal.

NEW JERSEY PREROGATIVE COURT.

(Filed Oct. 29, 1917.)

In the Matter

of

The Appeal of NEVA M. HARRISON, Administratrix, &c., of Lottie Lee Tipper, from an order or decree of the Orphans' Court of Bergen County dismissing the appeal of said NEVA M. HARRISON, Administratrix &c., from the order of the Surrogate of BERGEN COUNTY admitting to probate a certain paper writing as the Last Will and Testament of JOHN TIPPER, deceased.

On Petition of
Appeal.

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Sir:

Please take notice that I shall apply to the Ordinary, at the State House, in Trenton, on the twenty-third day of October; instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order that the appeal heretofore taken in this cause, be dismissed with costs for (1) want of

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Order of Reference.

prosecution and (2) failure to make the deposit as required by the rules of this Court.

Dated October 18, 1917.

ADOLF L. ENGELKE,

Proctor for and of Counsel with
 Alfred T. Taylor and William E.
 H. Schneider, Executors of
 the Last Will and Testament
 of John Tipper, deceased.

10

To

Warren Dixon, Esq.,
 Proctor of Appellant.

State of New Jersey, }
 County of Hudson, } ss. :

20

Adolf L. Engelke, being duly sworn, on his oath deposes and says that on Thursday, October eighteenth, 1917, he served the within notice upon Warren Dixon, Esq., proctor of appellant, by leaving a true copy thereof at the office of the said Dixon, No. 1 Montgomery Street, Jersey City, with the person in charge thereof, who promised to deliver the same to the said Dixon.

ADOLF L. ENGELKE.

30

Sworn and subscribed to before me this }
 twenty-second day of October, A. D. 1917. }

Daniel P. Byrnes,
 Master in Chancery of New Jersey.

Order of Reference.

(Filed Oct. 23, 1917.)

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It is on this 23rd day of October, 1917, on motion of Warren Dixon, proctor for Neva M. Harrison, administratrix of Lottie Lee Tipper, deceased, the appellant, the Proctors of the respondents Englewood Hospital Association, Engle

Affidavit of Alfred T. Taylor.

wood Free Public Library, St. Paul's Church, Englewood, the estate of John Tipper and Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of John Tipper, consenting thereto, ordered that the above entitled cause be and the same is hereby referred to Hon. John H. Backes, one of the vice-ordinaries, to hear the same for the ordinary and to report thereon to him what order or decree should be made therein. 10

E. R. WALKER,
Ordinary.

We hereby consent to the making and entry of the foregoing order of reference.

ALBERT I. DRAYTON,
Proctor for Englewood Hospital Association,
Englewood Free Public Library, St. Paul's
Church, Englewood. 20

ADOLF L. ENGELKE,
Proctor for the Estate of John Tipper and Alfred
T. Taylor and William E. H. Schneider, Ex-
ecutors of the Last Will and Testament of
John Tipper.

Affidavit of Alfred T. Taylor.

(Filed Oct. 29, 1917.) 30

State of New Jersey, }
County of Hudson, } ss.:

Alfred T. Taylor being duly sworn on his oath deposes and says that he is one of the executors nominated in the last will and testament of John Tipper, deceased, which will was duly probated by the Surrogate of Bergen County and from which probate the appeals in this cause are pending; 40

Affidavit of Alfred T. Taylor.

Deponent further says that the real estate consists in part of six parcels of real estate, five of which are improved; that other parcels of real estate are unimproved and that taxes are unpaid thereon and accruing; that by reason of the appeals first to the Orphans' Court which was not prosecuted, and unnecessarily delayed and of the pending appeals to this Court, deponent and his co-executor, William E. H. Schneider, are prevented from proceeding with a sale of this real estate and the payment of the taxes thereon, and are constantly under expenses for the maintenance and up-keep of the improvements of the five parcels above mentioned;

That the testator died on December sixth, nineteen hundred and sixteen; that the appeal was taken from the probate of the will to the Orphans' Court on or about the fourteenth day of March, nineteen hundred and seventeen, and the appeal to this Court was taken on August seventh, nineteen hundred and seventeen; that beyond the making of a deposit and the filing of the petition, the appellant has taken no further steps in this Court and that it is the opinion of deponent that the appeal is without merit and if further delayed the estate will be unnecessarily called upon to pay interest to claims which deponent and his co-executor are now of opinion it would be unsafe for them to pay unless the appeals were disposed of.

ALFRED T. TAYLOR.

Sworn and subscribed to before me this 18th day of October, A. D., 1917.

HARRY B. BROCKHURST,
Master in Chancery of New Jersey.

Order.

(Filed October 29, 1917.)

This matter coming on to be heard on the notices, and in the presence of Albert I. Drayton, proctor for the respondents, Englewood Hospital Association, St. Paul's Church, Englewood, N. J., and the Englewood Free Public Library, and of Adolf L. Engelke, proctor of the estate of John Tipper, deceased, and of the respondents, Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of John Tipper, deceased, and in the presence of Warren Dixon, Esq., proctor of the appellant, Neva M. Harrison, administratrix, aforesaid, and application being made to the Court to dismiss said appeal for lack of prosecution, and upon hearing the arguments of counsel and the reading of the affidavit of Alfred T. Taylor,

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It is on this 23rd day of October A. D., 1917, ordered that the hearing of the above-entitled appeal be and the same is hereby set down before the Hon. John H. Backes, one of the Vice Ordinaries, at the State House at Trenton, on Tuesday, the 30th day of October A. D., 1917, at the hour of 10:30 o'clock in the forenoon.

E. R. WALKER,

Ordinary.

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John H. Backes,
V. O.

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Conclusions.

(Filed January 19, 1918.)

NEW JERSEY PREROGATIVE COURT.

In the Matter
of
The Estate of John Tipper,
deceased.

On appeal from the Orphans Court of Bergen County.

For the Appellant, Mr. WARREN DIXON.
For the Respondent, Mr. ADOLF L. EN-
GELKE.

BACKES, Vice-Ordinary:

The will of John Tipper, deceased, was admitted to probate by the Surrogate of Bergen County. Neva M. Harrison, the appellant, administratrix of the widow of the testator, took an appeal to the Orphans' Court and a day for hearing was fixed. On that day the appellant applied for an adjournment on the ground that she then recently was obliged to retain new counsel who had not time to prepare for trial, and also because of the absence of a material witness. The Court, deeming the reasons sufficient, ordered a continuance for a week to July 17, 1917, upon the following terms:

"That the said Neva M. Harrison, administratrix as aforesaid, appellant, pay on or before July 16, 1917, at twelve o'clock noon, to the respondents Alfred T. Taylor and William E. H. Schneider,

Conclusions.

executors of the last will and testament of, and representing the estate of, John Tipper, deceased, or to their proctor for them, and to the above named respondents, Englewood Hospital Association, St. Paul's Church and Englewood Free Public Library, or to their proctor for them, who appeared at the hearing of this appeal on this day, their respective costs of the day for such appearances at that time, and also pay to the proctor of the said executors representing the said estate of the said John Tipper, deceased, the expenses for the attendance of such expert witness who had been engaged by said estate in this appeal for said hearing, the amount of such expense to be certified to said Warren Dixon, Esq., under the hand of the proctor of said estate;

And upon the said Neva M. Harrison, administratrix as aforesaid, failing to make all of said payments of said costs and expenses on or before the time hereinbefore stated, it is further ordered that the said appeal of the said Neva M. Harrison, administratrix as aforesaid, shall be dismissed;"

Timely objection was made to the allowance of the expenses for the expert. The taxed bill of costs, amounting to \$26.40, and a statement of the expenses of the expert witness, amounting to \$107.75, duly certified, were served upon the appellant's counsel within the time limited by the order. The amounts were not paid and for failure to pay a decree was entered on the adjourned day, dismissing the appeal. From both order and decree the appeal is taken, chiefly on

Conclusions.

the ground that the allowance of the fee of the expert witness was illegal, oppressive and an abuse of discretion. That the Court had power to impose terms, is well settled. The usual condition is the payment of the taxable costs. 6 R. C. L., 567. Others may be imposed. The cases are collected in the note to 26 Ann. Cas., 306. Sections 196 and 197 of the Orphans' Court Act (C. S., 3884) authorizes allowances, to either litigant or the estate, of expenses in addition to costs, which expenses in a proper case may include fees of expert witnesses (*Sanderson v. Sanderson*, 52 N. J. Eq., 243), and if the justice of the case demanded, it was within the discretion of the court below to require payment of the fee as a condition of the continuance. The allowance rests in a sound discretion and in its exercise it seems indispensable that the propriety of hiring the expert and the value of his services be judicially determined, otherwise how could the Court hold that the terms imposed were reasonable? The Court examined into and passed upon neither question, but left the first to the judgment of counsel and the amount to be arbitrarily fixed by the party who was to receive it. This is evident from the minutes and appears by the order requiring the payment of such expense as the proctor should certify. The statement made at the time of the motion, that the fee was \$100, does not relieve the situation and besides the certificate of the proctor fixes the expenses at a larger sum. The failure to state in the order of continuance the precise terms, is fatal, and as the dismissal was based solely upon a non-compliance the order dismissing must be reversed.

The cause will be remanded for trial, with costs.

Decree of Reversal.

(Filed February 15, 1918.)

NEW JERSEY PREROGATIVE COURT.

In the Matter

of

The Appeal of NEVA M. HARRISON, Administratrix, &c., of Lottie Lee Tipper, deceased, from an order or decree of the Orphans' Court of Bergen County, dismissing the appeal of said NEVA M. HARRISON, Administratrix, &c., from the Order of the Surrogate of Bergen County admitting to probate a certain paper writing as the last Will and Testament of John Tipper, deceased.

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On Appeal.

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Neva M. Harrison, administratrix, &c., of the estate of Lottie Lee Tipper, deceased, having presented her petition of appeal, appealing from an order or decree of the Orphans' Court of Bergen County wherein and whereby the said Orphans' Court dismissed the proceedings brought by said Neva M. Harrison, administratrix, &c., on appeal from the order or decree of the Surrogate of said County of Bergen admitting to probate a certain paper writing purporting to be the last will and testament of John Tipper, deceased, which said order or decree of dismissal was made by the said Orphans' Court on the seventeenth day of July, nineteen hundred and seven-

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Decree of Reversal.

10 teen; and the said matter having come on to be heard before this Court in the presence of Warren Dixon, counsel for the appellant, and Adolph L. Engelke, counsel for the alleged executors of the estate of John Tipper, deceased, and Albert I. Drayton, counsel for appellees, Englewood Hospital Association, St. Paul's Church of Englewood, New Jersey, and Englewood Free Public Library; and the Court having heard the said parties and the arguments of their respective counsel and having duly considered the said matter so presented,

20 It is thereupon, on this fifteenth day of February, nineteen hundred and eighteen, on motion of Warren Dixon, of counsel with said Neva M. Harrison, administratrix, &c., appellant,

30 Ordered, adjudged and decreed that the aforesaid order or decree of the Orphans' Court dismissing the appeal of said Neva M. Harrison, administratrix, &c., be and the same hereby is in all things reversed, with the appellant's costs to be taxed; and it is further ordered that the said Orphans' Court of Bergen County duly proceed with the trial of said cause before it in accordance with the law and the practice and rules of the Court.

E. R. WALKER,
Ordinary.

Respectfully advised,

JOHN H. BACKES,
V. O.

**Notice of Appeal to the Court of Errors
and Appeals.**

(Filed February 18, 1918.)

The respondents, Alfred T. Taylor and William E. H. Schneider, executors of the last will and testament of John Tipper, deceased, hereby appeal from a decree of reversal, which decree reversed in all things a decree of the Bergen County Orphans' Court dismissing the appeal of the appellant, Neva M. Harrison, administratrix, &c., of the estate of Lottie Lee Tipper, deceased, made in this Court in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

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ADOLF L. ENGELKE,
Solicitor for and of Counsel with Respondents
Alfred T. Taylor and William E. H. Schneider.

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Dated, February 16, 1918.

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

ADOLF L. ENGELKE,
Of Counsel with Respondents Alfred T. Taylor
and William E. H. Schneider.

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Petition of Appeal.

(Filed Feb. 21, 1918.)

NEW JERSEY COURT OF ERRORS AND AP-
PEALS IN THE LAST RESORT IN ALL
CAUSES.

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In the Matter

of

The appeal of NEVA M. HARRISON, Administratrix, etc., of Lottie Lee Tipper, deceased, from an order or decree of the Orphans' Court of Bergen County dismissing the Administratrix, etc., from the order of the Surrogate of Bergen County admitting to probate a certain paper writing as the last will and testament of John Tipper, deceased.

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On Appeal from
the Prerogative
Court.

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

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The petition of Alfred T. Taylor and William E. H. Schneider, Executors of the last will and testament of John Tipper, deceased, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree of reversal made in the New Jersey Prerogative Court, by his Honor, Edwin R. Walker, Ordinary of the State of New Jersey, bearing date the 15th day of February, in the year 1918, in the cause wherein the said

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Petition of Appeal.

Neva M. Harrison, Administratrix, etc., of Lottie Lee Tipper, deceased, appealed from an order or decree of the Orphans' Court of Bergen County, dismissing the appeal of the said Neva M. Harrison, Administratrix, etc., as aforesaid, from the order of the Surrogate of Bergen County, admitting to probate the last will and testament of the said John Tipper, deceased, in this respect to wit, that the said decree orders and adjudges that the order or decree of the said Bergen County Orphans' Court dismissing the appeal of the said Neva M. Harrison, Administratrix as aforesaid, from the order of the Surrogate of Bergen County, admitting to probate the last will and testament of John Tipper, deceased, be in all things reversed, with the costs of the said Neva M. Harrison, Administratrix aforesaid, to be taxed, and further ordering that the said Orphans' Court of Bergen County duly proceed with the trial of the said cause before it, in accordance with law and the practice and rules of the Court.

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And your petitioners humbly appeal from each and every part of the said decree or order, upon the ground that the same is erroneous, improper and illegal and that your petitioners are aggrieved thereby, in that the said Court should have affirmed the order of the said Bergen County Orphans' Court appealed from, as the same was just and legal and made upon a due consideration and proper judicial determination of the facts before it when making the order appealed from.

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Your petitioners therefore pray that the said decree of reversal of the said Ordinary may be, in the particulars aforesaid, reversed, set aside

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Affidavit of Service of Petition of Appeal.

and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

ADOLF L. ENGELKE,

Sol'r. for and of Counsel with Appellants.

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Affidavit of Service of Petition of Appeal.

(Filed March 6, 1918.)

State of New Jersey, }
County of Hudson, } ss.:

Adolf L. Engelke, being duly sworn on his oath, deposes and says, that he is an attorney and counsellor at law of this State and the solicitor and counsel with the appellants in the above entitled appeal; that on Monday, February 25, 1918 he served a certified copy of the Petition of Appeal, heretofore filed in the above entitled cause, upon Warren Dixon, Solicitor of the Respondent Neva M. Harrison, Administratrix, etc., of Lottie Lee Tipper, by leaving said certified copy with the person in charge of the office of the said Warren Dixon, at No. 1 Montgomery Street, Jersey City, this State; who promised to deliver the same to the said Dixon.

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ADOLF L. ENGELKE.

Sworn and subscribed this 25th }
day of February, A. D., 1918. }

Daniel P. Byrnes,

Master in Chancery of New Jersey.

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Answer.

(Filed March 9, 1918.)

The answer of Neva M. Harrison, Adminstratrix, etc., of Lottie Lee Tipper, deceased, etc., the 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 of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the Fifteenth day of February, in the year nineteen hundred and eighteen, made and entered in the Prerogative Court of the State of New Jersey, 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 is legal and proper, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

WARREN DIXON,

Proctor for and of counsel with respondent.

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Notice of Argument.

(Filed June 1, 1918.)

Sir:

10 Take notice that the argument of the appeal
in the above cause will be brought on at the
next term of the Court of Errors and Appeals,
to be held at the State House at Trenton, on
Tuesday, the eighteenth day of June, next, at
eleven o'clock A. M. or as soon thereafter as
counsel can be heard.

ADOLF L. ENGELKE,

Proctor for Appellants Alfred T. Taylor and
William E. H. Schneider, Executors, etc., of
John Tipper, deceased.

20 Dated, May 29th, 1918.

To

Warren Dixon, Esq.,
Proctor for Respondent,
Neva M. Harrison, Administratrix, etc.

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New Jersey Court of Errors and Appeals.

In the Matter

of

The appeal of NEVA M. HARRISON, Administratrix, etc., of Lottie Lee Tipper, deceased, from an order or decree of the Orphans' Court of Bergen County, dismissing the appeal of said NEVA M. HARRISON, Administratrix, etc., from the order of the Surrogate of Bergen County admitting to probate a certain paper writing as the last will and testament of John Tipper, deceased.

On Appeal
From
Prerogative
Court.

POINTS FOR APPELLANTS.

This appeal brings up for review the propriety and legality of a decree of the Prerogative Court (Case, p. 49), which reversed a decree of the Bergen County Orphans' Court in the above matter (Case, p. 29).

The decree of the Orphans' Court dismissed the appeal of Neva M. Harrison, Administratrix of Lottie Lee Tipper from the probate of the will of John Tipper, husband of said Lottie Lee Tipper.

The order of dismissal of the appeal was the result of the failure of Neva M. Harrison, Administratrix, to comply with and observe the conditions of an order of the Orphans' Court (Case, p. 25), theretofore made, which granted to the said Administratrix a continuance of the hearing of her appeal upon certain conditions, namely, the payment of costs of the day to two of the respondents to her appeal, and in addition thereto, the payment to the Executors of the John Tipper estate of the expenses of an expert witness, called by them and present in court that day, ready to testify in answer to the issue of the testator's mental capacity tendered by the Administratrix' petition of appeal (Case, p. 2, l. 30), but who was prevented from testifying because of the continuance of the hearing of the appeal, but whose expense the Executors were nevertheless obligated to pay.

The one real question involved is the propriety of the order of continuance made by the Orphans' Court, involving, of course, the propriety of the terms imposed by said order.

A history of the facts may be summarized as follows:

The testator, John Tipper, made his will in September, 1916, and died December 6th, 1916. In the will he nominated the appellants in this Court, Alfred T. Taylor and William E. H. Schneider, Executors. The Executors offered the will for probate and on December 19th, 1916, the Surrogate of Bergen County duly admitted the said will to probate.

Lottie Lee Tipper was the wife of John Tipper, the testator. She died December 19th, 1916. The respondent in this Court and the appellant below, Neva M. Harrison, was appointed Administratrix of Lottie Lee Tipper, the wife of tes-

tator. She filed the petition of appeal (Case, p. 1) from the probate of John Tipper's will, March 14, 1917.

Citations were in due course issued by Messrs. Collins & Corbin, as proctors of the Administratrix, and made returnable June 6th, 1917. On the return day of the citations, the proctors of the respective parties—Messrs. Collins & Corbin, representing the Administratrix of Lottie Lee Tipper; Adolf L. Engelke, representing the executors of John Tipper, and Albert I. Drayton, representing three of the legatees—appeared, and the Court fixed June 25th and 26th, for the hearing of the appeal. About June 21st, by agreement of the counsel just named, all appeared before the Judge of the Orphans' Court and counsel for the Administratrix asked for an order of continuance of the hearing of her appeal. It was opposed, but on the allegation of counsel for the Administratrix, that a material witness, Anna Wildhagen, was absent from the State, but could and would be produced after a reasonable adjournment, the Court continued the hearing of the said appeal and set July 10th and 11th, peremptorily, for the trial of this appeal, to which stipulation counsel for the Administratrix agreed.

Counsel for the Executors prepared for trial, issued subpoenas, and on July 10th, the day fixed by the Court, appeared before the Orphans' Court with witnesses, including an expert, whose services, at considerable expense to the Executors, had been engaged for the day. No notice of an application for further continuance had been received by counsel for the Executors, or by anyone for them. Mr. King, who stated that he appeared in behalf of Mr. Dixon, addressed the Court and requested an adjournment (Case,

p. 14). He read an affidavit of the Administratrix, which is printed on Case page 9, which stated that she had engaged new counsel, Warren Dixon, Esq., who deemed it impossible to prepare for the trial, and also further alleged that a material witness (the same Anna Wildhagen) was absent from the State, being the same witness whose absence was the ground for the granting of the prior continuance.

In opposition to the granting of the continuance, counsel for the Executors urged (1) the Court's previous fixing of the day peremptorily, (2) the summoning of a host of witnesses and the expense incurred by the Executors for the services of the expert who was present and ready to testify, and (3) the fact that no notice of the intended application for a continuance had been given to counsel for the executors (Case, pp. 15-16), that he might have avoided the expense.

Notwithstanding this opposition, the Orphans' Court continued the cause to July 17th, upon the terms above set out. The Administratrix failing to comply therewith and failing to appear on July 17th, the Orphans' Court on July 17th dismissed her appeal (Case, p. 29).

On August 7th, 1917, the Administratrix appealed to the Prerogative Court (Case, p. 33) from the order of continuance and on the same date noticed a separate appeal from the order of dismissal, filing separate petitions of appeal (Case, pp. 33 to 38 inclusive).

No action being taken on either appeal, counsel for the executors gave notice on October 18, 1917, of a motion to dismiss the appeals (pp. 39-41).

On October 23rd, the cause was referred to Vice Ordinary Backes and on that day he made

an order setting down the hearing of the appeal for October 30th (Case, p. 45). On the day fixed, the appeal was duly argued and on January 19th, 1918, the Vice Ordinary filed his conclusions (Case, p. 46) in which he decided that although the Court had the power to impose the expense of the expert, the Court did not pass upon the question of the propriety of hiring the expert by the Executors and the value of his services (Case, p. 48).

On February 15th, 1918, a decree reversing the order of the Bergen County Orphans' Court dismissing the appeal of the Administratrix was entered in the Prerogative Court (Case, p. 49).

From this decree the Executors appealed to this Court on February 16th, 1918 (Case, p. 51), and on February 21, 1918, filed their petition of appeal (Case, p. 52).

The decree of reversal of the Prerogative Court sending this matter back to the Orphans' Court for trial, was illegal and should be reversed because the Orphans' Court, when allowing the continuance, used sound discretion in imposing the terms contained in said order, and its order of dismissal of the appeal, because of a failure to comply with the conditions of the order of continuance, was legal and just.

POINT I.

Continuances of causes are not favored by the courts.

POINT II.

The granting or refusing of a continuance and the imposing of terms and conditions upon its grant, are matters resting in the sound discretion of the Court.

POINT III.

Sound discretion implies the imposing of such terms as the justice of the case demands.

POINT IV.

Courts, when granting a continuance, are not restricted to the imposing of costs alone, but may require as a condition precedent to the granting of the continuance, a large variety of conditions on the part of the party asking the indulgence of the court.

POINT V.

In the absence of a prompt waiver of the continuance, the order therefor must be regarded as absolute and the applicant for the order must be considered as having accepted the terms imposed.

POINT VI.

The order of continuance being accepted upon the terms imposed, becomes thereby an agreement of record and the applicant cannot complain if the order is enforced against her.

POINT VII.

The Orphans' Court, in imposing the terms contained in the order of continuance, exercised a sound discretion after a full hearing of the merits of the application and the grounds in opposition thereto. Such an order is not reviewable and the Prerogative Court erred in entertaining the appeal and reversing the order of dismissal.

Argument.

The Administratrix when applying for the order of continuance, which was the subject of the appeals, had already been the recipient of an indulgence of the Court in the original continuance granted from June 26th to July 10th. Therefore she was asking the indulgence of the Court for a *second time*. One of the features of our judicial system that has made "Jersey justice" famous throughout the land, is the refusal of our courts to entertain a practice which results in the postponement of causes. This, however, is not the rule alone in the State of New Jersey, but elsewhere as well (9 Cyc., 79 and 158).

The ground alleged for the first continuance was the absence from the State of a witness, Anna Wildhagen. The affidavit read on the application for the continuance in question, names

the same witness as being still absent from the state and *fails to state any facts* from which the Court might conclude that any effort had been made to locate the witness. It alleges a further ground, namely, a change of counsel.

“A continuance should not be granted when it appears that ample time and opportunity for preparation has elapsed before the case is called for a hearing, and the party seeking the continuance has exercised no diligence whatever in endeavoring to be ready.”

9 Cyc., 88;

Bailey *v.* Wilner, 107 Ga., 364.

“One of the most frequent causes for alleged want of preparation is found in the employment of new counsel, before the day set for trial. The rule in this regard *does not vary* from the general practice already [above] laid down.”

9 Cyc., 88.

“POLLOCK, C. B.: The rule, as I remember it, is this—where the postponement of a trial is applied for on the ground of the absence of a material witness, it is given in the first instance as a matter of course; *but if the party come a second time, whether on the same or other materials, he must give some better proof of his good faith:* otherwise the case might go on forever. I therefore think that the condition [of the bringing into Court of the sum sued for, £900] imposed in this case, was a proper one; but the defendant may, if he pleases, avoid it by giving security to the satisfaction of the Master, for the amount sued for.”

Campbell *v.* Read, 4 Jur. (N. S.), page 111.

Since the Court granted the continuance, it is

not of moment to inquire as to the reasons moving the Court in granting the motion. If the Court had denied the continuance its ruling would not have been objectionable. It is well, however, to review the situation presented to the Court when making the order.

On June 6th, the Administratrix, the appellant below, was represented by counsel, who agreed to the fixing of June 25th and 26th, as the days for the hearing of her appeal. Almost twenty days elapsed when counsel finding themselves unable to proceed, applied for further time, and fourteen more days were granted them. The summer vacation was approaching. The Court was desirous of disposing of this case before the fall term. The adjournment to July 10th was peremptory (Case, p. 21, l. 27). On June 23rd (Case, p. 11) the Administratrix was aware that the counsel whom she had chosen to try the case, could not personally attend to the same. She did not seek other counsel, until July 6th, when that counsel found it was impossible for him to prepare for the trial of the cause.

The counsel consulted on July 6th, did not appear before the Court on the day set for the hearing—July 10th—but a representative appeared (Case, p. 14), reading an affidavit which is printed in Case, page 9. No notice of this application for a continuance had been given to counsel for the Executors, who by reason of the fact that the case had been peremptorily set for that day, had witnesses in Court under subpoena, and also Dr. Britton D. Evans, an expert in mental diseases, with whom the Executors had an agreement to pay for his attendance at the Court that day. This expense the Executors will be compelled to meet, although the estate

would derive no benefit from the presence of the doctor. This expense could have been saved the estate, if counsel for the Administratrix had notified counsel for the Executors.

The Court was then confronted with a situation in which to do *justice to BOTH parties*, the continuance should be granted, but the Executors and the estate, which was being attacked, should be left in *statu quo*, and not occasioned any monetary loss by reason of the continuance. Justice demanded that the continuance be given, but it likewise demanded that the estate should be fairly treated, and that they should be reimbursed the expenses which they incurred, for the expert who was present to meet the expected attack upon the mental capacity of the testator under whose will the Executors were acting. This the Court did when it made the continuance, and the imposing of such terms is the exercise of only a sound discretion.

“The Court granted a continuance upon condition that the defendants pay \$65 ‘as terms’ to the plaintiff.

“It appears that this was to cover certain expenditures of the plaintiff in coming to the place of trial with counsel, which would be of no avail if the amendment was allowed, because a continuance of the cause would become necessary.

“In this connection it appears further that the cause had been upon the calendar for two years; * * * and that what was asked was to reimburse plaintiff for actual expenditures, * * *.

“The defendants did not seem to be decidedly averse to paying this money as a consideration to filing the amendment, but wanted it included in the general bill of costs. But this the plaintiff objected to, as not likely to result in his ever getting the

money, * * *. The Court seemed to think that as the defendants had so long delayed their proposed amendment, and had compelled the plaintiff to come with counsel from a distant place, putting him to this expense, and that an amendment would necessitate a continuance, justice required that the defendants should reimburse the plaintiff then and there, for the money thus expended, which otherwise he would perhaps not obtain from the defendants.

“Order affirmed.”

Culverhouse *v.* Crosan, 94 Cal., 544;

See Allen *v.* Chase, 81 Conn., 474.

“We suppose the universal practice is, for the Court to impose such terms as in its discretion may be considered reasonable and just, as a condition to granting a continuance. This is precisely what was done in these causes. The Court imposed such terms as it deemed just; and it is impossible to say that the sums which the company was required to pay in each cause as a condition for its continuance were exorbitant or unreasonable. They will probably no more than indemnify the plaintiffs for the expense and loss they will sustain in consequence of the causes not being brought to trial at the term.”

Hawkins *v.* R. R. Co., 34 Wisc., 302, at 304.

The expense being incurred, it was the Court's opinion that the estate should not pay it if the applicant desired her continuance (Case, p. 20, l. 26). The variety of terms imposed when granting continuances is large.

9 Cyc., 151 A.

While there is no express authority for allowing an expert witness fee as a condition precedent, it has been held that the expenses paid

by a litigant for coming to the scene of the Court, may be imposed as a condition precedent (*Culverhouse v. Crosan*, 94 Cal., 544); the payment of jurors in attendance upon the Court (*Baumberger v. Arff*, 96 Cal., 261) and a counsel fee has been allowed (*Knox v. Arnold*, 1 Wisc., 70). Also that the action should not abate by reason of the death of the party (*Ames v. Webber* 10 Wend.,* 575).

“The other objection relates to the authority of the Court to impose other terms than costs as a condition for granting the continuance. The statute does not authorize other terms than costs to be imposed. But in the reports so many cases may be found in which the power of imposing conditions upon a party upon granting his application for a continuance has been exercised, that the practice must be considered established.”

Brown v. Warren, 17 Nev., 417, at 421.

“* * * and certainly there is nothing unreasonable in the condition upon which it is claimed that the Court offered to grant the motion, viz.: the payment by plaintiff of the fees of all the jurors in attendance upon the Court upon that day, amounting to \$87, and the defendant’s costs for the day.”

Baumberger v. Arff, 96 Cal., 261.

“The Court did not err in imposing the payment of \$75 as a condition for postponing the trial of the action, or from proceeding with the trial upon the refusal of the defendants to comply with the condition. The cause had been set down for trial upon that day with the consent of the defendants, and witnesses had been subpoenaed on behalf of the plaintiffs and were in attendance in court at that time, and one of the plaintiffs had himself gone from Los Angeles to

Calaveras County to attend the trial * * *. The Court was not limited to requiring a payment of the taxable costs as the condition of postponing the trial, but was at liberty to exercise a reasonable discretion for the purpose of compensating the plaintiff for the expense incurred in preparing for the trial."

Pomeroy *v.* Bell, 118 Cal., 635, at 638.

Moreover, the Administratrix, if the terms imposed were not to her liking, should have promptly waived the order, and after failure to do so, must be considered to have accepted them. A prompt waiver is essential to the administration of justice. Any other course would lead the court and counsel to believe that the terms imposed had been accepted.

"In the absence of a prompt waiver of the continuance, the order therefor, must be regarded as absolute, and the clause respecting the payment of costs as indicating the terms upon which the continuance was granted. The words used must be treated as words of agreement rather than of condition. (*Pugh v. Kerr*, 5 Mees. & W. 167; *Horton v. Improvement Co.*, 7 Exch. 911; *Gilliland v. Rappleyea*, 15 N. J. L., 138; *Fenn v. Railway*, 73 Texas, 380.)

Barney v. Love, 101 Mich., 543;

Gilliland v. Rappleyea, 15 Law, 138, at 141.

"It cannot be questioned that *nisi prius* courts possess a large discretionary authority in granting or refusing continuances of pending causes between litigants. It is a power essential to the prompt administration of justice, and its exercise is beyond the jurisdiction of the Appellate Court to control or to revise. It is common practice to grant such applications on *conditions*.

* * *

"It is insisted, however, that the record shows that the appellant *objected* to accepting *the continuance* on the terms imposed. We do not so construe the record. The recital following the order of continuance is—'to which *order* defendant excepts.' It is obvious that the appellant *enjoyed the benefit of the continuance*, and did not object to that; otherwise, he would have insisted on proceeding with the trial of the cause. His exception, according to a well settled rule, must be most strongly construed against him, as the excepting party. It must be taken as an acceptance of the conditions with an objection to *the terms* imposed. This was not permissible. The enjoyment of the benefit of the order as made, was an acceptance of the condition with which the court saw fit to burden it. The two should have been accepted or rejected as an entirety and this course does not seem to have been followed."

Humes *v.* O'Bryan, 74 Ala., 64, at 78.

Approved and cited in full in Ford *v.* Simmons, 121 Pacific (Col.) Rep., 167, at 170.

"This judgment is right in principle, but wrong in point of form. The court granted the defendant an unusual favor in giving him twenty days to pay the costs of putting off the trial and might impose such terms or conditions as they thought proper. If the defendant did not like the terms, he should not have taken the rule. Having taken it, and then neglecting to pay the costs, it was very proper for the court to enforce the order by rendering judgment for the plaintiff."

Booth *v.* Whitby, 5 Hill, 447.

"Relators argue that they rejected the terms imposed by the court and that the trial upon their offer to go on should have proceeded, and the court had not offered

to continue the case and had taxed the costs against them. * * * Perhaps they could have declined to accept a continuance on the terms imposed, and have done this by withdrawing their motion for a continuance. They did not ask, or offer that the order for the continuance should be vacated, which must necessarily have been done if the trial was to be had. * * * In that contingency they should have paid the costs and had their continuance; or they could have asked to have the order for the continuance vacated, and, if done, could have saved the payment of the costs * * *. Suffice it to say that we know of no principle of law or rule of practice by which it may be demanded from a court, as was demanded from the District Court in this case, and even here insisted upon, that it do both of two things at once, the performance of one of which is the non-performance of the other, and then complain that the court has done the one demanded by a formal motion."

State *v.* District Court, 10 Mon., 456, at 459-460.

That the Administratrix accepted the terms imposed, clearly appears from the colloquy between her counsel and the court:

"The Court: That might be so, but the only point now is that the Court will not grant an adjournment without terms and without imposing upon the appellants the costs of the day, and the question is as to whether you want to continue your application for an adjournment on that basis.

"Mr. King: Well, I want an adjournment, and I leave it to your Honor to impose conditions or not" (Case, p. 18, l. 14).

Further colloquy between counsel and the Court, found on Case, page 23, shows that

the Court determined to grant the continuance only on the payment of the expenses incurred by the estate for the expert witness. Counsel for the Administratrix inquired whether the expert witnesses would be paid for by the appellant, and the Court ruled that one was to be paid for. Counsel was informed of the approximate cost which he had to pay. There is no waiver of the continuance. Counsel attempts to withdraw his consent to the "taxation of the costs of the day." His request was for an adjournment and a consent to impose conditions or not. There is no waiver of, or a refusal to accept, the continuance. Counsel's attitude might be construed as a disapprobation of the terms imposed, nothing more. Mere objection, however, to the terms imposed, is not such a waiver of the continuance as is intended.

Humes *v.* O'Bryan, 74 Ala., 64;

Ford *v.* Simmons, 121 Pac., 167.

It has been frequently held that an order of continuance being accepted, the terms imposed thereby become an *agreement of record* between the parties litigant, and the applicant cannot complain if the order is enforced against her. A careful reading of the minutes of the proceedings held before the Court when the continuance was granted, will fail to disclose any circumstance which can be construed into a refusal to accept the continuance. It follows, therefore, that the order of the Court that the case be continued until July 17th on the terms imposed, was an agreement of record between the Administratrix and the Executors. The legal consequence of the breach of such an agreement is the enforcement of the order of dismissal contained in the order of continuance, which resulted in the order the Court made on July 17th.

"In *Waller v. Sultzbacher*, 38 Ala., 318, we said: 'One of the conditions upon which the defendant obtained the continuance at the fall term, was, that if the costs were not paid in ninety days after the adjournment of the Court, the defendant's plea should be stricken from the file, and the plaintiffs have judgment by *nil dicit*, with inquiry. The defendant did not question the right of the Court to impose these terms, but accepted the same. The order of the Court became thereby an agreement of record between the parties, and the defendant cannot complain that it was enforced against him. The record shows that the costs were not paid within the ninety days, and accordingly the Court did not err in striking the defendant's plea from the file, and giving the plaintiff judgment by *nil dicit*.'

"The rule declared above has been announced, in substance, in many of the decisions of this Court, on that and kindred questions. They rest on two well recognized principles: the power of the Court to impose conditions in promotion of the ends of justice, on which it accords the exercise of discretionary powers; and the binding efficacy of agreements entered of record which are implied from the acceptance of the order with the conditions annexed. * * *

"We are aware that, in what we have said above, we are treading on delicate ground. Discretionary powers may be abused, still they do and must exist; and there is really no redress for their abuse. The safety of the public does, and must rest in the strong sense of the right, which should always pre-
side in such ministrations."

Rhea v. Tucker, 56 Ala., 450;

Barney v. Love, 101 Mich., 543.

Under all the circumstances related, the Orphans' Court justly imposed the terms and conditions contained in the order of continuance.

No other course would have so fully served the principles of justice.

The court below, in the conclusions of the Vice Ordinary says that in order to exercise a sound discretion, the court should have examined into and passed upon two questions (1) "the propriety of hiring the expert"; and (2) "the value of his services" (Case, p. 48, l. 20). It is respectfully submitted that in so holding the Vice Ordinary fell into error.

There can be no question as to the propriety of hiring the expert. The issue tendered by the petition of appeal in Paragraph 5, Case, page 2, is the soundness of mind of the testator, John Tipper. To meet such an attack it was most proper to have on hand an expert who could give his aid in the solution of the question which it is common knowledge is a much vexed one. The Executors were entitled to have on hand evidence of this character. They had on hand but one such expert. There is no endeavor to foist upon the appellant unnecessary cost, although who can gainsay the fact that, had the Executors engaged more than one expert, they would have exceeded their authority in an endeavor to sustain the will of their testator. The Court was informed of the nature of the attack; the petition of appeal was before it and it must be presumed that the Court passed upon the question of the propriety of the presence of Dr. Britton D. Evans, an alienist of countrywide fame.

"The value" of the expert's services was not before the Court for judicial determination or otherwise. "*The expense*" of the expert was considered. In that connection the minutes clearly show that the Executors were obligated to pay the expert \$100 and his expenses (Case, p. 23,

l. 26). This was a matter of contract between the Executors and the witness. What the Court determined was that the expense which the Executors had incurred, namely, the amount which they were under contract to pay the witness, which cannot be considered exorbitant or unreasonable, should not be lost to them by reason of the continuance. In other words, the Court decided that the "fee of the expert" should be paid. One expert alone was allowed. The amount of the fee was specified; the only indefinite amount was that of the expenses.

The Orphans' Court was not concerned at this stage of the case, with the value of the expert witness's services, but was merely concerned, in order to exercise its sound discretion, in arriving at what expense the estate was put to and to save it such expense at the cost of the appellant who was seeking the indulgence of the Court.

This Court will presume, and the Prerogative Court ought to have presumed, that the court below had passed upon and found all facts necessary to support its judgment. This would include the propriety of engaging the expert, as well as the value of his services.

"There was no finding of fact as to where the contract in suit was made. The presumption in such case is that the necessary fact was found, *i. e.*, that it was not a New Jersey contract."

Ridley's *v.* Brockhurst, 92 Atl., 58; 86 Law, 697.

The action of the Orphans' Court, should not be reversed when a mere doubt exists as to the causes from which its action springs, but every intendment of its justness should be presumed.

“To work a reversal some injurious error must be shown, as every intendment is in favor of the record (cases cited); to raise a doubt is not enough.”

Phillips *v.* Longport (N. J.), 100 Atl., 192, at 194.

“In determining whether there has been such an abuse [of discretion], ‘great weight is due to the action of the Trial Court; and every reasonable presumption should be given in favor of its correctness.’”

Cables *v.* Bristle, 86 Conn., 223; 84 Atl., 928.

The order specified the payment of “expenses for the attendance of such expert witness who had been engaged by said estate in this appeal for said hearing, the amount of such expense to be certified to said Warren Dixon, Esq., under the hand of the proctor of said estate.”

There is nothing indefinite in such terms, the order is not lacking in precision. By a reference to the amount certified under the hand of the proctor, the appellant could ascertain the expense.

The precise amount of the expense was duly certified in compliance with the order, and served upon Warren Dixon, as directed. There is nothing objectionable in that practice. The Court and counsel had before it the amount of the witness charge, and were informed that expenses in addition to the approximate amount of the charge would be required. Such expenses were the subject of discussion before the Court in the final stages of the proceeding on July 10th (Case, p. 25).

Such practice has been heretofore approved

in the courts, and the Administratrix cannot find herself aggrieved in any particular.

“There is no showing made by defendants as to the number of witnesses in attendance, the amount of their fees, nor any reason why the costs of their attendance should be taxed against plaintiff, except that after the trial was entered upon, plaintiff amended his declaration, and on this account, defendants asked for and were allowed a continuance of the case. In the absence of any other showing we are not prepared to say there was any abuse of discretion in the judgment and order of the Court, as to the witnesses’ fees for that term.”

A. T. & S. F. Ry. Co. v. Jones, 110 Ill. App., 626, 639.

“The Court continued the cause on terms thereafter to be determined. This was a proper exercise of its discretion and its decision in this respect cannot be revised in this Court.”

Collins v. Richardson, 66 Vt., 89.

IN ANSWER to the appellant’s contentions, it may be urged that because the respondent, Neva M. Harrison, appealed to the Orphans’ Court in a purely representative capacity, as Administratrix of the wife of the testator, that she is not liable for costs. If such contention be made sufficient answer thereto exists.

The rule that executors and administrators are not responsible for costs, exists only by virtue of the statute to be found in the Practice Act:

“* * * the defendant, if the plaintiff shall be non-prossed or non-suited or a judgment shall pass for the defendant shall have judgment to recover his costs against the plaintiff (except against executors or ad-

ministrators prosecuting in the right of their testators or intestates) to be taxed as aforesaid."

Practice Act (Comp. St., 4123, Sec. 229).

It is quite evident that this statute is applicable only in courts of law, and only excuses representatives when *they* are the ones *bringing* suit, or plaintiffs in the action, who have failed in the action.

While orphans' courts are not courts of equity, yet equitable principles govern them. The ecclesiastical courts were the originals of the courts of probate. Ecclesiastical courts as well as courts of equity were courts of conscience. Similar principles govern the determination of proceedings in each court. Therefore our Orphans' Court was bound by similar principles.

The rule that an administrator is exempt from the payment of costs does not bind courts of equity.

"Ordinarily executors do not pay costs * * * they are not supposed to know as plaintiffs the imbecility of their own suit. This is the reason of the *rule at law*, but in *this* court where the costs are discretionary, they seem to depend more upon the particular circumstances in each case" (*Getman v. Beardsley*, 2 Johns. Chy., 274).

The Court of Errors, in approving this doctrine, quoting from the case of *Shepherd v. McClain*, 18 Eq., 128, has said:

"In this court costs by statute are in the discretion of the court. In general that discretion is exercised according to rules that have been fixed by practice. Courts of law by statute *cannot* award costs against executors and administrators when plaintiffs.

but *must*, if they are unsuccessful defendants. Courts of equity are not within that statute, and have not adopted it in practice. It is an arbitrary rule, and if this court adopt it, it cannot award costs as the act regulating its practice requires, i. e., according to its discretion."

Walton *v.* Taylor, 78 Eq., 266; 79 Atl. 437.

The statute binding the Orphans' Court, is far more specific than that applicable to Chancery Courts:

"In all litigated suits in the Orphans' Court, the Court shall adjudge and direct which party shall pay *the costs and expenses* of such litigation, and shall have the power to apportion and determine the costs and expenses to be paid by either party."

Orphans' Court Act, Sec. 196 (3 Comp. St., 3884).

It will be observed that the statute gives the court power to award costs and expenses. The Vice Ordinary has held in his opinion (Case, p. 48), that fees of expert witnesses, may, in a proper case, be allowed as an expense under the terms of this statute:

Sanderson *v.* Sanderson, 52 Eq., 243.

The case last cited decided to disallow the expert witness's fees on the ground that it would create "an unwise precedent to mulct the testator's estate" with the fees and expenses of an expert *called by the contestants* of the will who had failed. It is authority for the justice of the action of the Orphans' Court which refused to allow the estate of Mr. Tipper to lose the sum of \$107.51, the expenses it had incurred to de-

fend the testator's will, in order to indulge the appellant by granting her a continuance which would cause such a loss to the estate.

It may be contended that the Court in imposing the expense of the expert witness, was awarding the same in the guise of costs. There is nothing in the order to substantiate any such contention. The costs of the day are awarded, for the Executors had on hand a large number of witnesses subpoenaed for the day and that expense likewise it was but just that the Administratrix should pay, but the Court deemed the expert's expenses as a proper charge upon the Administratrix who could have prevented the expense by an act of ordinary courtesy and common sense,—notice to the other side.

In considering the allowance of the expert witness's fees, it is well to bear in mind that its allowance was not as an item of cost, but as an item for which the appellant should reimburse the estate,—not as "costs" taxed by the statute because of the unsuccessful litigation; "costs" being imposed upon the failing party or that one who was blameworthy in instituting litigation which the Court decided should not have been instituted. The allowance of the fees in question, was a mere act of justice, not retributive or punitive, but equitable.

Cases may be cited which deal with the question of costs, but it is respectfully submitted that such cases are not determinative of the questions before the Court *sub judice*. All those cases deal with *litigation which has been terminated* and in no instance applying to cases where they are *imposed as conditions for the granting of an indulgence*, such as a continuance.

In conclusion, counsel insists that the decree of the Prerogative Court is erroneous. The Or-

phans' Court before whom the matter was originally argued, was best able to determine what judgment would mete out justice, being cognizant of all the surrounding facts and circumstances.

"There is no doubt but motions for continuances like motions for new trial, are addressed to the sound discretion of the Court. But this is a legal discretion, to be guided by rules which have become well established and familiarly known. Important, nay, frequently, the entire rights of a party may be involved in a motion for a continuance and there can be no doubt that a denial of his legal right in this respect should be as capable of redress as in any other proceeding in the progress or trial of a cause. Yet from the peculiar character of motions of this kind, very much must be left to the sound discretion of the Court to whom the application is made. This Court is familiar with the suit through all the stages it has passed, knows all the circumstances attending it, and in general is much more competent to judge of the propriety of granting or denying the motion than a court of review can be. Cases may arise however, in which the discretion addressed may be so glaringly abused as to outrage justice and imperatively demand correction * * * .

"Did the County Court err in imposing the terms which it did upon the defendant's application for the continuance of his cause? And if so, was it such an abuse of judicial discretion as to call for the interference of this Court? * * * How often then may a party compel his adversary to attend the respective terms to which he procures his cause to be continued without any compensation? The continuances already obtained by the defendant had caused the plaintiff the expense of several attendances by his attorney and it would seem no more than just that, as the continuances moved by him were

for his benefit and to the plaintiff's prejudice, some compensation, by way of terms, might justly be imposed."

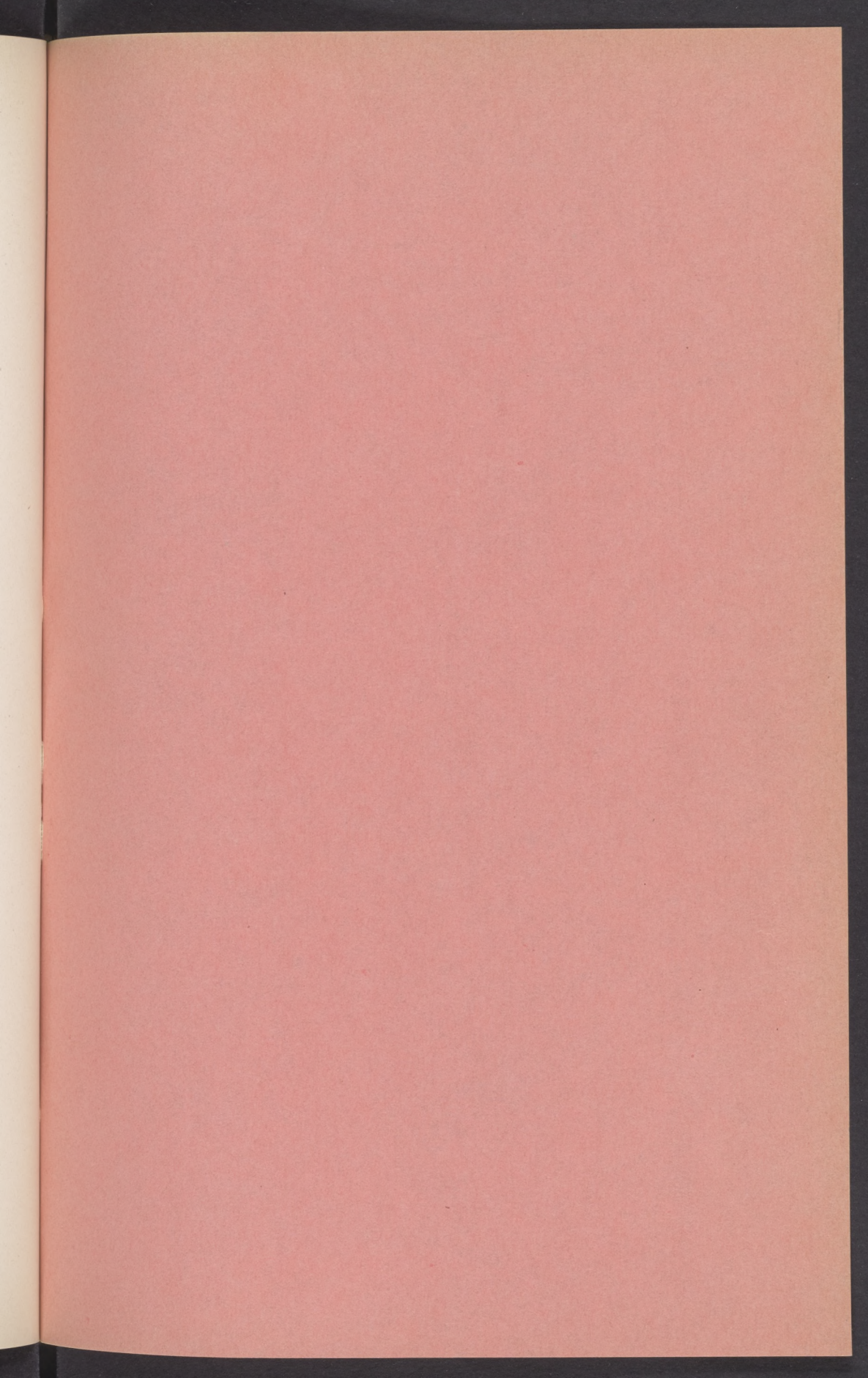
Knox v. Arnold, 1 Wis., 70;

State v. Thurman, 232 Mo., 130, citing and reviewing many of the authorities referred to.

The Orphans' Court exercised in this instance, a sound discretion in granting to the Administratrix the continuance she desired but was little deserving of having, upon her placing the Executors in the same position they were before their appearance in court had occasioned them an expense. If in justice the appellant should have her continuance, justice required that the estate should not be the loser because it lay in the power of the Administratrix to have avoided the expense which the estate incurred by conduct which the ordinary rules of courtesy would require.

It is respectfully submitted, therefore, that the decree of reversal of the Prerogative Court, be reversed, with the costs of these appellants to be taxed.

ADOLF L. ENGELKE,
Counsel for Alfred T. Taylor and William E.
H. Schneider, Executors of the Last Will and
Testament of John Tipper, deceased.



For the Month of ...

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