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New Jersey Court of Errors and Appeals

Between HARRIET ELLA KREMELBERG et als., *Complainants-Appellants,* *and* EDITH K. TOMPKINS et als., *Defendants-Respondents.*	*On Bill, etc.* *On Appeal from Chancery.*

Brief for Appellants.

The appellants, who are the surviving children of John D. Kremelberg, deceased, filed their bill in the Court of Chancery against the defendants, executors of the will of J. George Kremelberg, deceased, for the enforcement of certain express trusts declared by the said J. George Kremelberg in favor of the complainants, and for an accounting by the trustee of the profits and property held by him in trust.

The Court of Chancery, Vice-Chancellor Stevens sitting, held that the trusts had been fully performed, and, therefore, dismissed the bill of complaint.

From this decree the complainants below have appealed.

STATEMENT OF FACTS.

The facts are undisputed and almost wholly documentary.

John D. Kremelberg was the founder of two firms—one in New York and the other in Baltimore—each of which carried on a large and profitable exporting tobacco business.

In the New York firm, Kremelberg & Company, he associated with himself his brother, George, and Adolph Englar, giving them as the resident partners the major interest, retaining himself a 20 per cent. interest. In the Baltimore firm of J. D. Kremelberg & Company he had admitted his son, Fred, with a small interest.

The profits of these two firms had been large. John's share of the profits had enabled him, with a family of six children, to live as one of the wealthy men of Baltimore, with a city home which his executor sold for fifty thousand dollars, and a country place, and to leave part of his profits in both firms undrawn at the time of his death. For his share of the profits previously earned and credited to his account, the New York firm owed him $19,577.91, and the Baltimore firm $31,980.74. On the same date his brother George, who was a partner in the New York firm, but not in the Baltimore firm, had overdrawn and owed the New York firm $8,894.66. Englar, the other partner in the New York firm, had also overdrawn and owed the firm $4,013.83.

John D. Kremelberg's interest in these two firms, which he bequeathed to his brother George and his son Fred, was of more value than all the residue of his estate, which he left to his six children. This residue, consisting of the undrawn profits above mentioned, the proceeds of the sale of his home, life insurance and some securities and personal effects, amounted to only $128,213.49, or $21,333.90 for each of his six children.

At the time John made his will five of his children were minors, three being very young. These three were still minors when his executor stated his distribution account, nine years after the date of the will.

John's executor charged himself with the amounts of $19,577.91 due from the New York firm and $31,980.74 due from the Baltimore firm, and carried these amounts into the residue distributed to John's three children who were of age, and the guardians of the other three, but the

executor did not actually collect either of these sums; they were simply entered to the credit of John's children on the books of the firms.

Thirteen months after the death of John D. Kremelberg his four daughters went abroad and remained for eighteen months, when two of them returned to Baltimore—one of them, the eldest, having married in Germany, and the youngest being left there at school.

John D. Kremelberg, Jr., was still a minor; his uncle, George, being his guardian. Subsequently, the three single girls spent part of their time in Baltimore and part with their sister in Germany.

Nine years after his father's death John D., Jr., died, and the next year Fred died in Australia. Both of the boys died unmarried and without issue.

The matter of collecting and remitting the income of the girls was attended to by Mr. Martin, who had been a clerk of their father's in the Baltimore firm, and who after their father's death became a partner with George in that firm.

By his will John bequeathed his interest in both firms to his brother George and his son Fred, each one-half. About six months after his father's death Fred assigned *his half* of his father's interest in *both firms* to his uncle George and went abroad, never to return.

Contemporaneously with Fred's assignment to him, George executed a declaration of trust that the assignment was made to him in trust for all of John's children. Six months later George executed another declaration of trust that he was holding the *other half* of John's interest in both firms, which John had bequeathed directly to him, also in trust for John's children.

In his first declaration of trust as to the half of John's interest received from Fred, George reserved nothing for himself. In his second declaration, as to the *half* of John's interest in *both* firms, received directly under John's will, George reserved the right to pay to Messrs. Brancker and Charles Martin each fifteen per cent. of the profits of said half part, and twenty per cent. for his own use; or, altogether, fifty per cent. of the profits from that *half* of John's interest in *both* firms.

George, as owner of half of John's interest, under John's will, was admitted as a partner in the Baltimore firm, and his own prior interest in the New York firm was increased by the addition of half of John's interest. Six months later *his interest was again increased* by the addition, under Fred's assignment, of the *other half of* John's interest in *both* firms.

John died in May, and before the end of that year George had the legal title to John's entire interest in both firms. So far as complainants *then* knew, George was also the equitable owner, for they had no knowledge of the declarations of trust which show that John's children were the equitable owners of their father's interest in both firms.

The declarations of trust show that John did not intend to leave his valuable interest in these firms away from his helpless children; he left his interest in these partnerships to his brother and oldest son, thinking that was the best way to preserve them for the benefit of all his children.

George held John's interest in both firms as long as he lived. In the New York firm, after John's death, George collected the profits on John's one-fifth interest in that firm, as well as on his own prior interest. The New York firm paid the children six per cent. interest on the $19,577.91 due their father at the time of his death, but George never gave John's children *any* of the *profits* which *he received* on John's twenty per cent. interest in that firm.

In the Baltimore firm, in which George had no interest prior to John's death, George, as legal owner of John's share under John's will and Fred's assignment, associated with himself as partners Messrs. Brancker and Martin. Brancker remained less than two years, and thereafter the partnership consisted of George and Martin until the latter's death. After Martin's death, for four years, George was sole proprietor of the Baltimore firm. Then he took in G. Louis Hester as partner, and the firm was composed of George and Hester until George's death. George was partner in the Baltimore firm as legatee of John and assignee of Fred, as he never contributed either

capital or services to the Baltimore firm. The capital was furnished by John's children, and consisted of $31,980.74 due their father at the time of his death, plus $24,000, or $8,000 each, belonging to the three older children—Fred, Virginia and Ella. For the use of this $55,000 the Baltimore firm paid these children, in addition to legal interest, one-half of the profits of the firm until 1895. After 1895 the firm didn't need that much money. The children withdrew all but $20,000, and thereafter were paid for the use of $20,000, in addition to legal interest, $1,200 per year.

Martin died in 1904. Since Martin's death George and his executors have drawn in profits from the Baltimore firm $67,386.57. Since John's death George and his executors have drawn in profits and interest on profits from the New York firm $464,674.22, of which about $175,000 were drawn on John's one-fifth interest and the balance of about $290,000 were drawn upon George's own prior interest in that firm. Of these profits, there remained undrawn at the time of George's death $239,280.93.

In addition to George's other estate, real and personal, the amount of which does not appear, the defendants have collected from the two firms this $239,280.93, and they have also sold George's interest in the good will of the New York firm for $10,000. One of the defendants, Mrs. Tompkins, is the only child of George Kremelberg and legatee of substantially his entire estate.

QUESTIONS INVOLVED.

The questions involved in this appeal are purely questions of law, consisting of the proper construction of documentary evidence. In his final opinion Vice-Chancellor Stevens held that the trusts had been performed.

This conclusion was reached by separate reasonings as to the two firms.

1. As to the New York firm, His Honor held that John's interest in that firm, bequeathed by his will to George and Fred, consisted of the amount of $19,577.91, which the firm owed John at the time of his death, plus one-fifth of the value of the good will of the firm at that

time; that, under the decision in *Mullin vs. Mullin,* the firm had no good will that was of any value; that, therefore, John's interest consisted simply of the $19,577.91, which the firm owed him; and as the firm transferred that debt to the credit of the children and subsequently paid it, all of John's interest in that firm was accounted for (Opinion, pp. 288-291).

As to which appellants submit that His Honor erred in his construction of the bequest in John's will of John's "interest in" the firm; that John's interest meant his one-fifth share as partner, not the $19,577.91 the firm owed him; that, inasmuch as the firms were not wound up, John's interest consisted of his right to draw twenty per cent. of the profits of the firm; and that inasmuch as George, during his whole life, drew this twenty per cent. of the profits on John's interest, he cannot hold these profits which, *as trustee,* he *has received,* and say to his *cestui qui trustent*: "I don't owe you anything because, if the firm had been wound up at your father's death, his interest would not have amounted to more than the $19,-577.91, which the firm then owed him."

2. As to the Baltimore firm, His Honor reached the conclusion that the arrangement which George made with Martin and Brancker, whereby the children received one-half the profits of that firm in return for the use by the firm of their $55,000 as capital, was a performance of the trust as to the Baltimore firm. And His Honor seems to regard this as a performance assented to by complainants (Opinion, pp. 291-297).

We submit that this conclusion of His Honor also arose from an erroneous construction of the expression, "interest in" the firms, used in the will and in the declarations of trust; that the $55,000 was not part of the trust estate, but was money belonging to the children and the firm gave them one-half the profits for the use of the money, just as if it might have given to any stranger who would risk that much money by lending it to a firm which had no capital; that this arrangement could not be a full performance of the trust, even as to the Baltimore firm, because if George had fully performed his trust and

transferred the interest he received under John's will and Fred's assignment to John's children, he would have ceased to be a partner in the Baltimore firm, and thereafter could have drawn no profits from it; that as long as George continued to draw profits from the Baltimore firm, the fact of his drawing such profits is mathematical proof that he had not fully performed his trust as to the Baltimore firm; that George had no right to hold John's interest and draw profits on it all his life; that after Brancker had gone, and Martin had died, and John's children were all of full age, George ought to have performed his trust by transferring all John's interest in the Baltimore firm to John's children; and that, since the books show that he and his executors have drawn from the Baltimore firm, *since the death of Martin,* $67,386.50, his executors ought to be held accountable for at least that amount of the profits drawn from the Baltimore firm; and that the complainants cannot be held to have consented to accept the profits that they received from the firm for the use of their money, as a full performance of George's trust, because at the time that arrangement as to profits was made three of the children were minors and *all* of them were *ignorant* of the *existence* of the *declaration of trust.*

If it be said that George was entitled to hold John's interest until the complainants requested him to transfer it, the answer is they did not know their rights and he ought to have told them.

Complainants at the time of their father's death were young and inexperienced, two of them being under age. They left everything in the hands of their Uncle George, in whom they reposed unbounded confidence. They did not know of the existence and effect of the declarations of trust until after George's death, when they promptly demanded an accounting and settlement. The defendants refusing to account, this bill was filed. The death of the trustee, J. George Kremelberg, does not affect the right of the plaintiffs to recover, because that right is established by unquestioned documentary evidence; their father's will; the announcement of the death of John D. Kremelberg sent out by the survivors in both firm, stating that

the firms would continue; the announcement of the admission of George into the Baltimore firm; Fred's assignment to George; the declarations of trust signed and sealed by George, and the books of the firms, showing the amount of profits George received upon John's interest in both firms, which had passed to him under John's will and Fred's assignment.

Here is no room for the argument that any obscurity may have resulted from lapse of time, or any difficulty in reaching a decision produced by the lapse of years.

The Court can just as easily tell *today the meaning of the will and the two declarations of trust* as it could have told *the day after they were made.*

THE TWO DECISIONS OF HIS HONOR VICE-CHANCELLOR STEVENS.

There were three hearings in the Court below; the first before Vice-Chancellor Stevens, upon a motion to strike out the bill; the second before Vice-Chancellor Emery, after all the evidence was in; and the third before Vice-Chancellor Stevens.

Every fact and date relied on by defendants at the final hearings was set out fully and in detail in the bill and the five Exhibits filed therewith (Record, pp. 1 to 47).

The defendants filed a motion to strike out the bill on various grounds, the first being that—

"the complainants show no equity (Record, p. 302).

This motion was argued orally and by brief before Vice-Chancellor Stevens; held sub curia, and subsequently denied (see Record, p. 304).

Depositions were taken in New York and Baltimore and plaintiffs testified at the final hearing before His Honor Vice-Chancellor Emery, who heard argument, and at the conclusion made an oral statement indicating an opinion in favor of plaintiffs.

Vice-Chancellor Emery's oral statement was taken by the stenographer, and is printed as taken down, with the interruptions of Mr. Hood, as an addendum to this brief.

Vice-Chancellor Emery having died before actually deciding the case, it was again argued before Vice-Chancellor Stevens, who subsequently held, as stated in the conclusion of his opinion, that (Record, p. 297)—

> "the bill is devoid of all equity and should be dismissed."

The question whether or not the "bill is devoid of equity" was distinctly presented by the motion to strike out the bill, and was decided in favor of the complainants by the Vice-Chancellor's order overruling that motion.

The decision of this Court in *Mullin vs. Mullin,* on which the Vice-Chancellor relies in his final opinion, was rendered after His Honor's decision of the motion to strike out the bill.

ERRORS IN THE VICE-CHANCELLOR'S FINAL OPINION.

We respectfully submit that the learned Vice-Chancellor, in his opinion after the final hearing, fell into the following errors:

1. In his construction of the Declarations of Trust.

2. In his construction of the will of John D. Kremelberg:

   (a) In holding that John's "interest in" each partnership specifically bequeathed to George and Fred consisted of the amount of undrawn profits due John, plus the value of his share of the good will (pp. 288-293);

   (b) In holding that, under this Court's decision in *Mullin vs. Mullin,* the firms had no good will that was valuable (p. 291);

   (c) In holding that the trusts had been performed.

3. In holding that the Declarations of Trust were a voluntary donation from George to his brother's children (p. 296).

4. In the amounts used with reference to the Baltimore firm and in stating amount of complainants' claims.

I.

ERROR IN CONSTRUING DECLARATIONS OF TRUST.

The Vice-Chancellor, referring to the Declarations of Trust, says (Record, pp. 296 and 297):

> "George did not thereby undertake to continue the business and give John's children the profits. Nothing of this sort can be found in these papers. All that he undertook to do was to hold the interest bequeathed—that is, the capital and good will as they stood at John's death—for the benefit of the children. He would have performed his whole duty had he called in or realized on the capital, including the good will, if saleable, and paid it over."

The provision of the Declaration of Trust, as to Fred's *half* of his father's partnership interests, are (Record, pp. 13-14):

> "KNOW ALL MEN BY THESE PRESENTS, That, whereas, by deed of even date herewith, perfected before the execution hereof, John Frederick Kremelberg conveyed and assigned to me all the interest bequeathed to him in and by the will of his father, the late John D. Kremelberg, in and to the business houses of Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms.
>
> "Now I hereby declare that the said assignment and conveyance to me was made, and that I now hold the said property in trust for the said John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Marie Kremelberg and Mary Augusta Kremelberg in equal proportions, share and share alike."

(Kremelberg, Schaefer & Co., New Orleans, was wound up before John's death.)

The provisions of the Declaration of Trust of the *half* of John's partnership interests, bequeathed *directly* to George, are (Record, pp. 15-16):

"Now, for divers good causes and valuable consideration me thereunto moving, I do hereby declare that I hold and possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will, IN TRUST for John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg, Mary Augusta Kremelberg, in equal proportions, share and share alike, and *agree with them to grant and assign the same to them, whenever requested so to do,* I paying to Messrs. Brancker and Charles Martin, each fifteen per cent. of the profits of *said half part* of the property devised and bequeathed to me as aforesaid, and holding the other twenty per cent. thereof to my own use."

The original Declarations of Trust were proven and filed with the depositions taken in Baltimore (Record, pp. 95 and 101-2). And are copied in full in the bill (Record, pp. 13-16).

The first declaration does not indicate how long the trust was to continue. But the second declaration clearly indicates that the trust was expected to continue at least until all of John's children became of age, for George agreed "to grant and assign the same to them whenever requested so to do." At that time three of the children were under age, the youngest being only 15, and, therefore, legally incapable of making the request.

The testator certainly contemplated that George and Fred would continue the business at least until his younger son, Diedrich, should become of age, for in his will he says (Record, p. 31):

"My son, John Diedrich, I recommend most earnestly to the care of his brother Frederick and his uncle George, and I desire that nothing shall be neglected necessary to his proper and thorough education; and I recommend them, if, upon his arrival at age, he shall show aptitude and taste for mercantile life, to afford him as soon and as fully as possi-

ble, all the advantages which I, as his father, would wish for and extend to him."

When the second declaration of trust was signed, Diedrich was still a minor. George was Diedrich's guardian and signed a release as guardian of Diedrich to the executor a month and a half *after* his second declaration of trust.

Moreover, the stipulation that George was to retain fifty per cent. of the profits on the half of John's interest bequeathed to him; fifteen per cent. for Martin, fifteen for Brancker and twenty for himself, clearly indicated that the business was to continue.

Again, that the business was intended to continue and that George was to remain trustee of John's interest until some time in the future, was indicated by George's financial condition.

At that time J. George Kremelberg had no interest in the Baltimore firm, and was in debt to the New York firm, in which he had an interest as partner, the amount of the indebtedness on January 1, 1884, having been $8,894.66 (Ex. C-1; Test. of Hillen, Record, p. 143). He was in straitened financial circumstances (Test. Miss Ella Kremelberg, Record, p. 185).

On cross-examination, Miss Ella Kremelberg testified (page 211):

"Q. You knew at that time that the business needed money? A. Yes.

Q. Mr. George Kremelberg had suffered great losses? A. Yes.

Q. He had no money? A. No.

Q. He owed the New York firm money? A. Yes."

For twelve years after these declarations of trust George remained indebted to the New York firm, and it was fifteen years before his balance was large enough to enable him to begin to account to these children for any of the profits of the New York firm (Record, p. 190, and see account Ex. C-1).

The surviving partners immediately after John's death and before either declaration of trust was signed, had announced that the business would continue as heretofore, and George had been admitted as a member of the Baltimore firm and had associated with himself Brancker and Martin for the purpose of continuing that business.

We submit, therefore, that by the declarations of trust, George *did undertake to continue the business of both firms and give John's children the profits* (less the part of the profits which he stipulated he should retain for himself, Brancker and Martin); and that this is clearly shown by:

1. The provision in John's will above quoted.

2. The announcement of John's death, in which it was stated that the business of both firms would continue as heretofore.

3. The admission of George as a partner in the Baltimore firm.

4. His taking charge of that ,firm and arranging with Brancker and Martin for the continuance of its business.

5. His financial condition. The holding of John's interest and the continuance of the two firms is all that saved George from bankruptcy.

6. The stipulation in the second declaration of trust as to profits, as there could be no profits without the continuance of the business; and

7. The stipulation in the declaration of trust that he would assign and transfer John's interest to John's children "*whenever requested* so to do."

The very acknowledgment that he was trustee of John's interest for John's children, involved an obligation to account for all the profits except that portion that he reserved for himself and Brancker and Martin.

There was no need of the bequest in John's will, nor of George's declarations of trust, if the firms were to be wound up. There was no need of a trustee to realize on

the assets, including the good will, and pay over the proceeds. That is what would have happened if John had made no bequest of his interest and the firms had been wound up. The only purpose John could have had in making the bequest in his will was to prevent a winding up of the firms, and the only purpose in making the declarations of trust was that George would hold John's interest in both firms until John's children requested him to turn it over to them and account to them for the profits received on that interest while he held it.

II.

ERROR IN CONSTRUCTION OF WILL OF JOHN D. KREMELBERG.

The Vice-Chancellor's opinion proceeds upon the assumption that John's interest in each partnership, which was bequeathed by him to George and Fred, consisted, as to each firm, of the undrawn profits standing on the firm's books to John's credit, plus John's share of the value of the good will of the firm, as of the date of John's death. (Opinion, p. 289).

We submit that the very purpose of the bequest in John's will was to prevent a dissolution or winding up of the firms; that this purpose was concurred in by the surviving partners and the partnerships were not dissolved; and that, inasmuch as the firms were not intended to be wound up and were not wound up, John's interest in each firm, as long as it was a going concern, was the same after John's death as before, viz., a right to draw twenty per cent. of the profits of the New York firm, and practically all the profits of the Baltimore firm.

The provisions of the will relating to John's interest in the firms are (pages 30-31):

> "I give, devise and bequeath to my brother George and my son, J. Frederick, in equal proportions, all my interest in the following business houses, namely: Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms. * * * * * * * * *."

"It is my will, and I hereby direct, that all my just debts and funeral expenses, and the entire interest to which my wife may be entitled in my estate, real and personal, shall be paid out of the proceeds of the rest and residue of my estate above mentioned, so that my *interest in the business houses* and firms above mentioned and devised to my brother George and my son, J. Frederick, *shall remain wholly undisturbed* and be *in no way interfered with.*"

Thus the purpose of John D. Kremelberg, that these partnerships should continue and not be dissolved by his death, was clearly indicated.

This purpose was concurred in by the surviving partners, who in their announcement of the death of John D. Kremelberg, announced the continuance of the firms as follows (Record, p. 142):

"SIR:

It is our painful duty to inform you of the death of our highly esteemed *senior partner,* Mr. J. D. Kremelberg, on the 24th instant, at Philadelphia, where he had gone for medical advice.

The business in Baltimore, New York and Louisville will be continued as heretofore.

Yours respectfully,
J. Fred Kremelberg,
George Kremelberg, New York,
Ad. Englar, New York,
Julius Wille, Louisville."

This notice indicated, by the expression "senior partner," that John D. Kremelberg was the founder of both firms, for he was *not the oldest partner* (Test. Hillen, p. 143).

It also indicated, by the omission of any place after the name J. Fred Kremelberg, that Fred, as legatee of his father, had an interest in the business in all three places. (The business in Louisville was a branch of the Baltimore firm. Test. Stellman, Record, p. 90.)

Shortly after John's death, announcement was made that J. George Kremelberg had become a member of the Baltimore firm, as follows (Record, pp. 148-9):

"SIR:

We beg to inform you that Mr. J. George Kremelberg, of New York, has become a member of our firm.

Please take notice of his signature at foot.

Yours very respectfully,

J. D. Kremelberg & Co.

Mr. J. George Kremelberg will sign:

J. D. Kremelberg & Co."

George became a partner in the Baltimore firm entirely as legatee under his brother's will. He never contributed any capital or services to the Baltimore firm.

(Test. Baker, Record, pp. 120 and 126.)

(Test. Hester, Record, pp. 97 and 100.)

The Vice-Chancellor says (Record, pp. 284-5):

"The property, in respect of which this trust is alleged to have arisen, was, if I understand complainants' position aright, John D. Kremelberg's share of the good will of a commission business carried on by him in New York and Baltimore, which, after his death, came into the hand of George, and thereafter it is said, produced large results."

Again on page 289:

"The question that arises on this contention is, was there a good will that was valuable?"

And again on page 291:

"It seems to me that the evidence fails to show that the good will of the New York concern had any substantial value."

The learned Vice-Chancellor did not

"understand complainants' position aright."

Complainants' position is that the trust property consisted of the *partnership interest* of John D. Kremelberg in the two firms, being in the New York firm one-fifth, and in the Baltimore firm, approximately nine-tenths.

And since the firms were not wound up, John's interest in the two firms consisted of the right to draw twenty per cent. of the profits of the New York firm and ninety per cent. of the profits of the Baltimore firm.

The account of the profits earned by the New York firm since the death of John is in the Record. It shows profits of over $21,000.00 for the first year, and an average of more than $20,000.00 every year since. If John had lived he would have drawn over $4,000.00 a year in profits from that firm; that is what his interest would have yielded if he had lived; and that it was his interest did yield to George.

Property that yields an income of $4,000.00 a year is certainly valuable, and yet the learned Vice-Chancellor, by calling John's "interest in" the partnership, "good will," finds that it was of no value and that the trustee, who has actually received thousands of dollars from it, is not obliged to account to the beneficiaries, for whom he declared himself a trustee.

Because of the destruction of the books in the great Baltimore fire, we do not know exactly what profits John received from the Baltimore firm, but they were large.

The testimony indicates, what we would naturally expect, that prior to John's death the Baltimore firm, John's home firm, was the stronger and more profitable, and after John's death the New York firm, George's home firm, was the stronger and more profitable.

During John's life the New York firm was usually indebted to the Baltimore firm (Test. Stellman, Record, pp. 82-3).

After John's death the Baltimore firm was a borrower from the New York firm (Test. Hester, Record, p. 104).

During John D. Kremelberg's life no one would have had any doubt about what was meant by his "interest in" the Baltimore and New York firms.

If anyone had asked John or George or Englar what was John's interest in the New York firm, there would have been no hesitation about the answer. The answer would have been one-fifth. Neither John, nor George, nor Englar, would have gone to the books to see how much stood to the credit of John before answering the question. Every one of them understood that what stood to John's credit was a *debt due from the firm to John,* and that what stood charged against George and Englar were *debts due by them,* respectively, to the firm.

Hillen testified that George "owed $8,894.66," and that Englar "owed $4,013.83," and that there was to the credit of John D. Kremelberg "a balance of $20,263.14" (Record, page 143); and that "both Mr. George Kremelberg and Adolph Engler were *indebted to* the firm at that time" (Record, page 144); and further testified (Record, page 141):

> "Q. Will you state whether or not it was always the custom of this firm to charge or allow interest on balances due to or from the partners just as if they were debts? A. Yes."

When John D. Kremelberg wrote his will, he knew what was his interest in the New York firm; that it was one-fifth. That interest could not be changed except by agreement of the partners. But he also knew that the amount which the firm owed him might change from time to time, and what it might be at the time of his death he did not know.

If at the time John wrote his will anybody had asked him, what do you mean by "all my interest" in the New York firm, can there be any doubt that he would have answered, my one-fifth interest as a partner? Can there be any reasonable doubt that when John signed his will he meant to bequeath to his brother George and his son Fred, his *partnership interest* in the New York firm, *his one-fifth,* and that he had no intention of giving to them the debt which that firm might owe him at the time of his death?

It is evident that *this partnership interest* in these two firms was, in the production of income, by far *the most valuable part of John's estate.* His reason for leaving this partnership interest to his brother, who was a co-partner in the New York firm, and his son, who was a copartner in the Baltimore firm, was to prevent a dissolution or winding up of these firms, which would result in cutting off from his family the very large income which those firms earned.

The declarations of trust made by George soon after his brother's death indicated that John had an understanding with George and Fred, that his interest in both

firms was to be held by them for the benefit of his children.

We see, therefore, a reason—a very excellent reason—why John bequeathed his partnership interest in both firms to his brother and his oldest son; but no reason can be suggested why he would intend to give to his brother and his oldest son the debts which the firms might owe him, and which at the time of his death amounted to over $51,000.00, when he had five other children, all of whom were minors at the date of his will.

We submit, therefore, that the expression "interest in" Kremelberg & Co., New York, and J. D. Kremelberg & Co., Baltimore, used in the will, in Fred's assignment and in George's two declarations of trust, meant John's *partnership interest,* namely, *his one-fifth* in the New York firm and nearly the entire interest, say ninety per cent., in the Baltimore firm.

This is the conclusion one would reach by putting himself in the place of John at the time he made his will, and asking the question: What do I mean by "all my interest in" the New York firm and the Baltimore firm?

This view is also supported by authorities.

Simpson vs. Beard, 57 L. J., Ch. 887.
Same case, 36 W. R. 519, and 58 L. T. (N. S.) 629.
Buckingham vs. Ludhum, 29 N. J. Eq. 345.

In *Simpson vs. Beard,* 57 L. J., Chan. 887, the language of the bequest was as follows (page 887):

> "Then after defining what he intended to describe as 'partnership real estate,' he 'gave, devised and bequeathed to his son, Frank Beard, all that his share, right and interest of and in the good will of the business which should be carried on by him in conjunction with his said partner, W. Bright, and also all his right, share and interest of and in the brewery,' public houses and partnership real estate, 'and also all debts, chattels, money and personal estate forming part of the assets thereof.' * * * "

At the time of the testator's death the partnership books contained an entry of "3,866 lbs. 10s. 10d. entered

in the partnership books as a debt due to him from the partnership."

The Court, North, J., decided that the debt did not pass under the devise. The Court said (57 L. J. Chan. 888-889):

> "The question, therefore, is whether the amount which was due to the testator at his death as a creditor of the partnership, and for which the partnership was indebted to him, passed by the disposition which I have read of his share and interest, to put it shortly, in the partnership assets. It would have taken very few words, one way or the other, to turn the scale and make it perfectly clear either that this was intended to be so passed or that it was not. But upon the whole, I come to the conclusion that it was not. First of all, I do not think it is accurate to describe a debt due to a partner from the firm as a part of his share and interest in the partnership assets. The words 'share and interest' seem to me to imply something less than the whole, the other share and interest in which would be in his copartners, and not to refer to a debt due from the partnership to him as an outsider. He was, no doubt, in one sense not an outsider, because he could not compete with other outside creditors of the partnership. But, as between the partners on the one hand and himself on the other, the testator was a creditor and not a partner with respect to this debt; and his interest as a partner in the assets of the partnership and the interest of the other partners in the assets of the partnership, could only be ascertained after all the liabilities to other parties had been cleared away, including liabilities to himself as well as to every other creditor of the partnership. The words 'share and interest in the partnership' seem to me, therefore, to be addressed to his share and interest in the clear net proceeds remaining after all the liabilities of the partnership are cleared off."

In this case we have the exact question passed on in *Simpson vs. Beard,* viz., whether by a bequest of testa-

tor's "interest" in a partnership and in "the assets thereof," a debt due testator by the firm, passes.

In *City of Norwich,* 118 U. S. 468, the Supreme Court passed on the meaning of an "interest in" a ship.

This decision was made in a very hard case, where a person injured in a collision received practically nothing because the owner's "interest in" the vessel amounted to only $5,000, and the owner, who was at fault, walked away with a large amount of insurance which he had placed *on* his interest in the vessel.

(See this pointed out in the dissenting opinion, page 529).

But the majority of the Court held that the expression "interest in the vessel" in the law limiting an owner's responsibility to the amount of his interest in the vessel, meant his "share or proportion in the vessel itself," and did not include his right to insurance money which accrued to him upon the loss of the vessel.

(See the reasoning of the Court, pages 493, 494.)

In *Buckingham vs. Ludlum,* 29 N. J. Equity 345, a firm which was formed in 1854 continued with some changes until dissolved by the death of the senior partner in 1874. Upon a bill filed by executrix of deceased partner for accounting the surviving partner was charged with being "indebted to the firm in the sum of $73,975.47, and the firm indebted to deceased partner in the sum of $476.01." The larger part of this debit was in the ledger prior to 1864. New books were opened in 1864, and no debit balance was carried forward, but the accounts had never been balanced.

The survivor contended that, irrespective of the balances in the ledger accounts with the partners, all the assets should be divided equally, relying on a declaration in the will of deceased, that his "share and interest" was "one equal half part."

But the Court of Errors and Appeals said, 29 N. J. Eq. 354:

> "'The declaration in the unproved will of James Horner, dated June 17, 1873, that his share and interest in the copartnership property and assets, real

> and personal, of James Horner & Co., was one equal half part; that his partner, James Ludlum, owned the other equal half part thereof, and that this includes all real estate owned by them together, is but an admission that they were equal partners in the business and property; it has no reference to their personal accounts."

The language of John D. Kremelberg's will is almost identical with the language in the will passed on in *Buckingham vs. Ludhum.*

In the former (Record, page 30):

> "All my interest in the following business houses, viz., Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore, and Kremelberg, Schaefer & Co., of New Orleans, and in the assets and property of every kind of said houses or firms."

And in the latter:

> "his share and interest in the copartnership property and assets, real and personal."

Compare also the language in *Simpson vs. Beard,* quoted above. As pointed out by the Court in *Simpson vs. Beard,* the amount standing to the credit of a partner is not an *asset of the firm; it is a liability of the firm,* and an *asset* of the *individual partner.*

The $19,577.91 standing to the credit of John D. Kremelberg in the New York firm was not an *asset* of that *firm;* it was an *asset* of John D. Kremelberg; a *debt* due by the firm to him.

The same is true of the $31,980.74 standing to his credit on the books of the Baltimore firm.

If the firms had been wound up, John's interest would have consisted of his right to receive in the New York firm twenty per cent. of the residue, which might have remained after the conversion of all the assets of the firm, including the good will into cash, and payment first of all

outside creditors, and secondly, of the amount standing to John's credit on the books of the firm.

30 *Cyc.* 688-695.
1 *Bates on Part.*, Sec. 180.
Farquhar vs. Hadden, 7 L. R., Ch. 1.
Dutton vs. Morrison, 17 Vesey, 193.
Nicoll vs. Mumford, 4 Johns, Ch. 525.

In 1 *Bates on Partnership*, Sec. 180, under the heading, "Interest or Share of Each," the author says:

> "NATURE OF. A partner has no specific interest in any particular chattel or asset or part of the property of the firm; his only interest is in a proper proportion of the surplus of the whole after payment of debts, including the amounts due the other partners."

This right of John as a partner to one-fifth of the residue, in the event of winding up, was not the same right as his right to the amount standing to his credit. The amount to his credit must be paid *before there can be any residue* for division among the partners; his right to the amount standing to his credit is as a creditor, a creditor lower in dignity than outside creditors, but still a creditor; his right to one-fifth of the residue is as *partner;* his right to the amount to his credit is as *sole* owner; his right as partner is only to one-fifth of the residue, after paying debts, including the debts, if any, due one or more of the partners. His interest as partner, if the firm had been wound up, would not have been confined to one-fifth of the value of the good will; he would have been entitled as partner to one-fifth of the residue from *all* the assets of the firm, of which the good will was only one. But *the firm was not wound up*, and so long as the partnership continued as a going concern, John's partnership interest consisted of his right to draw every year twenty per cent. of the profits.

In an equal partnership of three partners, one might owe the firm $10,000.00, the second might have $10,000.00 standing to his credit, and the account of the third with the firm might be balanced, and yet *each of them* would

have an *equal "interest in"* the firm. Again, a partner might have $50,000.00, or any amount, standing to his credit on the books of a firm, and yet, if the firm became unable to pay its general creditors, his partnership interest would not be worth a cent. John's interest in the New York firm did not consist of the $19,577.91 standing to his credit on the books of the firm, plus his share of the good will, but consisted of *his right to draw twenty per cent. of the profits of the firm so long as it continued* as a going concern; and his right to draw twenty per cent. of the profits was *entirely independent of whether the firm owed him* $20,000 *or* $10,000, *or nothing, or whether he owed the firm.*

In this very New York firm, at the same time that the firm owed John $19,577.91, George owed the firm $8,894.66, and the other partner, Englar, was also indebted to the firm, and yet George and Engler between them, although both indebted to the firm, were drawing 80 per cent. of the profits; while John, with the firm indebted to him, was drawing only 20 per cent.

On the day before his death John had two rights:

1. The right to demand and receive payment of the $19,577.91 standing to his credit on the books of the firm, and

2. The right to continue to receive 20 per cent. of the profits on his 20 per cent. partnership interest.

The payment of the $19,577.91 standing to his credit would not have affected his partnership interest or his right to continue to draw 20 per cent. of the profits.

And John having bequeathed his partnership interest to his brother George and his son Fred, there remained, after his death, two rights:

1. John's executor had the right to demand and receive payment of the $19,577.91, and

2. John's legatees, George and Fred, had the right to be admitted as partners and draw 20 per cent. of the profits, which John would have drawn had he lived.

This right was not absolute. The other partner could have objected; but that did not occur. John's legatee was already Englar's partner, and Englar gladly consented to the provision in John's will (supplemented by Fred's assignment) whereby John's 20 per cent. interest passed to George, thus preventing a dissolution and winding up of the firm, which would have been disastrous, as Englar subsequently declared, both to himself and George (Englar's letter, page 280, line 38).

When, in announcing the death of John D. Kremelberg, the surviving partners announced that

> "The business in Baltimore, New York and Louisville will be continued as heretofore,"

the right of John's legatees to his partnership interest of 20 per cent. became perfected.

Fred having assigned his half interest as legatee to George, George became possessed of the *legal title* to the *whole* of John's interest, and thereby became entitled to draw and *did subsequently draw the* 20 *per cent. of the profits* which John would have drawn had he lived.

And having declared himself a trustee of John's interest for the benefit of John's children, George must account to his brother's children for the profits received by him on John's interest.

THE AMOUNTS STANDING TO JOHN'S CREDIT ON THE BOOKS OF THE FIRM WERE DEBTS DUE HIM.

The undisputed evidence is that the $19,577.91 to John's credit in the New York firm, and $31,980.74 to his credit in the Baltimore firm consisted of undrawn profits.

The Vice-Chancellor says (pp. 288-9):

> "The firm's books show, and it is conceded, that these figures represent the precise earnings left by John in the two firms named for use as capital."

Undrawn profits are debts of the firm. The partner's right to them is as creditor.

Molineaux vs. Raynolds, 54 N. J. Eq. 559.
Dinham vs. Bradford, L. R. 5, Ch. App. 524.

Grant vs. Smith, 75 N. Y. Supp. 83.
Lloyd vs. Carrier, 2 Lansing, 365.
Tuft vs. Land, 50 Ga. 339, 350.

In *Molineaux vs. Raynolds,* the Court say (54 N. J. Eq. 564):

"It is clear that when these profits were calculated and divided according to the terms of the agreement, and the share of each partner was put to his credit, then, as between the partners, these profits ceased to be assets of the firm and became debts due from the firm to each member of the firm."

WERE TREATED AS DEBTS BY THE FIRMS.

(Test Hillen, pp. 141, 143, 144.)
(Test. Baker, p. 121.)

At the time of John's death the $19,577.91 stood on the books of Kremelberg & Co. as a debt due John D. Kremelberg. After his death the only change made was the addition of the word "Estate" after the name of John D. Kremelberg, and the interest on that debt which, during John's life, had been credited to his account, was thereafter paid through the Baltimore firm to John's children, who were his residuary legatees.

(Test. Hillen, pp. 160, 161.)

TREATED AS DEBTS BY THE EXECUTOR OF JOHN D. KREMELBERG.

By the law of Maryland, debts due the deceased are not appraised or included in the inventory.

Handy vs. Collins, 60 Md. 239, 241.

But it is the duty of the executor to collect all collectible debts and charge himself with those collected in his account.

If John's executor had insisted on actual payment of these debts, the New York firm would have been broken up. In a letter to Miss H. Ella Kremelberg, Adolph Englar, one of the partners, says (Record, pp. 280, 281):

"If, at the time of your father's death, you had demanded the money due to his account, we could

not have continued business here, and George would have been obliged to come there to make his living."

To avoid this result, which would have been disastrous to Adolph Englar and J. George Kremelberg, the executor did not demand or receive actual payment of these sums; (admitted answer, p 54), but charged himself with these two debts as though they had been collected and distributed the entire residue to the three children of the testator, who were of age, and the guardians of the other three, the testator having left the entire residue of his estate to his six children equally.

In charging himself with the debts due from the New York firm and from the Baltimore firm, the executor used the language (Record, p. 33):

" " " "Deceased interest in firm of Kremelberg & Co.....$19,577.91
" " " Deceased interest in firm of J. D. Kremelberg & Co..... 31,980.74

These are two items in a long list of collections. Ditto marks mean "and with."

These sums were not in fact collected, but they were *reported as if collected.* The expressions, "deceased interest, etc.," *simply indicate the source from which these collections were* (ostensibly) *made;* just as another line in the same account:

"Life Insurance.....$10,000"

does not mean that the life insurance policy was *appraised* at $10,000, but that the executor had collected $10,000 from that source. And another line:

"Insurance on Dwelling.....$360.00"

does not indicate that the executor had the insurance policy on the home *appraised.* It indicates, in connection with the fact, that the house had been sold, that the executor had collected for return of unearned insurance premium $360.00.

Similarly these entries in the executor's account, as to these two sums, in connection with their distribution to

the residuary legatees, and the specific bequest of the testator's interest or share in both firms, simply indicate the *amounts collected* (*ostensibly*) from the two firms, to which the residuary legatees were entitled.

DEFENDANT'S CONTENTION BASED ON THIS LANGUAGE IN EXECUTOR'S ACCOUNT.

Defendant's contention is that the words "deceased's interest in the firm of Kremelberg & Co., $19,577.91, and deceased's interest in J. D. Kremelberg & Co., $31,980.74, mean that John's executor had the interest of John in the New York firm appraised at $19,577.91, and the interest in the Baltimore firm at $31,980.74"; that by his declaration of trust George declared himself trustee of John's interest in the two firms; that John's executor had those interests appraised and carried the amount thereof into the residue of the estate distributed to John's children; and that the children thereby received the trust estate and the trust was performed.

The foundation upon which this contention was built was destroyed by the production of the certified copies of the inventories, showing the appraisement of all of John's personal estate and showing that *his interest in these firms was not appraised.*

The Vice-Chancellor finds against this contention of the defendants. In his opinion he says (Record, p. 286):

> "The inventory of testator's tangible property, made in July, 1882, does not appraise or even refer to testator's interest in the two firms."

Again, referring to the two figures above mentioned, the Vice-Chancellor says (Record, pp. 288-9):

> "The firm's books show, and it is conceded, that these figures represent the precise amount of the accumulated earnings left by John in the two firms named, for use as capital."

So that, as matter of fact, shown by the inventory, these two sums with which the executor charged himself, do *not* represent appraisements of testator's partnership interests in the two firms; and, as matter of law, shown

by *Molineaux vs. Raynolds* and other authorities supra, these sums did not represent testator's partnership interest in the two firms, but simply the *debts due him by the two firms,* respectively.

(b) The executor distributed these sums to testator's *residuary legatees.* If he had thought they represented John's partnership interests in the two firms, he would have distributed these sums to George and Fred, the *specific legatees of testator's interest* in both firms.

If what executor *said* in his account indicates that he thought these two sums were John's interest in the two firms, respectively, what he *did* by his account indicates that he thought these two sums were not the partnership interest specifically bequeathed to George and Fred.

(c) It seems to us singular to contend that George's trust could be performed by anything John's executor said or did. *The rights of complainants under the Declaration of Trust was not property of the estate which the executor could have appraised; they were their rights to be thereafter accounted for directly to them by the trustee.*

(d) The legal title to John's partnership interests in these firms did not vest in his executor, but in the surviving partners.

Thomson vs. Thomson, 1 Bradf. Sur. 24, 34-5.
Shipe's Appeal, 114 Pa. St. 205.
Loomis vs. Armstrong, 63 Mich. 355, 361.
Handy vs. Collins, 60 Md. 237.
Wickliffe vs. Eve, 58 U. S. 467.
Emerson vs. Senter, 118 U. S. 8.
30 *Cyc.* 620.
4 *Am. and Eng. Ann. Cas.* 61.
Walker vs. Miller, 139 N. Car. 448.

No administration was necessary to vest title in the specific legatees of those partnership interests, but their title became complete by the assent of the executor and the other surviving partners.

Burwell vs. Cawood, 2 How. 560.
Kent vs. Somerville, 2 G. & J. 269.

The assent of the surviving partners was shown by the notice sent out of John's death and the continuance of the firms.

The executor's assent may be presumed.

18 *Cyc.* 599.

And in this case is clearly indicated by the fact that the executor was a witness to George's declaration of trust, in which he declared that he held and possessed John's partnership interest in the two firms (Record, page 16).

John left no debts to require that the value of his interest in the two firms should be ascertained by a winding up of the firms and paid over to his executor; he had carefully provided in his will that all his debts should be paid out of the residue of his estate,

> "so that my interest in the business houses and firms above mentioned and devised to my brother George and son, J. Frederick, shall remain wholly undisturbed and be in no way interfered with."

(e) George's declaration of trust of the half of John's interest bequeathed directly to him, was made on the same day John's executor stated his account.

In that declaration George says:

> "I do hereby declare that I hold and possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will in trust, etc."

Clearly the declaration referred to *something that was in George's possession* at the date of the declaration. What did George *"hold and possess"* on those dates? Not the $19,577.91 due John D. Kremelberg by the New York firm, nor the $31,980.74 due him by the Baltimore firm. They were held and possessed by *John's executor.*

Neither was the money that was owing in George's possession, but in the possession of the firms of which George was only one member.

The declarations of trust do not refer to these debts, because George did not hold or possess them; but he did

hold and possess John's one-fifth interest as a partner in the New York firm, and his nine-tenths interest as a partner in the Baltimore firm, and it was of these partnership interests that he declared himself trustee. They were valuable. They had yielded large annual profits to John. They continued to yield large profits, to George.

B

ERROR IN HOLDING THAT THE FIRMS HAD NO GOOD WILL THAT WAS VALUABLE.

This holding was based apparently upon *Mullin vs. Mullin,* 85 N. J. Equity, 531 (96 Atl. 997).

In the Mullin case Vice-Chancellor Stevens had decided below, that the son, who after the death of the executrix under his father's will, had been appointed administrator d.b.n.c.t.a., was accountable for profits made in the business, upon the theory that he was trustee of the good will of the business of Peter M. Mullin, deceased, which was that of an undertaker.

This Court did say, as quoted by the Vice-Chancellor (Record, page 292):

> "We think it doubtful whether in a business of that character, consisting of personal services and evidently dependent largely, if not entirely, upon the personal characteristics of the individual, there could be any good will, even as late as four or five years after a man's death."

But the real point of the decision of this Court, if we understand it, is that young Mullin, *before* he was appointed administrator, had *purchased* the good will and the right to use the name of Peter M. Mullin for a *valuable consideration,* and that that contract was not abrogated by his subsequent appointment as administrator d.b.n.c.t.a..

This Court, referring to Vice-Chancellor Stevens' opinion, say (85 N. J. Eq. 534):

> "The error lies in overlooking the fact that the agreement made between the executrix and the com-

plainant in 1896 necessarily ran and bound both parties until the posthumous child born in 1892 attained his majority in 1913, two years after the present bill was filed. The complainant could not, and did not, repudiate or evade his obligation to support the infant children, and now acknowledges it. It is not questioned that he has performed on his part. This obligation arose out of an agreement which gave him all the profits, and he cannot be held to the performance of the contract on his part and compelled to give up his own rights thereunder. He was not acting in a fiduciary capacity when he made the contract, and the contract did not terminate when he became administrator. Both he and his father's estate remained bound."

The Mullin case related to that good will, if it can be so called, which attached to the name of an *individual* engaged in an occupation which consisted largely of personal services; in this case we are dealing with two commercial partnerships having an organization of clerks, buyers, etc., doing business for years under partnership titles. In the Mullin case the individual carrying on the business died; in this case a member of each partnership died, but the partnerships, which carried on the business, survived and continued. In the Mullin case there was no express trust; in this case there is an express declaration of trust by the trustee. In the Mullin case the son of the deceased had acquired the right to use his father's name for a certain number of years under a valid contract *for a valuable and full consideration;* in this case George obtained the interest of his brother in both firms *without consideration, and declared over his own hand and seal that he would hold that interest for his brother's children.*

The Vice-Chancellor's conclusion that the good will had no value, is based upon another conclusion reached by him, namely, that the good will of these tobacco exporting firms "would seem rather to resemble that of a doctor or lawyer than that of a retail merchant" (Record, p. 290).

His Honor also infers that John's executor thought the good will of no value.

The Vice-Chancellor says (Record, p. 291):

> "Tagart, the executor, evidently thought the name had no pecuniary value. I say this, because as a lawyer of long experience, and friend as well as the legal adviser of John, and the friend of his children as well as the temporary custodian of their property, he could not have been ignorant of that species of property called good will and he must have desired to obtain for them all that the estate was capable of yielding, and yet, in his account, he did not attribute any value to it."

And again he says (Record, pp. 292 and 293):

> "Mr. Tagart, at least, did not attribute any money value to the name, for he only charges himself 'with deceased interest in firm of Kremelberg & Co., $19,577.91,' a sum which, as I have said, represented the precise amount of accumulated profits left with the firm at John's death."

We submit that the executor put in his account "the exact amount of the accumulated profits" standing to John's credit on the books of the firm, because that was a *debt*, which it was the *duty of the executor to collect and distribute* to John's *residuary* legatees.

So far as it appeared upon the face of John's will, his children had no claim to his partnership interest in the two firms; the testator had left that to George and Fred. The reason why John's executor charged himself with the precise amount of the debts due by the firms, respectively, and did not put any value on the good will or on John's share in the firms, was *not* that he did not consider John's partnership interest or the good will of the firms valuable, but that he thought that the partnership interests passed directly to George and Fred under the will, and that he had nothing to do with them.

Authorities cited above show that the legal title to these partnership interests passed to the specific legatees thereof, *directly under* the will, and not *through* the executor.

It seems to us that a partnership engaged in exporting

tobacco, whose business consists largely in filling orders on commissions for European customers, is the very kind of a mercantile house whose good will is most valuable—the very kind of a commercial house to which we might apply the language of Romers, J., in *Davis vs. Matthews,* 1 Law Reports, Chancery, page 382 (1899):

> "The good will of the business would be an asset and might well be the most valuable asset of the partnership."

The Vice-Chancellor was of the opinion that this New York firm had no assets beyond its good will, or, to use his language (Record, page 290):

> "That had the executor of John's estate demanded payment, the New York firm would have been hopelessly insolvent."

And yet that *very year* we find this New York firm earning $21,873.96 profits. And it continued thereafter on an average to earn more than $20,000 per year profits. It was such a business as is described by Lord MacNaughton in *Trego vs. Hunt,* Appeal Cases (H. L. 1896), page 24, where he says:

> "Often it happens that the good will is the very sap and life of the business, without which the business would yield little or no fruit. It is the whole advantage, whatever it may be, of the reputation and connection of the firm, which may have been built up by years of honest work, or gained by lavish expenditure of money."

A partnership which earns $20,000 a year is certainly valuable. An interest in that partnership is valuable, and this is true, even though it might also be true that the partnership might be unable to pay its debts at a given time if forced to wind up.

John's one-fifth interest in that partnership, had he lived, would have yielded him more than $4,000.00 annual income; it did yield more than that amount to George after John's death.

It would require an investment of approximately $100,000.00 to produce a yearly income of $4,000.00.

John's one-fifth partnership interest in the New York firm, which produced an average income of more than $4,000.00, was worth more than $19,577.91; it was more nearly worth $100,000.00.

When this *same New York firm,* carrying on the *same business,* was dissolved by the death of *George,* his executors collected from the surviving partners $203,000.00, and in addition, *sold to them* George's *one-half* interest in the good will for $10,000.00, thus indicating a value of the good will of $20,000.00 (Record, pp. 124 and 150).

In view of these undisputed facts, it is difficult to understand how His Honor could have concluded that a partnership engaged in exporting tobacco purchased on commissions for European houses, was engaged in a business like that of a doctor or lawyer, whose good will has no value.

FIRMS WERE NOT DISSOLVED BY DEATH OF JOHN D. KREMELBERG.

The learned Vice-Chancellor seems to have overlooked the fact that, because of the bequest in John's will, John's death did not work a dissolution of the New York or Baltimore firms.

It is only when a firm is dissolved that it becomes material to ascertain the value of the good will, as *one* of the assets which must be converted into cash in winding up the partnership. So long as the partnership continues as a going concern, the good will is simply an element that enters into and aids in the earning of profits.

Even when the partnership is dissolved, if the survivors continue the business, they are responsible to the representatives of the deceased for the part of the profits proportioned to his share in the business.

The survivors cannot continue the business and reap the profits from such continuance, and then say to representatives of the deceased: We will pay you his share of the value of the good will at the time of his death.

If John D. Kremelberg had not bequeathed his interest in the firms the survivors would have had no right to

take deceased interest upon an appraisal. They must actually wind up and sell the assets, including the good will.

30 *Cyc.* 507.
Lindley on Partnership, 7th Ed., 652, Book IV, Chapter 3, Sec. 1.
Trego vs. Hunt, App. Cases (H. L., 1896), p. 17.
In re Davis, 1 L. R., Ch. (189) 382.
Coon vs. Moses, 70 N. Y. 473-4.
National Bank vs. St. Louis Dispatch, 36 Fed. 724.

By death of partner legal title to assets vest in survivor or survivors to wind up.

2 *Lindley,* p. 591.
4 *Am. and Eng. Annotated Cases,* 601.
Walker vs. Miller, 139 N. Car. 448.
30 *Cyc.* 620.

Survivor has no right to continue business except by provision in partnership articles or in will of deceased member.

30 *Cyc.* 636.

The good will may be the most important factor in earning profits; on the other hand, the personal skill, judgment and services of the partners may be more largely responsible for the profits earned.

And since it is not easy to segregate and say that so much of the profits are due to the good will and so much to the partners' ability and service, the law says that, when a partnership is dissolved by death and the survivors, instead of winding up, continue the business, they must account to the representatives of the deceased partner, *not for the value of the good will, but for the profits earned,* in proportion to the deceased partner's interest, less a reasonable compensation to the survivors for their personal services.

Lindley on Partnership, 7th Ed. 752.
Phillips vs. Reeder, 18 N. J. Eq. 90.
Clay vs. Field, 138 U. S. 473-4, 34 S. C. R. 1014, and other cases above cited.

Jones vs. Walker, 103 U. S. 444, 26 L. Ed. 404.
30 *Cyc.* 636-7.
Condon vs. Callahan, 1 L. R. A. (N. S.) 643.
20 *Cyc.* 1277.

In *Phillips vs. Reeder,* 18 N. J. Eq. 99, the Chancellor says:

> "There is a series of cases to sustain the principle that, where one or more of the partners of a firm continue the business after the partnership has been dissolved by death or otherwise, the retiring partner, or the legal representative of the deceased partner, are entitled to his share of the profits made after dissolution." Citing *Story on Part.,* Secs. 329, 342, and many other authorities.

In *Clay vs. Field,* the Supreme Court said (138 U. S. 473-4):

> "The general principle of law undoubtedly is that on the dissolution of the firm by the death of one of the partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time and pay over to the representatives of the deceased partner the amount due to them; and if he takes the responsibility of continuing the business of the firm and using the property of the partnership, he becomes liable for losses that may occur, and it is in the option of the representatives of the deceased partner *either to insist upon a division of the profits which may be made* in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm."

In 30 *Cyc.* 640, the text reads:

> "When the business is carried on by the survivor, for the purpose of completing existing contracts, or pursuant to the partnership articles, he must account to the representatives of the deceased for the profits made in the business."

In this case the surviving partners continued the business. They sent out promptly an announcement "of the

death of our highly esteemed senior partner," Mr. J. D. Kremelberg, in which they said:

> "The business in Baltimore, New York and Louisville will be continued as heretofore."

The business was continued. There was no winding up. There was no interruption. Both the New York and Baltimore partnerships "continued as heretofore."

The effect of John's bequest of his interest in both firms to George and Fred, and Fred's subsequent assignment of his half of the bequest to George, and the acceptance of this arrangement by the survivors, was to put George in the place of John in both firms, and prevent any dissolution or winding up.

30 *Cyc.* 636, 653, 654.
Burwell vs. Cawood, 2 Howard, 560.
Lincoln vs. Orthwine, 57 C. C. A. 540 (120 Fed. 880).

In *Burwell vs. Cawood,* 2 Howard, 576, 11 Lawyers' Ed., bottom page 385, the Court, through Mr. Justice Story, say:

> "By the general rule of law, every partnership is dissolved by the death of one of the partners. (a) It is true that it is competent for the partners to provide by agreement for the continuance of the partnership after such death; but then it takes place in virtue of such agreement only, as the act of the parties, and not by mere operation of law. A partner, too, may by his will provide that the partnership shall continue, notwithstanding his death; and if it is consented to by the surviving partner, it becomes obligatory, just as it would if the testator, being a sole trader, had provided for the continuance of his trade by his executor after his death."

Approved *Smith vs. Ayre,* 101 U. S. 329, 3d Ed. 9.
Jones vs. Walker, 103 U. S. 446.
Cited *Wild vs. Davenport,* 48 N. J. Law. 137.

The authorities quoted show that where the surviving partners continue the business, the representatives of

the deceased are entitled to the share of the profits which deceased would have received had he lived.

Both firms, acting in accordance with this principle, paid over to J. George Kremelberg the profits upon John's partnership interest, and under George's declarations of trust, appellants are entitled to the profits received by their trustee.

Appellants' claim is not for the value of the good will, but for the share of the profits of the firm which were earned on John's interest, which were paid over by the firms to George, and of which George declared himself trustee for the complainants.

C.

ERROR IN HOLDING THAT THE TRUSTS HAD BEEN PERFORMED.

The Vice-Chancellor having concluded that John's interest in each firm consisted of what each firm owed him at the time of his death, plus his share of the good will; and that there was no good will that was valuable, concluded that the passing of the two debts through the account of the executor, and the subsequent settlement of those two debts by the firms, accounted for all of the trust estate. This conclusion is a natural result of His Honor's erroneous construction of the will of John D. Kremelberg.

The unsoundness of this conclusion is, it seems to us, capable of mathematical demonstration. If the $31,980.74 was all of John's interest in the Baltimore firm, how did George have any interest in that firm after this $31,980.74 was passed through the executor's account and treated as a part of the capital furnished by the children? If by the executor's accounting for this sum of $31,980.74, George had performed his trust to assign and transfer to the children John's interest whenever requested so to do, how could George, *after that, still have an interest* in the Baltimore firm? George had no interest in that firm, except John's interest, which he received under John's will and Fred's assignment. If that interest had been transferred to the children, George would have had no interest left in the Baltimore firm. *Ex nihilo nihil fit.*

George was not a wizard; he could not get something out of nothing; he had nothing in the Baltimore firm, except John's interest, and if John's interest had been transferred to John's children, George would have had nothing left; he would no longer have been a partner. As stated by Vice-Chancellor Emery at the conclusion of the hearing before him:

> "Suppose George had made a deed to the children of his legal interest in the firm; that would have transferred the legal title to the equitable owners, and then he would have had no further right to be a partner in the firm. If George had made that transfer, would he have had any further interest in the firm as partner?"

And yet George continued to draw profits from the Baltimore firm as long as he lived. He drew since 1904 $67,386.57. Upon what did he draw these profits? There is but one possible answer. He drew them on John's partnership interest, which he had received under John's will and Fred's assignment.

This demonstrates that John's interest in the Baltimore firm was something different, or something more, than the $31,980.74 standing to his credit on the books of the firm at the time of his death.

In the New York firm George had an interest before John's death, and therefore, in order to make out complainant's case, it must appear that *after John death* George drew a larger percentage of the profits of the New York firm than his share in the firm *prior* to John's death. This *is* shown. Prior to John's death Hillen says that George had a forty per cent. interest (Record, page 151). After John's death, and after the $19,577.91 due by the firm to John had been accounted for by John's executor, the books show that George had a fifty per cent. interest (Testimony of Hillen, Record, page 140). Where did George get the other ten per cent? Prior to John's death (if Hillen is correct as to George's interest), George drew forty per cent. of the profits; after John's death he drew fifty per cent. How did he get the other ten per cent. unless it was upon John's interest? Hillen was not at all

positive about George having forty per cent. prior to John's death, or about John only having twenty per cent. He says (Record, page 151):

> "If you ask me absolute, I cannot answer. * * * To the best of my remembrance, he had twenty per cent.; the New York partners had forty per cent."

We have accepted in this brief Engler's hazy recollection that John only had twenty per cent. in the New York firm. The defendants cannot object to that, because they admitted in their answer that John had a twenty per cent. interest (p. 62); but the books of the New York firm show that George really had only thirty per cent. prior to John's death. Hillen testifies from the books that the profits were divided evenly between George and Engler after John's death (Record, page 140), that is, fifty per cent. each. It is conceded that George had received twenty per cent. under John's will and Fred's assignment, which shows that George's own interest in the New York firm prior to John's death was only thirty per cent. This was natural, as Engler, though not the founder, was the oldest member of the firm (Record, page 141), and was a man experienced in financial matters. Mr. Stellman testifies (Record, page 89): "Mr. Engler was an exchange broker before he went with Kremelberg & Co." George was much younger, being ten years younger than John and only forty-five years old at the time of the latter's death.

It is simple arithmetic that, if John's interest was twenty per cent. and George had fifty after he got John's, George's own prior interest was thirty per cent. So that, it is demonstrated mathematically that, after John's death, George drew fifty per cent. of the profits of the New York firm; before John's death he had only drawn thirty per cent. If John's interest in the New York firm consisted of only the $19,577.91, how did George get that additional twenty per cent. of the profits of the New York firm every year after John's death?

Even if the Vice-Chancellor were right in holding that the bequest in John's will "included the accumulated

profits" (p. 293), these undrawn profits were not *the whole* of the bequest. The bequest certainly included the *share as a partner* in each firm. This share in the partnership was the principal thing; the undrawn profits were simply part of the earnings of the shares; the shares were the tree; thet profits were part of the fruit theretofore borne by the tree. If the bequest carried this part of the past fruit of the tree, it also carried the tree itself. George declared himself trustee of the tree, and he could not discharge his trust by accounting for the fruit the tree had previously borne; he must also account for the fruit which he subsequently gathered from it.

(b) On the very day that Tagart stated his account in which he charged himself with these two sums due from the two firms, respectively, George executed his second declaration of trust, which was witnessed by Tagart, John's executor, in which he declared that he was holding the half of John's interest in the two firms in trust for John's children.

We can scarcely imagine George executing, or Mr. Tagart witnessing, a declaration that George was holding in trust *something which George did not have,* but *which Mr. Tagart,* the *executor, had,* and with which he had that very day charged himself.

Is this not demonstration that both George and Tagart considered that the interest in the partnership of which George declared himself trustee, was a different thing from the debts due by the partnerships to John at the time of his death, with which Tagart on that very day charged himself?

c. *After* Tagart had charged himself with these two debts, due from the two firms, and distributed the residue to the children of age and to the guardians of the three children under age, and *after* these debts had been transferred to the credit of the children by both firms, Tagart delivered these declarations of trust to Martin to be placed in the safe deposit box containing the securities and valuable papers belonging to the children.

The entry on the margin of the Record Office of Balti-

more City, where the assignment from Fred to his uncle George was recorded, shows that that assignment was delivered by the clerk to Mr. Tagart (Testimony of Mrs. Gill, Record, p 247).

And that assignment was found with the two declarations of trust in the envelope in the safe deposit box by Miss Ella Kremelberg in June, 1913 (Testimony of Miss Ella Kremelberg, Record, pp. 234-236).

Ordinarily, the possession of the assignment from Fred to his uncle George should have been with George, the assignee, although that paper having been recorded, which is proof of delivery, the possession of the original is not material.

But, inasmuch as the assignment from Fred to J. George Kremelberg, though absolute on its face, was in effect for the benefit of the children of John D. Kremelberg, as shown by the declaration of trust made at the same time, *the assignment and the declaration in reality formed but one transaction. The beneficial owners of the interest assigned* were the children of John D. Kremelberg, and Mr. Tagart properly held the two papers, showing the real nature of the transaction, together, and delivered them, with other papers belonging to the children of John D. Kremelberg, to Charles Martin, to be by him put in their safe deposit box for safe keeping.

Mr. Tagart was 73 years old at the time when the declaration of trust of May 6, 1883, was made. He died in 1892 (Test. Miss Ella, Record, p. 174).

The two children who were of age, Virginia and Ella, had insisted upon leaving the money due their father in the firms, now controlled by their uncle George, against Mr. Tagart's advice. These two children went abroad shortly after the declaration of May 6, 1883, and Mr. Tagart had turned over all their papers to Martin before their return (Test. Miss Ella, pp. 194 and 229).

d. If the trust acknowledged by these declarations of trust had been performed, the declaration of trust would have been surrendered to J. George Kremelberg. He knew he had signed them. If he had ever performed his trust, he would have called for the surrender of these declarations. Their possession by the complainants is evi-

dence of their delivery by J. George Kremelberg, and that he has never performed his trust thereunder.

Hill vs. Beach, 12 N. J. Eq. 44-5.
Black vs. Shreve, 13 N. J. Eq. 457.
Benson vs. Wolverton, 15 N. J. Eq. 158.
Brown vs. Brown, 33 N. J. Eq. 653.
9 *A. and E. Enc. Law,* 2 Ed. 169.
Games vs. Dunn, 14 Peters, 326.

In *Hill vs. Beach,* 12 N. J. Eq. 44-5, Beach produced an agreement which complainant contended had never been delivered. There was testimony pro and con. The Court held the paper valid. Referring to the effect of the possession, Williamson, Chancellor, said:

> "Beach produces the agreement. Prima facie he is entitled to the benefit of it. If the complainant undertakes to destroy its validity, he must not leave the matter in doubt."

In *Black vs. Shreve,* 13 N. J. Eq. 457, the Court of Errors and Appeals say:

> "In the absence of all evidence to the contrary, mere possession of a complete instrument by the grantee is sufficient evidence of a lawful delivery."

In *Games vs. Dunn,* 14 Peters, 326, the Supreme Court say:

> "But independently of these facts, the possession of the deed by the lessor of the plaintiff, who offers it in proof, is prima facie evidence of its delivery. Under ordinary circumstances, no other evidence of the delivery of a deed than the possession of it by the person claiming under it, is required."

III.

ERROR IN HOLDING THAT THE DECLARATIONS OF TRUST WERE VOLUNTARY DONATIONS FROM GEORGE TO HIS BROTHER'S CHILDREN.

His Honor says (Record, page 296):

> "There is nothing whatever to indicate that the gifts to Frederick and George were not gifts out and

out. If John had intended a trust, there was nothing to have prevented him from declaring it. He did not, and Frederick and George took absolutely. They generously surrendered to John's children a valuable interest, worth over $50,000.00."

His Honor, Vice-Chancellor Emery, suggested what seems to us a very good reason why John did not set out the trust in his will.

Vice-Chancellor Emery said:

"It would be very important in a business way to know who the members of the firm are, and if it was understood that these infant children of John D., or their guardian, were the real members of that firm in Baltimore, it probably would not have stood long; there would have been no credit whatever on their account, because everyone can understand that the infants could not legally be partners" (see His Honor's opinion at end of this brief).

And, of course, John had implicit confidence in his brother and his son Fred, as is indicated by his tender commendation of his young son and namesake, John Diedrich, "to the care of his brother Frederick and his uncle George" (Record, page 31).

The fact that Fred at the time of assigning to George his one-half interest in the bequest, exacted from George a declaration that he had received that half interest in trust for all of John's children, is a strong indication that Fred had received the bequest from his father on the same trust.

Fred's assignment, just like his father's will, is in form absolute. No trust is expresed in the assignment. We learn the trust from the declaration of trust which was made contemporaneously with the assignment. The assignment from Fred to George was recorded; the declaration of trust made by George was not recorded. The fact that this assignment from Fred to George is absolute on its face, and does not express the trust upon which it was actually made, seems to bear out the sugges-

tion of Vice-Chancellor Emery that it was thought desirable not to have the public know that the children were interested in the firms for fear of the effect on their credit. Of course, if Fred's half of John's interest was really left to him in trust for all of John's children, George's half of the same interest was left on the same trust.

George and Fred did *not surrender* the *partnership interest* they had received under John's will; Fred assigned his one-half of that interest to George, but George held it as long as he lived and received the profits therefrom. Nor did they surrender the debts due by the firms to John, because, as shown by the reasoning and decisions above, these debts never passed to George and Fred.

The Vice-Chancellor, referring to George, says (Record, page 293):

> "As far as it appears, he was not under the slightest obligation to give his own half to anyone. That he was under an obligation to declare a trust of Frederick's share appears only from the fact that he did so on the day on which Frederick conveyed to him."

Not only was the declaration as to Fred's half made "on the day on which Fred conveyed to him," but the declaration expressly says that *Fred's assignment to George was made in trust* for all of John's children (Record, p. 14). How could it appear any more clearly than it does that George *was under an obligation* to declare a trust of the one-half of John's interest bequeathed to Fred? As to his own half, received directly from John, George says over his own hand and seal that he was holding that in trust "for divers good causes and valuable consideration me thereunto moving" (Record, page 15). The good cause no doubt was an understanding with his brother John that he would hold this interest for the benefit of John's children, three of whom were then very small, and one valuable consideration was that by obtaining John's interest and thus preventing a dissolution and winding up of the New York firm, that firm was enabled to continue in business and *George's own interest* in that firm, instead of being wiped out, was preserved and thereafter yielded to George large profits.

The Vice-Chancellor finds that at the time of John's

death "Englar owed the firm $4,013.83, George $8,894.66," and "that had the executor of John's estate demanded payment, the New York firm would have been hopelessly insolvent" (Record, pages 290 and 291).

If John had not bequeathed his interest in the firm to George and Fred, the New York firm would have been wound up, George's own interest would have been wiped out and he would have been a bankrupt. The bequest in John's will, followed by the forbearance of John's executor to demand actual payment of the debt due by the firm to John, enabled the firm to go on and enabled George to draw nearly half a million dollars in profits from that firm. *If his estate pays the appellants the proportion of those profits that accrued on John's interest, there will be left nearly* $300,000 *accrued upon George's own interest, every cent of which he owes to the bequest in John's will and the forbearance of John's executor.*

Obtaining for *the New York firm, the continued use of* $19,577.91, *due by it to John, and of* $26,523.91, *due by the New York firm to the Baltimore firm* (*Record, p.* 146); *without which the New York firm would have gone to the wall, was a valuable consideration to George, who had a* 30 *per cent. interest of his own in the New York firm.*

If John's executor had demanded payment of the $31,980.74 due by the Baltimore firm, and the $19,577.91 due from the New York firm, the latter would have been ruined (Record, pp. 280, 290). John's executor had the right to demand payment. George had no *legal* right to put the risk of continuing the business on his brother's children, and no *moral* right, unless he intended that the children should share the profits if the venture succeeded.

When the time came for the executor to state his account, John's eldest child, Fred, was in foreign lands, a wreck from dissipation; the other son and two of the daughters were minors. The executor advised that the money due from the two firms be collected, but Miss Ella, out of affection for her uncle George, wanted the money left with the firms. *On the very day that Tagart consented to put the risk on the children,* by charging himself with these debts without collecting them, George de-

livered to Tagart the second declaration of trust. *Is it not a fair inference that Tagart was induced to leave the money at the risk of the business by George's declarations of trust whereby, if the business succeeded, John's children were to get the part of the profits their father would have received had he lived?*

ALL THE RISK OF CONTINUING THE BUSINESS WAS PUT ON JOHN'S CHILDREN.

George, who was appointed by his brother's will a guardian of his minor children, permitted John's children three of whom were still minors, to risk more than half of their entire fortune with two allied firms, which did not have a dollar of capital (Rec., p. 211). $19,577.91 due from the New York firm, and $31,980.74 due from the Baltimore firm to John, and $24,000 more due from the latter firm to three of the children, or a total of $75,558.65, belonging to these children were left at the risk of this business. If the firms had failed, the children would have lost it all. George risked nothing. He had nothing (Record, p. 211). If the firms had failed, he could have had no less.

The use of this money by the firms and George's succession to John's interest, enabled the firms to succeed, and enabled George to receive large profits *both* for *himself* and *as trustee* for his brother's children.

Could there be a stronger equity than that which demands from George *that part of the profits which he received as trustee* for his brother's children?

IV.

ERRORS AS TO AMOUNTS.

On page 290 the Vice-Chancellor refers to "the debt, if so it may be called, which the New York firm owed John D. Kremelberg's estate, and which amounted to $31,980.74." His Honor was mistaken. This was the amount due by the Baltimore firm. The amount due by the New York firm was $19,577.91.

On page 293 His Honor uses the figures $19,577.91 as the amount of accumulated profits left with the Baltimore firm at John's death. The figures should have been $31,980.74.

His Honor also refers to "$32,000.00 which belonged to

four of the children, $8,000.00 to each." This figure should be $24,000.00. The three oldest children had $8,000.00 each, which they had received through their mother and which they had loaned to the Baltimore firm prior to John D. Kremelberg's death (Test. Miss Ella, p. 212). After his death the $31,980.74 belonging to all the children as residuary legatees under John's will, and the $24,000.00 belonging to three of them, total $55,980.74, became the capital of the Baltimore firm, and for the use of this capital the children were allowed one-half the profits of the Baltimore firm, the half being divided as between themselves in proportion to their respective ownerships of the $55,980.74 (Test. of Miss Ella Kremelberg, Record, pp. 181-2, and Exhibits C-18 to C-24).

This arrangement related only to the Baltimore firm. The children never received any profits from the New York firm.

AMOUNT OF COMPLAINANTS' CLAIM.

The Vice-Chancellor seems to have fallen into an error on this point. He says (Record, page 289):

> "These earnings cover a period of thirty years and amount, it is asserted, to over $580,000. The rather startling claim is made that they belong to the defendants, less an allowance for management.

The amount mentioned by the Vice-Chancellor represents the entire profits received by George *both on his own prior interest and on the interest which George received under John's will and Fred's assignment.*

After obtaining John's interest, George received from the New York firm for part of the time, fifty per cent., and for the remainder of the time more than fifty per cent. of the entire profits (Test. Hillen, Record, pp. 140-1).

John's interest having been twenty per cent., complainants' demand is for twenty per cent. of the *entire profits* of the New York firm, which would amount to something *less than forty per cent.* of the amount of *profits received by George* from that firm. *All the profits* which George received from the *Baltimore firm* were due to his having obtained John's interest; because George had no interest in that firm prior to John's death, and never contributed

either capital or services to that firm after John's death. Hence, complainants' demand is for all the profits received by George from the Baltimore firm. And as to both firms, George should be credited with the amount to which the Court may find he is entitled under the stipulation in his second declaration of trust that he could retain for his own use twenty per cent. of the profits of the *half part* of John's interest directly bequeathed to George. George did not reserve for his own use 20 per cent. of the profits of the *Baltimore firm; but 20 per cent. of the profits of the half of John's interest in both firms,* which, of course, is equal to *ten per cent.* of the profits from *John's entire interest in both* firms. It is easy to calculate ten per cent. of the profits received by George on John's interest in the New York firm, for we have the books of that firm ever since the death of John, except for one year. The books of the Baltimore firm prior to 1904 were burned up in the great Baltimore fire. We have the testimony of the bookkeeper that the profits received by George from the Baltimore firm were quite as large before 1904 as they were after 1904 (Testimony of Baker, Record, p. 123). But we have no record evidence of the amount of profits received by George from the Baltimore firm prior to 1904. After 1904 he and his executors received $67,386.57.

The books of the Baltimore firm also show the entire profits since 1904, and it is easy to calculate ten per cent. thereof.

Complainants submit, however, that George ought not to have held John's interest all his life. After all the children were of age he ought to have transferred these interests to the children and, therefore, as to the Baltimore firm, toward the profits of which he contributed no service, George ought not to be allowed to keep any of the profits since 1904, especially if, because of loss of record evidence, he should not be held accountable for the profits received by him from that firm, prior to 1904.

If it be said that the complainants' claim involves a charge of breach of trust against a man who in his life time was highly trusted by these very complainants and by their father, the answer is that practically all of the

breaches of trust which have been committed were committed by men who had been previously considered men of honor and fidelity.

When, as in this case, a claim against a trustee is proven by unquestioned documentary evidence, the reputation of the trustee, no matter how good it had previously been, is no answer to complainants' demand.

No doubt George intended to perform these declarations when he made them, and probably this intention did not change for many years.

In the declaration of December 4, 1882, no specific time was mentioned when he must account; and the declaration of May 4, 1883, said he would "grant and assign the same to them *whenever* requested so to do."

This language indicates that the trust was to continue at least until the youngest child became of age, because until then the children could not make the request. Three children were then under age, the youngest being only fifteen.

For twelve years after these declarations of trust George remained indebted to the New York firm, and it was fifteen years before his balance was large enough to enable him to begin to account to these children for any of the profits of the New York firm. (See his Account, Exhibit C-1.)

Miss Ella testifies (Record, page 185):

> "Q. You say you were, I believe, 24 then; do you know of your own knowledge what was your uncle George's financial condition at that time? A. Yes. Q. What was it. A. They were very straitened. Q. You say they were very straitened, how do you mean? A. His finances were very straitened."

And again, on page 190:

> "Q. How long before he became in easier circumstances financially? A. About in 1897, I think."

During all those fifteen years he may have honestly intended to account. At the end of the fifteen years, when his finances began to improve, *the only persons who knew anything about the declarations of trust—Tagart and Fred—were dead*, had died about three years before;

and the temptation evidently came to George to postpone accounting until he was still better able to do so, or until his nieces requested it. They never requested it because they *never knew their right* to do so, until after his death.

LAPSE OF TIME NO BAR TO COMPLAINANTS' RIGHT TO RECOVERY.

All the dates were given in the bill and the accompanying exhibits. Lapse of time, if a defense, appeared on the face of the bill. It was distinctly raised by the ninth reason in the motion to strike out the bill (Record, page 303), and overruled by Vice-Chancellor Stevens' order denying the motion (Record, page 304). It is not referred to in His Honor's final opinion. So that, apparently, the view of the learned Vice-Chancellor on this point is with the complainants.

There are three reasons why lapse of time cannot affect the right of the complainants to recover in this case.

(1) The defendants suffered no loss by the lapse of time. If the defendants are now required to account in one lump sum for all the profits received by George on John's interest in the two firms, George's estate will be no worse off than if George had accounted for these profits from year to year as received. No evidence has been lost which would reduce complainants' claim, because the amount complainants ask for is shown by the *books* of the two firms.

(2) The evidence which establishes complainants' claim is entirely documentary. No testimony that could be given by George, if he were living, could change it. He could not deny that John's interest in both firms was bequeathed to him and Fred; nor that Fred assigned his one-half of the bequest to George; nor that George signed the declarations of trust, for his daughter and others who know his signature do not question his signature to these declarations; nor could George deny that he received the profits shown by the books of the two firms.

There must be a concurrence of delay on the part of complainants, and also loss or detriment to defendants

before lapse of time can ever be a bar to the enforcement of an express trust.

25 *Cyc.*, pages 1149 to 1151.
Gordon vs. Small, 53 Md. 550, 559.
New Orleans vs. Warner, 175 U. S. 130.
Smith vs. Coombs, 49 N. J. Eq. 420.
Condit vs. Bigelow, 64 N. J. Eq. 314.
Stevenson vs. Markell, 72 N. J. Eq. 686.
Kimball vs. Asso., 76 N. J. Eq. 358.

In *Smith vs. Coombs*, 49 N. J. Eq. 420, A. D. 1892, the *administrator* of the residuary legatee of John Reed, who died in 1861, recovered against the *administrators* of the estate of *Joseph Coombs, executor* of John Reed, on the ground that they had in their hands monies which were really part of the estate of John Reed. The claim was made some time after 1889; it does not appear exactly when. On the question of limitation the Court, Bird, V. C., say (49 N. J. Eq. 428):

> "It has been urged that the statute of limitations ought, by force and analogy, according to the practice of this Court, be applied to the claim of the said Aaron Coombs. This doctrine has never been applied to express trusts in New Jersey. The trust has always been acknowledged, or at least not a shadow of resistance to it, or repudiation of it, by the trustee, and consequently there is no foundation fo rthe application of the doctrine. *Gutch vs. Fosdick*, 3 Dick., Ch. Rep. 353; *Dyer vs. Waters*, 1 Dick., Ch. Rep. 484; *Bechtold vs. Read*, 4 Dick., Ch. Rep. 111.
>
> "Nor have these legatees lost their right to recognition and protection because they did not file any written claim or demand with the administrators of Joseph Coombs, deceased, under the statutory rule to bar creditors. I think no one will contend that the statute referred to was designed to embrace the rights of *cestui que* trusts."

In *New Orleans vs. Warner*, 175 U. S. 130, the Supreme Court say:

> "The rule is well settled that in actions by *cestuis que* trusts against an express trustee, the statute

of limitations has no application, and no length of time is a bar."

(3) COMPLAINANTS ACTED PROMPTLY AFTER KNOWLEDGE OF THEIR RIGHTS.

The complainants knew nothing about these declarations of trust. They were girls, two of them minors; they had been raised in a home of wealth, and had no occasion to become experienced in practical or business affairs. When their father died they looked upon their uncle George as taking the place of their father, and left everything in his hands. Against the advice of Mr. Tagart, the money which was due their father in both of the firms remained there. Fred knew about the declaration which his uncle George signed when he made the assignment to him, but he was then in a very dissipated condition and shortly thereafter went abroad and never returned. He died in Australia in 1892 (Test. Miss Ella, Record, p. 172). He never told his sisters anything about the declarations of trust.

Mr. Tagart knew about the declarations of trust. They were evidently delivered to him and by him delivered with other papers, securities, etc., of these children, to Charles Martin, and by Martin put in the children's safe deposit box, while the girls were abroad (Test. Miss Ella, pp. 173, 174).

He knew from the declaration of trust of December 4, 1882, that George was trustee of *half* of John D.'s share or interest in both firms, and no doubt George had told him that he was also trustee of the *other half* directly bequeathed to him, and Tagart took the declaration of trust of May 4, 1883, to preserve written evidence of the fact that George was trustee as to that *half also;* not because he had any suspicion of George's good intentions, but because he knew George's financial condition, and knew that this trust was to be performed at some time in the future, *"whenever"* the children requested it. When he had stated his accounts upon the public records, and had turned over to Martin, to be preserved in a safe deposit box these two declarations of trust and the assignment from Fred to George, he had preserved written evidence

of the rights of the children to the balances standing to the credit of their father in both firms, and also of the fact that their uncle George would, *whenever requested,* turn over to them their father's share in both of these firms.

Mr. Tagart turned these papers over to Martin at the same time he gave Martin the securities, soon after he stated his second account, June 20, 1883. This was while the children were abroad. They did not return until the latter part of 1884. Mr. Tagart was 74 or 75, having been 72 when J. D. Kremelberg died (Test., p. 174), and was turning over the cares of practice to others (Test. Steele, p. 76). Mr. Tagart had no reason to suppose that the confidence of the children in their uncle was misplaced. During the remaining eight year of Mr. Tagart's life George was financially unable to transfer John D.'s interest to his children, but there was no breach in the friendly relations between George and his nieces, and no repudiation of the trust by George to suggest to Mr. Tagart that he ought to advise the children to make demand on their uncle.

When Mr. Tagart turned these declarations of trust over to Martin, he probably considered his duty in the matter ended. If he thought of the matter at all after the return of the children 18 months later, he probably thought that their uncle George had told them that he was holding their father's interest for their benefit. Mr. Tagart saw them after that only socially. He never was consulted by them professionally about any matter after that (Test. Miss Ella, p. 231).

It seems to us natural that Mr. Tagart did not volunteer any advice to these children as to their rights against their much-loved and trusted uncle. At all events, we know that Mr. Tagart did not tell them of their rights under the declarations of trust, because we have their positive testimony that no one told them.

One of them, Miss Ella, had had physical vision of the papers after the death of Martin in 1903, but did not read them or understand them, and did not consult anybody about them. She was so little impressed with the sight of the papers, and so entirely ignorant of their ef-

fect, that she did not even mention having seen them to either of her sisters, or to her brother-in-law, John Gill, Jr., with whom she lived when in Baltimore. *The other complainants never even knew of the physical existence of the papers until the latter part of June,* 1913 (Test. Mr. Gill, pp. 110-111; Miss Ella Kremelberg, pp. 112, 116-17, 175, 186, 203, 232; Mrs. Gill, p. 248, and Miss Mary A. Kremelberg, p. 252).

This evidence is undisputed. The daughter of J. George Kremelberg, who is about the same age as one of the complainants, Mrs. Gill, did not go on the stand to contradict any statement made by either of the complainants, and to submit herself to cross-examination as to the possible possession of books, accounts or statements which might completely corroborate the testimony of complainants. The families were always very intimate, visiting back and forth, and she herself was married from the home of Mr. Gill shortly after her father's death. Her failure to go on the stand emphasizes the fact that the testimony of the complainant is entirely uncontradicted.

This evidence shows:

1. That *three of the complainants,* Mrs. de Graaff, Mrs. Gill and Miss Mary A. Kremelberg, *never saw either of the declarations of trust and never knew of their existence until after the middle of June,* 1913.

2. That while Miss Ella saw the papers in 1904 in her safe deposit box, *she did not understand them and did not know their effect and did not know the rights of herself and her sisters under these papers until after the middle of June,* 1913.

COMPLAINANTS NOT GUILTY OF LACHES, BECAUSE WITHOUT KNOWLEDGE OF THEIR RIGHTS.

Life Asso. vs. Siddal, 3 DeG. F. & J. 72.
Stinis vs. Stinis, 54 Eq. 17.
2 *Perry on Trusts,* Sec. 850.
18 *Enc. Law,* 2d Ed. 102, 103, and Notes.
Prevost vs. Gratz, 6 Sweeten, 487.
Lindsley vs. Dodd, 30 Atl. (N. J.) 896.
Pairo vs. Vickery, 37 Md. 486.
Whitridge vs. Whitridge, 76 Md. 54.

In *Whitridge vs. Whitridge,* 76 Md. 85, the Court say:

> "But acquiescence always presupposes that the party sought to be bound by it understood the act done, and was apprised of his legal right to question or impeach it."

In *Life Association vs. Siddal,* 3 DeG. F. & J. 74, Lord Justice Turner said:

> "Acquiescence, as I conceive, imports knowledge, for I do not see how a man can be said to have acquiesced in what he did not know, and in cases of this sort I think that *acquiescence imports full knowledge, for I take the rule to be quite settled that a cestui que trust cannot be bound by acquiescence unless he has been fully informed of his rights and of all the material facts and circumstances of the case.*"

In a note to 18 *Enc. of Law,* 2d Ed., 103, it is said:

> "Acquiescence always presupposes that the party sought to be bound by it understood the act done and was apprised of his legal right to question or impeach it."

In *Stinis vs. Stinis,* 9 Dickinson (54 N. J. Eq. 17), the *defense of laches was overruled* because there was no open repudiation of the trust brought home to the knowledge of the plaintiff, *although forty years had elapsed,* and, as stated by the Chancellor on page 23:

> "The lapse of time carried with it the lives of both life tenant and mortgagor, who could have spoken as witnesses, and we know not what other evidences."

The facts of this case were that a son gave a mortgage to his father and afterward became his father's executor. He never filed any account, and in 1887, as executor, he released the mortgage. In 1891 he died; in 1894 the administrator d.b.n.c.t.a. of the father filed a bill for an accounting, and the Chancellor overruled the demurrer, setting up the ground of laches.

This case is a good illustration of the principle that laches must be founded upon *actual* and not upon constructive knowledge.

The release of the mortgage had been on record for seven years, and yet the plaintiff was not charged with knowledge of it.

The Chancellor says (54 N. J. Eq. 24):

> "There is absense of laches with reference to the attack upon the satisfaction, if for no other reason, because it does not appear that the existence of that instrument was known to the *cestuis que trustent.*"

The case of *Lindsley vs. Dodd,* 30 Atl. Rep. 896, referred to by the Chancellor in *Stinis vs. Stinis,* 9 Dickinson, also states the rule that *laches* must be *founded upon actual knowledge* and not upon what might have been found out by diligent inquiry.

The Court, Vice-Chancellor Pitney, says (53 N. J. Eq. 86):

> "It is quite clear in this case that complainant has not knowingly slept on her rights for the statutory period. It is true that if she had employed counsel as soon as she became of age, in the lifetime of both the life tenants, it is probable that such counsel would have discovered the true state of affairs, but I can find no authority for debarring her from relief because she was not diligent in ascertaining just what her rights were when, as here, the mystery surrounding them was due to the neglect of duty of the trustee."

The doctrine by which a person is charged with knowledge of what he might have found out by inquiry, *does not apply to the case of an express trust.* It is the duty of the trustee to inform the *cestui que* trust; he cannot possess himself of the trust property and then profit by his own wrong, merely by showing that the *cestui que trustent* might have found out their rights by diligent inquiry.

A note to 18 *Amer. and Eng. Enc. Law,* 2 Ed., page 103, reads:

> "A *cestui que trust* who does not actually know is not to be affected with knowledge of a breach of

trust because he might by inquiry have ascertained the fact, for it is not his duty, but that of the trustee, to see that the trust fund is in a proper state. *Thompson vs. Finch,* 22 Beav. 316; *Scotland L. Asso. vs. Siddall,* 3 DeG. F. & J. 58."

This principle is fully sustained.

Lindsley vs. Dodd, 30 Atl. Rep. 896.
Stinis vs. Stinis, 54 Eq. 17.
Whitridge vs. Whitridge, 76 Md. 85.
Life Asso. vs. Siddall, 3 DeG. F. & J. 72.

The duty of notifying complainants of their rights under the declarations of trust rested *primarily on the trustee, J. George Kremelberg.*

The fact that J. George Kremelberg died before complainants discovered their rights is no bar to their recovery.

Stinis vs. Stinis, 54 Eq. 17.
Lindsley vs. Dodd, 30 Atl. Rep. 896.
Stevenson vs. Markley, 72 Eq. 686.
Whitridge vs. Whitridge, 76 Md. 85.

In *Smith vs. Coombs,* 49 Eq. 420, recovery was had by the administrator of a legatee ,more than 28 years after testator's death, against the *administrator* of the executor; that is, after the death of both trustee (executor) and *cestui que trust* (legatee).

In *Stevenson vs. Markley,* 72 N. J. Eq. 686, recovery was permitted from estate of guardian after the deaths of both ward and guardian.

In *Whitridge vs. Whitridge,* 76 Md. 85, recovery was permitted after the death of the trustee.

In *Stinis vs. Stinis,* 54 Eq. 17, and Lindsley vs. Dodd, 30 Atl. Rep. 896, the lapse of time had carried with it the lives of parties to the transactions in question.

VI.

APPELLANTS HAVE DONE NOTHING TO RELEASE TRUSTEE FROM PERFORMANCE TRUST.

Vice-Chancellor Stevens seems to think the arrangement whereby John's children received fifty per cent. of the profits of the Baltimore firm was a performance of the second declaration of trust.

His Honor says (Record, pp. 293-4):

> "Before he declared the trust of May 4, 1883, Messrs. Brancker and Martin had come into the business as partners. The agreement was that the $19,577.91 and the $32,000 should remain as capital; that the children of John should receive fifty per cent. of the profits; that Brancker and Martin should each receive fifteen per cent., and that he (George) should receive the remaining twenty per cent."

(His Honor is in error as to the figures, which should be $31,980.74 and $24,000.)

On page 295 His Honor says:

> " 'In the deed of May 4, 1883, George agrees to hold the one-half part of the property bequeathed to him in trust for the children, 'I paying to Messrs. Brancker and Charles Martin each fifteen per cent. of the profits of said part of the property devised and bequeathed to me as aforesaid and holding the other twenty per cent. thereof to my own use.' "

His honor overlooked the fact that the *agreement* between George and Martin and Brancker, and the *declaration of trust* of May 4, 1883, *do not refer to the same thing.* The former refers to the Baltimore firm. Brancker and Martin never had anything to do with the New York firm. The declaration of trust of May 4, 1883, refers explicitly to *both* firms, namely, to John's half interest in both firms. The prior declarations of trust, covering the half of John's interest bequeathed to Fred and by him assigned to George, also covered half of John's interest in *both* firms.

Under the declarations of trust, George had no right to take half the profits of *the Baltimore firm,* fifteen per cent. for Brancker, fifteen per cent. for Martin and twenty per cent. for himself; his right was to retain twenty per cent. for himself, fifteen per cent. for Martin and fifteen per cent. for Brancker of the profits of *one-half* of *John's* interest in *both* firms.

George, the trustee, could not change these declarations of trust and treat the *half of John's interest* bequeathed to him, as equivalent to John's *whole interest in the Baltimore firm* and the *half of John's interest* bequeathed to Fred and assigned to George, as being equivalent to *John's whole interest* in the New York firm. The children, as beneficiaries in the trust, had the right to have George, the trustee, account for the profits on John's interest in both firms; the trustee could not say that I will give these children one-half the profits from the Baltimore firm in satisfaction of their claim for the profits on their father's interest in both firms, otherwise the trustee, having control of both firms, and both firms being engaged in the same kind of business, could have very easily diverted the cream of the business to the New York firm and very much diminished the profits of the Baltimore firm. Moreover, all the profits from the Baltimore firm were due to John's interest, because George had no interest in the Baltimore firm until he received John's interest under John's will and Fred's assignment. The agreement between George, Brancker and Martin had evidently been made when George was admitted into the firm just after John's death; and then, when George came to make the declarations of trust of May 4, 1883, he may have had in mind the division of the profits of the Baltimore firm which was in his existing agreement with Brancker and Martin, and may have inserted those same percentages in the declarations of trust of May 4, 1883. But that cannot alter the fact that the declaration of trust expressly applies to *half* of John's *interest* in *both* firms. George reserved for himself and Brancker and Martin not 50 per cent. of the profits of the Baltimore firm, but 50 per cent. of the profits of the *one-half* of John's interest in *both*

firms, which was bequeathed directly to George. It makes no difference to the beneficiaries whether George paid Brancker and Martin out of the profits from both firms, or whether he paid them entirely out of the profits of the Baltimore firm; but his obligation to the complainants must be determined by his declarations of trust and not by his agreement with Brancker and Martin. The declarations of trust could not be changed by any agreement which George may have theretofore made, or might thereafter make, with any third parties. Nor could the rights of the complainants be affected by the supposed assent of Miss Ella Kremelberg to the arrangement George made with Brancker and Martin for three reasons:

1. Because at that time Miss Ella had no knowledge of the existence of the declarations of trust;

2. Because three of the children at that time were minors, George being the guardian of one of them; and

3. Because the highest fiduciary relations of utmost confidence existed between these children and their uncle; and, as a matter of fact, they could not understand any of these business transactions. Miss Ella says, as quoted by the Vice-Chancellor (Record, page 295):

> "Mr. Martin and uncle George arranged it and they told us."

Moreover, it is undisputed that the payment of half the profits of the Baltimore firm to John's children, up to 1895, was for the use of their $55,000 as capital for the firm.

And the undisputed facts remain:

1. That, since the death of Brancker and Martin, the trustee and his executors have received in profits from the Baltimore firm $67,386.57, every cent of which was from the interest of John held by the trustee.

2. The trustee and his executors have received from the New York firm $464,674.22, nearly forty per

cent. of which, or about $175,000, was from John's twenty per cent. interest in that firm. These two sums, $67,486.57 and $175,000.00, George received as profits on John's interest in both firms, clear, after paying Brancker and Martin.

3. The only part of these profits which George reserved for himself under the declarations of trust was twenty per cent. of the profits from *half* of John's interest, or ten per cent. of the entire profits received by him on John's *entire* interest.

4. That of the profits of the Baltimore firm the children have received less than they are entitled to under the declarations of trust, and that of the profits from the New York firm they have received nothing.

VII.

We therefore, respectfully submit that the decree below should be reversed and a decree entered for complainants for the amount of the profits received by J. George Kremelberg upon the interests of John D. Kremelberg in the firm of Kremelberg & Co. and J. D. Kremelberg & Co., held in trust by said J. George Kremelberg, less such allowance to the trustee as to the Court may seem just.

S. S. FIELD,

CHAUNCEY G. PARKER,

Of Counsel for Appellants.

ADDENDUM

VICE-CHANCELLOR EMERY'S STATEMENT.

EMERY, V. C. (Orally—at close of argument):

There is a suggestion in reference to the execution of the trust that has not been made by either side, and it may have a bearing in the case. On these entire papers that were executed was there anything that indicated a situation by which George was to hold the legal title as partner, and hold that legal title under the Declaration of Trust, carrying on the business as the legal owner, but for the benefit of the residuary legatees? George was the actual partner in New York. These young women apparently were not expected to be partners in that concern, and the announcement of the partnership there as made on the death of John D., and as apparently continued from that time, was of George, Frederick and Englar. They changed afterwards.

MR. HOOD: That was the announcement from the Baltimore firm.

COURT: The capital account of the deceased was transferred to the credit of the children's capital account, in the proportions indicated by the Declaration of Trust, and would be a method of keeping the account as between George and his beneficiaries on the books of the firm, but the question is whether, in reference to the legal title to the whole property of the firm, it was not intended that George should be the real partner in point of law, having given this agreement as to the equitable interest to the children to protect them. That bears on the question of whether the papers themselves and the acts of the parties have executed the trust. It would be very important in a business way to know who the members of the firm were, and if it was understood that these infant children of John D., or their guardian,

were the real members of that firm in Baltimore, it probably would not have stood long; there would have been no credit whatever on their account, because everyone can understand that the infants could not legally be partners.

Therefore, as to all the papers that were executed, and all the acts that were done in carrying them out, this question may arise: are they consistent with the view, which may be called a third view, of the status, viz.: that by the understanding between all the parties, the sisters, brother and the guardian of the infants, George held the legal title as partner, and was the legal partner, but all that legal interest and title was for the benefit of John D.'s children, for whom as trustee he was carrying it on.

Mr. Hood: I do not understand what interest that could apply to.

Court: On this theory, the children's interest has never been anything but equitable, and George still holds the legal title to all the property of the firm that stands under the Declaration of Trust, and is the partner responsible in law, and the credits to the sisters and on the capital account are not themselves a transfer of the legal interest to the equitable owners, and were not intended to be a transfer of the legal interest.

Suppose George had made a deed to the children of his legal interest in the firm; that would have transferred the legal title to the equitable owners, and then he would have had no further right to be a partner in the firm. If George had made that transfer, would he have had any further interest in the firm as partner?

Mr. Hood: As to whether your opinion is that he should have made a deed for shares that appear on the books to others—there wasn't anything else there then.

Court: It is only on the point as to whether that transfer of credit on the books executes the Declara-

tion of Trust. The question is whether this was only a system of accounting for the profits between the trustee and his beneficiaries appearing on the books, because if it is to be treated as the execution of the trust, the children own not only the accounts, but they own also all the property of the firm. But that property does not seem to have ever been transferred to them.

MR. HOOD: You understand that the testimony in this case is, from Ella Kremelberg, that the children of John Kremelberg, together with George Kremelberg and Mr. Brancker and Mr. Hiller, formed a partnership.

COURT: That may very well be. Any person who is a partner in a firm may declare to others that he holds his share or interest in the partnership in trust for them. That would constitute an arrangement by which the legal title as partner to all the property is in one, and the equitable interest is in others. The owners of the equitable interest are partners in the profits. Are they legally partners in the property of the firm? If the trust is executed, must not the legal title be in the beneficiaries? And my question was asked in view of the fact that there is no one here to explain the circumstances under which the different papers were drawn, and defendant claims that the papers actually drawn, and the acts following them, show the actual assignment, under the declaration, of all the legal interest to the beneficiaries. My question was, whether in the absence of something that would pass out of George Kremelberg, the legal title to the property of the firm which was given to him under the will, the transfer of the capital and profit account on the books to the children, is not consistent with the view that this was a transfer of the legal interest? Suppose some question had arisen immediately after Mr. Kremelberg's death, as to these sisters becoming the legal partners, I can very well see that a lawyer intending to protect, if possible, that investment in a business which would apparently

have gone to pieces if the money of the testator's capital had been taken out at once, should have suggested a method by which George should become the legal partner, with that capital remaining, and as such partner have the legal title, and at the same time give to the proposed beneficiaries the declaration of trust that "all that I hold as partner there, I hold in trust for you."

It occurred to me while the case was going on, as one possible explanation, and I would be very glad to have the views of counsel, inasmuch as this view was not suggested on either side at the argument."

New Jersey Court of Errors and Appeals

Between	
HARRIET E. KREMELBERG et al.,	
Complainants-Appellants,	
and	*On Bill, etc.*
EDITH K. TOMPKINS et al.,	
Defendants-Respondents.	*On Appeal from Chancery.*

Reply to Brief for Respondents.

We beg leave to reply briefly to some of the statements in the Brief for Respondents, which, we submit, are erroneous.

(1)

As a basis for their contention that the New York firm was dissolved by the death of John D. Kremelberg, respondents' counsel say (Brief, page 3):

> "The New York concern continued with George and Englar as partners. Nothing was done to admit Frederick to the firm. This appears satisfactorily from a letter which Engler wrote to Ella Kremelberg in December, 1893, in which he states: 'I never heard that Fred was to have a share in our business here.' (Case, p. 280)."

George and Engler were the surviving partners. The notice of John's death, sent out by the surviving partners, which stated that the business "*will be continued as here-*

tofore" (Case, p. 142); the facts, that the business *was continued* without interruption; that *there was no winding up;* that Fred, *seven months after* his father's death, *assigned his half of his father's interest in the New York firm,* acquired under his father's will, to George; that *on the same day George signed* a Declaration of Trust that he would *hold the half of John's interest in the New York firm,* acquired under Fred's assignment, in trust for all of John's children (Case, pp. 44 and 14); *prove, beyond question, that Fred was a partner in the New York firm from his father's death to the date of his assignment to George.*

Fred's name does not appear on the books of the New York firm, because the books of the New York firm *now in existence* begin January 1st, 1884. Fred assigned his half of his father's interest to George, December 4th, 1882, so that on January 1st, 1884, George was the legal owner of Fred's half of John's interest, as well as the half bequeathed to him.

> (*Note.*—Some years after the death of John, the New York firm—George and Englar—destroyed all their books prior to January 1st, 1884 (Case, p. 134).

The statement in Englar's letter, written *eleven years after* Fred had assigned his interest to George, means that, *prior to John's death,* Englar had "never heard that Fred was to have a share" in the New York firm. *After* John's death Englar must have known that fact from John's will.

Counsel for respondent, on pages 14-15, cite 22 Enc. of Law, 199-201, to the effect that death of a partner dissolves a partnership.

2 Lindley is cited on pages 52-3 to the same effect. But all authorities agree that dissolution and winding up, which would otherwise result from a partner's death, may be prevented by a bequest of the deceased's interest, assented to by the survivors.

> *Burwell vs. Caword,* 2 Howard, 576.
> And other cases in Brief for Appellants, p. 38.

Even where the firm is dissolved by the death of a

partner, unless there is *an actual winding up,* the survivors, continuing the business, are accountable for profits to representatives of the deceased.

Phillips vs. Reider, 18 N. J. Eq. 99,
And other authorities in Brief for Appellants, pp. 36, 37.

In the quotation made from Lindley in respondents' brief, p. 53, we find:

> "* * * for so long as profits are made by the employment of the capital of the deceased partner, so long must such profits be accounted for by the surviving partners."

It is admitted that there was no winding up of the New York firm. The notice of John's death sent out by the surviving partners stated that the business "will be *continued* as heretofore," and respondents' counsel, in their brief, say: "*The New York concern* CONTINUED with George and Englar as partners."

Respondents do not claim that there was ever any notice of dissolution or any winding up of the New York firm.

(2)

On page 3, counsel for respondents say:

> "The assets of John D. Kremelberg in Kremelberg & Company of New York were appraised by the said executor, etc."

This is disproven by the inventory and appraisement (Ex. C-16, Case, pp. 327-331).

The Vice-Chancellor finds that there was no appraisement (Case, p. 286, line 37).

(3)

Respondents' counsel say (Brief, p. 7):

> "Under this arrangement the money was loaned *by the Kremelberg children* to the New York concern at six per cent. interest."

At that time three of the children were *minors,* one of them being only twelve. How could minors loan their money? The fact is that *George,* in his *double capacity* as *Trustee* for *all the children* and *guardian* for one, loaned the children's money to the New York firm in

which he was partner; and because the firm subsequently paid interest on this debt to the children, George's executors want to escape accounting for the *profits on John's interest in the firm,* which George held in trust for John's children.

(4)

On pages 8, 9 and 10, counsel argue that the Declaration of Trust of May 4th, 1883, means that George is to keep *all* the profits for himself, Branker and Martin. If this were true, why did he make a Declaration of Trust? What were the beneficiaries to get; if George was to get *all* for himself, Branker and Martin? All means 100 per cent. How can 15 per cent. for Martin and 15 per cent. for Branker and 20 per cent. for George, aggregate 100 per cent.?

(5)

On pages 9 and 10 counsel argue that 15 per cent. of the profits *of the Baltimore firm* would not have been a sufficient compensation for the services of Branker or Martin. The Declaration of Trust doesn't say anything about 15 per cent. of the profits of the *Baltimore firm;* it speaks of 15 per cent. of the profits of the *one-half* of *John's interest* in *both* firms. Moreover, Martin and Branker may each have had, and probably did have, a stated salary in addition to a share of the profits.

Hillen had a salary and 10 per cent. of the profits of the New York firm for his services (Case, p. 140).

Baker received a salary and 5 per cent. of the profits of the Baltimore firm for his services (Ex. C-4, Case, p. 311). It is a matter of common occurrence for an employee or a working partner to have a stated salary and also a percentage of the profits.

Moreover, Mrs. Tompkins probably has the agreement between her father, Martin and Branker, which would show exactly what their arrangement was. She did not go on the stand.

On pages 22 and 23 counsel quote portions of Miss Ella Kremelberg's testimony in support of his contention that Miss Ella participated in the agreement that George made with Martin and Branker. The fact is that Miss Ella

didn't know what the agreement was at the time it was made. She says (Case, p. 214): "I have heard it since, *but at the time I didn't know the division.*"

On page 38 counsel say:

> "The children of John agreed that of the profits Branker and Martin were each to get 15 per cent., and George Kremelberg 20 per cent."

The fact is that the children knew nothing about it.

At that time three of the children were minors. How could they agree?

(6)

On page 11 counsel, referring to Declarations of Trust, say:

> "They are associated further with the executor's first account of May 4, 1883, in which he charges himself with the interests in the New York and Baltimore concerns and with the distribution of the estate on June 20, 1883, by which the Declaration of Trust was seemingly carried into effect. * * *"

The second Declaration was made on the same day as the executor's first account, and was witnessed by the executor. How can it be contended that *George* made a Declaration, and the executor witnessed it, that *George* was holding in trust for John's children *something* which the *executor on that very day* charged *himself* with having in *his* hands?

Respondents' counsel say (Brief, p. 28):

> "But the proof in the case shows that the date of this first account is May 4, 1883, and that the date of the Declaration of Trust by George Kremelberg of the interest which had been given to him by his brother's will bears the like date, so that it is fair to assume that they were part of the same *transaction.*"

On the contrary, *can there be any other conclusion* but that the two papers relate to *different subject matter;* that the *Declaration of Trust* refers to John's 20 *per cent. interest in the New York firm*, and his 90 per cent. interest in the Baltimore firm, which he had bequeathed to George and Fred, and *which George then had;* and that the *executor's account* refers to the *debts* due by the *firms*

to John, which the *executor* on *that day charged himself with having received?*

The executor's accounts included debts due John, and other assets of his estate to which John's children *as his residuary legatees* were *legally* entitled; the Declaration of Trust covers John's *partnership interest* in *both* firms, of which John's children were the *equitable* owners, the *legal title being in George.*

The Declaration of Trust was made on the same day as the executor's account, because, before charging himself with the two debts, amounting to $51,000.00, *without actually receiving the money,* and thereby leaving the money at the risk of the business, so that *it would have been lost if the business had failed;* the executor wanted something in writing from George to show that the children *were* the *equitable owners* of *their father's interest* in the business, and therefore *would share in the profits, if the business succeeded.*

(7)

On page 19, speaking of leaving the money due by the firms to John, in the business, counsel say:

> *"It was engineered by Mr. Tagart, who had the reputation of being a good lawyer."*

On the next page counsel say that Mr. Tagart *"had advised against leaving any money in the business."*

The latter statement is the correct one (Case, p. 227, line 10, and p. 230, line 27).

Leaving the money in the business, where it all would have been lost if the business had failed, was "engineered" by George. He put all the risk on his brother's children, intending, no doubt, *at the time,* to subsequently account to them for all the profits he received on their father's interest.

He did arrange that the Baltimore firm should pay the children half of its profits in return for the use of their $55,000.00 with that firm, but he did *not* arrange for them to get a cent of the profits of the New York firm. From the New York firm they received only simple interest on the $19,000 the firm owed them, about $1,100

per year; whereas George received the profits on his own share in the firm and the profits on John's share, *and interest on any balance* in his favor on the books, *amounting to more than* $11,000 *per year*. It is admitted that without the children's money the firm would have gone to the wall; with their money the firm was able to go on and pay George profits of *eleven thousand dollars per annum*. Under the Declarations of Trust the children have the same right to the profits on their father's interest in the New York firm as they have to the profits on his interets in the Baltimore firm.

(8)

Continuing the contention that the trusts were performed by the executor's first account of May 4, 1883, in which he charged himself with the debts due by the firms, and his second account of June 20, 1883, by which he distributed all the residue, including those two debts to John's children, counsel for respondent say (Brief, p. 19):

> "It gives strength to my suggestion that the Declaration of Trust of May 4th was intended to cover only a short period of time, and demonstrates to my mind conclusively that on or before the 20th of June, 1883, demand had been made upon George by the John Kremelberg children for the delivery to them of the trust property. * * *"

One June 20, 1883, *three of the children were minors*. How could they have made demand? None of them had any knowledge of the existence of the Declarations of Trust. How could they have demanded performance thereof? The provision in the Declaration of Trust, "and agree with them to grant and assign the same to them *whenever requested* so to do," taken in connection with the fact that three of the children were minors, indicates that the trust was intended to last at least until all the children were of age, and thus legally capable of making a demand upon their trustee.

(9)

Respondents' counsel say (Brief, p .12):

> "It is not contended that George Kremelberg has not accounted under the Declaration of Trust as to

> so much of the interest which he took under his brother's will as is represented in the executor's account of May 4, 1883, but it is contended that he has not accounted for some portion of the profits that accrued upon that interest."

Complainants' contention is that the *two sums which are in the executor's account never belonged to George;* that these were debts due by the firms to John D. Kremelberg at the time of his death, which the executor passed through his account (though not actually received), distributing these sums properly to the residuary legatees of John D. Kremelberg; and *that what was specifically bequeathed to George and Fred was John's partnership interest in the two firms, and not what the two firms owed John.*

Our further contention is that *even if the bequest to George and Fred included the debts due from the firms to John, these debts were not the whole* of the bequest, and the trustee must account for the profits *which he received* on the partnership interest of John in both firms.

Following their construction that under the bequest in John's will, George was entitled to the debts due from the firms to John, and that the inclusion of those debts in the executor's accounts indicates that George gave them up, counsel say (Brief, p. 38):

> *"George actually giving up his legacy was an* event which must have caused *comment* and *approval.* The beneficiaries must have been told about it. And then it is an act of such a character that it precludes wrongdoing on his part. If it was his purpose to rob his nephews and nieces of their profits, *would* he have given to *them* the very thing which *produced* the profits?"

The answer is, *George didn't give up his legacy;* or if the debt due by the firms was included in his legacy, he *did not give up all his legacy. He kept "the very thing which produced the profits;"* George *received* the *profits which that very thing produced,* and his executors want to keep all the profits so produced, notwithstanding George declared that he was holding that *"thing which produced the profits" in trust for his brother's children.*

If George had "given to them the very thing which produced the profits," thereafter *they would have received the profits.* From the New York firm the children *never received a cent of profits.* George received *all the profits,* and after his death these respondents sold his interest in the good will of the "thing which produced the profits," for $10,000.00 (Ex., pp. 340-345).

(10)

Referring to the amounts to John's credit on the books of the firms, counsel for respondents say (Brief, p. 45):

> "There is nothing in the testimony to show that these items were carried as debts. * * *"

The fact is that the undisputed testimony so shows (Test. Hillen, Case, pp. 143, 144, 160, 161; Test. Baker, pp. 121, 243).

The account on the books is in the form of a debt due by the firm. The heading is (Ex. C-6, Case, p. 324):

Dr. J. D. Kremelberg's Estate. Cr.

And Hillen testifies (Case, p. 161):

> "Q. As it stands on the books now from January 1, 1884, it is simply as a creditor of this firm? A. Yes."

And it is admitted that this heading is just exactly as it was at John's death, except that the word "Estate" was written after the name John D. Kremelberg (Test. Hillen, Case, p. 160).

(11)

Under the heading "As to Laches," respondents' counsel cite (Brief, p. 39) *Dean vs. Dean,* 9 Eq. 432; *Stinis vs. Stinis,* 54 Eq. 17; *Lutsen vs. Lutsen,* 64 Eq. 773.

Not one of these was the case of an express trust except Dean vs. Dean, where there was an open repudiation by the trustee brought home to the *actual knowledge* of *cestui que* trust.

On page 41 of Brief counsel for respondent quote:

> "Of course, it is an essential element of laches that the party charged with it should have knowledge, but knowledge may be attributed to him because he has failed or omitted to obtain knowledge where it

was obtainable after notice or where there have been circumstances which should have induced inquiry and an effort to obtain knowledge. 18 *A. and E. Enc.*, page 102. And knowledge to the plaintiff's agent may be imputed to the plaintiff for the purpose of charging him with laches. *Bowman vs. Wathem*, 1 Howard, U. S., 189."

This is a quotation from the article in the Encyclopædia on Laches. It does not apply to an *express* trust.

Lindsley vs. Dodd, 30 Atl. Rep. 896. See 903.
Stinis vs, Stinis, 54 Eq. 17.
Whitridge vs. Whitridge, 76 Md. 85.
Life Asso. vs. Siddall, 3 DeG. F. & J. 72.

In Stinis vs. Stinis, 54 Eq. 24, the *release of the mortgage had been on record for seven years, and yet the plaintiff was not charged with knowledge of it.*

Bowman vs. Wathen, 1 Howard, 189, was *not a case of a trust*, but an action by the devisee of Bowman to recover the profits of a ferry which had been operated by defendant for 28 years *under a grant from the Legislature.* Bowman had owned the shore land, and by his attorney-in-fact had sold part of it for the town of Jeffersonville, reserving "whatever right he may now hold as proprietor to the establishment of one or more ferries." No ferry was ever established by Bowman or his devisee, but 38 years afterward his devisee sought for an accounting of the profits of the ferry *from third parties who had established a ferry under the authority of the State.*

The Court say (1 Howard, 195-6):

"The defendant, or his grantors, did not enter under Bowman, nor in subordination to any title of his; they have always claimed under grants from a wholly different authority, and adversely to Bowman and to every one else."

A note to 18 Amer. and Eng.. Enc. Law, 2 ed., page 103, reads:

"*A cestui que trust* who does not actually know is not to be affected with knowledge of a breach of trust because he might by inquiry have ascertained the fact, for it is not his duty, but that of the trustee, to see that the trust fund is in a proper state. *Thompson vs. Finch*, 22 Beav. 316; *Scotland L. Asso. vs. Siddall*, 3 DeG. F. & J. 58."

See discussion and authorities on this point in Brief for appellants, pp. 52-59.

On page 41 counsel for respondents quote from 18 *Enc. of Law,* 105:

> "Where, from delay, any conclusion at which the Court may arrive, must at best be conjectural, and the original transactions have become so obscured by lapse of time, loss of evidence, and death of parties or witnesses as to render it difficult, if not impossible to do justice, the plaintiff will, by his laches, be precluded from relief, * * *"

This doctrine *has no application* to the present case, because *it is admitted that whether plaintiffs are, or are not, entitled to recover, depends upon the construction of written instruments; namely, the will of John D. Kremelberg and the Declarations of Trust executed by George Kremelberg.*

In their Brief (pp. 26 and 27) counsel for respondents say:

> "* * * for, after all, we cannot get away from *what is the real controversy between the complainants and defendants* in this case, and that is, what was *the scope of* the document, what property, under the *Declaration of Trust,* was held by George *in* trust? If the fair construction of this paper is as the defendants contend, then the complainants have all that they are entitled to receive, and *if, on the other hand, it is what the complainants contend, then clearly they are entitled to a further accounting.*"

The answer to the question, "*What property, under the Declaration of Trust, was held by George in trust?*" depends *on the construction of the will of John D. Kremelberg;* for it is clear that the Declarations of Trust cover *precisely the same thing* which by John's will was bequeathed to George and Fred. The construction of these two written instruments is for the Court. The meaning of John's will and George's Declarations of Trust does not depend on the testimony of witnesses, but on what is written therein. What is written in these documents is before the Court. It has not "become obscured by the lapse of time, the loss of evidence, the death of parties or witnesses."

By the bequest in John's will of *"all my interest"* in the two partnerships, did John give to his brother George and his son Fred, the undrawn profits which the firms owed him, *as respondents contend;* or did John give to his brother and oldest son *his partnership interest in both firms,* 20 per cent. in the New York firm and 90 per cent. in the Baltimore firm, *as complainants contend?*

If complainants' construction is correct, then counsel for respondents admit complainants' right to recover, not as a matter of conjecture or probability, but (again to quote respondents' counsel),

> *"then* CLEARLY *they are entitled to a further accounting."*

The *acts,* which respondents claim were a performance of the George's trust, are *not in dispute.*

Respondents claim that the executor's first account, in which he charged himself with the two sums of $19,577.91 and $31,980.74, and his second account, by which he included these two sums in the residue distributed to John's children, amounted to a performance of George's trust.

Whether this claim is sound or unsound, depends on whether these two sums were the trust property in George's hands as trustee; if these sums were *not the trust property,* or if they were not *all of the trust property,* then respondents' counsel admit that complainants are entitled to an accounting. And whether these two sums *were* the *trust property* or *were all of the trust property,* depends on the *construction of the will of John D. Kremelberg.*

The decisin of this appeal does not depend on a single disputed question of fact; but depends entirely on the construction of the will of John D. Kremelberg and the Declarations of Trust.

Respectfully,

S. S. FIELD,

CHAUNCEY G. PARKER,

Counsel for Appellants.

New Jersey Court of Errors and Appeals.

Between HARRIET ELLA KREMELBERG *et al.*, Complainants-Appellants, and EDITH K. TOMPKINS *et al.*, Defendants-Respondents.	On Bill, etc. On Appeal from Chancery.

BRIEF FOR RESPONDENTS.

I.—The Facts.

John D. Kremelberg died in May, 1882 (Case p. 142) and left a will (Case p. 29) which contains two provisions effecting the present controversy. These are as follows: (a) "I give, devise and bequeath to my brother, George, and my son, J. Frederick, in equal proportions, all my interest in the following business houses, namely, Kremelberg & Co, New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms." (b) "It is my will, and I hereby direct that all my just debts and funeral expenses, and the entire interest to which my wife may be entitled in my estate, real and personal, shall be paid out of the proceeds of the rest and residue of my estate above mentioned, so that my interest in the business houses and firms above mentioned and devised to my brother, George, and my

son, J. Frederick, shall remain wholly undisturbed and be in no way interfered with." The will bears date September 18, 1874. Between the date of the making of the will and John's death his worldly condition had changed. In 1874 he was reputed to be a very wealthy man (Case p. 81). In 1882, when he died, his estate, according to the executor's accounting, amounted to only $136,608.73 (Case p. 33), including real estate of $50,000, and inclusive also of his interest in the New York concern of about $20,000, and in the Baltimore concern of about $31,000. The New Orleans concern was no longer in existence. His partners in the New York concern were Adolph Engler and his brother, J. George Kremelberg, and the respective interests of the several partners therein were as follows: John, 20%, George, 40%, and Engler, 40%; and the concern was carried on under the firm name of Kremelberg & Co. (Case p. 151).

In the Baltimore concern he had only one partner, his son, J. Frederick Kremelberg, who was admitted into partnership January 1, 1878 or 1879, but it has not been ascertained what share of profits he was entitled to receive (Case p. 88).

John seems to have been interested also in the Louisville concern, but we are, in this case, in no way concerned with that interest.

On May 31, 1882, the following notice was issued (Case p. 142):

"Baltimore, May 31, 1882.

Sir:

It is our painful duty to inform you of the death of our highly esteemed senior partner, Mr. Kremelberg, on the 24th inst., at Philadelphia, where he had gone for medical ad-

vice. The business in New York, Baltimore and Louisville will be continued as heretofore.

Yours very respectfully,

J. FRED KREMELBERG
Geo. Kremelberg } New York.
Ad. Engler }
JULIUS WILLE,
Louisville."

In July, 1882, the Baltimore concern issued the following notice (Case p. 148):

"Sir:

We beg to inform you that Mr. J. George Kremelberg of New York has become a member of our firm. Please take notice of his signature at foot.

Yours very respectfully,
J. D. KREMELBERG & CO."

The New York concern continued with George and Engler as partners. Nothing was done to admit Frederick to the firm. This appears satisfactorily from a letter which Engler wrote to Ella Kremelberg in December, 1893, in which he states: "I never heard that Fred was to have a share in our business here" (Case p. 280).

The assets which John D. Kremelberg had in the Baltimore firm were carried in his capital account on the books of the firm. He had no other assets than such as appeared therein except his interest in the good-will of the business. The value of these assets as accounted for by Mr. Taggart, the Executor, appearing in his first account of May fourth, 1883, was $31,980.74 (Case p. 33) and presumably this must have included the value of the good-will. The assets of John D. Kremelberg in Kremelberg & Company of New York were appraised by the said Executor at $19,577.91 (Case p. 33) which also appeared in the capital amount of the New York firm's books. He was of course,

also interested in the good-will of this business; but it must be assumed that when the Executor accounted for John D. Kremelberg's interest in the New York firm, that he included therein the good-will. This assumption is not negatived by the fact that seemingly nothing was allowed for it. The entry in the first account of Taggart,—John's Executor, is as follows: "and with deceased's interest in firm of Kremelbeg & Company, $19,577.91"; "and with deceased's interest in the firm of J. D. Kremelberg & Company, $31,980.74". The language used in this account is identical with the language of the will by which he gives to his brother and his son "all my interest in the following business houses * * * and in the assets and property of every kind of said houses or firms."

Of what the capital account of John D. Kremelberg in both the Baltimore and the New York firms originally consisted, does not appear, nor do we know how it was made up when John died. There are no books in either New York or Baltimore to show it. The Baltimore books were destroyed by the great Baltimore fire and the New York books before 1884, are not in existence. Mr. Hillen, however, testifies that, before John's death, there was a capital account of John, George and Engler, the partners composing the New York firm (Case p. 163). During the period of our investigation, which is subsequent to the death of John, there were entered the profits that were made in the transactions of the business, less withdrawals therefrom. At the time of the death of John D. Kremelberg there was also on the books of both concerns an account of their mutual dealings. This account appeared upon the New York firm's books as an account kept with J. D. Kremelberg & Company of Baltimore, Maryland (this account is Exhibit C-7 of the New York testimony, Case p. 166), and upon the Balti-

more firm's books in the name of Kremelberg & Company of New York, but this clearly was an asset of J. D. Kremelberg & Co. of Baltimore and not an asset of J. D. Kremelberg individually, and did not specifically pass under the bequest in the will, though, of course, this account entered into the credit items in ascertaining the value of the interest of John D. Kremelberg in the Baltimore firm.

On December 4, 1882, J. Frederick Kremelberg conveyed to George Kremelberg all the estate which was bequeathed to him under his father, John D. Kremelberg's will, to the businesses in Baltimore and New York (Case p. 44). J. Frederick Kremelberg, it is said, was ill at the time and apparently was compelled to withdraw from the business and so entrusted the assets which he had in the business to his Uncle George so that after the fourth of December, 1882, and until the fourth of May, 1883, George held as Trustee one-half of the property which had been given to him under his brother John's will, holding the other half in his own right. George owned in his own right at that time, under the bequest in John's will, the one-half of the assets of the Baltimore and New York firms and the one-half of the profits that had accrued thereon since the formation of the new partnership.

On May 4, 1883 (this date is identical with the date of the filing of the first account by John's executor), George Kremelberg made a Declaration of Trust (Case, p. 15) which is as follows:

> "KNOW ALL MEN BY THESE PRESENTS, that Whereas, John D. Kremelberg, late of the City of Baltimore, deceased, in and by his Last Will and Testament dated the 18th day of September, 1874, among other things devised and bequeathed as follows: 'I give, devise and bequeath to my brother George

and my son J. Frederick, in equal proportions, all my interest in the following business houses, namely: Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms.'

Now for divers good causes and valuable consideration—me thereunto moving I do hereby declare that I hold and possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will. IN TRUST for John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg and Mary Augusta Kremelberg in equal proportions, share and share alike, and agree with them to grant and assign the same to them, whenever requested so to do, I paying to Messrs. Brancker and Charles Martin, each fifteen per cent. of the profits of said half part of the property devised and bequeathed to me as aforesaid; and holding the other twenty per cent. thereof to my own use.

Baltimore, May 4th, 1883.
J. GEO. KREMELBERG.

TEST:
S. H. Taggart."

The Kremelberg children, who are the *cestuis que* trust in the Declaration of Trust of May, 1883, became partners of J. George Kremelberg in the Baltimore concern before January 20, 1883, under an agreement by which the Kremelberg children contributed as capital to the concern the sum of $31,980.74, standing to his credit at the time of his death on the books of the Baltimore firm, besides the moneys owing from the Baltimore firm to three of the children, and were to receive fifty per cent. of the annual profits, the remaining fifty per cent. of the profits being distributed amongst J. George

Kremelberg, Branker and Martin in the following proportions: J. George Kremelberg, twenty per cent., Branker and Martin each fifteen per cent. As to the item of $19,577.91, standing to the credit of John D. Kremelberg at his death on the books of the New York firm, a special arrangement was made at the same time as the Baltimore partnership was formed. Under this arrangement the money was loaned by the Kremelberg children to the New York concern at six per cent. interest.

The complainants-appellants filed their bill for an accounting under the trust and claim that there is a share of the profits of the firm which were earned on John's interests and which were received by George of which George had declared himself as trustee and for which George had not accounted. The defendants-respondents resist this claim, asserting that the trust was fully performed as far back as 1883.

II.—As to the Meaning of the Declaration of Trust.

The substantial question in this case is—What is the true construction of George's Declaration of Trust of May 4, 1883? When George withholds under this Declaration of Trust the profits of the half part of the property devised and bequeathed to him does he withhold all of the profits which may accrue on the property held in trust or does he withhold one-half of these profits so that there is accountability for one-half of the profits.

The paper is not well drawn although the indications are that it was drawn by Mr. Taggart who is said to have been a very eminent lawyer in Baltimore. After reciting the provisions of the will it states: "That for divers causes and valuable considerations, I do hereby declare that I hold and

possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will in trust for," etc. If we knew nothing further of the case I think it would be fair to say that what is effected by the trust declaration is merely one-half of the property which George took under the will. In other words, that the trust declaration affects one-half and not all of the interest which John had in the New York and Baltimore concerns, and in the assets and property of every kind in said houses or firms. And yet, by the 20th of June, in the same year, a settlement is made by Mr. Taggart which appears in his second account to divide up among John's children the property which he, as executor, was administering, including in that division the interest of approximately $20,000 in the New York concern, and of approximately $31,000 in the Baltimore concern, and he takes from each of the children who are of age and from the guardians of the children who are not of age releases for the property which is distributed. Among these releases are those of George Kremelberg, as guardian of John D. Kremelberg, and of Ella Kremelberg, as Guardian of Anna and Mary Kremelberg, and of Elizabeth Kremelberg, as Trustee for J. Frederick Kremelberg. This fact would seem to indicate that, as the New York account of $20,000 and the Baltimore account of $31,000 were included in the legacy of John's will, the parties in interest construed the trust declaration to cover all of the amount so given to George and not the one-half part of the property devised and bequeathed. In this construction the true interpretation of the following language will bear an important part, as in designating the property the same words are employed: "I paying to Messrs. Branker and Charlie Martin each fifteen per cent.

of the profits of said one-half part of the property devised and be queathed to me as aforesaid, and holding the other twenty per cent. thereof to my own use." In using this language, George I think, unquestionably proposes to dispose of the whole of the profits of the trust property which he declares he holds in trust. The profits of this property were 50%. When one says that he has profits of 50% and he gives fifteen per cent. of them to one and fifteen per cent. of them to another, and the other remaining twenty per cent. to a third, does he not say that he divides up his fifty per cent. of profits among three people and that in that division he disposes of his entire fifty per cent. of profits? No matter how inaccurate the expression, the intent and meaning of this language is that those who took these profits took them in the proportion that fifteen and twenty bear to fifty and not in the proportion that fifteen and twenty bear to one hundred. Again the contention that the fifty per cent. received under the Declaration of May 4, 1883, in fact equaled twenty-five per cent. of the total profits of the Baltimore concern would have given Martin, Branker and George very trifling compensation. We have no figures as to what J. D. Kremelberg & Co. earned in 1882, but, according to the balance sheets, the profits in 1885 were $6,037.99 (Exh. p. 33), and in 1886 the profits were $3,167 (Exh. p. 334), and in 1887 the profits were $12,977.27 (Exh. p. 336), so the average profits for three years were $7,394. Assuming the profits of the firm to have been the same at the time of the making of this Declaration of Trust, or approximately $7,500 a year, the one-half interest to which George and his associates would have become entitled would be $3,750, of which Branker and Martin would each receive $1,125, and George Kremelberg $1,500. This is a compensa-

tion not large, but perhaps sufficiently large to secure their employment, but if the profits to be derived for the three were only one-quarter of the entire profits, as is contended by the complainants, then the three associates would have received together only $1,875 and Branker and Martin, under the arrangement, would have been compelled to work for $562.50 each and George Kremelberg for $750. The indications are, therefore, that the purpose of the declarant was to dispose of all the profits that accrued on the trust property. The language of the Declaration of Trust "paying to Branker and Charlie Martin each fifteen per cent., and holding the other twenty per cent. to my own use" disposes of all the profits accruing on the corpus of the trust estate, for otherwise the declarant would not have used the word "other" to qualify twenty per cent. which could only mean the remaining twenty per cent. and would have specified where the balance of the profits, after taking out the fifty per cent., is to go. Contemporary events show that this was the construction of the parties. The business books and statements show that, as a matter of fact, fifty per cent. of the profits of the firm of J. D. Kremelberg & Co. of Baltimore was divided amongst the children, and what was retained for George, Branker and Martin amounted likewise to fifty per cent. of the total profits of the Baltimore business. Of course, this bookkeeping is the result of the bargin which Ella Kremelberg spoke of, entered into before the Kremelberg children went to Europe about June 20, 1883, by the terms of which the Kremelberg children, George Kremelberg, Branker and Martin formed a partnership, the profits of which were to be divided as follows: The Kremelberg children were to have fifty per cent. of them; Martin and Branker were each to have fifteen per cent. of

them; and George Kremelberg was to have twenty per cent. of them (Case p. 214). But this, too, is a contemporaneous event and shows what the parties had in mind as to the division of the profits. For the Declaration of Trust and the formation of a partnership are closely following events, the former bears date May 4, 1883, and the latter was effected by June 20, 1883 (Case pp. 228, 193). They are associated further with the executor's first account of May 4, 1883, in which he charges himself with the interests in the New York and Baltimore concerns and with the distribution of the estate on June 20, 1883, by which the Declaration of Trust was seemingly carried into effect, thereby enabling the Kremelberg children to secure the capital which they were to contribute to the partnership formed by them with their Uncle George and with Branker and Martin. So that the whole may very properly be construed as a transaction in which each part may be scrutinized for the purpose of ascertaining the meaning of any other part.

If now the language "I paying to Branker and Charlie Martin each fifteen per cent. of the profits * * * and holding the other twenty per cent. thereof to my own use" means fifty per cent. of the entire profits of the businesses which may be earned, then, "said one-half part of the property devised and bequeathed to me as aforesaid" means one-half part of John's interest in the settlement of Kremelberg & Co. of New York and J. D. Kremelberg & Co. of Baltimore, and "the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will" means all my interest in the following business houses, etc.

If, on the other hand, it should be held that the language "I paying to Branker and Charlie Mar-

tin each fifteen per cent. of the profits of said one-half part of the property devised and bequeathed to me as aforesaid and holding the other twenty per cent. thereof to my own use" disposes of only fifty per cent. of the profits, or, in other words, twenty-five per cent. of the whole profits of the property, then said one-half part of the property means one-half part of the property devised and bequeathed to me and not of all of the property devised and bequeathed to me, *i. e.*, one-half part of my interest in the Baltimore and New York concerns.

It is not contended that George Kremelberg has not accounted under the Declaration of Trust as to so much of the interest which he took under his brother's will as is represented in the executor's account of May 4, 1883, but it is contended that he has not accounted for some portion of the profits that accrued upon that interest. The basis of this contention is stated by the complainants to be that every person who has something standing to his credit in a profitable concern, gets two things: 1. The amount standing to the credit of his account; 2. The aliquot share of the business, including good-will, with the right as long as the partnership continues to receive a portion of the profits. I ~~have spoken~~ will speak of the element of good-will ~~before~~ later, and I now want to say a word about the right to receive an aliquot share of the profits. Profits in a going concern are not the result of the good-will. The good-will may be an element operating to produce profits, but it is not the only source of profits. Profits are produced by labor and capital. Good-will is an accretion that has come to a going concern as a result of labor and capital. As it is the accretion that has come to a going concern, when a partner dies his estate becomes entitled to be compensated for his share in the good-

will, but that does not say that he continued to be entitled to the profits which may be earned by the business. Even counsel's contention is by his language limited to profits "as long as the partnership continues." There is, I suppose, good-will to every business, but its value is not readily determinable. Often it is valueless, often of very little value, and sometimes of great value. Its character, when applied to a commission business such as was carried on by the Kremelbergs both in Baltimore and New York, approximates the good-will in Mullin v. Mullin, 85 N. J. E., 531, where Mr. Justice Swayze says: "The business of the decedent, as distinguished from the tangible assets of the estate to be mentioned hereafter, consisted only of such good-will as might attach to the name 'Estate of Peter M. Mullin.' We think it doubtful whether, in a business of that character, consisting of personal services and evidently dependent largely, if not entirely, upon the personal characteristics of the individual, there could be any good-will as late even as four or five years after a man's death. Assuming that there was, as the filial partiality of the complainant seems to have thought there was when he made the agreement, such good-will is, at best, a wasting asset, and must become less valuable with each year. The value of the business, so far as that value belonged to the estate, must have decreased as rapidly as the burden of the obligation to support the children. No provision may have been made in express words that the business should be the complainant's when the youngest child attained his majority in 1913. Such an express provision was hardly necessary. The successful conduct of a business of that character for more than twenty years would, in effect, make it his, whether the parties so agreed or not, in the

absence of an express covenant on his part not to engage in the business for himself; and there was no such covenant. He would be free to conduct the business in his own name and we can hardly imagine a business competitor who would be willing to pay for the mere privilege to use the name of a man who had been dead more than twenty-one years."

The good will of the Baltimore firm consisted largely of John D. Kremelberg's connections. Mr. Stellman says (Case, p. 81): "He had relations abroad which enabled him to obtain money to almost any extent. J. Henry Schroeder & Company, in Liverpool, a very large international banking company, and Goll and Company, of Amsterdam, and several others, several large business connections in London, Julius Caesar & Company, in London, for example." This was an asset which could not be transferred. As to the good will of the New York concern, an estimate of its value can be readily made from what Mr. Englar said in his letter: "If, at the time of your father's death, you had demanded the money due to his account, we could not have continued here, and George would have been obliged to come there (Baltimore) to make his living." It is apparent from the proofs that it required only a few persons to conduct the business—a manager, under John, and a few clerks. It was a broker's business in which personality was the principal factor.

Death terminates a partnership. It is said in 22 A. & E. Enc., Title Partnership, "The death of one partner *ipso facto* dissolves the partnership by operation of law as to all the partners" (p. 199). "Where there are provisions for continuance it is sometimes loosely said that the death of a partner does not dissolve the partnership but this

is inaccurate if the business is carried on under such arrangement. There is in effect and in law a new partnership" (p. 201). In other words, under the will of John D. Kremelberg, his brother George and his son Frederick were given the partnership property, but were not made partners. Their own agreement became necessary to create the partnership in the Baltimore firm and a joint agreement between George Kremelberg and J. Frederick Kremelberg and Adolph Engler were necessary to constitute the partnership in the New York business. The evidence shows that after the death of John D. Kremelberg a partnership was actuallly formed in Baltimore to consist of J. George Kremelberg and J. Frederick Kremelberg (see Notice of July, 1882, Case p. 279), and the evidence further shows that J. Frederick Kremelberg was never admitted to the partnership in New York and that after the death of John D. Kremelberg, the New York partnership was continued by J. George Kremelberg and Adolph Engler (Case p. 152).

When John Kremelberg died in legal effect the partnership in the Baltimore firm ended and the partnership in the New York firm ended. George by his will could give his property rights away in this partnership but he could not make the persons to whom he gave the property partners. The donees of this property could become partners only with the consent of the remaining partners of the old firm. Such consent was never given as to the New York firm, for Engler, who was one of the partners of the New York concern at that time, writes in 1893 that he had never heard of it. Such a consent was given as to the Baltimore firm, for the Baltimore people sent out notices that George had become a member of the firm. But on May 4, 1883, when George signed his Declaration of Trust there wasn't in any sense a partnership. George

owned it all. He owned it because of the assignment which Fred had made to him for the half interest and the gift which John had made to him under the will of the other half. There can be no question that under the legacy in John's will the legatees took a share of the good-will of the businesses, but they surely did not take separate and apart from the assets and good-will a right to future profits. If they had acquired such profits subsequently, they acquired them because they devoted the legacy to future enterprises and thereby made profits.

It will be said, of course, that the Declaration of Trust speaks of profits. It does, but it speaks of the profits "of said one-half part of the property devised and bequeathed to me," but it does not speak of profits *in futuro* of the business of Kremelberg & Company and J. D. Kremelberg & Co. Whatever accumulations of profits there had been from the death of the testator until the date of the Declaration of Trust are taken care of by the instrument. There was no occasion to take care of anything more by this instrument than by the Declaration of Trust of December 4, 1882, as property of the same character is dealt with by both of the Declarations of Trust.

And this leads me to say that the Declaration of Trust was intended purely as a temporary expedient or shift. It differed particularly from the Declaration of Trust which George made in December 1882 in that it contains the words "and agree with them to grant and assign the same to them whenever requested so to do,"—which suggests that a speedy assignment might be sought. Undoubtedly at this time the matter of the formation of a partnership between the heirs of John D. Kremelberg and George Kremelberg was contemplated and probably the terms thereof, which in-

cluded as a contribution by the heirs to the capital of the partnership the very property with which the Declaration of Trust concerns itself, had been arranged. On June 20, 1883, Taggart filed his second account (Case, p. 35), which shows the distribution amongst the children of John D. Kremelberg of the very property with which the Declaration of Trust concerns itself. Then, too, the paper is so carelessly drawn that if it had been intended to cover any considerable time and to involve matters not speedily to be disposed of, so good a lawyer as Mr. Taggart was reputed to be would surely have exercised greater care in the drawing of it, or, if Mr. Taggart did not draw the paper, would probably have declined to accept it when it came to his hands. That it came to his hands is established by the testimony (Case, p. 174). I have already pointed out the lack of care in specifying the property which was to be held in trust and the percentage of the profits that were to be accounted for. I now want to call attention to the fact *that by its terms* Martin and Branker were entitled to profits not only out of the Baltimore concern, but also out of the New York concern. Now Branker and Martin, as we know, were active in the Baltimore concern and got their profits in compensation for the services which they rendered (Case pp. 186, 188). But Branker and Martin had no activity or connection with the New York concern and there was no reason why they should get profits out of that concern, nor is there a word in the testimony to show that they ever got a dollar out of the New York concern. On the contrary, the proof is that only George Kremelberg and Engler got profits out of the New York concern (Case p. 140). Again, there is nothing to show in this Declaration of Trust that Branker's nnd Martin's profits were at all dependent upon their activity in the busi-

ness. According to the language of the agreement, they were entitled to receive them whether they were in business or out of business, and whether they were active or dormant. Again, there is no limitation of time during which Branker and Martin were to receive them except that Kremelberg's children could terminate the trust by demanding the principal. As long as the trust continued, Branker and Martin were entitled to their percentages, and if they died, their representatives were entitled to step into their shoes.

III.—As to the Performance of the Trust.

About six weeks after the making of the Declaration of Trust of May 4, 1883, Mr. Taggart, the executor of the estate, divided up the entire estate among the children, including therein the appraised value of the estate in New York, and the Baltimore businesses (Case pp. 36, etc.). Releases were excuted at the time of this settlement. Ella Kremelberg signed for her share and also as guardian of Anna and Mary; Virginia signed for herself and as trustee for J. Frederick, and George signed as guardian for John Diedrich (Case pp. 91, 275, 282). It will be noticed that the executor did not seek a release from George Kremelberg. As the property was given by will to George and Frederick, it is natural to expect that the releases which the executor would have sought for were the releases of Frederick and George. Seemingly, the reason why he took the releases from the children of John Kremelberg was because he knew that George had declared that he held the property which was given under the will in trust for the children of John Kremelberg. The executor's conduct fits in with what was done in May of that year by George's Declaration of Trust, and by the execu-

tor charging himself in his first account with the interest in the New York and Baltimore concerns. It gives strength to my suggestion that the Declaration of Trust of May 4th was intended to cover only a short period of time, and demonstrates to my mind conclusively that on or before the 20th of June, 1883, demand had been made upon George by the John Kremelberg children for the delivery to them of the trust property, but whether demand had been made or not the *cestuis que trust* under the George Kremelberg Declarations of Trust, both of December 19, 1882, and of May 4, 1883, had become possessed either individually, if they were of age, or if not of age, then in the person of their guardians, of the property to which they became entitled under the executor's accounting, which included the John D. Kremelberg assets in the New York and Baltimore concerns.

Now it is said that money did not actually pass and that the assets which were in the New York and the Baltimore concerns were allowed to remain there and that they were treated as if they had been paid and received by the parties entitled to them. Assuming this to be true, it nevertheless cannot be denied that the very object of doing this thing was to treat the matter as if the money had been received and then reinvested in the firms. The scheme seems altogether intelligible now, though no written agreement was drawn up which may be used now as commentary. It was engineered by Mr. Taggart, who had the reputation of being a good lawyer. But if the scheme were not intelligible now, ought it to be disturbed? Taggart and George Kremelberg and all the other persons who participated in the transaction, except the surviving Kremelberg children, are not here to explain it and the Kremelberg children who are here to explain it have no memory about it and say

they did not participate in it; and Mrs. DeGraef who lives in Germany and who must have participated in the transaction has not been called as a witness nor has her testimony been taken by deposition. Under these circumstances a court surely cannot ruthlessly overthrow the effect of this adjustment because all the steps thereof are not made to appear. It must, of necessity, take the result as it was then declared to be and that was that the assets in the Baltimore and New York firms passed through Mr. Taggart into the hands of George Kremelberg's six nephews and nieces. They can have passed through Mr. Taggart only by the act of George Kremelberg because the title was in George Kremelberg and what passed was the title that was in him to the corpus of the estate as he held it under the two Declarations of Trust of December, 1882, and May, 1883, and having passed out of him into the possession of Mr. Taggart and from Mr. Taggart into the possession of George Kremelberg's nephews and nieces, the trust relationship became terminated and the trust declaration became executed and performed.

The negative proof in the case confirms the view that the trust which George Kremelberg declared on May fourth, 1883, became executed and performed. Mr. Taggart, the lawyer who engineered the whole affair, lived for ten years after this date and for those ten years he was on terms of intimate friendship with the family (Case p. 227, &c.). It is only natural to assume that the bosom friend of John D. Kremelberg (Case p. 192), who settled his estate, would have seen to it that the interests of the family were properly looked out for, especially as he had advised against leaving any money in the business (Case p. 205), knew that the boys were out of the business, and that the women folks of the family were left to themselves. Nothing

appears in the testimony that the matters which he had in charge in the settlement of the Kremelberg Estate ever again formed a subject of conversation between him and the Kremelberg children. One can hardly conceive that such a situation should have existed and continued for so long a period as ten years if Mr. Taggart had left any loose ends when he filed his second account.

So, too, Ella Kremelberg's testimony relating to the making of a new agreement by which the Kremelberg children were to get six per cent. on the interest which John D. Kremelberg had in the New York firm at the time of his decease and were to become partners in the Baltimore firm and to receive fifty per cent. of the profits in the Baltimore firm, whilst Branker and Martin and George Kremelberg were to get the other fifty per cent. of the profits of the Baltimore firm supports this view. For the greater part of the money which they invested in Baltimore and New York was the proceeds of the property which John Kremelberg gave by his will to his brother George, and to his son Frederick. If they had not received it from their uncle George, they could not have placed it with these two firms.

It should be remembered that by the Declaration of Trust of May, 1883, George individually gave up the estate or assets which he got under his brother John's will. There were generous motives that impelled him to do this thing and probably motives that inured to his own benefit. He was a poor man at the time, his ledger balance in the New York firm was on the wrong side, he had no money of his own to run the Baltimore firm, and money apparently was necessary to run it. By this arrangement he procured the use of Frederick's interest and certain former investments of Ella, Elizabeth and Frederick in J. D. Kremelberg

& Co. (Case pp. 212, &c.). On the other hand he gave to his nephews and nieces all that he took under his brother's will except some few specific things, probably of no great value, and so made amends to them for the change in the size of their father's estate between the time of the making of his will and the time of his death. Engler, in his letter of December 25, 1893, to Ella Kremelberg, says, "If at the time of your father's death you had demanded the money due to his account we could not have continued business here and George would have been obliged to come there" (that is Baltimore) "to make his living" (Case p. 280). This passage can have only one meaning and that is that the allowing of the nineteen thousand and odd dollars to remain in the New York firm, which included Fred's interest, enabled George to stick to the New York business and to give up his legacy under his brother's will.

But the investment by the children of John Kremelberg of the sum of $31,000 in the business of J. D. Kremelberg & Co. of Baltimore, shows more than this. Ella Kremelberg's testimony, taken in open court (Case p. 214, &c.), is as follows:

> "Q. At the time when you made the arrangement in 1883, do you recall as to what was to happen to the remaining 50% of the profits; who was to get those?
>
> A. The other partners.
>
> Q. Who were those partners who were to get them?
>
> A. Mr. Martin and Mr. Engler and George.
>
> Q. Who else?
>
> A. I imagine Mr. Branker.
>
> Q. Then the arrangement at that time was that the children of John D. were to have fifty per cent. of the profits and that the three partners, George J. Kremelberg, Mr. Branker and

Mr. Martin were to get the other fifty per cent. of the profits of the business.
A. Yes."

And on page 207:

"Q. Was it your understanding that the members of your family became partners in the firm of Kremelberg & Company?
A. Yes."

Now, if the children of the Kremelberg family were admitted to partnership in June, 1883, to the extent of fifty per cent. of the profits, *there was restored to them by that very act fifty per cent. of the good-will* of the concern.

As the result, therefore, of the entrance by the children of John D. Kremelberg as partners into the firm of J. D. Kremelberg & Co., of Baltimore, they became possessed not only of the legacy given by John Kremelberg to his son and his brother, and therein designated as his interest in his businesses, appraised and included by his executor in his first accounting, but in addition thereto to fifty per cent. of the good-will of the concern of J. D. Kremelberg & Co., of Baltimore. This interest they held for ten years or more, for it was not until the early 90's, about the time of the Engler letter, that they ceased to be partners in the firm, withdrew part of their capital, and invested $20,000 under an agreemnt by which they got annually twelve per cent. interest, six per cent. thereof being the regular interest and six per cent. thereof being an allowance made to them in lieu of profits (Case p. 219).

The proof then establishes that every dollar which John D. Kremelberg's children were entitled to receive under the arrangement that they made with George Kremelberg they have, in fact, received, and that they are now not entitled to any account-

ing. Emphasis is given to this contention when it is considered that the complainants do not point out any property given by the will of John D. Kremelberg which George took that he has not accounted for, except, possibly, the good-will of the firms, and concerning this good-will, I have said before, that it must be assumed to have been embraced in the sums with which Mr. Taggart, as executor, charges himself for John D. Kremelberg's interest in the New York and the Baltimore firms, but that if it is not, an accounting of the good-will does not mean an accounting of the profits of the two Kremelberg concerns, because the profits of the two Kremelberg concerns were not the earnings of the good-will in those concerns.

Exhibit C-8 (Case p. 307), constituting the last page of the Exhibits to the testimony taken in New York, purports to be the account of John D. Kremelberg's Baltimore Estate. On the debit side of this account the first entry is: "1884, June 21, To Check of S. H. Taggart, Ex. Interest to June 1 on $19,577.91, $1,174.68." The $19,577.91 were Mr. Taggart's appraisal of John D. Kremelberg's interest in the New York firm and $1,174.68 is the interest at six per cent. on this amount. For some reason the check for 1884, although Mr. Taggart finally accounted for the Estate on June 20, 1883, went to Mr. Taggart. On this account then, Mr. George Kremelberg was not treated as the legal holder of the claim of the Kremelberg children to their father's interest in Kremelberg & Company of New York. In 1885 and all the years thereafter, the debit entry is "To transfer to J. D. Kremelberg & Co. for interest" through whom the interest was paid to the Kremelberg children (Case p. 154). In 1885 there are two of such entries under date of May 1st. "To transfer to J. D. K. & Co. 11 mo. int. on $19,577.91, $1,076.79." Under date of No-

vember 30, "To transfer to J. D. K. & Co., 6 mo. int. on $19,577.91, $587.34." It was not until 1888 that one-sixth of this amount was withdrawn by J. D. Kremelberg and the principal remaining with Kremelberg & Company was reduced to $16,478.08.

My conclusion, therefore, is that George Kremelberg, in fact, executed and performed the trust that he declared by the instrument of May 4, 1883.

At the conclusion of the argument before Vice-Chancellor Emery (who heard the case some months before he retired from office, but left it undecided), he said, among other things, "Therefore, as to all the papers that were executed and all the acts that were done in carrying them out, this question may arise: are they consistent with the view which may be called a third view of the status, to wit: that by the understanding between all the parties, the sisters, brothers and guardian of the infants, George held the legal title as partner and was the legal partner but all that legal interest and title was for the benefit of John D.'s children for whom, as trustee, he was carrying it on." I think that perhaps this question arose in the Vice-Chancellor's mind and was not suggested by counsel on either side, because the Vice-Chancellor did not have in mind the character of the business that was carried on, which the counsel on both sides did know, and concerning which the record before him was incomplete. It is not denied that the business was purely a brokerage and commission business, that J. D. Kremelberg & Co., represented a number of large European tobacco manufacturers for whom they bought tobacco on orders received, charging them in each invoice sent, brokerage and commission for their services as buyers and that the profits accruing therefrom represent any eventual capital which each partner may have to his credit under capital account. This appears in a way concern-

ing the New York business in Mr. Hillen's testimony (Case p. 144) and is now covered by the stipulation made before Vice-Chancellor Stevens (Exh. p. 348).

The property in question concerned personal property only. It was money, pure and simple, and an obligation concerning money can readily be discharged by the payment of it without the execution of any formal instrument. Moreover, a formal instrument, if it had been executed, would have been delivered to the complainants or some of them, and the custody of the paper would be in them and not in the defendants and as the matter relates to a transaction now some thirty odd years old and those who participated in the transaction, with the exception, possibly of Ella Kremelberg and Mrs. DeGraef, are dead, it is manifestly unfair to expect the representatives of George Kremelberg to furnish this proof. If a legal document became necesary to transfer the legal title to the *cestuis que trust*, where it appears as it does in this case by the acknowledgment of the complainants that they have received all that which, upon the construction placed by the defendants upon the written document they are entitled to have, it must rather be assumed by the court that if delivery alone was not sufficient to solve the obligation, then that delivery was accompanied by such documents as the case required, for, after all, we cannot get away from what is the real controversy between the complainants and defendants in this case and that is, what was the scope of the document, what property, under the declaration of trust, was held by George in trust? If the fair construction of this paper is as the defendants contend, then the complainants have all that they are entitled to receive, and, if on the other hand it is what the complain-

ants contend, then clearly they are entitled to a further accounting.

What was done in May and June, 1883, in the settlement of the Estate of John D. Kremelberg must have had some definite purpose. If the sum of Thirty-One Thousand Dollars standing to the credit of J. D. Kremelberg on the books of J. D. Kremelberg & Co., of Baltimore, and of Nineteen Thousand Dollars standing to the credit of J. D. Kremelberg on the books of Kremelberg & Company of New York were debts owing by these concerns to John D. Kremelberg and did not pass under the bequest in the will, then Mr. Taggart, the executor, should certainly have charged himself in his inventory with these two indebtednesses; but the inventory shows that he did not. And the first accounting of Mr. Taggart shows that he charged himself in that account not with debts owing from the firm of Kremelberg & Company and J. D. Kremelberg & Co., to the deceased, but with "Deceased's interest in firm of Kremelberg & Company" and "Deceased's interest in firm of J. D. Kremelberg & Co." Now, according to Mr. Field's contention, the interest of the deceased in these two firms ought not to have appeared in the account according to what he says is the practice in Maryland because it was a specific legacy. All the more reason to explain why it is that so good a lawyer as Mr. Taggart is reputed to have been should have charged himself with it. Undoubtedly Mr. Taggart knew the reason and those who participated in the transaction at the time, including Mr. DeGraef and Ella Kremelberg, knew the reason. Unfortunately of all these persons only Mrs. DeGraef and Miss Ella Kremelberg survive. Mrs. DeGraef has not been produced nor examined and we know nothing of her recollection concerning it, and Ella Kremelberg's recollection, to put

it mildly, seems extremely faulty. But the proof in the case shows that the date of this first account is May 4, 1883, and that the date of the Declaration of Trust by George Kremelberg of the interest which had been given to him by his brother's will bears the like date, so that it is fair to assume that they were part of the same transaction. At the time of this Trust deed, George was a member of the firm of J. D. Kremelberg & Co., having been admitted thereto not pursuant to the terms of the will of John D. Kremelberg—but pursuant to a specific agreement, the evidence of which is the notice of July, 1882, whereby the world was notified that J. George Kremelberg had become a member of the firm of J. D. Kremelberg & Co. of Baltimore.

I think it clearly appears from the balance sheets of account of the firm of J. D. Kremelberg & Co., produced at the trial, and from the other evidence of the case, that the accounts as they appeared on the books were not just a method of bookkeeping so that George might know to what extent he was indebted to his nephews and nieces, but fully corroborate Miss Ella Kremelberg's testimony that a specific contract of partnership had been made between the children of John D. Kremelberg and their Uncle George under which, in consideration of their allowing the money which had been given to George and which was by him generously returned to his nieces and nephews, together with the moneys which Ella and Elizabeth and Frederick theretofore had in the business, should remain there and that it is an account which shows their investment in the business. The first paper to be considered is the Trust Deed made to Mrs. DeGraef (who was then Elizabeth Virginia Kremelberg) by John F. Kremelberg, her brother. It is Exhibit E and concerns the residuum of the property bequeathed under the will of

John D. Kremelberg to his six children. John F., who in these proceedings has been called "Frederick," assigns his share in his residuum to his sister, in trust for himself and his sisters and brother, in equal shares. Seemingly, Elizabeth V. Kremelberg invested this trust fund, or a part thereof, with J. D. Kremelberg & Co. of Baltimore, for in the balance sheet for 1885 there is a credit entry "142 E. V. d G. Trust J. F. K. $8,161.72" (Exh. p. 332). In the balance sheet for 1886 the item appears again as "10 E. V. d G. Trust for J. F. K. $10,004.85" (Exh. 333), and so again in the balance sheet for 1887, "7, E. V. d G. Trust for J. F. K., $10,947.06" (Exh. p. 335), and so again in the balance sheet for 1891, "8 E. V. d G. Trustee, $10,756.03" (Exh. p. 336). A similar entry does not appear in the balance sheet of 1892 (Exh. p. 337) which is the next balance sheet that we have. Neither does it appear in the balance sheet for 1895 (Exh. p. 338), so apparently this account was settled before the balance sheet of 1892. The account must be distinguished from Elizabeth V. DeG. Personal Account and from the personal account of J. Frederick Kremelberg, both of which appear in the balance sheets.

In the balance sheet for 1885 there appears in addition to this trusteeship account, the account of Eliz. Vig. DeGraef, personally, for $12,469.72, of J. Frederick Kremelberg, Personally, of $8,-611.72, of H. Ella Kremelberg, Personally, of $13,-415.71, of J. D. K. Gdn. of J. D. K. (which must mean George Kremelberg, guardian of John Diedrich Kremelberg) of $4,164.17, of H. E. K., as Gdn. of A. M. K. (which must mean Harriet E. Kremelberg, Guardian of Anna Maria Kremelberg) $4,-279.39, of H. E. K. Gard. M. A. K. (which must mean Harriet E. Kremelberg, Guardian of Mary Anna Kremelberg), $5,306.31.

By referring now back to the releases which were executed to Mr. Taggart on the twentieth day of June, 1883 (Case p. 282), we find that Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg and Elizabeth V. Kremelberg as Trustee for J. Frederick Kremelberg, each acknowledged the receipt from the Executor of certain personal property other than money of $1,636.33, and that Harriet E. Kremelberg as Guardian of Mary A. Kremelberg and Harriet E. Kremelberg as Guardian of Anna G. M. Kremelberg, and George Kremelberg as Guardian of John D. Kremelberg, likewise each acknowledged the receipt from Mr. Taggart as executor, of personal property, other than money, of $1,636.33 and that each of these persons individually, and in their representative capacity, further acknowledged the receipt of money of $19,697.57. This money, it is conceded, was not actually paid, insofar as it related to the deceased's interest in the New York and Baltimore firms, which aggregated about $51,500.00, one-sixth of which would be approximately $8,600, so that the Kremelberg children must have received cash over and above the value of these business interests. The proof shows that the deceased's interest in the New York firm, amounting to $19,577.91, remained there and the proof shows that the money which was allowed to remain in the Baltimore firm and the deceased's interest in that firm, amounting to $31,980.74 for all the children, plus approximately the sum of $8,000 for Virginia and $8,000 for Ella, and some sum of John's, the amount of which is not given. Now a sixth of $31,980.74 is $5,330; and the first balance sheet which we have, that for 1885—the division having been made in June, 1883—shows the interest of George as Guardian of John Diedrich Kremelberg, to be $4,164.17 (Exh. p. 332);

of Harriet E. Kremelberg as Guardian of Anna Maria Kremelberg, $4,279.39; and of Harriet E. Kremelberg as Guardian of Mary A. Kremelberg, $5,306.31. If we add to Ella's share of $5,330 the $8,000 which she said she then had standing in the firm, we would get $13,330. In the 1885 balance sheet the amount with which she is credited is $13,415.71 (Exh. p. 332). If we add to Virginia's share the $8,000 which she had standing in the firm we would get about the same figures as in Ella's share. The 1885 balance sheet gives her investment as $12,469.72. The J. Frederick Kremelberg investment in 1885, is given on the balance sheet to be $8,611.72 which would indicate that J. Frederick at that time had $3,000 standing to his credit of the old account. Adding together the figures standing to the credit of Virginia, J. Frederick, Ella, George as Guardian of John D., and Harriet Ella as Guardian of Anna Maria and Mary Anna, we find that the total amount in 1885, is $48,244, which fully corroborates Ella's statement and the averment in the bill (Case p. 21) that under the arrangement that was made $46,000 was allowed to remain with the firm, for the arrangement was made in 1883, and the balance sheet of 1885, probably shows the interest since that time.

I find it stated in the 22nd Volume of the A. & E. Enc. of Law, under the heading "Partnership", on page 68, "Generally speaking, an infant may be a partner, his contracts being merely voidable and not void. Until he avails himself of the privilege of rescinding his contracts he has all the rights and powers of any other partner", and Continental National Bank v. Strauss, 137 N. Y., 148, is to the same effect; so that it is not to be hastily inferred that because some of the children were minors they could not enter into the partnership.

As a matter of fact they did not enter into the partnership; their guardians became the partners and the accounts were kept in the names of the guardians who had the legal title to the money and to the children's interest in the firm. With the kind of business that J. D. Kremelberg & Co. conducted it made little difference who the partners of the firm were so long as there was sufficient cash capital in the business. In the letter which Mr. Engler wrote to Miss Ella Kremelberg under date of December 25, 1893, in which he discusses with Miss Ella the dissolution at that time of the Baltimore firm, he writes that in case of dissolution "All sorts of inquiries are made by parties from whom we enjoy our large credit and reputation. I am anxious to uphold our present status and I am able to do so,—but I fear scrutinizing inquiries from outside parties as to change of capital, etc." A further examination of these balance sheets shows that as soon as the minors got to be of age the accounts were kept no longer in the name of the guardian, but in the name of the child. In the balanse sheet of 1885, Harriet E. Kremelberg appears as Guardian of Anna Maria Kremelberg, but in the balance sheet of 1886, and thereafter, Anna Maria Kremelberg appears in person without the protection of the guardian. In the balance sheet for 1885, Harriet Ella Kremelberg appears as guardian of Mary A. Kremelberg and so she does in the balance sheet for 1886, and in the balance sheet for 1887, but when it comes to the balance sheet for 1891, Mary A. Kremelberg appears in her own name and so she does in the subsequent balance sheets. It will be remembered from the testimony that Mary was twelve when her father died in 1882. In 1891 she must have attained her majority and the account thereafter was carried in her own name.

As to George Kremelberg as Guardian for John Diedrich Kremelberg, the credit item stops with the balance sheet of 1885. In the balance sheet for 1885, there is a debtor entry of $23.55; in the balance sheet for 1887, there is a credit entry of $107.82, in the name of J. D. Kremelberg (the guardianship apparently having ceased before that time); in the balance sheet for 1891, there is a debtor entry of $2,480.95 opposite J. D. Kremelberg; in the balance sheet for 1892, there is a debtor entry of $6,872.76 set opposite J. D. K.'s child, and in the balance sheet of 1895, J. D. Kremelberg's name disappears entirely. The testimony is that at some time he withdrew his money (Case p. 208).

An examination of the individual statements (Exh. C24, p. 350) corroborates much of what has been said with reference to the balance sheets and furnishes additional proof of the contention which I have made. The first of these statements is dated Baltimore, December 31, 1884, and is the account of Harriet E. Kremelberg, Guardian for Anna M. Kremelberg. There is no further guardian's statement for Anna M. Kremelberg, probably owing to the fact that under the Maryland code (Article 93, Section 193), females, when they arrive at the age of eighteen years, are entitled to an accounting from their guardians, and to possession of the property held by their guardian (Stipulation Exh., p. 348).

There are statements for Harriet E. Kremelberg as Guardian of Mary A. Kremelberg for the year 1885, for the year 1886, for the year 1887, for the year 1888 and for the year 1889. Beginning with the year 1890, Mary A. Kremelberg's statement appears in her own name, and beginning with the year 1885 Anna M. Kremelberg's statement appears in her own name. All of these statements show, on the credit side, an entry for proportion of profit

and an entry of interest at six per cent. on credit items in excess of debit items. They show also that whatever money was in the business became mingled with other funds which Kremelberg & Co. handled for the individual persons. Kremelberg & Co. collected the interest on bonds, on mortgages, on leases, and the dividends on stock, and when the mortgages were paid off the principal was received by Kremelberg & Co. and credited to those who were the owners of the mortgage. Surely there would not have been a mingling of the personal assets of these different children to which they individually held title, with the assets which they had invested in the business of Kremelberg & Co. if they held not the title to these assets so invested in the firm. A reading of the statement of Anna Maria Kremelberg for the year 1887 is highly instructive from this point of view. I find the following written in red ink on the credit side of the statement (Exh. p. 358):

"Balance on hand January 1, 1887		$4,146.62
Add principal a/c Brooklyn property	$ 372.55	
Frick Mortgage	3,006.20	
Arkansas Property	972.99	
	$4,351.74	
Less invested in C. & G. First Mortgage	3,166.37	1,185.37
Total principal		$5,331.99
Add Income a/c Interest on Investments	$1,062.91	
Profits from J. D. K. & Co.	679.35	
	$1,742.26	
Less expended in 1887	1,517.52	
Saved from Income		224.74
Balance Jan. 1/88 as above,		$5,556.73"

And a like account appears on the statement of the account of Harriet Ella Kremelberg for the year 1887 (Exh. p. 359), to wit:

"Balance Jany. 1, 1887		$13,993.46
Add principal a/c Brooklyn property	$372.55	
Arkansas property	927.98	1,300.53
Total principal		$15,293.99
Add Income a/c Interest on Investments	1,961.61	
Profits from J. D. K. & Co.	2,101.50	
	$4,063.11	
Less expended in 1887	2,112.65	
Add—Saved from Income		1,950.46
Balance Jany. 1/88 as above		$17,244.45"

I take it that under the Declaration of Trust made by George Kremelberg on the fourth of May, 1883, he reserved to himself and his associates all the profits which might accrue on the property which he declared to hold in trust for the John D. Kremelberg children. He could, with great propriety, do this as he made to these children a present of the bequest which came to him under their father's will. There is certainly nothing in the document from which one can conclude that the *cestuis que trust* entitled to this principal money were entitled to receive from George any profits thereof, and therefore, the item of interest on each of the statements, on the credit side thereof, corroborates the view of a special arrangement entered into between the children of John D. Kremelberg and Kremelberg & Co., and this suggests that they had received the interest which John D. Kremelberg had in the Baltimore concern. On

page 8 of the Bill of Complaint (Case p. 10) it is said, "And the said sum of $31,890.74 remained with the firm of J. D. Kremelberg & Co. of Baltimore and with other moneys added by Elizabeth Virginia Kremelberg and Harriet E. Kremelberg was considered as capital contributed by the children of John D. Kremelberg hereinbelow mentioned under an arrangement made by J. George Kremelberg, whereby the said children were to receive interest on said sum and share in the profits of said Baltimore firm as hereinbelow more particularly set out.

If, under the trust deed made by George on the fourth of May, 1883, the children were entitled to the profits of the principal moneys held in trust, the presumption is that they were to receive such profits, share and share alike. Yet an examination of the statements (Exh. C24) for the years 1885, 1886, 1887, 1888, 1889, 1890 and 1892 shows that the profits were not divided equally between them but apparently, according to the amount of money that each of them had invested in the firm. In 1885 the profits do not appear upon the statement; but in 1886 Harriet, as guardian of Mary, with a balance of $5,666 shared in the profits of 1886 to the extent of $14.87 (Exh., p. 355); Anna, with a balance of $4,146.62, shared in the profits to the extent of $13.48 (Exh., p. 356); in 1887 Anna, with a balance of $5,556, shared in the profits for 1887 to the extent of $679.35 (Exh., p. 358); Harriet, with a balance of $17,244, shared in these profits to the extent of $2,101.50, (Exh., p. 359), and Harriet, as guardian of Mary, with a balance of $7,755.86, shared in the profits to the extent of $749.11 (Exh., p. 357). In 1888 Harriet, with a balance of $19,768, shared in the losses for that year to the extent of $562.63 (Exh., p. 369); Anna, with a balance of $5,067, shared in these losses to the extent

of $181.88 (Exh., p. 362), and Harriet, as guardian of Mary, with a balance of $7,305.33, shared in these losses to the extent of $200.56 (Exh., p. 361). In 1889 Harriet, with a balance of $11,559, shared in the profits of 1889 to the extent of $859.27 (Exh., p. 363); Anna, with a balance of $5,378, shared in these profits to the extent of $515. (Exh., p. 364); and Harriet, as guardian of Mary, with a balance of $7,928, shared in these profits to the extent of $687.42 (Exh., p. 365). In 1890, Mary, with a balance of $8,313, shared in the profits of this year to the extent of $674.52 (Exh., p. 366); and Anna, with a balance of $5,478, shared in these profits to the extent of $505.89 (Exh., p. 367). It was not until 1893 that Mary, Anna and Harriet are credited with the same amount of profits, although their balances are not the same; this indicated a new arrangement at the time when all the interested parties were of full age. I may as well, at this point, direct the Court's attention to the statement in the bill of complaint, on page 8 (Case, p. 10), "All claims of the children or John D. Kremelberg in reference to said sums of money so due (meaning the items of $31,980.74 mentioned in Mr. Taggart's first account as John D's interest in J. D. Kremelberg & Co., of Baltimore, and the item of $19,577.91, mentioned in the same account as John D. Kremelberg's interest in the New York firm of Kremelberg & Company) from the firm of Kremelberg & Company of New York and J. D. Kremelberg & Co. of Baltimore have been finally settled or adjusted."

From what I have said it appears that George Kremelberg had accounted for both corpus and profits under the Frederick Kremelberg Declaration of Trust, and that he has accounted for the corpus under the Trust declaration of May 4th, and

that he was not bound to account for profits under the latter Declaration, because the profits were either reserved in toto, or only one-half of the corpus was held in trust, and George retained one-half of the corpus and one-half of the profits, expressly reserving the other one-half of the profits for himself and Branker and Martin.

But, if the complainants' contention should prevail that the whole of the corpus was held in trust under the Declaration of May 4th, and that only one-half of the profits thereon were reserved so that the *cestuis que* trust became entitled to the other one-half of the profits, should there be an accounting? No. First, because with the accounting of the principal there was nothing left upon which profits could accrue. They could not accrue purely on the good-will, even if this is not included in the corpus which George turned over to the children. And again, the partnership of June 18, 1883, negatives such an accounting. The children of John agreed that of the profits Branker and Martin were each to get fifteen per cent, and George Kremelberg, twenty per cent. This specific bargain put any further liability of George out of consideration. Surely George was not required to pay them the percentages which Branker and Martin received by their express say so, nor for what he received by their express say so. To this it is urged that the Kremelberg children know anything of the trust. This is simply impossible. George actually giving up his legacy was an event which must have caused comment and approval. The beneficiaries must have been told about it. And then it is an act of such a character that it precludes wrong doing on his part. If it was his purpose to rob his nephews and nieces of their profits, would he have given to them the very thing which produced the profits? Would he not have retained what was given to

him under the will, and have said, "This was your father's wish; I will abide by it." But, if he did deceive them, they cannot abide by their bargain and claim the benefits of the trust at the same time.

IV.—As to Laches.

I am led to speak of laches as applicable to the case, merely for the sake of completeness, for, with my view of the facts that the trust had been performed and completed, the Doctrine of Laches, of course, can find no application.

The Doctrine of Laches is enforced in cases of express trusts. In Dean v. Dean, 9 N. J. Eq., 429, it is said: "Even in cases of express trusts, if the parties have long ceased to act upon or recognize them, Courts of Equity will not interfere to enforce them." In Stimis v. Stimis, 54 N. J. Eq., 19-21, it is said: "Time will not defeat an express trust, cognizable in equity alone, which continues to be acknowledged and acted upon by the parties. But when the Trustee denies the right of the *cestui que trust* and his possession of the property becomes adverse, lapse of time from that period may constitute a bar in equity."

In the enforcement of the Doctrine of Laches, the Court will act upon this consideration, to wit: Its inability to do certain and complete justice which, in turn, is based upon a long acquiescence in the alleged breach of the trust, or lapse of time which has obscured the nature and character of the trust, or the acts of the parties or other circumstances which could give rise to presumption unfavorable to its continuance. Stimis v. Stimis, 9 Dick. Ch. Rep., 22.

In our Court of Errors, in the recent case of Lutjen v. Lutjen, 64 N. J. Eq., 773-780, Judge Vredenburgh, speaking for the Court, says: "But

there is a further ground for the rejection of the claim of the complainant by a court of equity. His release has stood unchallenged by its author upon the records of the title to property in the public office for the long period of nine years and almost eight months. Lapse of time alone is deemed by the authorities to be a sufficient ground of estoppel in cases like the present, when the Court cannot feel confident of its ability to ascertain the truth now as well as it could when the subject for investigation was recent, and before the memories of those who had knowledge of the material facts have become faded and weakened by time. To constitute estoppel of this description it is not essential that any actual loss of testimony through death or otherwise, or means of proof, or changed relations to the prejudice of the other party, should have occurred. But the estoppel arises because the court cannot, after so great a lapse of time, rely upon the memory of witnesses to reproduce the details that entered into the final execution of the instrument of settlement. The case in hand is, as already noted, a striking illustration of the importance of adhering to this rule. It is held by a long line of controlling authority, both in this State and elsewhere, that suitors who seek to repudiate their deeds of release are bound to use reasonable diligence after the delivery of the instruments of settlement both to ascertain their rights and to enforce them in courts of equity. The old equitable maxim, *Vigilantibus non dormientibus aequitas subveniunt,* is applied here. Equity requires this diligence, in analogy to the statutes of limitation at law, for the security of titles to property; to guard against the danger of the loss of evidence by the death, failure of memory, or absence of witnesses and proofs, and for other important considerations.

There has been no inflexible rule adopted by the courts fixing any exact period of time as a bar to relief in such cases. Necessarily, each case must rest upon its differing circumstances."

And so the A. & E. Enc. of Law, Vol. 18, p. 105, states the Doctrine to be "Where, from delay, any conclusion at which the court may arrive, must at best be conjectural, and the original transactions have become so obscured by lapse of time, loss of evidence, and death of parties or witnesses as to render it difficult, if not impossible, to do justice, the plaintiff will, by his laches, be precluded from relief, and it is not even necessary that the court should be satisfied that the original claim was unjust or has been satisfied."

Of course, it is an essential element of laches that the party charged with it should have knowledge, but knowledge may be attributed to him because he has failed or omitted to obtain knowledge where it was obtainable after notice or where there have been circumstances which should have induced inquiry and an effort to obtain knowldge. 18 A. & E. Enc., p. 102. And knowledge to the plaintiff's agent may be imputed to the plaintiff for the purpose of charging him with laches. Bowman v. Watham, 1 Howard, U. S., 189.

The transaction under consideration dates back to 1883, and the contention is that the Trust Declaration was never recognized and that no act has been done under it since its declaration. Of the six children which John D. Kremelberg left him surviving, the youngest one at the time of his death, which occurred in May, 1882, was twelve years of age, so that by 1891, all of John D. Kremelberg's children were of full age. The transaction must have been participated in by Mr. Taggart, who witnessed the instrument, and it is inconceivable to suppose that Virginia and Ella or

Frederick, who were all of age, had no knowledge of what so closely affected their interests. We have but little information concerning Diedrich, but Anna and Mary say very frankly, that their sister Ella was their agent and represented them (Case pp. 260, 265). It is true that Ella says that she knew nothing about the transaction until recently; that she saw the Declaration of Trust in 1903, but paid no attention to it, and therefore that she, for herself, and those whom she represented, cannot be charged with knowledge until 1913; but this presentation of fact is incredible, and, I think, is contradicted by the evidence in the case. John D. Kremelberg's children must have known that John, by his will, gave a one-half interest in his businesses to his brother George, and they must have known that George resigned that legacy, and yet Ella says that she has no recollection of it although she remembers that the will was read to them (Case p. 204, &c.). Now, if the will was read to them, certainly notice must have come to them through the reading, of at least the fact that a considerable portion of their father's estate had been given to their uncle, and with the size of their father's estate the bequest to their uncle was not so insignificant a thing as to be overlooked by them because it meant taking away from them at least twenty-five per cent. of what their father had left. That whatever came to George under the legacy was returned to the children appears from the Declaration of Trust and from the transactions which Ella admits were going on at the time, as the result of which the children became again possessed of the interests of John D. Kremelberg in the New York and Baltimore firms, aggregating in excess of fifty thousand dollars. Surely this is a case in which the Court, after so great a lapse of time, cannot rely upon the memory

of witnesses to reproduce the details that entered into this transaction.

Again, Virginia (Mrs. DeGraef) has not been called. It is true that she resides in Germany and that at this time it was difficult to get her testimony. I do not consider, however, that it was impossible to get her testimony. It is true, also, that Ella, in her testimony, said that she told her that she did not know anything about it, but the defendants have a right to her testimony on the witness stand and to cross examine her and to search her memory. Being the oldest in the family, unless she has as elusive a memory as her sister Ella, she ought to have retained some few facts relating to the gift which her father made to his brother and the gift which this brother made to his nephews and nieces.

And then, there is the Engler letter addressed to Ella in 1893, which certainly states facts which put her upon inquiry, a letter which she treasured and kept for more than twenty years, but which, according to her statement now, she never acted on. Mr. Engler writes in this letter "As to the letter of your father which had been in my keeping for a number of years before he died, I never learned of its contents, except what George mentioned to me 'that he was to inherit a share in the Baltimore firm.' That is all. I never heard that Fred was to have a share in our business here. Since Mr. Taggart must have had this letter among his papers, you will be better posted on it." As this letter is in answer to one which Ella wrote to Mr. Engler under date of December 22, 1893, it is apparent that the answer speaks of things mentioned or suggested by the letter so that Ella must have written and if she wrote she must have known something which induced Mr. Engler to say that there had been a letter which

he had kept for a number of years before John's death and that Mr. Taggart must have had this letter among his papers and for that reason that she, Ella, would be better posted on it. All that he knew was that George had told him that he, George, was to inherit a share in the Baltimore firm; and as to what is suggested or expressed concerning Fred, why he, Engler, never heard that Fred was to have a share in the New York business. Now, at this time, the parties were only ten years away from the time of the settlement, all those who had participated in it, excepting perhaps Mr. Taggart, were living and all the children of John D. Kremelberg were of full age. If Ella was at all in doubt concerning the transaction she surely would have looked among the papers of Mr. Taggart who was then only recently deceased, and gone to Martin to inquire into the matter, and the Trust Declaration would have been found, because it was in her safe deposit box. She didn't act on it because she knew that the matter had been arranged for and settled. She may be deceiving herself at this time, her memory may have faded and she may not recall either the settlement or the facts in the Engler letter or what she stated in her letter to Mr. Engler, but there is enough in the Engler letter to show that the interest of the Kremelberg children in the partnerships and the capital which they had invested and as to whether that capital should continue with the firms or should be withdrawn, were matters which were under discussion about Christmas time, 1893. And so, I say, that the Doctrine of Laches applies. It is some thirty-three years since John Kremelberg died and thirty-two years since George signed his Declaration of Trust; and more than twenty years, yes, twenty-two years have elapsed since Adolph Engler wrote his letter, and George has been hold-

ing adversely to the trust since at least June 20, 1883. From the absence of such testimony as Virginia could perhaps give, from the uncertainty of the testimony which Ella gives, from the clear proof that Ella's memory and recollection are deficient, from the fact that the attending circumstances of the transaction cannot now be reproduced and that the matters involving the creation and continuance of the trust were known and became the subject of discussion, laches seem fully established and the Court, in justice to the defendant, cannot do otherwise than to deny relief, because the conclusion which the Court may arrive at must at best be conjectural, the original transaction having become obscured by the lapse of time, the loss of evidence, the death of parties, or witnesses, and it is now difficult, if not impossible, to do justice.

V.---Comments on Appellants' Brief.

a: As to the contention that the moneys standing to the credit of John D. Kremelberg on the books of the New York firm and on the books of the Baltimore firm were debts owing from those firms to John D. Kremelberg, and did not pass under the will.

There is nothing in the testimony to show that these items were carried as debts and I do not think that the mere fact that they do not appear in the inventory, because under the Maryland statute debts are not to be included in the inventory (Handy v. Collins, 60 Md., 239) establishes these items to be debts. It is clear from Handy v. Collins that the executor's duty under the statute is as follows: "To return a list of the debts due to the deceased which have come to his knowledge, specifying the nature of each debt and setting down such

as he shall deem separate, distinct and separate from those which he shall deem desperate or doubtful." It may, therefore, be argued with equal force that the executor did not consider the items to be debts for if he did he would have filed the list which the statute required him to file. The record does not show that he filed such a list of the debts due to the deceased. If one had been filed surely the appellants would have availed themselves of this record to establish the fact that the executor considered the items to be debts. The absence of the list of debts due to the deceased makes clear the meaning of the word "interest" as it appears in the first account of the executor in which he charges himself with "deceased's interest in the firm of Kremelberg & Company, $19,577.91" and with "deceased's interest in the firm of J. D. Kremelberg & Co., $31,980.74", and establishes the fact that the executor, at the date of the filing of his first account, whatever his views may have been before that, had reached the conclusion that these items were not debts.

I do not think that Molineaux v. Raynolds, 54 N. J. E., 559, supports the contention that undrawn profits are at all events debts of the firm. On the contrary, I think the case establishes that after all it is a question of fact as to whether or not, at any given time, they are debts or capital, depending upon what the partners agree that they should be, an agreement which is always to be established by the facts of the case. In this case Vice Chancellor Reed says, p. 564, "Now it seems to be entirely clear that at the end of each year the net profits of the business were divided between the respective partners in the proportions in which profits were to be divided by the terms of the agreement. It is clear that when these profits were cal-

culated and divided according to the terms of the agreement, and the share of each partner was put to his credit, then, as between the partners, these profits ceased to be assets of the firm and became debts due from the firm to each member of the firm. The sum set apart to each partner at the end of each year was at the disposal of the partner as so much cash put to his credit. He could draw it out and use it as he chose. If he chose to invest it in the business, it was to be regarded as any other money which he saw fit to so invest. It became a part of the capital, or it became a loan, just as he and the partners agreed. That they agreed to regard these sums as addition to the capital appears beyond all question. Up to 1884 there was not merely a division of calculated profits, but such calculation included all profits so that apparently nothing existed in the shape of undivided earnings."

But assuming, for the sake of argument, that these items were debts, can the appellants' contention that they did not pass under the bequest in the will be sustained? Support is sought by the appellants from Simpson v. Beard, 57 L. J., Ch. 887, and Buckingham v. Ludlum, 29 N. J. E., 345. The point decided in Buckingham v. Ludlum was that the statement in Horner's codicil "my share and interest in the co-partnership property and assets, real and personal, of the firm of James Horner & Company, is one equal half part; my partners, James Ludlum, owns the other equal half part thereof; this includes all real estate owned by us together," does not establish as between Horner and Ludlum that an individual account of Ludlum's showing that he was indebted to the firm in the sum of $73,975.47 was satisfied and cancelled—a proposition which involves other considerations than may arise between the testator and his legatee.

Simpson v. Beard requires, for its proper understanding, a knowledge of the facts in the case. These appear very fully in the report and are as follows: Beard and Bright had been in partnership since 1856 under articles of co-partnership which provided that interest at five per cent. was payable on loans by either partner to the partnership. The original agreement of partnership, which bears date October 21, 1856, had endorsed on it an agreement under date of December 21, 1878, that Beard should have the power to dispose by will of "all his share in the good-will and all real and personal estate and effects which at his death should constitute his part of the co-partnership estate, assets and effects." Beard died in 1887. It appeared that the books had not been for some time accurately balanced, and that an accountant that was called in found in 1884, that Mr. Bright had about £3,900 in the firm and Beard £8,300, and that Beard then placed £5,000 to the account of each partner as his nominal capital and had then treated Bright as a debtor to the firm of £1,100 and himself as a creditor of the firm for £3,300. It appeared probable that the large amount due to the testator arose from his undrawn profits; that Bright's debt to the firm had diminished to £933 9s. 8d. on the 30th of September, 1886, and that the firm's debt to Beard had, by the same date, increased to £3,866 11s. 10d. Interest at five per cent. had been paid to Beard by the firm and to the firm by Bright. The question was whether the £3,866 11s. 10d. passed under the bequest of the testator's share in the business or whether it was undisposed of and fell under the residuary bequest. The Court considered the question was so close that it said "The question in this case is a difficult one and I do not feel at all satisfied what answer the testator would give if he could be

asked what his wishes were; but the conclusion at which upon the whole I arrive is that he did not intend this debt to pass with the business and good will to the son as trustee."

In this case, as in Buckingham v. Ludlum, there were both capital and debts to be considered. In our case, if the appellants' contentions hold good, there is no capital or profits except in so far as the good-will constitutes capital; and in our case there is also the further consideration which does not appear in either of the other cases. The testator provided in his will "all my just debts and funeral expenses and the entire interest to which my wife may be entitled in my estate, real and personal, shall be paid out of the proceeds of the rest and residue of my estate above mentioned, so that my interest in the business houses and firms above mentioned and devised to my brother George and my son, J. Frederick, shall remain wholly undisturbed and be in no way interfered with." It is quite supposable that if this fact had appeared in Simpson v. Beard that the Court's conclusion as to the testator's intention would have been different. "A bequest of a partner's capital has been held to include what was due to him in respect of advances." 2 Lindley on Partnership, No. 619, citing Bevan v. Attorney General, 4 Giff., 461, in which the Vice Chancellor, Sir John Stuart, says "when the testator speaks of his capital, he meant to give all that was coming to him out of the assets of the partnership." The language in John Kremelberg's will clearly indicates that nothing that he had any interest in should be taken away from the firm, for it was his desire that everything in his firms should remain wholly undisturbed and be in no way interfered with. Therefore, I submit that even if the items of $19,577.91 and $31,980.74 should be held to be debts, they p

under the bequest in his will to his son and his brother.

b: As to the suggestion that the legacy in the will to George, his brother, and Frederick, his son, were in fact legacies in trust.

There is nothing to sustain this contention. The language in the will surely does not make them so and no fact appears in the case from which such a conclusion can be drawn. If the legacies were given to George and Frederick in trust, they would have held a joint estate and declared their trust jointly at the same time, and something would have appeared in their Declarations of Trust to the effect that while the legacy was given absolutely, it was yet intended to be a trust legacy. From the proofs, however, it appears that Frederick made conveyance to his Uncle George in December, 1882, because of failing health, and that when George declared the trust for the interest that had been conveyed to him by Frederick in December, 1882, he said that "Whereas, Frederick Kremelberg conveyed and assigned to me all the interest bequeathed to him." "I hereby declare the said assignment and conveyance to me was made and I now hold the property in trust."

When George makes his own trust deed he recites the bequest in John's will and declares "for divers good causes and valuable considerations, me thereunto moving, I do hereby declare that I hold and possess the one half part of the property devised and bequeathed to me * * * in trust." In view of the facts of the case we do not have to go far to know what George meant by "for divers good causes and valuable considerations,"—it was the agreement of the Kremelberg children to leave their money in the business and to restore to the children the property which John had given to him by his will.

I do not think that a trust can be affixed to this absolute bequest because the testator said in his will that he commended his son, John Diedrich, to his brother Frederick and his Uncle George "and if upon his arrival at age he shall show aptitude and taste for mercantile life to offer him as soon and as full as possible all the advantages which I, as his father, would have extended to him." If anything it emphasizes the notion that John expected that his brother George and his son Frederick might be engaged in mercantile business at the time when Diedrich arrived at age, in their own right and not as trustees because of the gift that he had made to them.

c: As to the effect of the releases given to the executor upon the distribution of the estate.

It is suggested that the executor would not have taken the releases of the children and the children's guardians but the releases of George and Frederick if he had considered the items of $19,577.91 and $31,980.74 as included within the legacy. Frederick had conveyed his share of the bequest to George, and George, by two separate instruments, had declared that he was holding the property as trustee for all the Kremelberg children, and the Kremelberg children had come into possession of the property and invested it in the New York concern on interest and in the Baltimore concern as capital of the partnership which they had entered so that the release of the children was the release of the beneficial owner of the property, and, therefore, protected the executor. The executor, too, may have considered the Declaration of Trust equivalent to a relinguishment of the legacy and treated the matter as a legacy

which had failed, and, therefore, falls into the residuum.

d: As to the contention that "interest" in the two firms means the right to draw *in futuro* the profits which John drew in his lifetime.

It is said that the trust property consisted of the partnership interest of John D. Kremelberg in the two firms. Surely this is so speaking of it as meaning what he would have received on liquidation. Is it anything more? Is it, as a legacy, the right to draw twenty per cent. of the profits of the New York firm and ninety per cent. of the profits of the Baltimore firm irrespective of any capital investment by a partner and irrespective of personal services to be rendered to the partnership? Lindley says "A specific bequest by a partner of his share in the partnership clearly does not entitle the legatee to become a partner himself unless there is some agreement to this effect, binding upon the surviving partners. The right of the legatee is simply to be paid the amount due to the testator at the time of his death, in respect to his share," 2 Lindley on Partnership, p. No. 619. Is there such a thing as a right to give away by will or otherwise one's contract right to take out of a partnership a certain percentage of profits—for death terminates a partnership as completely and effectually as if the partnership expired by limitation? I insist that there is no such right and that the gift is of assets then in existence and not of profits thereafter to accrue. There are no profits thereafter to accrue and one cannot give what one has not to give. The profits that thereafter accrue resulted from a new enterprise in which the old assets are utilized and new personalities are involved.

e: As to the liability to account for all profits.

I quote again from Lindley on Partnership: "The death of any one member of a firm operates as a dissolution thereof as between all the members unless there is some agreement to the contrary. This is obviously reasonable for by the death of one of the members it is no longer possible to adhere to the original contract, the essence of which is (in the case supposed) that all the parties to which shall be alive. The mere fact that the partnership was entered into for a definite term of years which was unexpired when death occurred is not sufficient to prevent a dissolution by such death" (p. No. 590).

"In ascertaining the share of the deceased, the surviving partners must not only bring into account the assets of the firm which actually existed at the time of his death, but also whatever has been obtained by the employment of those assets up to the time of the closing of the account, for, so long as profits are made by the employment of the *capital* of the deceased partner so long must such profits be accounted for by the surviving partners. The executors of the deceased have, however, the option of taking interest at 5 l. per cent." (p. No. 592).

When John Kremelberg died the assets of the Baltimore firm passed to his surviving partner Frederick, and of the New York firm to George and Englar, his surviving partners. The obligation of these surviving partners was to account to the legatees under the rule above stated. By the arrangement under which George and Frederick became partners there was a substitute for the accounting and whatever passed under the legacy became vested in them so that nothing remained by way of partnership accounting because of John's death. When George declared himself as trustee for

the Kremelberg children, he became obligated as such trustee to account for the trust and the income of the trust as he could draw no profits for himself from the trust. This brings us back to the question, What was the trust?, and What was the meaning of the Declaration of Trust? The like reasoning becomes applicable to the New York firm. There Englar and George had to account to George and Frederick, and whatever was received under the accounting passed on to the Kremelberg children through George's Declaration of Trust. If George, as trustee, must account, he must account for the earnings of the trust property and the question is again, What is the trust property?, and What is the meaning of the Declaration of Trust? In neither case, however, is George called upon to account for any property not included in the trust nor for any earnings thereon. If my contention holds good all the property given by the legacy was accounted for with the formation of the partnership. If the complainants' contention holds good, there was no property existing at the time of the forming of the partnership in 1883, that was not accounted for, except the good-will. I cannot conceive that the profits for thirty years can be attributed to this element alone and that they resulted from the employment thereof solely as the capital of the trust fund.

f: As to sundry matters.

1: George's share in the earnings of the New York firm was increased after John's death by the agreement between himself and his partner, Englar. Each partner drew forty per cent. up to John's death, and after John's death each drew fifty per cent. (Case, p. 140). If George were drawing profits under the legacy he would have drawn sixty per cent. after John's death, namely, his old share

of forty per cent, and twenty per cent, as the representative of John's interest, as with the assignment by Frederick in December, 1882, George represented the whole of John's interest. Counsel's calculation that if George drew fifty per cent. after John's death he could have drawn only thirty per cent. before, may be essential to his argument, but is clearly contradicted by the proofs.

2: When George issued his Declaration of Trust of May, 1883, he had not stripped himself of his legal ownership of John's legacy—he merely declared who were thereafter to be considered as the equitable owners thereof, and very properly spoke of it as property which he held and possessed particularly so as it was a specific legacy. When he entered into the new partnership with the Kremelberg children in June of that year he then stripped himself of the legal title to the legacy.

3: The mere possession of the Declaration of Trust by Taggart and the Kremelbergs may prove delivery, but it does not show that the trust has not been performed. If the Declaration had been surrendered as it should have been the question now before the court would not have arisen. Performance is not part of the creation of the trust, and may be established, as it was in this case, by subsequent facts.

4: Vice Chancellor Emery did not *indicate* an opinion in favor of the complainants. He merely suggested that there was a viewpoint which neither counsel had presented in argument. He opens his remarks with: "There is a suggestion in reference to the execution of the trust that has not been made by either side, and it *may* have a bearing in the case"; and he closes these remarks with "It occurred to me while the case was going on, as one

possible explanation, and I would be very glad to have the views of counsel, inasmuch as this view was not suggested on either side at the argument."

5: Vice Chancellor Stevens has not expressed two conflicting views of the case. In disposing of the motion to strike out the bill he was bound to take the allegations of the bill. When he disposed of the case on final hearing he passed on the proofs.

6: George did not undertake by the Declaration of Trust to continue the business. He could relieve himself of his trust at any time and was obligated to do so whenever so requested. This request could be made at any time by John's children, for the guardians of those under age had power to speak for their wards.

7: The letter announcing John's death is dated at Baltimore, and the form of signatures shows that J. Fred. Kremelberg spoke for the Baltimore firm, of which he was the surviving partner, that George Kremelberg and Adolph Englar (after whose names "New York" appears) spoke for the New York firm, of which they were surviving partners, and that Julius Willse (after whose name "Louisville" appears) spoke for the Louisville concern of which he was the surviving partner. This letter does not indicate that Fred had an interest in all three concerns.

The notice does not state that the partnership will be continued nor that George had entered the firm; nor does it imply that his title as partner had become perfected. It says "The business in Baltimore, New York and Louisville will be continued."

8: The notice of the admission of George as a member of the Baltimore firm does not impliedly

relate to any trust arrangement under John's will. It, too, is dated at Baltimore and informs that "Mr. J. George Kremelberg of New York has become a member of our firm." Its date is July, 1882, ten months before George's Declaration of Trust, and simply shows that there had been a new partnership contract.

9: George continued to have an interest in the Baltimore firm after transferring his legacy to John's children, because of the formation of the new partnership in which John's children, by express contract, became partners. He could do this without owning any of the capital of the firm (1 Lindley on Partnership No. 14). He gave it his services, which were not insignificant, even if he did not visit Baltimore very often. The testimony shows that he exercised constant supervision through continuous correspondence (Case, p. 125).

It is respectfully submitted that the record shows no error and that the decree of the Court of Chancery should be, in all respects, affirmed.

LOUIS HOOD,
Of Counsel.

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Bill of Complaint.

Filed February 7, 1914.

In Chancery of New Jersey.

HARRIET ELLA KREMELBERG, MARY AUGUSTA KREMELBERG, ELIZABETH VIRGINIA DE GRAAFF and ANNA MARIA GILL,

vs.

EDITH K. TOMPKINS and THE FIDELITY TRUST COMPANY OF NEWARK, NEW JERSEY, executors of the last will and testament of J. GEORGE KREMELBERG and EDITH K. TOMPKINS, in her own right and as devisee and legatee under the said will.

To the Honorable Edwin R. Walker, Chancellor:

The Bill of Complaint of Harriet Ella Kremelberg, Mary Augusta Kremelberg, Elizabeth Virginia de Graaff and Anna Maria Gill, respectfully shows:

1. That the complainants, Harriet Ella Kremelberg, Mary Augusta Kremelberg and Anna Maria Gill are all citizens and residents of the City of Baltimore, State of Maryland, and the complainant, Elizabeth Virginia de Graaff is a citizen and resident of the German Empire in Europe, and the said Fidelity Trust Company of Newark, New Jersey, defendant, is a corpora-

tion of the State of New Jersey, and a citizen thereof, and the said Edith K. Tompkins, defendant, is a citizen and resident of the State of New Jersey.

2. That the said Fidelity Trust Company of Newark, New Jersey, and the said Edith K. Tompkins are the executors under the last will and testament of J. George Kremelberg, who died in East Orange, Essex County, New Jersey, on May 14th, 1913, the said Edith K. Tompkins being at the date of said will, Edith K. Rhodes, and so called therein, and the said Edith K. Tompkins is also the residuary legatee and devisee under the said will of said J. George Kremelberg, her father, as will appear from a copy of said will hereto annexed marked "Exhibit A."

3. That the said complainants, Harriet Ella Kremelberg, Mary Augusta Kremelberg, Elizabeth Virginia de Graaff and Anna Maria Gill are the children and the only surviving children of John D. Kremelberg, late of Baltimore City, Maryland, brother of said J. George Kremelberg. Said John D. Kremelberg died in said city on May 24th, 1882, leaving a last will and testament, which was duly probated on June 6th, 1882, and duly recorded in the office of the Register of Wills of Baltimore City, in Liber No. 49, folio 482, &c., a copy of said will is hereto annexed, marked "Exhibit B."

4. That by the said will of said John D. Kremelberg, he appointed his brother, J. George Kremelberg, and his son, J. Frederick Kremelberg, and his attorney, Samuel H. Tagart, Esq., executors; but after the probate of said will, to wit, on June 7th, 1882, the said J. George Krem-

elberg duly renounced, and on July 9th, 1882, the said J. Frederick Kremelberg also renounced, thus leaving the said Samuel H. Tagart, who qualified and administered the said estate.

5 That at the time of the death of the said John D. Kremelberg, he left surviving him four daughters, the said Harriet Ella, Elizabeth Virginia, Anna Maria and Mary Augusta, and two sons, J. Frederick Kremelberg and John Diedrich Kremelberg. That shortly after his death, the said daughters went abroad and while abroad the said Elizabeth Virginia married Henri de Graaff in the year 1884, and has ever since resided abroad, and subsequently, to wit, in the year 1897, the said Anna Maria married John Gill, Jr., in Baltimore City, Maryland, and has ever since resided therein. That the said John Diedrich Kremelberg died in the year 1891, intestate, unmarried and without issue, and the said J. Frederick Kremelberg died in the year 1892, intestate, unmarried and without issue.

6. That prior to and at the time of making his will, to wit, September 18th, 1874, the said John D. Kremelberg was a merchant connected with three firms engaged extensively in exporting tobacco, namely, Kremelberg, Schaefer & Company of New Orleans; J. D. Kremelberg & Company of Baltimore, and Kremelberg & Company of New York. That in addition to the moneys due said John D. Kremelberg from the firms of Kremelberg & Company and J. D. Kremelberg & Company, as hereinbelow stated, the said John D. Kremelberg had at the time of making the said will and at the time of his death, an one-third interest as partner in the firm of Kremelberg & Company of New York (the other two partners being J. George Kremel-

berg and Adolph Englar); that the said John D. Kremelberg was the sole proprietor of J. D. Kremelberg & Company of Baltimore, with the exception of a small interest in his son J. Frederick Kremelberg, as to the amount of said interest these complainants are not definitely informed. That the said J. George Kremelberg had no interest in the firm of J. D. Kremelberg & Company of Baltimore prior to the death of John D. Kremelberg. These complainants have no knowledge as to the interest of the said John D. Kremelberg in the firm of Kremelberg, Schaefer & Company, but upon information they say to the best of their knowledge that the said firm of Kremelberg, Schaefer & Company of New Orleans had been wound up, or practically so, prior to the death of said John D. Kremelberg and did not continue in business subsequently to his death. That at the time of making said will all of said firms were in a prosperous condition, and the said John D. Kremelberg was also possessed of considerable estate outside of his interests in said firms, but subsequently to the making of said will and prior to the death of the said John D. Kremelberg, the New Orleans house of Kremelberg, Schaefer & Company suffered heavy losses and said losses very materially reduced the resources of the said firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, especially the firm of Kremelberg & Company of New York, and to strengthen said firms, the said John D. Kremelberg loaned said firms large amounts of money, or allowed his profits to remain as loans to said firm; and the said firm of J. D. Kremelberg & Company of Baltimore also loaned the said Kremelberg & Com-

pany of New York large sums of money, so that at the time of the death of the said John D. Kremelberg, the said firm of Kremelberg & Company of New York was indebted to the said John D. Kremelberg in the sum of $19,577.91, and was also indebted to the firm of J. D. Kremelberg & Company of Baltimore in a large amount and the firm of J. D. Kremelberg & Company of Baltimore was also indebted to the said John D. Kremelberg in the sum of $31,986.74; and at that time the said J. George Kremelberg had overdrawn his share of the profits of the firm of Kremelberg & Company of New York and was indebted to the said firm in a large mount, to wit, about $7,500.00. And the said J. George Kremelberg continued to be indebted to said firm of Kremelberg & Company of New York for many years after the death of John D. Kremelberg, his indebtedness to said firm at the end of the years hereinbelow stated being as follows:

Due by J. George Kremelberg to Kremelberg & Co.—

Dec. 31, 1884	$7,585.06
Jan. 1, 1886	5,610.86
Jan. 1, 1887	5,312.50
Jan. 1, 1889	9,899.97
Jan. 1, 1890	6,360.98
Jan. 1, 1891	7,179.05
Jan. 1, 1893	6,942.70
Jan. 1, 1894	4,968.97

On December 31st, 1887, there was a balance in favor of J. George Kremelberg of $2,976.45; on December 31st, 1894, $1,843.27; December 31st, 1895, $7,325.23; December 31st, 1896, $13,041.18.

For the same period there was an indebtedness due by Kremelberg & Company of New York to the children of John D. Kremelberg, said indebtedness being carried in the statements in the name of J. D. Kremelberg's Estate, as follows:

Dec. 31, 1884	$20,263.14
Jan. 1, 1886	19,773.69
Jan. 1, 1887	19,773.69
Dec. 31, 1887	19,773.69

And a balance on January 1st, 1889, and each year thereafter of $16,478.08.

That the slight difference between the amount as shown by said statements and the amounts shown in the administration account of Samuel H. Tagart, executor under the will of John D. Kremelberg hereinafter referred to, consisted probably of interest accruing between the different dates and the reduction of said amount on and after January 1st, 1889, to $16,478.08, is due to the fact that John Diedrich Kremelberg was paid his portion of the said indebtedness in the year 1888. Said amount of $16,478.08 was continued as a loan by complainants to Kremelberg & Company until after the death of J. George Kremelberg.

For the same period the firm of Kremelberg & Company of New York was indebted to J. D. Kremelberg & Company of Baltimore at the end of the years following as follows:

Dec. 31, 1884	$27,301.58
Jan. 1, 1886	29,644.82
Jan. 1, 1887	19,978.09
Jan. 1, 1889	28,240.15
Jan. 1, 1890	10,320.41
Jan. 1, 1891	24,530.66

Jan. 1, 1893	28,423.12
Jan. 1, 1894	15,515.03
Dec. 31, 1894	22,091.75
Jan. 1, 1895	23,407.01
Jan. 1, 1896	10,947.01

The above figures are taken from yearly statements rendered by Kremelberg & Company of New York to Harriet Ella Kremelberg, said statements having been rendered because of the fact that the said Harriet Ella Kremelberg and her sisters were loaning a large amount of money to said firm during said years as hereinafter specified. Said statements purported to be correct statements of the affairs of Kremelberg & Company, and your complainants upon information and belief aver that the books of Kremelberg & Company of New York for the same period will show the same figures.

That the said firm of Kremelberg & Company of New York would have been unable to continue in business after the death of John D. Kremelberg if said firm had been compelled to pay the amount due John D. Kremelberg and the amount due to J. D. Kremelberg & Company of Baltimore; and it was arranged by the said J. George Kremelberg, who had succeeded under the will of John D. Kremelberg and the assignment from said J. Frederick Kremelberg hereinafter set out to all the interest of John D. Kremelberg in both of said firms, that the children of John D. Kremelberg should continue to loan to said firm of Kremelberg & Company of New York the said sum of about $19,000.00, due by said firm to John D. Kremelberg, and that the said indebtedness from Kremelberg & Company of New York to J. D. Kremelberg & Company of Baltimore

should continue as a loan from the latter to the former, and it was also arranged by J. George Kremelberg as hereinafter specified that the amount due John D. Kremelberg, at the time of his death by the firm of J. D. Kremelberg & Company of Baltimore should also be left with said firm, and by this means only was said firm of J. D. Kremelberg & Company able to continue the accommodation to Kremelberg & Company of New York.

7. That the said John D. Kremelberg by his will, bequeathed all his interest in all three of said firms, to wit, Kremelberg, Schaefer & Company of New Orleans, Kremelberg & Company of New York, and J. D. Kremelberg & Company of Baltimore, to his brother J. George Kremelberg and his son J. Frederick Kremelberg equally to be divided between them, and after the death of the said John D. Kremelberg, to wit, on December 4th, 1882, the said J. Frederick Kremelberg assigned his one-half of his father's interest in said three firms, so acquired under his father's will, to J. George Kremelberg as hereinafter more particularly set out; and the said interest of said John D. Kremelberg in said three firms was not accounted for or distributed in the settlement of the estate of said John D. Kremelberg, but the first administration account of Samuel H. Tagart, executor under the will of John D. Kremelberg, passed on May 4th, 1883, the said Samuel H. Tagart charged himself with the amount due by the firm of Kremelberg & Company of New York to the testator, to wit, $19,577.91, and also with the amount due by J. D. Kremelberg & Company of Baltimore to the testator, to wit, $31,980.74, as though the same had been paid; and in his

second administration account passed on June 20th, 1883, he distributed the entire estate with which he had charged himself, including the said two amounts of indebtedness from said two firms, to Elizabeth Virginia Kremelberg, J. George Kremelberg, guardian of John Diedrich Kremelberg, infant; Harriet Ella Kremelberg, Harriet Ella Kremelberg, guardian of Anna Maria Kremelberg, infant; Harriet Ella Kremelberg, guardian of Mary Augusta Kremelberg, infant, and Elizabeth Virginia Kremelberg, trustee for J. Frederick Kremelberg, one sixth to each; and on the same day releases were given by each of said distributees for the amounts so distributed; but your complainants say that the said sum of $19,577.91, due to the testator from Kremelberg & Company of New York, and of $31,980.74 due to the testator from J. D. Kremelberg & Company of Baltimore, were not in fact paid to said executor, but by arrangement of said J. George Kremelberg acquiesced in by said Elizabeth Virginia Kremelberg and Harriet Ella Kremelberg, who were of age, and the said J. George Kremelberg, as guardian for one of the infants, and Harriet Ella Kremelberg as guardian for the other two, and Elizabeth Virginia Kremelberg, as trustee for J. Frederick Kremelberg the said sum of $19,577.91, remained as a loan to the firm of Kremelberg & Company of New York and was carried on their books as an indebtedness to the estate of the said John D. Kremelberg, and interest thereon was subsequently paid from year to year to his children, until 1888. After 1888, the said loan was reduced by the payment to J. Diedrich Kremelberg of his share, and as reduced, remained as a loan until after the death of J.

George Kremelberg. And the said sum of $31,-980.74 remained with the firm of J. D. Kremelberg & Company of Baltimore and with other monies added by Elizabeth Virginia Kremelberg and Harriet Ella Kremelberg, was considered as capital contributed by the children of John D. Kremelberg hereinbelow mentioned under an arrangement made by J. George Kremelberg whereby the said children were to receive interest on said sum and share in the profits of the said Baltimore firm as hereinbelow more particularly set out. All claims of the children of John D. Kremelberg in reference to said sums of money so due by the firm of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, have been finally settled or adjusted, but no account was ever rendered or settlement ever made by the said J. George Kremelberg of the partnership interest of John D. Kremelberg in said two firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, which the said J. George Kremelberg acquired under the will of J. D. Kremelberg, his brother, and under the assignment from J. Frederick Kremelberg hereinafter mentioned.

And these complainants further show that the declarations of trust signed by the said J. George Kremelberg, as hereinbelow set out, specifically show on their faces that they deal with the interest in the firms, devised by the will of John D. Kremelberg, and not with an indebtedness due by said firms to said John D. Kremelberg; and therefore the settlement of said indebtedness in no wise affects the declarations of trust. They further call attention to the fact that the first declaration of trust herein-

below set out was executed on the same day of the assignment from J. Frederick Kremelberg to J. George Kremelberg of the interest in said firms acquired by J. Frederick Kremelberg under his father's will, and the second declaration of trust of the interest, which J. George Kremelberg had acquired in said firms directly under the will of John D. Kremelberg, was witnessed by Samuel H. Tagart and executed on the same day on which Samuel H. Tagart, executor, charged himself with the receipt of said two sums so owing by said two firms respectively, namely, May 4th, 1883.

Copies of said two accounts of Samuel H. Tagart, executor of J. D. Kremelberg, and of one of the releases to said Samuel H. Tagart, executor, all of said releases being identical except the name of the releasor, are herewith filed marked "Exhibit C."

8. That on December 4th, 1882, the said J. Frederick Kremelberg, son of John D. Kremelberg, being then in bad health and about to leave this country, made an assignment by deed of all the interest in the firm of J. D. Kremelberg & Company of Baltimore, Kremelberg & Company of New York and Kremelberg, Schaefer & Company of New Orleans, which he had acquired under the will of his father, John D. Kremelberg; to wit, one half of his father's interest in each and all of said firms; to his uncle, J. George Kremelberg, called in said deed, George Kremelberg. Said deed was duly recorded among the Land Records of Baltimore City in Liber R. T. A. No. 951, folio 508, etc. A copy of said deed is herewith filed marked "Exhibit D."

That on the same date, to wit, December 4th, 1882, the said J Frederick Kremelberg made an assignment or deed of trust to his sister, Elizabeth Virginia Kremelberg, of all of his interest in the estate of his father, John D. Kremelberg, in trust for himself and the other children of said John D. Kremelberg; which deed was duly recorded among said Land Records in Liber R. T. A. No. 951, folio 507, etc., a copy of which is herewith filed marked "Exhibit E."

That in January, 1883, the said J. Frederick Kremelberg went abroad and never returned to this country and died in Australia in the year 1892, intestate, unmarried and without issue.

9. Your complainants have recently discovered that on December 4th, 1882, the date of the assignment by J. Frederick Kremelberg to J. George Kremelberg above mentioned, the said J. George Kremelberg signed a declaration herein set out, that he held all the interest so assigned to him, in trust for the children of John D. Kremelberg, and five months later, to wit, May 4th, 1883, J. George Kremelberg signed another declaration, that he held all the interest in said three firms, which he had acquired under the will of John D. Kremelberg, in trust for the latter's children. That at the times of the execution of said two declarations of trust, two of these complainants were infants, and neither of them had any knowledge of said declarations of trust or either of them and neither of these complainants ever had any knowledge of the existence and effect of the said declarations of trust until in June, 1913, after the death of J. George Kremelberg, when the complainant, Harriet Ella Kremelberg, brought these declarations of trust to the at-

tention of her brother-in-law, John Gill, Jr., with the result that counsel was consulted in regard to them. That the said Harriet Ella Kremelberg found said declarations of trust among other papers in a safe deposit box in which Charles Martin, during his life time, had kept securities and other papers relating to the estate of John D. Kremelberg, which papers these complainants, upon information and belief, aver had been delivered to the said Charles Martin by Samuel H. Tagart, Esquire, executor of the last will and testament of John D. Kremelberg. That the said Samuel H. Tagart died many years ago, to wit, March 19th, 1892, and after his death, the said Charles Martin, who was then a member and the active head of the firm of J. D. Kremelberg & Company, acted as the business agent of the complainants and had charge of the papers of the estate of their father until the death of Martin in 1903. After his death the said Harriet Ella Kremelberg saw these declarations of trust among the papers found in said box, but did not understand them or appreciate their importance, or bring them to the attention of either of her sisters, or her brother-in-law, John Gill, Jr., until in June, 1913, as above stated. That the said declarations of trusts were each signed by the said J. George Kremelberg, the first being signed simply "Geo. Kremelberg" and were in words and form as follows:

KNOW ALL MEN BY THESE PRESENTS, that, whereas, by deed of even date herewith, perfected before the execution hereof, John Frederick Kremelberg conveyed and assigned to me, all the interest bequeathed to him in and by the will of his father, the late John D. Kremelberg,

in and to the business houses of Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms.

Now I hereby declare that the said assignment and conveyance to me was made, and that I now hold the said property in trust for the said John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg and Mary Augusta Kremelberg in equal proportions share and share alike.

Witness my hand and seal this Fourth day of December, one thousand eight hundred and eighty-two.

GEORGE KREMELBERG.

Test: [L. S.]

JOSHUA M. MYERS.

STATE OF MARYLAND,
CITY OF BALTIMORE, *to wit*:

I hereby certify that on this Fourth day of December, one thousand eight hundred and eighty-two, before the subscriber a Justice of the Peace of the State of Maryland in and for the city of Baltimore, personally appeared George Kremelberg and acknowledged the aforegoing deed or instrument of writing to be his act.

JOSHUA M. MYERS,
(*J. P.*)

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss:*

On this sixteenth day of December, A. D. 1882, before me personally came George Kremelberg to me personally known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

JNO. A. HILLERY,
[NOTARY PUBLIC SEAL] *Notary Public,*
New York City and County.

KNOW ALL MEN BY THESE PRESENTS, that, Whereas, John D. Kremelberg, late of the City of Baltimore, deceased, in and by his last will and testament dated the 18th day of September, 1874, among other things devised and bequeathed as follows: "I give, devise and bequeath to my brother, George, and my son, J. Frederick, in equal proportions, all my interest in the following business houses, namely: Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms."

Now, for divers good causes and valuable consideration me thereunto moving I do hereby declare that I hold and possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will. IN TRUST for John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg and Mary Augusta Kremelberg in equal proportions, share and share alike, and agree with them to grant and

assign the same to them, whenever requested so to do, I paying to Messrs. Brancker and Charles Martin, each fifteen per cent. of the profits of said half part of the property devised and bequeathed to me as aforesaid; and holding the other twenty per cent. thereof to my own use.

Baltimore, May 4th, 1883.

J. GEO. KREMELBERG.

Test:

S. H. TAGART.

The original Declarations of Trust will be produced when requisite.

10. Your complainants further show that at the times when the said J. George Kremelberg executed said declarations of trust of December 4th, 1882 and May 4th, 1883, he was not only a trustee for the children of his brother, John D. Kremelberg as acknowledged in said declarations of trust, but he was also the guardian of one of said children, viz: John Diedrich Kremelberg, duly appointed by the Orphans' Court of Baltimore City on the 24th day of September, 1882, and said J. George Kremelberg also occupied a position of actual confidence and trust, toward the children of his said brother, John D. Kremelberg, who had the most entire and implicit confidence in, and affection for him, and trusted him absolutely as to every arrangement that was made in reference to the affairs both of John D. Kremelberg & Company of Baltimore and of Kremelberg & Company of New York, and all the said arrangement with reference to said two firms were in effect made by the said J. George Kremelberg while he occupied the fiduciary relation of trustee as to all, guardian as to one, and of being in a position

where implicit trust and confidence were actually reposed in him.

11. That by the said declarations of trust of December 4th, 1882, the said J. George Kremelberg acknowledged that he held all the interest in the firm of Kremelberg & Company of New York; J. D. Kremelberg & Company of Baltimore, and Kremelberg, Schaefer & Company of New Orleans, which had been assigned to him by J. Frederick Kremelberg, IN TRUST for the children of John D. Kremelberg in equal proportions share and share alike. Said interest so assigned to said J. George Kremelberg by said J. Frederick Kremelberg and so declared to be held in trust by said declaration of trust was one-half of the entire interest of John D. Kremelberg in the said three firms above mentioned at the time of his death.

That by the said second declaration of trust, to wit, on May 4th, 1883, the said J. George Kremelberg acknowledged that he held in trust for the children of his brother, John D. Kremelberg, the interest which he acquired in the said three firms under the will of the said John D. Kremelberg, which was the other half of the interest of the said John D. Kremelberg in said three firms. So that, by the two declarations of trust, the said J. George Kremelberg acknowledged that he held the entire interest in said three firms, which had formerly belonged to said John D. Kremelberg, in trust for the children of John D. Kremelberg; and in the latter declaration, there is a specific provision that the said J. George Kremelberg would grant and assign said one-half of the interest of said John D. Kremelberg in said three firms, so acquired by him under the will of John D. Kremelberg, to the children of John D. Krem-

elberg whenever requested so to do; and a further provision: "I paying Messrs. Brancker and Charles Martin each fifteen per cent. of the profits of said one-half part of the property devised and bequeathed to me as aforesaid and holding the other 20% thereof to my own use."

These complainants aver that the meaning of this latter clause is, that, until he was requested to assign said interest to said children of said John D. Kremelberg, one-half the profits therefrom were to be divided in the proportions mentioned between Messrs. Brancker and Martin and the said J. George Kremelberg.

Your complainants therefore aver that the effect of said two declarations of trust is to entitle these complainants to demand from the executors and legatee of said J. George Kremelberg the transfer of the entire interest of John D. Kremelberg at the time of his death in the three firms above mentioned, together with an accounting of the entire profits from one-half of said interest and of one-half of the profits from the other half of said interest. Your complainants show that they never made any request or demand upon the said J. George Kremelberg during his life time because they never knew of the existence and effect of the said declarations of trust, and never knew of their rights in the premises; and they further show that during all the years between the executions of said declarations of trust and the death of said J. George Kremelberg, these complainants were on intimate terms with him and that he never advised them of their rights in the premises. So soon as they became aware of their rights in the matter they notified the defendant, Edith K. Tompkins, of the existence of said declarations of trusts and furnished her with

copies thereof and formally made request upon her for the adjustment of the matter in accordance with said declarations of trusts. They subsequently made formal demand upon the defendants for a transfer and accounting in accordance with said declarations of trusts, but said executors declined to make an adjustment or render an account, and these complainants having no other adequate remedy, therefore, appeal to this Honorable Court wherein such matters of trust and confidence are properly enforced and administered.

12. These complainants do not know why the said J. George Kremelberg never apprised them of their rights in the matter and never transferred to them the interest which he had so acquired and which he so held in trust for them, but they show to your Honor as a possible explanation of it that for many years after the death of the said John D. Kremelberg, the said J. George Kremelberg was indebted to the firm of Kremelberg & Company of New York, and was financially unable to make the assignment of the interest which he had acquired from and under the will of John D. Kremelberg, and under the assignment from J. Frederick Kremelberg; and they respectfully suggest that it was the knowledge of his inability to transfer said interest, if it had been requested which led him to say nothing about the matter during these years.

Subsequently the said firms became more prosperous and made large profits so that upon the death of the said J. George Kremelberg, which occurred on May 14th, 1913, the account of the said J. George Kremelberg with said firm of Kremelberg & Company of New York showed a

balance of about $176,000 in his favor. And his account with the firm of J. D. Kremelberg and Company of Baltimore also showed a large balance in his favor; which balances are made up of profits accruing from the interest which J. George Kremelberg acquired in the said firm of J. D. Kremelberg & Company of Baltimore and in the firm of Kremelberg & Company of New York, under the will of J. D. Kremelberg and the assignment from J. Frederick Kremelberg, above mentioned, as well as from the prior interest which J. George Kremelberg had in said firm of Kremelberg & Company of New York. But whether said balances, so due from said two firms, are more or less than the value of the interest which the said J. George Kremelberg acquired under said will of J. D. Kremelberg and said assignment from J. Frederick Kremelberg and the profits accruing from said interests for which account should be rendered under said declarations of trust, can only be ascertained by an accounting of said entire profits of said two firms and of the amounts withdrawn from said firms, from time to time, by said J. George Kremelberg, of which amounts, these complainants have no knowledge, and the defendants have knowledge.

13. Your orators upon information and belief aver that, at the time of the death of the said John D. Kremelberg, the firm of J. D. Kremelberg & Company of Baltimore was composed of John D. Kremelberg and his son, J. Frederick Kremelberg, who had a small interest, the amount of which they do not know; and they say, at that time, the said J. George Kremelberg had no interest in the firm of John D. Kremelberg & Company of Baltimore, and that all the interest that he ever had in said

firm was acquired under the will of John D. Kremelberg and under the assignment from J. Frederick Kremelberg, above mentioned. That, after the death of the said John D. Kremelberg, the said J. George Kremelberg assumed the direction of the business of the said firm of John D. Kremelberg & Company of Baltimore and associated with himself, as your orators are informed and believed, Charles A. Martin and Brancker, but the business was actually conducted by said Martin as said J. George Kremelberg lived in New York or New Jersey, and rarely visited Baltimore. Also, as they are informed, although they have no very distinct knowledge on this point because of the fact that the whole matter was left in the hands of the said J. George Kremelberg to arrange, the money which the said John D. Kremelberg & Company owed to said John D. Kremelberg, at the time of his death, to wit, $31,986.74, together with other funds contributed by the said Harriet Ella Kremelberg and Elizabeth Virginia Kremelberg (now Mrs. de Graaff), amounting in all to about $46,000.00, was left with said firm for the use of which, the children of John D. Kremelberg were given one-half the profits plus six per cent. on the said sum. That subsequently on February 2d, 1885, the said Brancker retired from said partnership and the same was continued by the said J. George Kremelberg and the said Charles Martin, the latter actually conducting the business, and the children of John D. Kremelberg; the latter continuing to receive six per cent. on said sum and one-half the profits for their said capital. That thereafter, on January 1st, 1889, an agreement was made extending the agreement of February 2d, 1885, with certain modifications except as to

John Diedrich Kremelberg, who withdrew. That subsequently this arrangement was again changed, the said J. Frederick Kremelberg and John Diedrich Kremelberg having in the meantime died, the surviving sisters, Mrs. de Graaff, Miss Harriet Ella Kremelberg, Miss Anna Maria Kremelberg and Miss Mary Augusta Kremelberg withdrew part of their money leaving $5,000.00 each (total $20,000.00) in the firm under an agreement whereby they were to receive six per cent. on the said $20,000.00, and were also to receive six per cent. on said sum in lieu of any interest in the profits of the firm, and this arrangement continued until the death of J. George Kremelberg. That the said J. George Kremelberg subsequently associated with himself G. Louis Hester, who continued until his death in 1908. And these complainants say that what they received from the firm of John D. Kremelberg & Company of Baltimore during the years since 1883, was in return for the cash capital invested by them in said firm, and that they never received any return or any profits on account of the interest of the said J. George Kremelberg in said firm which he had acquired as aforesaid under the will of John D. Kremelberg and under the assignment from J. Frederick Kremelberg; and they say they never made any demand for any profits or accounting thereof because they had no knowledge as above mentioned, until after the death of the said J. George Kremelberg that he had signed the declarations of trust hereinabove set forth.

Complainants further show that while J. George Kremelberg assumed direction of J. D. Kremelberg & Company of Baltimore, after the death of John D. Kremelberg, and continued a

member of said firm from that time to his death and arranged the various changes in the partnership; the business was practically conducted by Martin, and afterwards by Hester; and said J. George Kremelberg was rarely in Baltimore and gave practically no time or service to said business.

14. These complainants, upon information and belief, aver and charge that the defendants have in their possession or under their control, the successive partnership agreements under which the business of J. D. Kremelberg & Company of Baltimore was conducted from the time of the death of John D. Kremelberg to the time of the death of J. George Kremelberg; also the partnership agreement existing between the members of the firm of Kremelberg & Company of New York at the time of the death of John D. Kremelberg, and also the successive partnership agreements under which the business of Kremelberg & Company was conducted from the time of the death of John D. Kremelberg to the time of the death of J. George Kremelberg; and that the defendants have also in their possession, or under their control, the books, papers and accounts which would show the present value of the interest, in the firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, acquired by the said J. George Kremelberg under the assignment from J. Frederick Kremelberg above mentioned, and also the profits which have been received by said J. George Kremelberg from said interest in said two firms, and which would also show the present value of the interest in the firm of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore acquired by the said J. George ——

under the will of John D. Kremelberg, and the profits which the said J. George Kremelberg had received from the said interest so acquired in said two firms, and these complainants have not in their possession or under their control any of said agreements, books, papers or accounts.

WHEREFORE THESE COMPLAINANTS PRAY:

1. That the defendants, Edith K. Tompkins and the Fidelity Trust Company of Newark, New Jersey, executors of the last will and testament of J. George Kremelberg, and the same Edith K. Tompkins in her own right and as devisee and legatee under said will, may be required to answer this bill, but not under oath, any oath to said answer or answers being hereby expressly waived; and that they may be required to discover all partnership agreements, books, papers and accounts in their possession or under their control, showing who were the members of the firms of Kremelberg & Company of New York at the time of the death of John D. Kremelberg and the successive changes in that firm from the time of the death of John D. Kremelberg to the time of the death of J. George Kremelberg; also all partnership agreements showing who were the members of the firm, and the successive changes in the firm of J. D. Kremelberg & Company of Baltimore, from the time of the death of the said John D. Kremelberg to the time of the death of the said J. George Kremelberg; and also all books, papers and accounts showing the profits received by J. George Kremelberg from the time of the death of the said John D. Kremelberg to the time of the death of J. George Kremelberg,

and also the profits received by the defendants since the death of the said J. George Kremelberg, from the interest in the firms of J. D. Kremelberg & Company of Baltimore and Kremelberg & Company of New York acquired by the said J. George Kremelberg under the assignment from J. Frederick Kremelberg; and also all the profits so received by the said J. George Kremelberg, and by said defendants since his death, from the interest in said two firms acquired by the said J. Keorge Kremelberg under the will of John D. Kremelberg; and that the defendants may be required to render and file with their answer an account showing the profits so received by the said J. George Kremelberg, and by the defendants, from said two firms; and also showing the present value of the said two interests so acquired by said J. George Kremelberg under the will of John D. Kremelberg and the deed from J. Frederick Kremelberg, in said two firms.

2. That the defendants may be required in accordance with the declaration of trust signed by J. George Kremelberg on December 4th, 1882, to account for and pay over to these complainants the present value of the interest, in said two firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, acquired by said J. George Kremelberg under the assignment from J. Frederick Kremelberg of December 4th, 1882, together with all profits received by said J. George Kremelberg and by the defendants since his death from said interest in said two firms so acquired.

3. That the said defendants may be required in accordance with the declaration of trust signed by J. George Kremelberg on May 4th, 1883, to account for and pay over to these complainants the present value of the interest acquired by the said J. George Kremelberg under the will of John D. Kremelberg in the two firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, and may be required to account for and pay over one-half the profits received by said J. George Kremelberg and by these defendants since his death from said interest in said two firms so acquired by him under the will of John D. Kremelberg.

4. That the said two declarations of trust of December 4th, 1882 and May 4th, 1883, made by said J. George Kremelberg may be enforced and the defendants required to carry out and perform the same.

5. And for such other and further relief as their case may require and to this Honorable Court may seem just.

6. And that the writ of subpoena may issue directed to the defendants, the Fidelity Trust Company of Newark, New Jersey, a corporation of the State of New Jersey, having its principal office in Newark, New Jersey, executor, and Edith K. Tompkins, executrix of the last will and testament of J. George Kremelberg, and also to the said Edith K. Tompkins in her own right, both residents of Essex County, New Jersey, commanding them and each of them to appear in this Honorable Court on some certain day to be therein named, to answer this bill, but not under oath, and oath being expressly

waived, and to abide by and perform whatsoever may be decreed in the premises.

And they will every pray, etc.

CHAUNCEY G. PARKER,
Solicitor of and of Counsel with the Complainants.

S. S. FIELDS,
Of Counsel Complainants.

Exhibit A.

WILL OF JOHN GEORGE KREMELBERG.

I, John George Kremelberg, now residing at East Orange, in the County of Essex, and State of New Jersey, being of sound mind and memory, do make, publish and declare this to be my last Will and Testament, hereby revoking any and all other wills and testaments by me at any time heretofore made.

First. I direct that all my just debts and funeral expenses be paid as soon after my death as may be practicable.

Second. I give and bequeath to my niece, Mrs. E. Virginia de Graaff of Germany, the sum of Five thousand dollars ($5,000.00).

Third. I give and bequeath to my niece H. Ella Kremelberg, of the city of Baltimore, Maryland, the sum of Five thousand dollars ($5,000.00).

Fourth. I give and bequeath to my niece, Mrs. Anna M. Gill, of the city of Baltimore, Maryland, the sum of Five thousand dollars ($5,000.00).

Fifth. I give and bequeath to my niece, Mary A. Kremelberg, of the city of Baltimore, Mary-

land, the sum of Five thousand dollars ($5,000.00).

Sixth. I give and bequeath to The Orange Orphan Society of East Orange, State of New Jersey, the sum of One thousand dollars ($1,000.00).

Seventh. I give and bequeath to William Thomas, now in my service, the sum of Two hundred and fifty dollars ($250.00) upon condition that he shall be in my employ at the time of my death.

Eighth. All the rest, residue and remainder of my estate, both real and personal, I give, devise and bequeath to my dear daughter and only child, Mrs. Edith K. Rhodes, and I direct that out of said residuary estate there be set apart the sum of One hundred thousand dollars ($100,000) which shall be held by the Fidelity Trust Company, of the city of Newark, in the State of New Jersey, in trust, and for the following uses and purposes; that is to say; to invest the same, and keep the same invested in such property and securities as by law trustees are authorized to invest in, and to pay the rents, interests, income and dividends therefrom to my said daughter, Mrs. Edith K. Rhodes, for and during the term of her natural life, and upon the death of my said daughter, the said sum of One hundred thousand dollars ($100,000) shall be paid over and distributed to such person or persons as my said daughter shall, by her last will and testament, designate and appoint to take and receive the same.

Ninth. I nominate, constitute and appoint my said daughter Edith K. Rhodes and the Fidelity Trust Company, of the City of New-

ark, in the State of New Jersey, to be executors of this my Last Will and Testament, and direct that they be permitted to qualify and act as such executors without being required to furnish bonds or other security.

In witness whereof, I have hereunto subscribed my name and affixed my seal, this eighteenth day of August, in the year One thousand nine hundred and ten.

John George Kremelberg (L. S.)

Signed, sealed, acknowledged, published and declared by John George Kremelberg, the above named testator, to be his Last Will and Testament, in the presence of the undersigned, who at the request of said testator, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses this Eighteenth day of August, A. D. 1910.

Ernst Gustav Hillen, 28 Fort Place, St. George, N. Y.

Otto Brassler, 1072 Park Ave., New York.

Geo. H. Corey, 256 West 136 Street, New York City.

Date of Affidavit—Dec. 19th, 1913, Isaac Shoenthal, Surrogate of the Co. of Essex, and Clerk of the Surrogate's Court of said Co., New Jersey.

Exhibit B.

THE LAST WILL AND TESTAMENT OF JOHN D. KREMELBERG, OF THE CITY OF BALTIMORE, IN THE STATE OF MARYLAND.

Excepting the interest in my real and personal estate to which my wife, Gertrude J.

Kremelberg, may by law be entitled at the time of my death, I give, devise and bequeath all my estate and property, real and personal, after the payment of my just debts and funeral expenses, as follows:

I give and bequeath to my brother George, six oil paintings to be selected by him from my collection.

I give, devise and bequeath to my brother George and my son, J. Frederick, in equal proportions, all my interest in the following business houses, namely: Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms.

All the rest and residue of my property of every kind, real, personal and mixed, I direct shall be sold by my executors hereinafter named or the survivors or survivor of them, either at public or private sale, and upon such terms as to them or him may seem fit, as soon after my death as in their or his judgment may be advisable, and the proceeds arising from such sale or sales I give, devise and bequeath to my children, J. Frederick, Elizabeth Virginia, Harriet Ella, John Diedrich, Anna Maria and Mary Augusta, in equal proportions, share and share alike. I hereby fully empower my said executors and the survivors and survivor of them, to execute all necessary deeds of the property sold by them hereunder, and all deeds that may be necessary to carry out any contract made, or that may hereafter be made by me.

It is my will, and I hereby direct, that all my just debts and funeral expenses, and the entire interest to which my wife may be en-

titled in my estate, real and personal, shall be paid out of the proceeds of the rest and residue of my estate above mentioned, so that my interest in the business houses and firms above mentioned and devised to my brother George and my son J. Frederick, shall remain wholly undisturbed, and be in no way interfered with.

My son John Diedrich, I recommend most earnestly to the care of his brother Frederick and his uncle George, and I desire that nothing shall be neglected necessary to his proper and thorough education; and I recommend them, if, upon his arrival at age, he shall show aptitude and taste for mercantile life, to afford him as soon and as fully as possible, all the advantages which I, as his father, would wish for and extend to him.

I appoint my friend Samuel H. Tagart and my brother George, guardians of all my infant children.

I constitute and appoint my said friend, Samuel H. Tagart my brother George and my son Frederick, executors of this my last will and testament.

In testimony whereof I hereunto subscribed my name and affixed my seal this eighteenth day of September in the year of our Lord one thousand eight hundred and seventy-four.

JOHN D. KREMELBERG (Seal).

Signed, sealed, published and declared by John D. Kremelberg the above named testator as and for his last will and testament, in the presence of us, who, at his request, in his presence, and

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

J. S. Brancker,
Th. V. Dartker,
Chas. A. Martin,
C. Carroll Poultney.

Affidavits made June 6th, 1882.

Date of Renunciation, June 7th, 1882.

Date of Renunciation, June 9th, 1882.

Affidavit made Dec. 15th, 1913,
Howard W. Jackson,
Register of Wills,
Baltimore, Md.

Affidavit made Dec. 15th, 1913,
Myer J. Block,
Chief Judge of the Orphans' Court,
Baltimore, Md.

Exhibit C.

Baltimore City Set

THE FIRST ACCOUNT OF SAMUEL H. TAGART, EXECUTOR OF JOHN D. KREMELBERG, LATE OF THE CITY OF BALTIMORE.

This Accountant charges himself with the Inventory of the personal estate of said deceased returned on the 17th day of July, 1882,		$ 16,773.55
And with the Inventory of the Personal Estate of said deceased in Anne Arundel Co., returned on the 17th day of July, 1882,		3,572.92
And with the proceeds of sale of Real Estate in Hampden	$ 500.00	
And with Dividend on Bank Stock	180.00	
" " Life Insurance	10,000.00	

Bill of Complaint—Exhibit C.

And with Interest on City Stock (Loan)		258.33	
" " Rent Ft. Smith property		86.00	
" " Dividend Despard Coal Co.		375.00	
" " Rent of Stable		125.00	
" " Proceeds of Sale Snuff Mill property		2,233.73	
" " Proceeds of Sale House northwest corner Madison and Charles Sts.		50,000.00	
" " Rebate on Insurance on Furniture		81.42	
" " Insurance on dwelling		360.00	
" " Dividend on Concordia		20.00	
" " Interest collected		63.33	
" " Sale of wood		45.00	
" " Proceeds of sale of carriages, &c.		275.80	
" " Deceased interest in firm of Kremelberg & Co.		19,577.91	
" " Deceased interest in firm of J. D. Kremelberg & Co.		31,980.74	
" " Dividend on Merchants Mutual Ins. Co.		50.00	
" " Dividend on Merchants Mutual Ins. Co.		50.00	
			$116,262.26
			$136,608.73

And He Craves an Allowance for the Following:

Payments and Disbursements as per Receipt.

Paid Johnson & Prevost, appraisers	$ 24.45
" Hermage & Brewers, notice to creditors	4.00
" Baltimore Sun, notice to creditors	4.89
" Wm. F. Frick	13.35
" Vestry of Christ Church, pew rent	41.25
" W. K. Boyle, printing catalogue	16.50
" Baltimore Sun, advertising sale of Furniture	68.25
" Baltimore American, advertising sale of Furniture	23.50
" Dr. S. D. Gross, medical attendance	520.00
" Dr. S. W. Mitchell, medical attendance	75.00
" P. F. Kiegan, claim	31.00
" Yeaton & Co., claim	144.00
" David M. R. Culbreth, claim	1.70
" Colin Stewart, claim	1.50

Paid Risk & Bro., claim			6.75
" Clerk Circuit Court Balto			1.75
" Costs Kremelberg vs. Dresel, Circuit Court			62.00
" Dr. Miles, medicine			25.00
Allowed purchaser for taxes, water rent to day of sale			156.45
Allowed this accountant for loss on sale			5,351.98
Water Register			24.30
Baltimore American			4.75
Bedford & Holten			14.25
Paid Registers fees for this account and apy. due	$ 18.40		
Paid	10.50		
This Accountant's Commission on $80,756.75 at 5% $4,037.83, all of which he relinquished except 1-3	1,345.94		
And the State Tax due on commissions	403.78		
		$	1,749.72
Payments and Disbursements			8,395.24
Balance due the estate consisting of sundry horses, cattle and farming implements valued at	$3,572.92		
1 certificate of membership Corn & Flour Exchange	300.00		
1 share of stock of the Wednesday Club, no value			
1 share of stock of the Germania Club, no value			
510 shares of stock of the Brooklyn Co. Club, no value			
37½ shares of stock of the Navassa Phosphate Co.	375.00		
1000 shares of stock of American Gas & Coal Co., no value			
5 shares of stock of Fountain Hotel Co., no value			
50 shares of stock of Maryland Fire Ins.	250.00		
10 shares of stock of Concordian of Balto., no value			
10 shares of stock of Baltimore & Savannah Steamship Co., no value			
500 shares of stock of Chesapeake Oil Co. of Pa., no value			

500 shares of stock of Kings Mount Gold Mining Co., no value....		
500 shares of stock of Union Mining Co., no value		
1000 shares of stock of Agricultural Mechanics Assn., no value....		
20 shares of stock of Merchants Mutual Ins. Co.....	1,000.00	
24 shares of stock of Balto. Southern Transportation Co., no value		
750 shares of stock of Despard Coal Co.	3,000.00	
13 shares of stock of Mechanics Bank	143.00	
45 shares of stock of Mechanics Bank	495.00	
24 shares of stock of Mechanics Bank	264.00	
38 shares of stock of Mechanics Bank	418.00	
		$ 9,817.92
And in cash the sum of.....	118,395.57	
		128,213.49
Estate accounted for		$136,608.73

Made Affidavit, May 4th, 1883, Samuel H. Tagart before Robert T. Banks, Register of Wills for Balto., Md.

BALTIMORE CITY SET:

THE SECOND ACCOUNT OF SAMUEL H. TAGART, EXECUTOR OF JOHN D. KREMELBERG, DECEASED.

This Accountant charges himself with the balance of said Estate as shown by his 1st account rendered May 4th, 1883, consisting of sundry, horses, cattle and farming implements valued at	$ 3,572.92	
Sundry stocks and securities valued at	6,245.00	
		$ 9,817.92
And in cash the sum of.....	118,395.57	
		$128,213.49

And he craves an allowance for the following payments and disbursements:

Pd. Wm. Parks, Treasurer Balto. Co., taxes, 1883	$	15.94
" Henry S. Taylor City Taxes.....		105.00

	Paid Edward Kearney, livery		69.00
	" Baltimore Sun, advertising		10.20
	" Registers fees for this account		10.00
	Allowed this Accountant for the following Property Securities and Cash transferred and paid to Elizabeth V. Kremelberg, a daughter and one of the Legatees, as per Release.		
10	1-6 Interest in Certif. membership Corn Exchange	$ 50.00	
	1-6 Interest in 37½ shares Navassa Phosphate Co	62.50	
	1-6 Interest in 50 shares Md. Fire Ins. Co.	41.66	
	1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.66	
	1-6 Interest in Farming Implements, Horses, &c.	595.48	
	Whole Interest in 125 shares Despard Coal Co.	500.00	
	Whole interest in 20 shares in Mechanics Bank Stock	220.00	
20	1-6 Interest in 1 share Wednesday Club		
	1-6 Interest in 1 share Germania Club		
	1-6 Interest in 500 shares Brooklyn Co.		
	1-6 Interest in 1000 shares American Gas Coal Co.		
	1-6 Interest in 5 shares Fountain Hotel Co.		
	1-6 Interest in 10 shares Concordia of Balto.		
	1-6 Interest in 10 shares Balto. &		
30	Savannah Steamship Co.		
	1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.		
	1-6 Interest in 500 shares Kings Mount Gold Mining Co.		
	1-6 Interest in 500 shares Union Mining Co.		
	1-6 Interest in 1000 shares Agricultural Mechanical Asso.		
	1-6 Interest in 24 shares Balto. Southern Transportation Co.		
		$ 1,636.30	
	And in cash the sum of	19,697.57	
40			$ 21,333.87

Allowed this Accountant for the following Property securities and cash delivered transferred and paid to Harriet E. Kremelberg, a daughter and one of the Legatees under the will, as per Release:

1-6 Interest in Certif. of membership Corn and Flour Exchange	$ 50.00	
Amt. Forward		$ 21,333.87
Amt. Forward	50.00	
1-6 Interest in 37½ shares Navassa Phosphate Co. stock	62.50	
1-6 Interest in 50 shares Md. Fire Ins. Co.	41.66	
1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.66	
1-6 Interest in Farming Implements, Horses, &c.	595.48	
Whole Interest in 125 shares Despard Coal Co.	500.00	
Whole interest in 20 shares in Mechanics Bank Stock	220.00	
1-6 Interest in 1 share Wednesday Club		
1-6 Interest in 1 share Germania Club		
1-6 Interest in 500 shares Brooklyn Co.		
1-6 Interest in 1000 shares American Gas Coal Co.		
1-6 Interest in 5 shares Fountain Hotel Co.		
1-6 Interest in 10 shares Concordia of Balto.		
1-6 Interest in 10 shares Balto. & Savannah Steamship Co.		
1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.		
1-6 Interest in 500 shares Kings Mount Gold Mining Co.		
1-6 Interest in 500 shares Union Mining Co.		
1-6 Interest in 1000 shares Agricultural Mechanical Co.		
1-6 Interest in 24 shares Balto. Southern Transportation Co.		
	$ 1,636.33	
And in cash the sum of	19,697.57	
		$ 21,333.90

Allowed this Accountant for the following Property securities and cash delivered, transferred and paid to J. Geo. Kremelberg, guardian of John D. Kremelberg, infant son and one of the Legatees under the will, as per Release:

1-6 Interest in Certif. of membership Corn and Flour Exchange	$ 50.00
1-6 Interest in 37½ shares Navassa Phosphate Co	62.50
1-6 Interest in 50 shares Md. Fire Ins. Co.	41.67
1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.67
1-6 Interest in Farming Implements, Horses, &c	595.49
Whole Interest in 125 shares Despard Coal Co.	500.00
Whole interest in 20 shares in Mechanics Bank	220.00
1-6 Interest in 1 share Wednesday Club	
1-6 Interest in 1 share Germania Club	
1-6 Interest in 500 shares Brooklyn Co.	
1-6 Interest in 1000 shares American Gas Coal Co.	
1-6 Interest in 5 shares Fountain Hotel Co.	
1-6 Interest in 10 shares Concordia of Balto.	
1-6 Interest in 10 shares Balto. & Savannah Steamship Co.	
1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.	
1-6 Interest in 500 shares Kings Mount Gold Mining Co.	
1-6 Interest in 500 shares Union Mining Co.	
1-6 Interest in 1000 shares Agricultural Mechanics Asso.	
1-6 Interest in 24 shares Balto. Southern Transportation Co.	
	$ 1,636.33
And in cash the sum of	19,697.57
	$ 21,333.87

Allowed this Accountant for the following property securities and cash delivered transferred to Harriet E. Kremelberg, guardian of Anna G. M. Kremelberg, infant daughter and one of the Legatees under the will, as per Release:

1-6 Interest in Certif. of membership Corn and Flour Exchange	$ 50.00	
1-6 Interest in 37½ shares Navassa Phosphate Co	62.50	
1-6 Interest in 50 shares Md. Fire Ins. Co.	41.67	
1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.67	
1-6 Interest in Farming Implements, Horses, &c	595.49	
Whole Interest in 125 shares Despard Coal Co.	500.00	
Whole interest in 20 shares in Mechanics Bank	220.00	
1-6 Interest in 1 share Wednesday Club		
1-6 Interest in 1 share Germania Club		
1-6 Interest in 500 shares Brooklyn Co.		
1-6 Interest in 1000 shares American Gas Coal Co.		
1-6 Interest in 5 shares Fountain Hotel Co.		
1-6 Interest in 10 shares Concordia of Balto.		
1-6 Interest in 10 shares Balto. & Savannah Steamship Co.		
1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.		
1-6 Interest in 500 shares Kings Mount Gold Mining Co.		
1-6 Interest in 500 shares Union Mining Co.		
1-6 Interest in 1000 shares Agricultural Mechanical Asso.		
1-6 Interest in 24 shares Balto. Southern Transportation Co.		
	$ 1,636.33	
And in cash the sum of	19,697.57	
		$ 21,333.90

Allowed this Accountant for the following Property, Securities and cash delivered transferred to Harriet E. Kremelberg, guardian of Mary A. Kremelberg, infant daughter and one of the legatees under the will, as per Release:

1-6 Interest in Certif. of membership Corn and Flour Exchange	$ 50.00
1-6 Interest in 37½ shares Navassa Phosphate Co	62.50
1-6 Interest in 50 shares Md. Fire Ins. Co.	41.67
1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.67
1-6 Interest in Farming Implements, Horses, &c	595.49
Whole Interest in 125 shares Despard Coal Co.	500.00
Whole interest in 20 shares in Mechanics Bank	220.00
1-6 Interest in 1 share Wednesday Club	
1-6 Interest in 1 share Germania Club	
1-6 Interest in 500 shares Brooklyn Co.	
1-6 Interest in 1000 shares American Gas Coal Co.	
1-6 Interest in 5 shares Fountain Hotel Co.	
1-6 Interest in 10 shares Concordia of Balto.	
1-6 Interest in 10 shares Balto. & Savannah Steamship Co.	
1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.	
1-6 Interest in 500 shares Kings Mount Gold Mining Co.	
1-6 Interest in 500 shares Union Mining Co.	
1-6 Interest in 1000 shares Agricultural Mechanical Asso.	
1-6 Interest in 24 shares Balto. Southern Transportation Co.	
	$ 1,636.33
And in cash the sum of	19,697.57
	$ 21,333.90

Allowed this Accountant for the following Property, Securities, and cash delivered and transferred to Virginia Elizabeth Kremelberg, trustee for J. Frederick Kremelberg, son and one of the legatees under the will, as per Release filed:

1-6 Interest in Certif. of membership Corn and Flour Exchange	$ 50.00		
1-6 Interest in 37½ shares Navassa Phosphate Co	62.50		10
1-6 Interest in 50 shares Md. Fire Ins. Co.	41.67		
1-6 Interest in 20 shares Merchants Mutual Ins. Co.	166.67		
1-6 Interest in Farming Implements, Horses, &c	595.49		
Whole Interest in 125 shares Despard Coal Co.	500.00		
Whole interest in 20 shares in Mechanics Bank	220.00		
1-6 Interest in 1 share Wednesday Club			
1-6 Interest in 1 share Germania Club			20
1-6 Interest in 500 shares Brooklyn Co.			
1-6 Interest in 1000 shares American Gas Coal Co.			
1-6 Interest in 5 shares Fountain Hotel Co.			
1-6 Interest in 10 shares Concordia of Balto.			
1-6 Interest in 10 shares Balto. & Savannah Steamship Co.			
1-6 Interest in 500 shares Chesapeake Oil Co. of Pa.			30
1-6 Interest in 500 shares Kings Mount Gold Mining Co.			
1-6 Interest in 500 shares Union Mining Co.			
1-6 Interest in 1000 shares Agricultural Mechanical Asso.			
1-6 Interest in 24 shares Balto. Southern Transportation Co.			
	$ 1,636.33		
And in cash the sum of	19,697.57		
		$ 21,333.90	
Estate accounted for		$128,213.49	40

Made Affidavit, June 20th, 1883, Samuel H. Tagart before Robt. T. Banks, Register of Wills, of Balto., Md.

Made Affidavit, June 20th, 1883, J. Geo. Kremelberg, before Geo. McCaffrey, Justice of the Peace, of Balto., Md.

Made Affidavit, Jan. 3rd, 1914, Howard W. Jackson, Register of Wills for Balto., Md.

Made Affidavit, Jan. 3rd, 1914, Myer J. Block, Chief Judge of the Orphans' Court of Balto., Md.

Made Affidavit, Jan. 3rd, 1914, Howard W. Jackson, Register of Wills for Balto., Md.

KNOW ALL MEN BY THESE PRESENTS, That I, J. George Kremelberg, guardian of John D. Kremelberg, infant son and one of the legatees under the will of John D. Kremelberg, late of said city, deceased, do hereby acknowledge to have received from Samuel H. Tagart, the executor, in full of my ward's share in said estate

1-6 Int. in Certif. Membership Corn & Flour Exchange	$	50.00
1-6 Int. in 37½ shares of Navasso Phosphate Co.		62.50
1-6 Int. in 50 shares of Maryland Fire Ins. Co.		41.67
1-6 Int. in 20 shares of Merchants Mutual Ins. Co.		166.67
1-6 Int. Farming Implements, Horses, &c.		595.49
Whole Int. in 125 shares Despard Coal Co.		500.00
Whole Int. in 20 shares Mechanics Bank		220.00
1-6 Int. in sundry stocks of no value as shown in inventory		
	$	1,636.33
And in cash the sum of		19,697.57
Making together the sum of		$21,333.90

And in consideration thereof I do hereby release, acquit, exonerate and discharge the said Samuel H. Tagart, Executor as aforesaid, his

heirs, executors and administrators of and from all and every action, suit, claim or demand which could or might possibly be brought, exhibited or prosecuted against him, them or any of them, for or on account of the above mentioned property securities and Cash or the payment thereof, hereby declaring myself satisfied, contented and paid as above specified. Given under my hand and seal this 20th day of June in the year eighteen hundred and eighty-three.

(Signed) J. GEORGE KREMELBERG,
[SEAL] *Guardian of John D. Kremelberg.*

Signed, sealed and delivered
in the presence of

GEO. MCCAFFRAY.

STATE OF MARYLAND,
CITY OF BALTIMORE,
To wit:

I hereby certify that on this 20th day of June, in the year eighteen hundred and eighty-three, before the subscriber, a justice of the peace of the State of Maryland, in and for said City of Baltimore, personally appeared J. George Kremelberg, guardian of John D. Kremelberg, party to the above release, and acknowledged the same to be his act and deed. And I do hereby certify that of my own personal knowledge I am satisfied that the said J. George Kremelberg, guardian as aforesaid, who has acknowledged the above release is the person named and described as and professing to be the party in and to the same.

GEORGE MCCAFFRAY,
J. P.

Received to be recorded on the 21st day of June, 1883, same day filed and recorded.

TEST:

ROBERT T. BANKS,
Register of Wills for Baltimore City.

Exhibit D.

THIS INDENTURE, made this fourth day of December, in the year one thousand eight hundred and eighty-two, by John Frederick Kremelberg of the City of Baltimore, in the State of Maryland.

WITNESSETH, that whereas John D. Kremelberg, late of the aforesaid city, deceased, in and by one of the items of his last will and testament devised and bequeathed as follows: "I give, devise and bequeath to my brother, George and my son, J. Frederick, in equal proportions, all my interest in the following business houses, mainly: Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms."

Now, therefore, in consideration of the sum of one dollar, lawful money, paid to me by the said George Kremelberg, the receipt whereof is hereby acknowledged, and for divers other good and valuable considerations me thereunto moving, I, the said J. Frederick Kremelberg do hereby grant, bargain, sell, assign and transfer unto the said George Kremelberg, all my estate, right, title, interest, claim and demand whatsoever, in and to all the property devised and bequeathed to me in and by the aforesaid item of said last will and testament. TO HAVE

AND TO HOLD the same unto and to the use of the said George Kremelberg his executors, administrators and assigns, forever.

WITNESS my hand and seal on the day and year first herein written.

J. F. KREMELBERG.

GEO. KREMELBERG. [SEAL]

TEST: Witnesses,

N. P. HENDERSON.

J. D. KREMELBERG.

STATE OF NEW YORK,
CITY OF BROOKLYN and
COUNTY OF KINGS, *to wit.* } *ss:*

I hereby certify that on this fourth day of December, one thousand eight hundred and eighty-two, before the subscriber, a notary public in and for the County of Kings, State of New York, residing in said county, personally appeared J. Frederick Kremelberg and acknowledged the aforegoing deed to be his act, and that at the same time before me personally appeared also George Kremelberg, the within named grantee, and made oath in due form of law that the consideration set forth in the aforegoing deed is true and bona fide as therein set forth.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and year aforesaid.

N. P. HENDERSON,

(Notary Public Seal) *Notary Public,*
Kings County,
State of New York.

To be acknowledged also before officer required by laws of State of New York for property there.

Endorsement on back shows record on Dec. 20, 1882, in R. T. A. 951, folio 508, etc.

Exhibit E.

JOHN F. KREMELBERG,
Asst. to
ELIZABETH V. KREMELBERG,
"In Trust."

This Indenture, made this fourth day of December, in the year one thousand eight hundred and eighty-two by John Frederick Kremelberg of the City of Baltimore, in the State of Maryland. Whereas, John D. Kremelberg, late of the Will and Testament, deceased, in and by his last will and testament devised, bequeathed and directed as follows: All the rest and residue of my property of every kind real, personal and mixed I direct shall be sold by my executors hereinafter named or the survivors or survivor of them either at public or private sale and upon such terms as to them or him may seem fit as soon after my death as in their or his judgment may be advisable and the proceeds arising from such sale or sales I give devise and bequeath to my children J. Frederick, Elizabeth Virginia, Harriet Ella, John Diedrich, Anna Maria and Mary Augusta, in equal proportions share and share alike. Now this Indenture Witnesseth that I the said J. Frederick Kremelberg in consideration of the sum of One dollar lawful money paid to me by Elizabeth Virginia Kremelberg the receipt whereof is hereby acknowledged and for divers other good and valuable considerations, me thereunto moving,

do grant bargain sell, assign and convey unto the said Elizabeth Virginia Kremelberg her executors, administrators, heirs and assigns. All my estate right, title, interest, claim and demand in and to the property, estate and proceeds of sales devised and bequeathed to my as aforesaid. In trust and confidence, however, for myself the said J. Frederick Kremelberg and the said Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg and Mary Augusta Kremelberg, in equal proportions share and share alike and their respective heirs, executors, administrators and assigns.

Witness my hand and seal.

[L. S.] J. F. KREMELBERG.

TEST:

N. J. HENDERSON,
J. D. KREMELBERG.

MADE AFFIDAVIT, Dec. 4th, 1882, State of New York. N. P. Henderson, Notary Public.

Made Affidavit, Dec. 4th, 1882, State of Maryland, Joshua M. Myers, Justice of the Peace.

Made Affidavit, Jan. 2d, 1914, State of Maryland, City of Balto., Stephen C. Little, Clerk of the Superior Court.

Made Affidavit, Jan. 3d, 1914, State of Md., City of Balto., Walter I. Dawkins, Associate Judge of the Supreme Bench.

Made Affidavit, Jan, 3d. 1914, State of Md., City of Balto., Stephen C. Little, Clerk of the Superior Court.

A true copy.

SAM K. ROBBINS,
Clerk.

Answer.

Filed.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET ELLA KREMELBERG, *et als.*,

Complainants,

and

EDITH K. TOMPKINS and FIDELITY TRUST COMPANY OF NEWARK, NEW JERSEY, executors of the Last Will and Testament of J. GEORGE KREMELBERG, and EDITH K. TOMPKINS in her own right and as devisee and legatee under the said will,

Defendants.

Answer.

The answer of Edith K. Tompkins and Fidelity Trust Company of Newark, New Jersey, as executors of the last will and testament of J. George Kremelberg, and Edith K. Tompkins in her own right and as devisee and legatee under said will, to the bill of complaint of Harriet Ella Kremelberg, Elizabeth Virginia de Graaff and Anna Maria Gill, complainants.

These defendants severally answering say:

1. They admit the first paragraph of the complainants' bill.

2. They admit the second paragraph of complainants' bill.

Answer.

3. They admit the third paragraph of complainants' bill.

4. They admit the fourth paragraph of complainants' bill.

5. They admit the fifth paragraph of complainants' bill.

6. As to the sixth paragraph of complainants' bill they admit that prior to and at the time of making his will the said John D. Kremelberg was a merchant connected with the three firms in said paragraph named, engaged extensively in exporting tobacco; they deny that in addition to the moneys due said John D. Kremelberg from the firms of Kremelberg & Company and J. D. Kremelberg & Company as in said bill thereinafter stated, the said John D. Kremelberg had at the time of making his said will and at the time of his death a one-third interest as partner in the firm of Kremelberg & Company of New York: They do not know whether the said John D. Kremelberg was the sole proprietor of J. D. Kremelberg & Company of Baltimore, and they say that they have no information save that contained in the bill of complaint that J. Frederick Kremelberg had a small interest in the said Baltimore firm, and they leave the complainants to make such proof thereof as they may be advised to be necessary: They have no knowledge that J. George Kremelberg had no interest in the firm of J. D. Kremelberg & Company of Baltimore prior to the death of John D. Kremelberg and leave the complainants to make such proof thereof as they may be advised to be necessary: They say that they have no knowledge or information as to the interest of the said John D. Kremelberg in the firm of Kremelberg, Schaefer & Company of New Orleans, but upon

New Jersey State Library

information they say that they believe it to be true that the firm of Kremelberg, Schaefer & Company of New Orleans had been wound up prior to the death of the said John D. Kremelberg and was not in business subsequently to his death: They say they have no information, save that contained in the complainants' bill as to whether at the time of the making of said will all of said three firms were in prosperous condition, and as to whether the said John D. Kremelberg was also possessed of considerable estate outside of his interest in said firm, and as to whether subsequently to the making of said will and prior to the death of the said John D. Kremelberg the firm of Kremelberg, Schaefer & Company of New Orleans suffered any losses, and that said losses materially reduced the resources of the said firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, and as to whether the said John D. Kremelberg loaned said firms large amounts of money, or allowed his profits to remain as loans to said firm, and as to whether the firm of J. D. Kremelberg & Company of Baltimore loaned the said Kremelberg & Company of New York large sums of money and they leave the complainants to make such proof thereof as they may be advised to be necessary: They deny, however, that at the time of the death of the said John D. Kremelberg the said firm of Kremelberg & Company of New York was indebted to the said John D. Kremelberg in the sum of nineteen thousand, five hundred and seventy-seven dollars and ninety-one cents, and was also indebted to the firm of J. D. Kremelberg & Company of Baltimore in a large amount, and that the firm of J. D. Kremelberg & Company of

Baltimore was also indebted to the said John D. Kremelberg in the sum of thirty-one thousand, nine hundred and eighty-six dollars and seventy-four cents, and they deny on information and belief that at that time the said J. George Kremelberg had overdrawn his share of the profits of the firm of Kremelberg & Company of New York, and was indebted to said firm to an amount of about seventy-five hundred dollars; they say on information that they believe it to be true that the capital account of J. George Kremelberg as a partner of the firm of Kremelberg & Company of New York was overdrawn in various amounts from December 31, 1884, to January 1, 1894, and that on said account there was a balance in favor of the said J. George Kremelberg on December 31st, 1894, 1895 and 1896, and they believe that the amounts of such overdrafts and balances as in the said bill of complaint stated are substantially correct; on information and belief they admit that Kremelberg & Company's books carried an account in the name of John D. Kremelberg's Estate, or in the name of Samuel H. Tagart, the executor of the said John D. Kremelberg, from December 31, 1884, until after the death of the said J. George Kremelberg, and that the balances were such as are stated in the bill of complaint: On information and belief they admit that there was an account on the books of Kremelberg & Company of New York with J. D. Kremelberg & Company of Baltimore, and that said accounts during the period extending from December 31, 1884, to January 31, 1896, show balances against the New York firm of Kremelberg & Company of approximately the amounts stated in the bill of complaint. They further say that they have no

knowledge, save that contained in the bill of complaint, to wit: "That the said firm of Kremelberg & Company of New York would have been unable to continue in business after the death of John D. Kremelberg if said firm had been compelled to pay the amount due John D. Kremelberg and the amount due to J. D. Kremelberg & Company of Baltimore," and they leave it to the complainants to make such proof thereof as they may be advised to be necessary: They further deny on information and belief the following statement contained in the bill of complaint:

"And it was arranged by the said J. George Kremelberg, who had succeeded under the will of John D. Kremelberg and the assignment from said J. Frederick Kremelberg hereinafter set out to all the interest of John D. Kremelberg in both of said firms, that the children of John D. Kremelberg should continue to loan to said firm of Kremelberg & Company of New York the said sum of about $19,000.00, due by said firm to John D. Kremelberg, and that the said indebtedness from Kremelberg & Company of New York to J. D. Kremelberg & Company of Baltimore should continue as a loan from the latter to the former, and it was also arranged by J. George Kremelberg as hereinafter specified that the amount due John D. Kremelberg, at the time of his death by the firm of J. D. Kremelberg & Company of Baltimore should also be left with said firm, and by this means only was said firm of J. D. Kremelberg & Company able to continue the accommodation to Kremelberg & Company of New York."

Answer.

7. They admit that the said John D. Kremelberg by his will bequeathed all his interest in all three of said firms, to wit: Kremelberg, Schafer & Company of New Orleans, Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore to his brother J. George Kremelberg and his son J. Frederick Kremelberg, equally, to be divided between them, and they say that they have no knowledge save as contained in the bill of complaint that after the death of the said John D. Kremelberg, to wit: on December 4th, 1882, the said J. Frederick Kremelberg assigned his one-half of his father's interest in said three firms so acquired under his father's will, to J. George Kremelberg, as in the bill of complaint particularly set out, and leave the complainants to make such proof thereof as they may be advised to be necessary: They deny that the said interest of said John D. Kremelberg in said three firms was not accounted for or distributed in the settlement of the estate of said John D. Kremelberg; they deny also that by the first administration account of Samuel H. Tagart, executor under the will of John D. Kremelberg, passed on May 4th, 1883, the said Samuel H. Tagart charged himself with the amount due from the firm of Kremelberg & Company of New York to the testator, to wit, nineteen thousand five hundred and seventy-seven dollars and ninety-one cents, and also with the amount due by J. D. Kremelberg & Company of Baltimore to the testator, to wit: Thirty-one thousand nine hundred and eighty dollars and seventy-four cents, as though the same had been paid, and they say that in the said first administration account of Samuel H. Tagart he charged himself with the interest of

the testator in the said firm of Kremelberg & Company of New York, to wit: Nineteen thousand five hundred and seventy-seven dollars and ninety-one cents, and also with the interest of the said testator in said J. D. Kremelberg & Company of Baltimore, to wit: Thirty-one thousand nine hundred and eighty dollars and seventy-four cents: They admit that in his second administration account, passed on June 20th, 1883, he (the said Samuel H. Tagart) distributed the entire estate with which he had charged himself to the persons named in the bill of complaint, one-sixth to each, but they deny that in said distribution there were included two amounts of indebtedness from said two firms: They admit that on the same day releases were given by each of the said distributees for the amounts so distributed: They say on information and they believe it to be true that the said sums of nineteen thousand five hundred and seventy-seven dollars and ninety-one cents and of thirty-one thousand nine hundred and eighty dollars and seventy-four cents were not in fact paid to the said executor, but by arrangement with said J. George Kremelberg, acquiesced in by said Elizabeth Virginia Kremelberg and Harriet Ella Kremelberg, who were of age, and J. George Kremelberg as guardian for one of the infants and Harriet Ella Kremelberg as guardian for the other two, and Elizabeth Virginia Kremelberg as trustee for J. Frederick Kremelberg, the said sum of nineteen thousand five hundred and seventy-seven dollars and ninety-one cents remained with the firm of Kremelberg & Company of New York, and was carried on their books as an indebtedness to the estate of John D. Kremelberg, and interest

thereon was subsequently paid from year to year until 1888; and they say that the said sum of nineteen thousand five hundred and seventy-seven dollars and ninety-one cents was not due to the testator from Kremelberg & Company of New York, but was the value of the interest of the testator in said firm, and that the sum of thirty-one thousand nine hundred and eighty-two dollars and seventy-four cents was not due to the testator from J. D. Kremelbrg & Company of Baltimore, but was the value of the interest of the said testator in that firm: They are informed and believe it to be true, that after 1888 there was a reduction by the payment to J. Diedrich Kremelberg of his share, and that the balance so reduced remained outstanding until after the death of J. George Kremelberg, and that the sum of thirty-one thousand nine hundred and eighty dollars and seventy-four cents remained outstanding with the firm of J. D. Kremelberg & Company of Baltimore, to which other moneys were added by Elizabeth Virginia Kremelberg and Harriet Ella Kremelberg; but they have no knowledge save as contained in the bill of complaint that the said sum of thirty-one thousand nine hundred and eighty dollars and seventy-four cents, with the other moneys added thereto as aforesaid, was considered as capital contributed by the children of John D. Kremelberg under an arrangement made by J. George Kremelberg, whereby the said children were to receive interest on said sum and share in the profits of the said Baltimore firm as in the bill of complaint contained, and leave the complainants to make such proof thereof as they may be advised to be necessary: They admit that all the claims of the children of John D. Kremelberg in refer-

ence to the said sums of money left with the firm of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore have been finally settled and adjusted: They admit that the declarations of trust alleged to have been signed by the said J. George Kremelberg, if in fact so signed, deal with the interest in the firms devised by the will of John D. Kremelberg, and they deny that in said term "interest in the firms" there is not included an indebtedness due by said firms to said John D. Kremelberg, if any such there was.

8. They have no knowledge save as contained in the bill of complaint as to the matters alleged in the eighth paragraph of the complainants' bill, and leave the complainants to make such proof thereof as they may be advised to be necessary.

9. They have no knowledge save as in the bill of complaint contained that on December 4, 1882, J. George Kremelberg signed a declaration that he held all the interests so assigned to him in trust for the children of John D. Kremelberg, and that on May 4, 1883, he signed another declaration that he held all the interest in said three firms which he had acquired under the will of John D. Kremelberg in trust for the latter's children, but if such declarations were in fact signed, then they deny that the complainants have recently discovered that the said J. George Kremelberg made these declarations: They admit that at the times of the executions of said two alleged declarations of trust two of the complainants were infants, but they deny that neither of them had any knowledge of such declarations of trust if they existed, or of the existence and effect thereof until June, 1913: They have no knowledge, save that contained in

the bill of complaint as to whether in June, 1913, the said alleged declarations of trust were brought to the attention of one John Gill, Jr., with the result that counsel was consulted in regard to them, or that the said Harriet Ella Kremelberg found said declarations of trust among other papers in safe deposit box in which one Charles Martin had kept the securities and papers relating to the estate of John D. Kremelberg, delivered to him by Samuel H. Tagart, the executor of the said John D. Kremelberg, and they leave the complainants to make such proof thereof as they may be advised to be necessary: they admit that Samuel H. Tagart died on March 19th, 1892, and that after his death Charles Martin acted as the business agent of the complainants and had charge of the papers of the estate of their father until the death of the said Martin in 1903. They say that they have no knowledge, save that contained in the complainants' bill, as to whether after the death of said Charles Martin the said Harriet Ella Kremelberg saw these declarations of trust among the papers found, did not understand or appreciate their importance, and failed to bring them to the attention of her sisters or her brother-in-law, John Gill, Jr., until June, 1913, and they leave the complainants to make such proof thereof as they may be advised to be necessary: They have no knowledge as to whether the said declarations of trust were signed by the said J. George Kremelberg, and were in form and substance as in said bill of complaint set forth, but they leave the complainants to make such proof thereof as they may be advised to be necessary.

Answer.

10. They have no knowledge as to the matters alleged in the tenth paragraph of the complainants' bill, and leave the complainants to make such proof thereof as they may be advised to be necessary.

11. They say that in so far as the eleventh paragraph relates to the legal effect of the alleged declarations of trust they involve no question of fact which these defendants are required to affirm or deny, but they say that assuming said alleged declarations of trust to exist and to have the effect specified in the first and second clauses of said paragraph they yet deny the third clause of said paragraph, and so much of the fourth clause of said paragraph as relates to the effect of said two declarations of trust; they also deny that the complainants never made any request or demand upon the said J. George Kremelberg during his lifetime because they never knew of the existence of the said declarations of trust, and never knew of their rights in the premises; they admit that ever since the year 1882 and until the death of the said J. George Kremelberg the relations between complainants and the said J. George Kremelberg were intimate, and say that if he never advised them of their rights in the premises it was owing to the fact that there were no outstanding rights in the complainants: They admit also that some time in the year 1913 the complainants notified the defendant Edith K. Tompkins of the existence of the said alleged declarations of trust, furnished her with copies thereof, and made formal request upon her for an adjustment of the matter, in accordance with the said alleged declarations of trust, and for a transfer and account in accordance with the

said alleged declarations, and that the executors of the estate of J. George Kremelberg declined to make any adjustment or render any account.

12. They say that there was no occasion for the said J. George Kremelberg to apprise the complainants of their alleged rights because they had no rights beyond their money investments with the firm of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, which were well known to the complainants, and which they had at no time requested to be transferred to them, and that they believe it to be true that at the death of the said J. George Kremelberg on May 14th, 1913, his interest in said Kremelberg & Company of New York amounted to about one hundred and seventy-six thousand dollars, and that he also had a considerable interest in J. D. Kremelberg & Company of Baltimore, and that said interests were largely made up of profits which he had earned in the said two enterprises, but they deny that they had any knowledge which the complainants do not have, or any sources of information not open to the complainants as to profits earned by the said two firms since the death of John D. Kremelberg.

13. They say they have no knowledge, save that contained in the complainants' bill of complaint, that J. Frederick Kremelberg had a small interest in the firm of J. D. Kremelberg & Company of Baltimore at the time of the death of John D. Kremelberg, or that J. George Kremelberg at said time had no interest in J. D. Kremelberg & Company of Baltimore, and that all the interest that he ever had in said firm was acquired under the will of John D. Kremelberg and under the alleged assignment from J. Fred-

erick Kremelberg, and leave the complainants to make such proof thereof as they may be advised to be necessary. They admit that after the death of the said John D. Kremelberg, J. George Kremelberg assumed the direction of the business of the said firm of J. D. Kremelberg & Company of Baltimore, and associated with himself Charles A. Martin and one Braneker: They say that they have no knowledge, save that contained in the complainants' bill of complaint as to who actually conducted the Baltimore business: They say that they believe it to be true that after the death of the said John D. Kremelberg a considerable sum of money made up, in part, of the sum of thirty-one thousand nine hundred and eighty-six dollars and seventy-four cents, which represented the interest of the said John D. Kremelberg in J. D. Kremelberg & Company of Baltimore at the time of his death, was invested with the said firm, and that for the use thereof the children of John D. Kremelberg received one-half of the profits, plus six per cent. interest, and that subsequently some twenty thousand dollars were withdrawn from this investment by the said complainants, and that upon the said withdrawal a new arrangement was made by the complainants with the said firm of J. D. Kremelberg & Company of Baltimore under which they received interest upon their investment in lieu of profits, and that said arrangement continued until the death of the said J. George Kremelberg: They deny that the complainants never received any return or any profits on account of the interest of the said J. George Kremelberg in said firm which he has acquired as aforesaid under the will of John D. Kremelberg and under the alleged as-

signment from J. Frederick Kremelberg, and they deny further that the complainants never made any demands for any profits or accounting thereof because they had no knowledge until after the death of the said J. George Kremelberg that he had signed the alleged declarations of trust thereinbefore set forth: They further say that they believe it to be true that much of the conduct of the business of J. D. Kremelberg & Company of Baltimore was entrusted by J. George Kremelberg to the various persons and for the periods of time named in the bill of complaint.

14. They deny that they have in their possession or under their control the successive partnership agreements under which the business of J. D. Kremelberg & Company of Baltimore was conducted from the time of the death of the said John D. Kremelberg to the time of the death of J. George Kremelberg, or the partnership agreement existing between the members of the firm of Kremelberg & Company of New York at the time of the death of John D. Kremelberg, or the successive partnership agreements under which the business of Kremelberg & Company of New York was conducted from the time of the death of John D. Kremelberg to the time of the death of said J. George Kremelberg, or that they have in their possession or under their control the books, papers and accounts which would show the present value of the interest in the firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, acquired by the said J. George Kremelberg under the alleged assignment from J. Frederick Kremelberg, or the profits which had been received by the said J. George Kremelberg

Answer.

from said interest in said two firms, and which would also show the present value of the interest in the firm of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, acquired by the said J. George Kremelberg under the will of John D. Kremelberg, and the profits which the said J. George Kremelberg had received from the interests so acquired in said two firms.

15. These defendants further answering say that at the time of the death of John D. Kremelberg in the year 1882, he was interested only in the firm of Kremelberg & Company of New York and J. D. Kremelberg of Baltimore; that the firm of Kremelberg, Schaefer & Company of New Orleans had been wound up prior to the death of the said John D. Kremelberg, and at the time of his death was no longer in existence; that in the New York firm of Kremelberg & Company his interest amounted to twenty per cent. and that his brother J. George Kremelberg, and one Adolph Engler, were the active partners, each of them being entitled to forty per cent. of the profits; that they do not know and have no means of establishing who were interested as partners in J. D. Kremelberg & Company of Baltimore at the time of the death of the said John D. Kremelberg; that at the time of the death of the said John D. Kremelberg he had an interest in the firm of Kremelberg & Company of New York, and that after the death of the said John D. Kremelberg, his executor, Samuel H. Tagart caused the interest of the said John D. Kremelberg in the firm of Kremelberg & Company of New York to be appraised and ascertained it to be the sum of nineteen thousand five hundred and seventy-seven dollars and

ninety-one cents, and charged himself with that amount in the account filed by him as executor of John D. Kremelberg, deceased; that the said Samuel H. Tagart also caused the interest of the said John D. Kremelberg in J. D. Kremelberg & Company of Baltimore to be appraised, and that said appraisement amounted to the sum of thirty-one thousand nine hundred and eighty dollars and seventy-four cents, and that the said Samuel H. Tagart, as executor as aforesaid, charged himself with this sum in his said account: That said two sums of nineteen thousand five hundred and seventy-seven dollars and ninety-one cents and thirty-one thousand nine hundred and eighty-six dollars and seventy-four cents, aggregating fifty-one thousand, five hundred and sixty-five dollars and sixty-five cents, represented all the interest of the said John D. Kremelberg in said two firms of Kremelberg & Company of New York and J. D. Kremelberg & Company of Baltimore, which the said John D. Kremelberg by his last will and testament gave to his son J. Frederick Kremelberg, and his brother, J. George Kremelberg: That at the time of the death of the said John D. Kremelberg there was no indebtedness to him from the firm of Kremelberg & Company of New York, neither was there any indebtedness to him from the firm of J. D. Kremelberg & Company of Baltimore, so far as these defendants have been able to ascertain, but they aver that if any such indebtedness did in fact exist, that full credit was given for it in the appraisement made by the said Samuel H. Tagart of the interest of the said John D. Kremelberg in the said two firms; and these defendants cannot say whether J. George Kremelberg had overdrawn his account

Answer.

with the firm of Kremelberg & Company of New York before the death of the said John D. Kremelberg, for the reason that the books of said firm covering this period are no longer in existence, neither can they say whether or not at the time of the death of the said J. George Kremelberg the firm of Kremelberg & Company of New York was indebted to the firm of J. D. Kremelberg & Company of Baltimore, for the reason that the books of both of the said firms covering the said period are no longer in existence, but they aver that it is immaterial as to whether or not such indebtedness existed, because full allowance thereof was made in the appraisement made by the executor, Samuel H. Tagart, when he appraised the interest of the said John D. Kremelberg in the said two firms and charged himself with the amounts of said appraisal.

16. These defendants further say that after the death of the said John D. Kremelberg, the said Kremelberg & Company of New York, and the said firm of J. D. Kremelberg & Company of Baltimore were engaged in mutual transactions, and that in the course of the dealings between the said firms, at times the firm of Kremelberg & Company of New York was indebted to the firm of J. D. Kremelberg & Company of Baltimore, and *vice versa,* and that this indebtedness varied during each month of the year; that there are still books of the firm of Kremelberg & Company of New York in existence which show the course of these dealings, but that these books of account throw no light upon the claim of the complainants in their bill of complaint, neither does the capital account of the said J. George Kremelberg in the firm of Kremelberg

& Company from December 31, 1884, which appears in the books of the firm of Kremelberg & Company of New York, throw any light upon said claims: They say that after the death of the said John D. Kremelberg, his interest in the firm of Kremelberg & Company of New York, and in the firm of J. D. Kremelberg & Company of Baltimore passed under the will of the said John D. Kremelberg to his son, J. Frederick Kremelberg and his brother, J. George Kremelberg, but that the effect of the said legacy was not to constitute the said J. Frederick Kremelberg and J. George Kremelberg partners, either in the Baltimore firm or in the New York firm, but that the said bequests passed as assets merely.

16. They say that they are informed and believe that the said J. George Kremelberg and J. Frederick Kremelberg never assumed the relation of partners in the New York firm of Kremelberg & Company, and that they have no information as to whether or not a partnership relation ever existed between them in the Baltimore firm of J. D. Kremelberg & Company, and they aver that if there was a partnership between them in the Baltimore firm it terminated with the alleged assignment of J. Frederick Kremelberg of the interest devised to him under his father's will on the fourth day of December, 1882, and that after said alleged assignment the said J. Frederick Kremelberg had no longer any partnership rights in the said Baltimore firm; they further say that the said J. George Kremelberg, by the alleged declaration of trust under date of December 4, 1882, if it should be established to be his act and deed, did not intend to create or to vest, and did not in fact create or

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vest in the *cestuis que* trust named in the said alleged declaration any partnership rights: And they say that the arrangement alleged to have been made by him, if in fact so made, was to secure to the said *cestuis que* trust one-half of the devise given under the will of John D. Kremelberg, to wit, one-half of the aggregate of the appraisal made by the said Samuel H. Tagart, his executor.

18. They say that they have no knowledge as to what occasioned the alleged declaration of trust made by J. George Kremelberg on the fourth day of May, 1883, if it should be established to be his act and deed: They believe that the purpose of said declaration, if made, was to vest in the children of John D. Kremelberg the bequest made to J. George Kremelberg by the will of his brother, which at the time of the said declaration was invested in the two firms of J. D. Kremelberg & Company and Kremelberg & Company, and to specifically reserve any profits that this share should earn.

19. They say that the arrangements made between the complainants and the said J. George Kremelberg about investing the proceeds of the devise to J. Frederick Kremelberg and J. George Kremelberg under the will of John D. Kremelberg with the firm of Kremelberg & Company of New York, and with J. D. Kremelberg & Company of Baltimore, by which the complainants have received six per cent. on their investment, with the New York firm, and for a time six per cent. on the investment with the Baltimore concern and half of the profits thereof, and thereafter in lieu of all profits twelve per cent. on the capital, as is alleged in the bill of complaint, has been in fact performed, and that said ar-

rangement incorporated all the rights to which the complainants were entitled, including such as were created by the alleged declarations of trust and was in fact faithfully performed by the said J. George Kremelberg during his life time, and that the complainants, since the death of the said J. George Kremelberg, have received the capital of their investments with accrued interest, and they say that there is nothing owing to them, either by way of capital, interest or profits, as well under the alleged declarations of trust made by the said J. George Kremelberg as under any arrangement entered into between them and the said J. George Kremelberg, the same having been fully accounted for.

20. They say that in December, 1883, the said Harriet Ella Kremelberg and Elizabeth Virginia de Graaff were of full age; that the said Mary Augusta Kremelberg was of the age of sixteen years, and the said Anna Maria Gill was of the age of eighteen years; that they had knowledge of and participated in the negotiations which led up to the making of the declaration of trust, if made, and resulted in the arrangement by which the proceeds of the estate of John D. Kremelberg, deceased, bequeathed under his will to his son and brother, continued to be invested in the firms of J. D. Kremelberg & Company of Baltimore and Kremelberg & Company of New York; that they then knew of the making of the declaration of trust, if made, and of the delivery of them to Mr. Martin, their business agent, if delivered; that from this time on until the filing of the bill they have at all times known that they were in possession of the alleged declaration of trust, what the purpose was in making them, as well as their legal sig-

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nificance and effect: That although two of the complainants in 1883 were not of full age, yet they were of sufficient age to appreciate the nature of the transaction: They aver that all of the complainants participated in and had full knowledge of the different arrangements which were made for their benefit with the said J. George Kremelberg in the eighties, and that they were all of full age, had full knowledge of and participated in the arrangements which were made at the time when the said complainants each withdrew five thousand dollars from the Baltimore firm and were to receive twelve per cent. on the balance of twenty thousand dollars remaining in the said firm; They further say that Kremelberg & Company of New York no longer have any books or papers relating to the transactions of the firm prior to January 1st, 1884, these having been either destroyed by fire or as useless many years ago, or lost by removal, and that the firm of J. D. Kremelberg & Company of Baltimore have no books or papers antedating 1904—all of these having been destroyed by the great Baltimore fire of that year: They also state that, excepting the complainants, all the persons that participated in or had any personal knowledge of any of the transactions made by the complainants or for their benefit with the said J. George Kremelberg, are now dead; they therefore say that the complainants' claim is stale, and that even if at any time it was just and good, yet because of the staleness thereof and the circumstances attending the non-enforcement thereof, and the fact that so much of the evidence which might tend to disprove it has been lost, it would be inequitable to permit the

complainants to assert it in this court at this time.

And these defendants humbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LOUIS HOOD,

Solicitor of Edith K. Tompkins and Fidelity Trust Company of Newark, New Jersey, executors of the last will and testament of J. George Kremelberg, deceased, and Edith K. Tompkins in her own right and as devisee and legatee under the said will.

Replication.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET E. KREMELBERG, *et als.*,

Complainants,

and

EDITH K. TOMPKINS, *et als.*,

Defendants.

Replication.

The complainants join issue on the answer of the defendants.

CHAUNCEY G. PARKER,
Solr. and of Counsel with the Complainants.

Affidavit of Commissioner.

BE IT REMEMBERED, That on the 28th day of January, 1915, at my office, No. 220 St. Paul street, Baltimore, Maryland, at one o'clock P. M., being the time and place named in the annexed notice and agreement for taking the examination of the witnesses named in the said notice, I, William E. Schul, the Commissioner therein named, having first taken the oath required of me in this behalf, proceeded to examine such of the witnesses as could be met with, and as are hereinafter named, in pursuance of said notice and agreement, and caused said examination to be taken down in writing (stenographically) in my presence by Lafayette

Affidavit of Commissioner.

P. Temple, a competent stenographer, being one of the regular stenographers of the Supreme Bench of Baltimore City, who was by me duly sworn according to law, as per his affidavit hereto annexed, and each of said witnesses having been by me duly sworn that the answers which he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth. The said testimony having been taken down in the presence of S. S. Field, Esquire, representing the plaintiffs and Louis Hood, Esquire, representing the defendants, and upon question propounded by said attorneys respectively, and the questions and answers having been taken down stenographically and written up by said stenographer, was thereafter signed by said witnesses respectively in my presence, and by me sealed up, endorsed, directed and mailed by depositing in the Post Office at Baltimore, Maryland, with proper postage attached, addressed to the Honorable John R. Emery, Vice Chancellor, Newark, New Jersey.

The following exhibits were offered and are herewith returned:

Exhibit Commissioner No. 1.
Exhibit Commissioner No. 2.
Exhibit Commissioner No. 3.
Exhibit Commissioner No. 4.

Witness my hand and official seal as the Commissioner of Deeds for the State of New Jersey, residing in Baltimore City, Maryland, this day of February, 1915.

Commissioner.

Affidavit of Commissioner.

STATE OF MARYLAND,
CITY OF BALTIMORE, *to wit:*

I, William E. Schul, Commissioner within named, do hereby certify and return to the Court of Chancery of New Jersey, addressed to the Honorable John R. Emory, Vice Chancellor at Newark, New Jersey, that I have duly executed the within and commission in the manner and form as is therein and thereby commanded, and in accordance with the agreement of counsel for the respective parties thereto annexed, and that the execution thereof will fully appear by the schedule to the said notice and commission annexed.

Given under my hand and seal this day of A. D., 1915.

Depositions.

IN THE COURT OF CHANCERY OF NEW JERSEY.

January 28, 1915.

HARRIET ELLA KREMELBERG, MARY AUGUSTA KREMELBERG, ELIZABETH VIRGINIA DE GRAAFF and ANNA MARIA GILL,

vs.

EDITH K. TOMPKINS and THE FIDELITY TRUST COMPANY OF NEWARK, NEW JERSEY, Executors of the last will and testament of J. GEORGE KREMELBERG,

and

EDITH K. TOMPKINS, in her own right and as devisee and legatee under the said will.

Depositions taken before me, William E. Schul, the Commissioner named in the attached Commission, on this 28th day of January, 1915, at the office of S. S. Field, No. 220 St. Paul street, Baltimore, Maryland, at one o'clock P. M., there being present on behalf of the plaintiffs, Mr. S. S. Field, and on behalf of the defendants, Mr. Louis Hood.

S. TAGART STEELE, one of the said witnesses, appeared before me, and being by me duly sworn that the answers that he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, says:

Direct examination by Mr. Field.

Q What is your name? A S. Tagart Steele.

Q What is your business? A Member of the bar of Baltimore City.

Q Where do you live? A 20 West Madison street, Baltimore, Maryland.

Q What is your age? A Fifty-one.

Q State whether or not you knew Samuel H. Tagart, and if so, when he died and whether or not you were his executor? A I knew him very well. I was named after him. He died in 1892 or 1893, somewheres about that time, and I was the executor named in his will and I carried through the administration of his estate.

Q I believe he and your father were associated in the practice of law, were they not? A They were.

Mr. Hood. Do you mean by that that they were business partners, did they practice as a firm?

The Witness. Yes, but that was some time prior to Mr. Tagart's death and my father's death. I have forgotten exactly the date of it.

Q (*By Mr. Field*) I show you a paper dated Baltimore, May 4, 1883, purporting to be signed by J. Geo. Kremelberg, and I will ask you whether or not you recognize the signature of

the witness to said paper? A I do. That is the signature of Mr. Samuel H. Tagart.

Q Would you or not say that the body of that paper is in his handwriting? A I should say it was not.

Q I show you another paper dated December 4, 1882, purporting to be signed Geo. Kremelberg and acknowledged before Joshua M. Meyer, Justice of the Peace in Baltimore City, on the same date and before John A. Hillery, Notary Public of New York, on the 16th day of December, and I will ask you whether or not you would say the handwriting in this paper is that of Mr. Samuel H. Tagart? A No, it is not.

Q I call your attention to some pencil memoranda on the margin of this paper, "Date of deed," and again, on the margin of the front page, "Acknowledged also before N. Y. Commr.," and I will ask you whether or not that is the handwriting of Mr. Samuel H. Tagart?

Mr. Hood. I object to the question because I do not remember that the witness has said that he was familiar with the handwriting of Mr. Tagart. He said that he was his executor. It may well be that he is familiar with his handwriting, but I do not believe any foundation has been laid for this testimony as yet and for that reason I interpose an objection.

The Witness. Do you want me to show how I am familiar with his handwriting?

Mr. Field. Yes, I would like to have you do so. I omitted to ask you that question.

The Witness. Prior to Mr. Tagart's death, he had employed me to assist him in some business. He was trustee and wanted to resign and the work involved going over any quantity of checks, a number of checks. Prior to his death I became very familiar with his signature. Then, of course, in the course of the administration of his estate, I became more familiar with his signature then, in going over his checks with regard to his bank balances. I would say that I am absolutely familiar with his signature.

Mr. Field. Then I will ask you to answer the previous question.

(Previous question put to the witness by the stenographer.)

Mr. Hood. I renew my objection to the qualification of the witness to answer the question.

A The date of the deed does not look to me like Mr. Tagart's handwriting. This other memoranda, the "acknowledged" looks a little bit like his writing, but I could not say definitely.

Q Were you or not familiar with the signature of Joshua M. Meyer, formerly a justice of the peace? A No, I can not say that I am.

Q I now show you an original deed dated December 4, 1882, signed by J. F. Kremelberg and duly witnessed and acknowledged and I call your attention to the following, which appears in pencil at the foot of the New York acknowledgment, "To be acknowledged also before officer required by laws of State of New York for property there," and ask you whether or not that is Mr. Tagart's handwriting?

Mr. Hood. That is objected to for the same reason before given.

A I should say that it is not in his handwriting. Mr. Tagart had a trembling hand.

Q As executor of Mr. Samuel H. Tagart, did you or not come into possession of any papers belonging to the plaintiffs in this case, Miss H. Ella Kremelberg, Miss Anna M. Kremelberg and their sister, who is now Mrs. John Gill, Jr.?

The Witness. Papers of what kind?

Mr. Field. Securities or other private papers.

A No, I do not recall anything; certainly nothing in the way of securities.

Q Do you recall coming into possession of any papers of theirs at all? A No, I do not.

Cross examination by Mr. Hood.

Q You are not a relative of Mr. Tagart's, are you? A No, sir.

Q You were not associated with him in business? A No, sir.

Q And at the time that you have spoken of in your direct testimony, had you been admitted to the bar here in Baltimore? A Yes, I had been admitted to the bar; I was admitted about 1886 or 1887.

Q Did you know Mr. John D. Kremelberg in his life time? A No, I do not think I did.

Re-direct examination by Mr. Field.

Q You do not know the signature of George Kremelberg, do you? A No, sir.

General Question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to

this suit, or either of them, or that may be material to the subject of this, your examination, or the matters in question between the parties? If so, state the same fully and at large in your answer. A No.

(Testimony of witness concluded.)

WILLIAM H. STELLMANN, one of the said witnesses, appeared before, and being by me duly sworn that the answers that he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, says:

Direct examination by Mr. Field.

Q What is your name? A William H. Stellmann.

Q Where do you live? A Sudbrook Park, Baltimore County, Maryland.

Q What is your occupation? A Exporting merchant.

Q What is your age? A I was born in 1858.

Q Did you know John D. Kremelberg prior to the time of his death? A Yes.

Q And his son, J. Frederick Kremelberg, also? A Yes.

Q Were you employed in any capacity by John D. Kremelberg & Company? A I went there about March, 1877, and stayed there until the first of June, 1883. I went through the whole office. I suppose when I left there you might say that Mr. Martin was at the head of the bookkeeping and I attended to the corresponding and all the details and used to buy tobacco and everything else.

Q How old were you when you went there? A I went there in 1877 and I was born in 1858.

Q You were there, then, at the time of the death of John D. Kremelberg? A Yes.

Q Who composed the firm at the time of his death?

Mr. Hood. That is objected to unless it appears that the witness has some knowledge upon which he can declare that.

A Mr. J. D. Kremelberg and his son, J. Fred Kremelberg. I do not know about the New York people, what interest Mr. Kremelberg of New York or Mr. Englar may have had. They were the New York partners and I always understood, I do not know it of my own knowledge, that the Baltimore firm—

Mr. Hood. Let me enter an objection to the witness's testifying to what he does not know of his own knowledge.

Mr. Field. Do not tell that.

Q (*By Mr. Field*) You do not know that they had any interest? A No, sir.

Q What knowledge have you that J. Fred Kremelberg had an interest in the firm? A I know that his father made him a partner and on January 1st of some year, I do not know whether it was 1879 or not, because it has been so long ago that I do not remember it, but I do remember that he went into the firm because I sent the advertisement to the newspaper and then I directed several hundred circulars to correspondents in this country and in Europe, announcing the new partnership. I also know that he signed a great many checks and always signed them "J. D. Kremelberg &

Company," without any "P. P. C.," or anything to it, and the checks were paid at the bank.

Q Who else had authority to sign checks? A John Softon Brancker. He signed by power of attorney. He signed most of the checks, he was the check signer, that was his business.

Mr. Hood. Are you now speaking of Mr. Brancker?

The Witness. Yes, of course, Mr. Kremelberg and his son signed letters and, if it became necessary, signed checks, but Mr. Brancker is the man who signed the checks in the usual course of business.

Q (*By Mr. Field*) Did either one of the New York people ever sign any checks on the funds of John D. Kremelberg & Company of Baltimore? A Not to my knowledge.

Q What was the extent generally of the business of John D. Kremelberg & Company—I do not mean in dollars and cents, but was it large or small? A It was very large. He did a large business in cotton, petroleum, provisions, lard, tobacco of all kinds and you might say he did a banking business, too. They had firms in Louisville and New York and when I first went there they had one in New Orleans, Kremelberg, Schaefer & Company of New Orleans.

Q When you went with the firm in 1877, what was Mr. John D. Kremelberg's financial reputation?

Mr. Hood. That is objected to. In the first place reputation is not a matter of controversy in this case and financial standis not a matter of controversy and not in

issue. I object to it as irrelevant and incompetent.

A As far as I know, Mr. Kremelberg stood as high as anybody in Baltimore. I do not remember that he ever borrowed any money. He had relations abroad which enabled him to obtain money to almost any extent. J. Henry Schroeder & Company, in Liverpool, a very large international banking company, and Goll & Company of Amsterdam and several others, several large business connections in London, Julius Caesar & Company, in London, for example.

Q I did not mean that, I meant was he reported to be a very wealthy man or not; what was his reputation as to wealth?

Mr. Hood. That is objected to for the reasons heretofore given and for the additional reason that it is leading.

A He was one of the wealthy men in Baltimore. He was looked up to by everybody in his line of business and was considered to be a leader.

Q After the death of J. D. Kremelberg, who took charge of the business of J. D. Kremelberg & Company? A I had a very peculiar experience in that. I wanted to leave there and go in business for myself in 1883 and I told Mr. Brancker, who was the principal here, that I was going to leave and then I afterwards thought I had better communicate with Mr. Kremelberg in New York, and I also wrote him. Then Mr. Kremelberg took offense at my having consulted Mr. Brancker first and he wrote to Mr. Brancker and they had quite a heated correspondence about it. But I always considered that Mr. Brancker was my principal

here because he was the man that I knew best. I did not know Mr. George Kremelberg very well. Of course, I knew him, but not very well. He would come here and stay a few hours and then go away again. I never saw anything of him to speak of.

Q About how long after Mr. J. D. Kremel- death did this incident occur? A On the first of June, 1883. I remember I wrote them two or three weeks beforehand and I believe Mr. Kremelberg died in April or May of 1882. Mr. Gill would perhaps know when he died. He has the newspaper clipping.

Q State whether or not Mr. George Kremelberg ever exercised any authority whatever in regard to the affairs of J. D. Kremelberg & Company in Baltimore prior to the death of J. D. Kremelberg? A No, sir, he did not.

Q Did you or not become familiar with the handwriting of Mr. George Kremelberg? A No, I only had one letter from him and I could not remember that.

Q Do you recall the relations between the firm of J. D. Kremelberg & Company of Baltimore and Kremelberg & Company of New York, whether or not the firms had close business connections with each other? A We never had any business with them excepting in money matters. We would send all our exchange to them. When I first went there we sold gold and our exchange was in gold and we would send them twenty-five thousand dollars or fifty thousand dollars or seventy-five thousand dollars in bills of exchange and then sell the gold against these bills, selling the gold to Baltimore brokers.

Q Sell it to Baltimore brokers or through them? A Sell it to the brokers and then we

would give the brokers our check on Kremelberg & Company in New York a draft rather, against bills of exchange that had been remitted a week or ten days before. J. D. Kremelberg always maintained a considerable balance in Kremelberg & Company's hands in New York, always.

Q When you say they maintained a considerable balance there, do you mean that there was always a considerable indebtedness?

Mr. Hood. That is objected to as leading.

A They certainly owed us the money that we had to our credit, yes.

Q It appears from the pleadings in this case that the books of J. D. Kremelberg & Company were all burned in the great fire of 1904, and therefore there is no record evidence of the amount of those balances; you have said there were large amounts; do you recall in substance the amount of balances that were maintained by J. D. Kremelberg & Company with Kremelberg & Company of New York.

Mr. Hood. I object to that because, in spite of the fact that the books of the Baltimore firm were burned in the Baltimore fire, it also appears by the pleadings that the books of the New York firm are in existence and are the best evidence that can be offered in the case, and therefore this testimony is incompetent.

A I know that Mr. Kremelberg would come out from his office and say to Mr. Brancker, "How much can I sell today?" and Mr. Brancker would say sometimes thirty thousand dollars or thirty-two thousand dollars or forty thousand

dollars, or fifty thousand dollars at different times. That meant, how much gold have we got to our credit? Then he would sell the gold and pull down the balance. I do not mean he would pull it all down, but Fischer would give us a check on the Baltimore bank and we would use it to our credit here, use it in paying for tobacco that was bought or paying for something else.

Q Was there ever a time while you were there that J. D. Kremelberg & Company of Baltimore were indebted to Kremelberg & Company of New York?

Mr. Hood. That is objected to as there is nothing in the witness's testimony thus far to show that he has any knowledge of the subject.

A No, I do not know that. I had charge of the books at one time, but it has been so long ago that I could not answer that question. I know very well that they owed us money often, in fact, most all the time.

Cross examination by Mr. Hood.

Q You came to Kremelberg & Company of Baltimore when you were nineteen years of age? A Yes.

Q What position did you fill first? A I was, I guess, only in the office; I did most anything I was asked to do.

Q That still does not tell us what you did. A I was the youngest boy in the office and I went to the postoffice, I copied the letters, I took the letters to Mr. Kremelberg's house on Sunday morning, carried tobacco samples, and, in fact, I did anything I was asked to do.

Q You were an errand boy, so to speak? A Yes.

Q How long did you continue as such? A I do not think I continued as an errand boy more than three months.

Q Then what position did you fill? A Then I wrote letters. I was educated in Germany and I was competent to write in the different languages and I wrote business letters. Also I went with Mr. Kremelberg on several trips. I was promoted in two months.

Q In other words, you got to be correspondence clerk? A Yes.

Q As such correspondence clerk, were you the author of the letters or did you just do the amanuensis work? A He told me what the market was and what to write.

Q How long were you correspondence clerk? A I also kept a tobacco book and wrote letters until the time I left.

Q What is meant by keeping a tobacco book? A Tobacco is inspected in the State warehouses and certificates are issued for each hogshead and then certificates have to be entered in a book with the number, the private number of the firm and also the number of the warehouse, the gross, tare and net weights, the farmers' names who grew the tobacco, the date of its inspection and a great many details of that kind.

Q Did you continue to do that until you left in 1883? A No, I did that only for a few years.

Q What position did you fill after that? A Then I was under Mr. Brancker in charge of the grain and cotton. We did not do much cotton business then, but a large grain and provision business.

Q That was the business end of it? A Yes.

Q There was no office end to that, was there? A Yes, we had to make all the calculations and send the cables off and buy the stuff and make the freight engagements and sell the exchange.

Q Then you would assist Mr. Brancker, you were his assistant? A Yes.

Q Then what other position did you hold? A I have charge of the consulate. We had the Austrian-Hungarian and the Swedish consulate in the office and we had a great many sea captains coming in, captains who would have trouble with their sailors and all that sort of consulate work.

Q You did that work? A Yes.

Q What other work did you do at the time you left? A I bought tobacco in the last two years I was there.

Q Did you have anything to do with the books? A Yes, I kept the books.

Q What books did you keep? A All of them for a year or so.

Q Did you keep the general ledger? A Yes.

Q Do you have any recollection of any specific account in the general ledger? A No.

Q Can you tell me who Mr. Brancker was? A Mr. Brancker was an Englishman who lived in Germany most of his life and his father and mother lived in Liverpool. I think they were of Welsh extraction.

Q I was much more interested in what he did in the firm of Kremelberg. A Oh, he came from New York. He was in the petroleum business in New York and Mr. Kremelberg, after his separation from Mr. Dresel, formed the firm of J. D. Kremelberg & Company, in October, 1872. He wanted some one to assist him

in his business and Mr. Brancker was recommended to him.

Q May I stop you a moment? I just want to know what Mr. Brancker did in general in the firm of John D. Kremelberg & Company? A He was the head man in the office.

Q Immediately under Mr. John D. Kremelberg? A Yes.

Q And in the absence of Mr. Kremelberg, who was acknowledged the chief? A Until Mr. Fred Kremelberg's entry into the firm Mr. Brancker was acknowledged the chief.

Q And Mr. Brancker's position during the time that you were there from 1877 to 1883 continued to be that of chief man in the office? A Yes.

Q You say you remember that some time, some January 1st, you sent out notices of a partnership between John D. Kremelberg and his son Frederick? A Yes.

Q Can you tell us about when that was? A It is my impression that it was in 1879, January 1st, but I will not be sure about that.

Q Do you know anything more about the circumstances of a partnership between father and son there except the fact that you sent out those notices of the formation of the partnership? A No, that is all; that is all I knew. Mr. Kremelberg simply told me that his son would be a partner in the firm. Mr. Kremelberg simply told us all that his son, Mr. J. Fred Kremelberg, was to become a partner.

Q That was before the notices went out? A Yes.

Q And the next thing you knew the notices were sent out? A Yes, I was told to send out the notices to the papers.

Q Were they printed notices? A No, I just wrote them out and they were put in the newspapers at the time.

Q Did you send any notices to the people that you were doing business with? A Yes, we had circulars and had Mr. J. Fred Kremelberg's signature to them; the circulars were engraved by Hoen.

Q Did you send notices out to the people you were doing business with, notifying them of the formation of the new partnership? A Yes, that is what I said. We did that with all the houses that we did business with in America and Europe.

Q After that, did Mr. Frederick Kremelberg continue in the business? A Yes.

Q Until the death of his father? A He was a partner in the firm all the time, according to my understanding.

Q I do not ask you what your understanding was, I want to know what you got affirmatively from anybody who was able to tell you? A I could not say that because I do not know.

Q You do not know whether that partnership continued or not? A I never was advised about that.

Q Do you know what his interest was? A No.

Q In keeping the books, did you keep these accounts of balances between New York and the Baltimore house? A Yes.

Q Have you any recollection as to what they were? A No, sir, it has been too long ago, I could not recollect that.

Q You do not remember anything about them at all? A I know at times we had substantial sums to our credit in New York.

Q But you do not know anything as to the course of dealings definitely? A No, because we would draw down and put back; it is just like it is in the banking business, we treated them like a bank account over there.

Q I do not quite understand what the New York firm did for the Baltimore firm in that respect; you say you sold them gold? A Yes, the foreign bills are gold, even today, foreign drafts are gold drafts, and in those days there was a premium on gold and we could sell whatever gold we had to dispose of and that gold was represented by draft on Kremelberg & Company of New York, against which they held our drafts or bills of exchange on foreign customers and which they disposed of. Mr. Englar was an exchange broker before he went with Kremelberg & Company.

Q In other words, Kremelberg & Company of Baltimore drew on Kremelberg of New York? A Yes.

Q In payment of their obligations? A In payment for what Kremelberg & Company of New York owed J. D. Kremelberg & Company of Baltimore.

Q You say they drew on them? A Against them.

Q They drew against their balances? A Yes.

Q Did they draw directly for the Baltimore firm or did they draw in payment of these obligations that they had abroad? A I do not believe you understand that correctly.

Q Then tell us how it is? A We would have several hundred of hogsheads of tobacco loaded here on the steamer for which we would obtain a bill of lading and we would issue our invoice. A draft was drawn. In the tobacco

business it is entirely different from any other business that I have ever heard of.

Q Never mind about that, just tell us what was done? A The tobacco people would remit their bills of lading to their customer and draw what is known as a clean draft. We would simply send that draft that we had, original and duplicate, to Kremelberg & Company and they would dispose of that to some foreign exchange banker and then we would have the thousands of dollars to our credit, just like we would have in the First National Bank here in Baltimore, where we did our banking, and in order to get money we would sell the gold draft to William A. Fischer & Sons, for example, and we would give them a draft on Kremelberg & Company, which Kremelberg & Company would honor and charge up to us. But they owed us the money.

Q You mentioned something about a Louisville firm, what was the Louisville firm? A Mr. Wille out there was a partner of Mr. J. D. Kremelberg's. Mr. Wille had been employed by Mr. Kremelberg before that.

Q Do you mean that J. D. Kremelberg had an interest in a Louisville firm? A He owned it.

Q Do you know how long that was in existence? A I do not know how long, no.

Q Do you know whether it was still going when you left? A Yes, it was going after I left, because I went out to Louisville frequently on my own business and I would always call on Mr. Wille out there.

Q What about this New Orleans concern? A That only lasted about a year after I went with them. That was Kremelberg, Schaefer &

Company and they did absolutely a cotton business.

Q That was out before the year 1880? A Yes.

Re-direct examination by Mr. Field.

Q What has become of Mr. Brancker, is he living? A No, sir, he has been dead for a number of years; I do not know just exactly how many years he has been dead.

Q With regard to Mr. Fred Kremelberg continuing in the firm, did he or not continue to sign checks and exercise the same authority up to the time of his father's death? A Mr. Fred Kremelberg was not there all the time and that is the reason I can not say. He was absent a great deal from business.

Q You remember his being taken into the firm and the notices being sent out? A Yes.

Q Was any notice ever sent of his going out of the firm? A No, not to my knowledge; I never sent any such notices, nor do I know of such notices being sent.

Q You said something about having Hoen & Company engrave some signature, what did you mean by that? A That is customary. I do not know whether it is now or not, but formerly it was customary, especially in a foreign business, to issue circulars advising your friends and customers of a new partnership and then, at the bottom of the card you will see "Mr. So-and-so will sign," and then his signature will appear just as he makes it, only it would be lithographed. That was done in this case also.

Q Did those circulars contain the name of John D. Kremelberg also or only the name of— A No, it was signed by J. D. Kremelberg &

Company, saying, "We wish to notify you that on such and such a date so-and-so will be a member of the firm," or to that effect.

Q During the time that you were there, was there any one who ever had authority to sign checks, except John D. Kremelberg and J. Fred Kremelberg and Mr. Brancker by power of attorney? A No.

Re-cross examination by Mr. Hood.

Q I want to ask you about J. Fred Kremelberg being away from business; you said he was away a great deal, did you not? A Yes, he would go on trips frequently.

Q On business trips or pleasure trips? A Business and pleasure both.

Q Do you mean that he went on some business trips and some pleasure trips, or that he combined business and pleasure trips? A Had to go out West; of course, we bought a great deal of tobacco in the West, and he would make trips there.

Q How much was he away from business? A Sometimes he would be away for a month or two.

Q In proportion to the time that he was there, was he away a half or a quarter or a third of the time? A I could not say that.

General Question.

Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit, or either of them, or that may be material to the subject of this, your examination, or the matters in question between the parties? If so, state the same fully and at large in your answer? A No.

(Testimony of witness concluded.)

G. LOUIS HESTER, one of the said witnesses, appeared before me, and being by me duly sworn that the answers that he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, says:

Direct examination by Mr. Field:

Q What is your name? A G. Louis Hester.

Q Where do you live? A 106 Edgevale road, Roland Park.

Q What is your occupation? A Tobacco merchant.

Q What is your age? A Forty.

Q You are now the sole member trading under the firm name of J. D. Kremelberg & Company, are you not? A I am the principal of J. D. Kremelberg & Company. The Misses Kremelberg have retained a certain interest in the title of the firm.

Q Including Mrs. John Gill, Jr.? A Yes, and Mrs. de Graaff.

Q How long have you been connected in any capacity with J. D. Kremelberg & Company? A Since November, 1898.

Q Did you have any connection, as employed or otherwise, with J. D. Kremelberg & Company before that time? A No, sir.

Q In what capacity did you go with the firm in 1898? A I was engaged an assistant to Mr. Martin as tobacco buyer.

Q What have been your positions successively since that time? A My position with Mr. Martin, with the firm of J. D. Kremelberg & Company, remained the same until the death of Mr. Charles A. Martin, which occurred in February, 1903. After that time Mr. J. George

Kremelberg gave me power of attorney and I became manager of J. D. Kremelberg & Company. This lasted, I think, to 1908, when Mr. Kremelberg admitted me into partnership and from then on I signed the firm's name, J. D. Kremelberg & Company.

Q Until when? A Until the present time.

Q Who composed the firm of J. D. Kremelberg & Company when you first went with them in 1898? A As far as I know, J. George Kremelberg and Charles A. Martin.

Q Who composed the firm between the time of the death of Charles A. Martin in 1903 and your being taken into the firm in 1908? A J. George Kremelberg.

Q And from the time you were taken into the firm down to the death of J. George Kremelberg, who composed the firm? A J. George Kremelberg and myself.

Q Are you or not familiar with the handwriting of George Kremelberg? A Yes.

Q You have already said that from 1908 down to the time of his death you were his partner in this Baltimore firm, have you not? A Yes.

Q Did you or not also correspond with him? A Yes.

Q So you had an opportunity to become familiar with his handwriting? A Yes, almost every week I had correspondence with Mr. Kremelberg.

Q I show you a paper dated December 4, 1882, and signed Geo. Kremelberg, and ask you whether or not that is the handwriting of Mr. J. George Kremelberg? A I think it is.

Q I show you another paper dated May 4, 1883, signed J. Geo. Kremelberg and ask you to state whether or not that is the signature of J.

George Kremelberg who was your partner? A I think that is also his signature. All my correspondence with Mr. Kremelberg shows that most of the time he signed his name J. George Kremelberg like this and not George Kremelberg.

Mr. Field. I now offer in evidence the papers just referred to by the witness, one being a paper dated December 4, 1882, signed "Geo. Kermelberg" "Seal," attest, "Joshua M. Meyer," purporting to be acknowledged before Joshua M. Meyer, Justice of the Peace, December 4, 1882, and also to be acknowledged by George Kremelberg before John A. Hillery, Notary Public in New York, on December 16, 1882. Also the paper dated May 4, 1883, signed J. Geo. Kremelberg, attest, S. H. Tagart. I will ask the Commissioner to put a back on these papers and mark them Exhibits, Commissioner, Nos. 1 and 2.

(Papers referred to, having been offered in evidence, were marked "Exhibit Commissioner No. 1" and "Exhibit Commissioner No. 2.")

Mr. Hood. I desire to enter an objection to their being received in evidence because the execution thereof has not been sufficiently established.

Q (*By Mr. Field.*) I show you a deed dated December 4, 1882, signed J. F. Kremelberg and I call your attention to a signature, "Geo. Kremelberg," over the word "witnesses" to the left, and I will ask you whether or not that is Mr. George Kremelberg's signature? A It looks like his signature.

Mr. Field. The said deed referred to by the witness is also witnessed by N. P. Henderson and J. D. Kremelberg and is produced in conformity to notice from the defendant and I now offer it in evidence as "Exhibit Commissioner No. 3."

(Paper referred to, having been offered in evidence, was marked "Exhibit Commissioner No. 3.")

Q Did you or not ever know Mr. John D. Kremelberg or either of his sons, J. Fred Kremelberg or John Diedrich Kremelberg? A No, sir.

Q Have you the books of John D. Kremelberg & Company, and if so, how far back have you the books? A I have the books since the fire, that is 1904, or after the fire of February, 1904.

Q You have all since the great fire in Baltimore in February, 1904? A Yes.

Q Have you any books of J. D. Kremelberg & Company prior to the great fire of February, 1904? No, sir.

Q What became of them, do you know? A They were all burned.

Q In that fire? A Yes, in that fire, in the old office building on German street.

Q Have you brought with you the books of Kremelberg & Company that would show the amount of profits which has been drawn by J. George Kremelberg from that firm since February, 1904? A I have brought the balance sheet along. That statement is a true copy of our books from 1904 on, of the profits.

Q Who has been the bookkeeper during that time? A W. A. Baker.

Q How long has he been the bookkeeper, ever since 1904? A When I came there in 1898 he was bookkeeper for the firm then.

Q To what extent did Mr. J. George Kremelberg give his personal time and attention to the business of J. D. Kremelberg & Company in Baltimore? A I used to report to Mr. Kremelberg nearly every week what was going on in the office and once in a while I went over to Mr. Kremelberg's in New York and consulted him on business matters. Once or twice he came down to Baltimore. I practically had entire charge of the office here in Baltimore, however.

Q How often did he come to Baltimore between 1898 and the time of his death, on an average, during the course of a year? A I would say twenty times.

Q Do you mean twenty times from 1898 to his death or twenty times in a year? A Twenty times from 1898 to the time of his death. Mr. Kremelberg came once or twice in the early part but in later years, when he grew older, he came less and he came probably but once a year. I do not think, in taking it altogether from 1898 to the time of his death, he was there over from twenty to twenty-four times.

Q When you were entered into the firm, did you have any articles of partnership or agreement? A Yes.

Q Have you those? A I do not have them with me, no.

Q But you have them? A Yes, I have them.

(Partnership agreement sent for by the witness.)

Q Have you in your possession any articles of partnership or partnership agreement that

would show who composed the firm from time to time prior to 1898? A No. My contract with Kremelberg that was made in 1908 says, "J. George Kremelberg, sole member of the firm of Kremelberg & Company," I believe.

Mr. Hood. Do you mean 1908 or 1898?

The Witness. 1908.

Q (*By Mr. Field.*) Do you know whether or not there were any written agreements or articles of partnership prior to that time between George Kremelberg and whoever else was interested in the firm? A I do not know of any.

Q What was the agreement between you and him as to the division of profits? A They changed according to the statement.

Q These statements will show it? A Yes. When I became partner my profits were seventy per cent. in 1908.

Q Will you state whether or not the book which you have produced will show all of the sums paid by J. D. Kremelberg & Company to J. George Kremelberg from 1904 to the present time? A It does not show the payments made to Mr. J. George Kremelberg, but it shows the profits. Mr. Kremelberg at certain times withdrew amounts from these profits or he left them with the firm of J. D. Kremelberg to accumulate.

Q Did you have a ledger account with J. George Kremelberg? A Yes.

Q And to that ledger account there would be credited the profits, would there not? A Yes.

Q And against it there would be shown all the drafts that he made? A Yes.

Q That is not what you brought, is it? A That is not what I brought, no.

Q We can get that, can we not? A Yes.

Q What does this account show, all the profits that were credited to him? A Yes. It will show the balance on the first of the year. Also on the last year, December, 1913, it shows a balance in his favor of $35,557.10.

Mr. Hood. But you are testifying now to a memorandum there that has not been proved as yet and I must object to it.

Q (*By Mr. Field.*) Have these profits all been paid to Mr. J. George Kremelberg or to his executors? A Yes.

Q What amount was paid to his executors after his death? A The amount of balance due him plus interest.

Q What was it, you paid it, did you not? A Yes.

Q Can you look at your book and refresh your recollection as to what it is? A It was this balance, $35,557.10 plus interest.

Q You have a record somewhere of just exactly what you paid him, haven't you? A Yes, but I can not see it from this statement. Our books will show exactly when the last payment was made. It was made in May, 1914.

Q Did Mr. J. George Kremelberg, at any time after your connection with the firm in 1898, put any capital into the firm? A Yes.

Q When and what amount? A That has to be shown by our books. He had a capital there at the time when he came to the firm of J. D. Kremelberg & Company.

Q Do you know whether or not that consisted of accumulated profits? A Since 1905 it consisted of accumulated profits. As I mentioned

before, occasionally Mr. Kremelberg withdrew some of his profits.

Q The question I am asking you is, did he ever put in any new money in addition to his profits outside of his profits? A No, sir.

Q Did he ever do it at any time since you have been there in 1898? A Not that I know of.

Q Was or was not interest allowed him on his balances? A Six per cent. interest was allowed him on whatever balance he had in addition to his profits.

Q Have you in your possesion, or are there in existence to your knowledge any papers which would show who were the partners in the firm and what their interests were at the time of the death of John D. Kremelberg? A No, sir.

Q Were all the books and papers of John D. Kremelberg & Company destroyed in the great fire? A Yes.

Cross examination by Mr. Hood.

Q You mentioned a Mr. Charles A. Martin and you say he was there when you came there in 1898? A Yes.

Q At the time when you came there in 1898 was he a partner in the firm or was he an employee? A He was a partner in the firm.

Q How long after that did he continue to be a partner there? A Until his death.

Q Immediately upon his death, did you take his place as partner? A No, sir.

Q When did he die? A He died in February, 1903.

Q You then became manager? A Yes, signing the firm by power of attorney.

Q And that continued until 1908 when you became a partner? A Yes.

Q And since that time until the death of Mr. Kremelberg you have been in partnership with him? A Yes.

Q Do you know whether, when you came there in 1898 and until the death of Mr. Martin, Mr. George Kremelberg had any other partners in this Baltimore concern? A As far as I know he had no other partners.

Q And after Mr. Martin's death and until the time when you became a partner, was there any other principal to the firm except Mr. George Kremelberg? A No, sir.

Q As manager of the firm, were you familiar with the books? A Yes.

Q Were you familiar with the books of the firm before you became manager? A No, sir.

Q At the time when you became manager, did Mr. George Kremelberg have a capital account on the books? A Yes.

Q And did that continue during the time that you were manager? A Yes.

Q And did it continue during the time that you were his partner? A Yes.

Q What made you say with regard to the signature on Exhibit Commissioner No. 1 that was shown you that the signature of J. D. Kremelberg, "I think" is Mr. Kremelberg's signature, without expressing any great certainty? A As I said before, he usually signed his name "J. Geo. Kremelberg." I recognized his handwriting but I made the statement that usually his signature was J. George Kremelberg.

Q Have you ever seen him sign George Kremelberg on other papers as it is signed here? A I think so.

Q So what you mean to say is that it is his writing? A Yes.

Q But it is an unusual signature on account of the form of it, is that it? A Yes.

Q You are not at all in doubt that it is his handwriting? A No, sir, I am not in doubt about his handwriting.

Q With regard to the paper marked "Exhibit Commissioner No. 2," what did you say about that, that you were sure or were not sure or that you thought it looked like his signature or what? A I said it looked like his.

Q Why do you say it looks like it; is there any doubt in your mind about the signature? A It looks like his signature. That is equivalent to saying that it may be his signature.

Q I know that, but I want to find out whether there is any doubt about it? A To my mind there is no doubt about it.

Q You think it is his signature? A Yes, I think it is his signature. I might have expressed myself more explicitly about it.

Q And do you want to say the same thing with regard to this attest on Exhibit Commissioner No. 3? A Yes.

Q It is your judgment that that is his signature? A Yes, that is my judgment.

Q When Mr. George Kremelberg died, was he an old man? A Yes.

Q How old a man was he? A Seventy-five.

Q How frequently did you go down to see him during the time that you were his partner? A I think I visited him in New York four or five times a year.

Q Were those social or business visits? A Both, you might say; mostly business.

Q Mostly business and a little society was mixed with it? A He was always kind enough to invite me to his house to stay.

Q But you went there to see him on business matters connected with the firm? A Yes.

Q And besides that you were in weekly correspondence with him? A Yes.

Re-direct examination by Mr. Field.

Q You said in answer to Mr. Hood that during all the time that you were there he had a capital account? A Yes.

Q Of what was that capital account made up, do you know; was there anything in it besides the profits that had been credited to him? A The capital he had in the firm, and, in addition, his yearly profits were credited to his capital account.

Q So far as you know, did he ever put any capital in the firm? A I believe he put ten thousand dollars in the firm of J. D. Kremelberg & Company.

Q When, have you any knowledge of that; was it before your time or during your time? A In 1898, I think the agreement was that he had at least ten thousand dollars capital in the firm of J. D. Kremelberg & Company.

Q Your agreement with him was that he was to contribute ten thousand dollars to the capital of the firm, is that what you mean? A Yes.

Q Did he contribute that in money or any part of it or was that balance standing to his credit on the ledger? A As far as I know it was the balance standing to his credit on the ledger from previous years.

Q Do you or not know whether that balance was made up entirely of profits which had been earned by the firm? A I could not answer that question.

Q So far as you know, did he ever put a dollar of money into that firm other than what he had previously gotten from the firm in the shape of profits? A With the exception of profits, he did not put additional money in the firm, but as you speak of additional money, I must say that his firm, the New York firm, loaned us additional funds up to forty thousand dollars or fifty thousand dollars a year.

Q Were they all paid back? A They were all paid back.

Q When was the first time that the New York firm ever loaned J. D. Kremelberg & Company any money, to your knowledge? A I cannot say. Just as Mr. Stallmann said, we had a running account with Kremelberg & Company in New York and we sold the exchange, just as Mr. Stallmann said.

Q Mr. Stallmann's testimony was to the effect that the balance was in favor of the Baltimore firm; in other words, that the New York firm owed the Baltimore firm? A Yes, but it changed later.

Q I want to know when it changed? A It most likely changed when Mr. Martin became a partner, because Mr. Martin at that time had no capital.

Mr. Hood. You say "most likely," of course you know that does not carry any weight. You must give us facts.

Q Suppose you speak of from 1908, what first happened since 1908; have they owed you or you owed them? A From 1908 to 1913 you had better consult Mr. Baker about that because he was the bookkeeper at that time. I have no knowledge of the books.

G. Louis Hester, re-cross.

Re-cross examination by Mr. Hood.

Q I take it from you you say that whatever you have said is limited to the period that you have been a partner since 1908, is that right? A But I had charge of the office since 1904.

Q Then do you say that whatever you have said is applicable since 1904? A Yes, I was not supposed to have knowledge of the books before that time.

(Note: Witness here produced partnership agreement of February 1, 1908, with the renewals thereof, being the agreement with J. George Kremelberg, and it is agreed by and between counsel for the respective parties that it may be copied into the record and the original returned the witness.)

(Paper referred to is here copied into the record as follows:

"An agreement is hereby made on this first day of February, 1908, between Mr. J. Geo. Kremelberg, of East Orange, N. J., sole member of the firm of J. D. Kremelberg & Co. of Baltimore, Md., and Mr. G. Louis Hester, of Baltimore, Md., that said J. Geo. Kremelberg has admitted said G. Louis Hester into the firm of J. D. Kremelberg & Co. of Baltimore, Md., as a partner. Said partnership shall commence on January 1st, 1908, and shall last for a period of one year and shall thereafter be renewed from year to year. Notice in writing shall be given from either partner to the other of an intention to terminate said partnership, six months before the end of any calendar year, in which event said partnership shall close at the end of such calendar year.

"It is further agreed that after payment of interest charges and of general running expense of the business said J. Geo. Kremelberg shall receive thirty (30) per cent. of the remaining profits of the firm, and said G. Louis Hester seventy (70) per cent. of said profits, as their respective shares therein.

"In case of the death of said J. Geo. Kremelberg, his interest in the firm shall continue until the end of the calendar year, and his share of the capital or funds of the firm shall be paid to his personal representatives within one year from his death.

"And in like manner the amount of twenty thousand (20,000.00) dollars due by the firm of Miss H. Ella Kremelberg, Mrs. Anna M. Gill, Miss Mary A. Kremelberg, all of Baltimore, Md., and Mrs. E. Virginia de Graaff, of Germany, shall be repaid to above said ladies with interest at the rate of six per cent. per annum on said $20,000.00 (twenty thousand dollars), and at a like rate upon any amount due to them upon running account, within one calendar year after said J. Geo. Kremelberg's death.

"In the event of the death of said G. Louis Hester, his interest in the firm shall continue until the end of the calendar year at which time his interest in the firm of J. D. Kremelberg & Co., and the profits thereof, shall be paid to his personal representatives.

"In the event of the death of said J. Geo. Kremelberg, said G. Louis Hester shall have the right to continue the business thereafter under the same firm name and style

of J. D. Kremelberg & Company, together with the right to the good will of said firm, upon complying with the conditions herein before set forth.

Baltimore, Md., February 1st, 1908.

J. GEO. KREMELBERG.
G. LOUIS HESTER.

Witnesses:

GUSTAV HILLEN,
OTTO BRASSLER,
W. ADDISON BAKER,
AUG. F. GIESEKE.

"The above agreement has been renewed by mutual consent to December 31, 1909.

J. GEO. KREMELBERG,
G. LOUIS HESTER.

"Renewed to December 31, 1910.

J. GEO. KREMELBERG,
G. LOUIS HESTER.

"The above statement is hereby renewed by mutual consent up to December 31, 1911, with the understanding however that the share of profits will be divided at the end of 1911, as follows:

J. Geo. Kremelberg, 27½%, G. Louis Hester 67½% and W. Addison Baker 5%.

New York, Jan. 7, 1911.

J. GEO. KREMELBERG.

Baltimore, Md., Jan. 6, 1911.

G. LOUIS HESTER.

"The 1911 agreement is hereby renewed by mutual consent up to December 31, 1912.

New York, January 22, 1912.

Baltimore, Md., January 12, 1912.

G. LOUIS HESTER,
J. GEO. KREMELBERG.")

Q Is there any other partnership agreement with J. D. Kremelberg & Company prior to the death of J. Geo. Kremelberg in existence, so far as you know? A Not to my knowledge.

Geueral Question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit, or either of them, or that may be material to the subject of this, your examination, or the matters in question between the parties? If so, state the same fully and at large in your answer? A No.

(Testimony of witness concluded.)

JOHN GILL, JR., one of the said witnesses, appeared before me, and being by me duly sworn, that the answers that he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, says:

Direct examination by Mr. Field.

Q What is your name? A John Gill, Jr.

Q Where do you live? A 1007 North Charles street, Baltimore, Md.

Q What is your occupation? A Member of the bar.

Q How long have you been a member of the bar of Baltimore City? A Since 1872.

John Gill, Jr., direct.

Q Will you state whether or not you married a daughter of the late John D. Kremelberg, and if so, tell us the date of your marriage. A I did; I married his daughter, Anna M. Kremelberg, on March 2, 1897.

Q State whether or not you have lived in Baltimore all your life? A Yes.

Q State whether or not you knew John D. Kremelberg during his lifetime? A I did.

Q When did your acquaintance with him begin? A Somewhere about 1875 or 1876, I should say, to the best of my recollection.

Q Did you or not know his sons Fred and John Diedrich? A I knew Fred but I did not know the younger one.

Q Do you know whether or not J. Fred Kremelberg and John Diedrich Kremelberg are living or whether they are both dead? A To the best of my knowledge they are both dead.

Q Do you know whether or not either of them left a will? A I think not.

Q Or whether either of them ever married? A Nor did either of them marry, to my knowledge.

Q What was the standing and reputation of John D. Kremelberg at the time of your first acquaintance with him in 1876, financially?

(Objected to.)

A He was considered to be one of the leading merchants of Baltimore, a man of considerable means. He resided at the corner of Charles and Madison streets in a very large mansion house.

Q Were you or not sufficiently familiar with him to have any knowledge of the extent of his business? A No.

John Gill, Jr., direct.

Q When did you first become acquainted with Mr. J. George Kremelberg? A Sometime in the year 1896, I think, about October.

Q After your marriage in 1897, did you or not become more intimately acquainted with him? A Very much more so.

Q From the time of your marriage in 1897 down to the time of his death, how often did he come to Baltimore? A I should think about twice a year for some length of time. Later on I do not think he came oftener than once a year.

Q What was the relation, from your earliest acquaintance with him down to his death, between him and your wife and her sister? A Most intimate at all times. They almost regarded him as a father.

Q Will you state whether or not he visited them on the occasions of his coming to Baltimore? A Always, he generally stayed with us.

Q Have Miss H. Ella Kremelberg and Miss Mary Augusta Kremelberg lived with you since your marriage? A They have spent their winters almost always with us.

Q And you say generally Mr. J. George Kremelberg stayed with you when he visited Baltimore? A He always stayed with us or came there when he was in Baltimore, as far as I know.

Q How long would he stay when he came to Baltimore? A Very seldom over one night; he has been there two nights, probably, at times; but I do not recall longer visits.

Q What would you say from your observation as to the confidence reposed in him by his nieces, your wife and her sisters? A Absolute confidence reposed by them in him.

Q To your knowledge, on the occasion of his visits to your house, were business relations ever discussed? A Never.

Q Will you state when you first had any knowledge of Exhibits Commissioner No. 1 and No. 2 (handing papers to witness). A My attention was first called to those papers toward the middle or the latter part of June, 1913, as I recall it, about six or seven weeks, possibly after his death, subsequent to the marriage of his daughter which took place at our house.

Q Do you mean the marriage of his daughter to her present husband, Mr. Tompkins, took place at your house? A Yes.

Q Please state how your attention came to be called to these two papers, Exhibits Commissioner No. 1 and No. 2? A My sister-in-law, Miss Ella Kremelberg, handed me these two papers saying—

(Objected to.)

Mr. Hood. Miss Ella Kremelberg is living, is she not?

The Witness. Yes.

Mr. Hood. Then I object.

The Witness. She handed the papers to me, saying that she had found them in the safe deposit box which had been turned over to her after the death of Charles Martin, and during his lifetime he had the custody of the box and the papers contained therein. She said at that time that the papers were signed by her uncle George and when she saw them she had not understood them—

Mr. Hood. I object to this testimony for the same reason as before stated, that it is hearsay and that it is a declaration not

against the interest of these parties and therefore not admissible:

The Witness (Continuing). When she saw them she did not understand them, she did not know what they were, did not know that they were of any importance at all, but that they might mean that she and her sisters were entitled to some interest in the firm of Kremelberg & Company and J. D. Kremelberg upon the death of her uncle.

Q What did you do? A I examined the papers and told her that the papers were declarations—

(Objection renewed.)

The Witness (Continuing). I examined the papers and gave them back to her and told her I thought it was proper that she should take legal advice about the papers.

Q Prior to this time, in 1913, when Miss H. Ella Kremelberg showed you these papers, did you or not have any knowledge of their existence? A Certainly not, none whatever.

Q You have said that she said they were signed by J. Geo. Kremelberg; do you or not mean that she saw them signed or that she was simply referring to the signature? A Simply referring to the signature.

Q Did she tell you when she first saw them? A My recollection is that it was some time after the safe deposit box had been turned over to her, but exactly how long after that I do not recall her stating.

Q At all events, if she saw them at any time prior to 1913, did she or not ever communicate to you any knowledge with regard to them? A Certainly not.

Q Will you state whether or not you have been in the active practice of the law in Baltimore, and if so, how long? A I have endeavored to practice it since 1872.

Q Where is the plaintiff, Mrs. Elizabeth Virginia de Graaff? A She is in Germany.

Q Will you state whether or not you have been able to have any communication with her since the present war? A We have had very little communication with her. Something dribbles through once in a while. We have had no response to any letters that we sent about this case. We have been very anxious to reach her and hear from her. You might say she is almost entirely cut off from us by the war.

Q Do you know the signature of Joshua M. Meyer, formerly a justice of the peace in Baltimore City? A No, I do not.

Q How long has he been dead, do you know? A I do not know that.

Q Has he or not been dead many years? A I have a very strong impression to that affect, but I have not the actual knowledge.

Q How long has it been since you have been unable to get a reply to letters to Mrs. de Graaff? A Personally I have had no response to letters sent to Mrs. de Graaff and her husband in August, but my wife and her sisters have had letters, though none of them was in response to the matters pertaining to this case, that we sent to them. What letters we have had have come in a roundabout sort of way, a great many of them apparently being lost.

Q What is the latest communication that you or your sisters have received from her in point of date? A I think they received a communication within the past week or ten days.

Q I do not mean when they received it, but when it was dated? A I do not recall, but I think the date of the last one was at least a month prior to the receipt of the letter. They have sometimes gotten through in six weeks and sometimes in a month. But there is absolutely no certainty about getting anything through in the ordinary time for communications.

Cross examination by Mr. Hood.

Q Mrs. de Graaff, I understand, is the wife of a German general, is that right? A That is correct.

Q Where is her home? A At Wiesbaden.

Q That is near Frankfort, is it not? A Yes. He is stationed in Frankfort at the present time.

Q These communications that you have gotten from Mrs. de Graaff, are they from Wiesbaden or from Frankfort? A They have been from either Wiesbaden or Frankfort.

Q So that apparently she is at her home or in the neighborhood? A She lives at Wiesbaden because they rent their house there. But I think the last letter from her was from Frankfort.

Q Mrs. de Graaff is the oldest of Mr. John D. Kremelberg's children, is she not? A Yes.

Q Did you know her before Mr. John D. Kremelberg's death? A I think I did, but only as a child, a young girl. She was not very old at the time of her father's death; I do not suppose she was over twenty-two or twenty-three years, or something about that.

Q Who is the oldest of the daughters living in this country? A Miss Ella Kremelberg.

Q Is she living with your wife? A Yes.

John Gill, Jr., cross.

Q And has been living with your wife all your married life? A She has been with us every winter. They generally, in the summer, go abroad, as they did last summer, to join their sister and stay with her a part of the time.

Q Is the second oldest daughter your wife? A No, my wife is the third oldest daughter.

Q And the youngest daughter, does she live with you? A Yes, in the winter.

Q The relations, I suppose, between the sisters is very friendly? A Yes.

Q And has been so at all times? A Absolutely.

Q With regard to the two boys that you speak of, you seemed to be a little in doubt about their deaths; what do you know about that? A I can not tell you personally.

Q Did you know them? A I knew Fred. Diedrich I did not know except possibly by sight.

Q Is it not so that both of these boys went abroad before or about 1890? A I could not answer that. The information that I have from my wife and her sisters is that Fred went abroad in 1882, sometime in December, and I have been told that he went out to Australia or New Zealand and never returned to this country.

Q What do you know about his being dead or about his having died without being married or without issue? A Only what they have told me.

Q Only what your wife and her sisters have told you? A Yes.

Q You have not been in correspondence with anybody on the subject yourself- A No, sir.

Q With regard to the other boy, Diedrich, where did he die? A He died here, I think, near Baltimore.

Q Did you know him? A I suppose I did know him by sight. He was a member of the same club that I was a member of.

Q Is it the family tradition that Diedrich died here in Baltimore before you married your wife? A Oh, yes. My impression is there was some administration on his estate. But the other one, there was no estate, he having made a deed of trust of all his property.

Q Did you know Mr. Charles Martin? A Very well.

Q Was he well acquainted with your wife and her sisters? A Absolutely; he must have been.

Q Was he a friend of the family? A I suppose so.

Q After your marriage, did he come to the house frequently? A No, I can not say that he did.

Q I take it that you married in 1897? A That is correct.

Q And it appears that Mr. Martin died in 1903? A Yes.

Q It seems from what you say that he had the custody of that safe deposit box? A Yes, so I am informed.

Q So your wife told you, didn't she? A No, I think that information came from my sister-in-law.

Q During this period after your marriage, who took charge of your wife's and her sister's interests in the Kremelberg concern? A I could not tell you from personal knowledge what their interest was.

Q Don't you know that they were interested? A Yes. I knew that they had certain relations with it.

Q Who took charge of those? A Mr. J. Geo. Kremelberg had entire charge of all their interests in the Kremelberg concern in New York and in Baltimore.

Q After your marriage? A Yes.

Q And until 1903? A Until his death.

Q What did Mr. Martin have to do with it? A Mr. Martin had the securities that they owned, bonds and stock, from which he cut the coupons and collected the interest for them and collected the interest on any mortgages that they might hold or any interest of that kind which was to be collected.

Q Then he represented your wife and her sisters in those matters? A Not my wife, after I was married.

Q But your wife's sisters, your sisters-in-law, he represented after your marriage and until 1903, at the time of his death? A Yes.

Q When you speak of Mr. George Kremelberg having charge of the interests of your wife and of her sisters, do you speak of your own knowledge or as to what your wife and her sisters have told you? A I possibly speak of my own knowledge as well as from what my wife and sisters-in-law told me.

Q What is your own knowledge on that subject? A My own knowledge is that Mr. Kremelberg had entire charge of the matters of the New York firm and the Baltimore firm.

Q He was running the two businesses? A I can not say that.

Q Not in the sense that he did everything, I do not mean that. A The business here during Mr. Martin's day was run by Mr. Martin and subsequent to Mr. Martin by Mr. Hester. Mr. Kremelberg was here very seldom. But

their interests they placed absolutely in his hands and looked to him. I can give you the reason why I know that, if you want it.

Q I do not ask you that; I want to know what your knowledge is about his taking care of their interests, whatever they were? A My knowledge is that I made some suggestions to them, I particularly recall one, as to something that I thought ought to be done, and they politely informed me that their uncle had charge of it and they had absolute faith in him and that they did not care for me to interfere.

Q That came, then, from your wife and her sisters? A Yes.

Q Did you get anything from it all, from Mr. George Kremelberg? A I never had any information from Mr. Kremelberg about either the New York company or the Baltimore company except when Mr. Martin died I got for him, from the executor, Mr. Martin's wife, a paper adjusting their respective interests in the J. D. Kremelberg firm.

Q Which respective interests, whose? A Mr. Martin's and Mr. Kremelberg's.

Q Then you never discussed with him the interests of your wife or your sisters? A Never.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to his suit, or either of them, or that may be material to the subject of this, your examination, or the matters in question between the parties? If so, state the same fully and at large in your answer. A No.

(Testimony of witness concluded).

W. ADDISON BAKER, one of the said witnesses, appeared before me, and being by me duly sworn that the answers that he should give to the interrogatories put to him should be the truth, the whole truth and nothing but the truth, says:

Direct examination by Mr. Field.

Q What is your name? A W. Addison Baker.

Q What is your occupation? A Bookkeeper.

Q Where do you live? A 1210 West North avenue.

Q What is your age? A Fifty-seven.

Q Are you connected with J. D. Kremelberg & Company of Baltimore, and if so, in what capacity? A I am; as bookkeeper.

Q How long have you been bookkeeper for that firm? A Since 1894.

Q Have you brought with you the ledger of that firm? A Yes.

Q Covering what dates? A From 1904 on.

Q To the present time? A To the present moment.

Q Will you state whether or not there are any books or papers of that firm in existence prior to the great fire in Baltimore in 1904? A None that I know of, sir.

Q Were they all destroyed in that fire? A Yes.

Q Is the ledger which you have produced in your handwriting? A Yes.

Q The entries all made by you? A Yes.

Q Will you turn to the account of J. Geo. Kremelberg in that ledger?

(Witness turned to pages 10 and 11 of the ledger).

Q Will you give us the opening of this account, I mean to say, will you tell us what was the balance and in whose favor that balance was. A The balance on December 31, 1903, that was afterward obtained from a paper that Mr. Hester had in his possession at that time, that we were about to make a transfer of the books or a balance sheet of the books, and through that and by other means we were able to establish the amount that was on hand at that time, which amounted to $11,392.90.

Q That was a balance to the credit of J. Geo. Kremelberg? A Yes, on his account on the books that were destroyed in the fire, and was obtained, as I told you, by the merest chance. Mr. Kremelberg happened to have this copy in his possession.

Q You say you have been bookkeeper since 1894? A Yes.

Q Can you tell us how that balance was made up; was it made up in cash capital contributed, or was it made up of profit which had accrued to J. Geo. Kremelberg? A It was made up of profits that had accrued to him year by year.

Q Were you or not with the firm prior to the time of your being bookkeeper? A Yes, I was with them from 1872 to 1879, inclusive, as a boy right from school.

Q Then were you away for a while? A Yes, I was away from 1879 to 1894; in February, 1894, I came back.

Q Will you state what was the balance in this account appearing to Mr. J. Geo. Kremelberg's credit on January 1, 1914? A It was $35,557.10, but from January 1st until May, until the final payment in May, there was an in-

terest accruing on the same which was also paid, the total sum paid him being $36,280.93.

Q That was paid to his executors, you mean? A Yes

Q On what date? A There were several payments made, one of April 27, of fifteen thousand dollars; one of May 6th, 1914, of fifteen thousand dollars; one of May 11th, of six thousand two hunded and eighty dollars and ninety-three cents. That included the interest from January 1st.

Q Will you please examine this account and state whether or not there was any cash capital contributed to this account by J. George Kremelberg between December 31, 1903, and his death, or whether the entire account is made up of profits to his credit? A It is made up of profits in addition to the balance that he had at the time he came, with interest, of course.

Q State whether or not the interest was allowed on the balance? A Interest was allowed on the balances at six per cent. per annum from year to year.

Q Give a statement to the stenographer as to what sums were withdrawn by Mr. J. Geo. Kremelberg between December 31, 1903, and December 31, 1913.

(Note. It is agreed by and between counsel that this account may be transcribed by the witness, Mr. Baker, and returned as an exhibit with these depositions, with his affidavit that it is a true copy of the account as it appears upon the ledger, said account to be filed and marked "Exhibit Commissioner No. 4," to be attached to these depositions).

Q You have stated the amount that was paid to the executors of J. Geo. Kremelberg since January 1, 1914, have you not? A Yes.

Q Now please state from this account what was the total amount paid to Mr. J. Geo. Kremelberg or for his account between December 31, 1903, and December 31, 1913? A Against the balance due him of eleven thousand three hundred and ninety-two and ninety cents, there is a charge of the same date, December 31, 1903, of $1,694, which he transferred from another account. That person had died suddenly and he had just transferred it to his account.

Mr. Hood. He paid another man's debts, in other words?

The Witness. Yes. The total, December 31, 1913, was $31,105.64.

Mr. Hood. That is in addition to the thirty-six thousand dollars?

The Witness. Yes.

Q (*By Mr. Field*) Then what has been the total profits paid by J. D. Kremelberg & Company to J. Geo. Kremelberg and to his executors since December 31, 1903, including interest? A $67,386.57.

Q This is the amount, as you have stated, since December 31, 1903; you were bookkeeper from 1894 to 1903, a period of nine years, were you not? A Yes.

Q Is there any record anywhere that would show the profits paid by J. D. Kremelberg & Company to J. Geo. Kremelberg during the nine years from 1894 to 1903? A No, sir, none at all. He was sent each year a copy of his account. That is the only copy extant that I know of.

Q Will you state whether or not he was paid profits every year during those nine years? A Yes, he was.

Q Were they large or small? A They varied as you could see by that list that Mr. Hester brought here.

Q I am speaking of the time from 1894 to 1903. A Oh, they varied. It depends altogether upon the crop and as to what you could get out of your crop. Our orders have been about the same year after year. If the crop is sufficient to enable us to fill the orders, our sales are larger and we are able to do more some years than others. The profits some years will be twelve thousand dollars, some years five thousand dollars and some years six thousand dollars and often they are ten thousand dollars. It depends altogether upon the season.

Q How did the profits compare during the ten years of 1894 to 1904 with the profits since 1904? A I do not know that I would be in a position to say that definitely, but offhand I would say there would not be very much variation. We may have two or three bad seasons and then we would have two or three good seasons. It depends entirely on that. It is not a business that you can force or increase, you have to depend entirely on the crop at the time you pick your tobacco.

Q But you were there and you were the bookkeeper and you know probably as well as anybody else, unless Mr. J. Geo. Kremelberg's executors have this statement, so I ask you, is it or not substantially correct, according to your recollection, that your profits were substantially about the same the ten years prior to 1904 as in the ten years since 1904? A I think I am safe in saying yes.

Q Have you any knowledge of the profits between 1879 and 1904? A No, sir, I do not know. I was in business on my own account during that time and I lost sight of the thing entirely.

Q Were you there at the time that Mr. John D. Kremelberg took his son Fred into the firm? A I think I was.

Q Do you remember about that? A I recollect his signature; I can recall very clearly his signature, "J. D. Kremelberg & Company"

Q What time in the year 1879 did you leave, do you recall? A It was along about the spring, but I do not know what month, possibly it was April or May.

Q What was the extent of the business in 1879 as compared with 1904 and since? A We did a large business; there were so many lines that they were in then and now it is confined purely to tobacco and the tobacco business has changed more or less. Then they were in cotton and in petroleum and lard and clover seed and almost everything that was exportable. Mr. Kremelberg was a very large dealer in all kinds of export goods and handled everything, you might say.

Q The business when you were there in your early days from 1872 to 1879— A Far exceeded the business of the present day in Baltimore.

Q Will you state whether or not you are familiar with the signature of J. Geo. Kremelberg? A I think I would know it anywheres, sir.

Q Will you look at Exhibit Commissioner No. 1, at the signature "Geo. Kremelberg," and state whether or not that is the signature of J. Geo. Kremelberg? A I should say it was, sir.

Q Will you look at the signature of J. Geo. Kremelberg to Exhibit Commissioner No. 2 and state whether or not that is the signature of J. Geo. Kremelberg? A It is.

Q And this signature of George Kremelberg on the deed, which is Exhibit Commissioner No. 3, is that his signature? A Yes, I should say that is his signature also.

Q To what extent would you see his signature prior to his death so as to familiarize yourself with it? A He wrote almost semi-weekly to Mr. Hester and he very frequently turned those letters over to me, and then when Mr. Hester was in Europe Mr. Kremelberg would correspond with me and I have had quite a number of letters from him myself. At various times, before I got the power of attorney, I saw his signature on the various documents, and I have seen his signature in various ways.

Q Did you know anything about the safe deposit box in which Mr. Martin had some papers belonging to the Misses Kremelberg? A Yes, I know he generally attended to the coupons and all that business for the ladies. We generally collected them and remitted the money to them.

Q Who had access to that box, do you know? A He had, for one. I presume the ladies had access to it also, but I do not know.

Q Anybody else in the firm? A Nobody else in the firm, so far as I know. I do not really know only from observation.

Q Mr. Hester has produced his partnership agreement in 1908 with the successive renewals of it; is there or not to your knowledge in existence any partnership agreement prior to that time of the firm of J. D. Kremelberg & Com-

pany? A No, sir, Mr. Martin never showed it to me and I have never seen it.

Q How often did J. Geo. Kremelberg come to Baltimore and have anything to do with this business? A Not oftener than twice a year; generally he came about once a year.

Q How long did he stay when he came? A He would not be with us more than the day; he would come in the morning and in the evening he would come sometimes; I have seen him there two days, forty-eight hours. He would rarely stay away more than a day at a time. He would come there and look at the Virginia samples that we would buy for the Austrian Government.

Q During the ten years from 1894 to 1904, while you were bookkeeper, did J. Geo. Kremelberg put any new capital into the firm? A No, sir, only what had already been placed to his credit as a balance. He never put any fresh capital in.

Cross examination by Mr. Hood.

Q Mr. Baker, were there no years of losses, when there were no profits? A We have thought usually that five thousand dollars was a very small year, a bad year.

Q Did you not have a year in which you had exceptional loss through foreign failures? A Yes, I believe I recall that one year.

Q When was that? A I really do not know when that was.

Q Was is during this period that you speak of that you were bookkeeper? A I think that was before. I rather think I was there, though, but it must have been in the early part of my

coming, because I would know something more definite about it otherwise.

Q Did the account go on the other side of the ledger that year? A Really I do not know about that year. I am very hazy on that. I would cheerfully tell you, if I knew. That is the only thing that ever occurred that I know of in the way of a loss in the business since 1872.

Q That was a substantial one, was it not? A A very good loss, yes.

Q Do you remember approximately how much it was? A No, I do not recall that.

Re-direct examination by Mr. Field.

Q Did I understand you to say that annually you sent to Mr. J. Geo. Kremelberg a statement showing the profits and a statement of the books showing the balance sheet, both 1 and 2, and the resources and the liabilities and a statement of investment, the whole thing each year from 1904 on.

Q Would those statements, if they are in existence, show exactly what profits he drew from the firm from 1894 down to 1904? A Yes.

Q Do you or not know whether he received such statements prior to 1894? A I do not know it for a fact, no, sir. I presume he did.

Mr. Hood. Only state what you know.

The Witness. Then I do not know that. I am sorry I can not remember about that loss. It must have been when I first came with the firm. I knew there was such a thing, but I can not just recall the particulars of it. I know exactly the name of the firm, but I can not recollect the amount.

Mr. Hood. That would be about 1892, would it?

The Witness. 1894.

General question. Do you know or can you state any other matter or thing that may be to the benefit or advantage of the parties to this suit, or either of them, or that may be material to the subject of this, your examination, or the matters in question between the parties? If so, state the same fully and at large in your answer. A No.

(Testimony of witness concluded).

Be It Remembered, That on this 28th day of January, 1915, at my office, No. 220 St. Paul Street, Baltimore, Maryland, at one o'clock p. m., being the time and place named in the annexed notice and agreement for taking the examination of the witnesses named in the said notice, I, William E. Schul, the Commissioner therein named, having first taken the oath required of me in this behalf, proceeded to examine such of the witnesses as could be met with, and as are hereinafter named, in pursuance of said notice and agreement, and caused said examination to be taken down in writing (stenographically) in my presence by Lafayette P. Temple, a competent stenographer, being one of the regular stenographers of the Supreme Bench of Baltimore City, who was by me duly sworn according to law, as per his affidavit hereto annexed. The said testimony having been taken down in the presence of S. S. Field, Esquire, representing the plaintiffs and Louis Hood, Esquire, representing the defendants, and upon question propounded by said attorneys respectively, and the questions and answers hav-

ing been taken down stenographically and written up by said stenographer, was thereafter signed by said witnesses respectively in my presence, and by me sealed up, endorsed, directed and mailed by depositing in the Postoffice at Baltimore, Md., with proper postage attached, addressed to the Honorable John R. Emery, Vice Chancellor, Newark, New Jersey.

The following exhibits were offered and are herewith returned:

Exhibit Commissioner No. 1.
Exhibit Commissioner No. 2.
Exhibit Commissioner No. 3.
Exhibit Commissioner No. 4.

Witness my hand and official seal as the Commissioner of Deeds for the State of New Jersey, residing in Baltimore City, Maryland, this day of February, 1915.

.....

Commissioner.

Stipulation.

IN CHANCERY OF NEW JERSEY.

Between HARRIET ELLA KREMELBERG, and others, *Complainants,* *and* EDITH K. TOMPKINS, and others, *Defendants.*	*On Bill, &c.* *Stipulation.*

It is hereby stipulated and agreed by and between the parties to the above entitled cause, as follows:

(1) That the testimony of Gustav Hillen, a resident of the City, County and State of New York, a witness on behalf of the complainants, may be taken *de bene esse* on Friday, the twenty-sixth day of February, nineteen hundred and fifteen, at two o'clock in the afternoon, at the office of Kremelberg & Co., Number 92 Water street, in the City and State of New York, before Nicholas W. Bindseil, a Master in Chancery of the State of New Jersey.

(2) That the said testimony may be taken stenographically by the Master and afterwards reduced to typewriting, but shall bear the signature of the witness thereto.

(3) That the said testimony may be taken and used with the same force and effect as if the same had been taken in accordance with all of the requirements of the laws of this

Stipulation.

State with reference to the taking of testimony of witnesses *de bene esse,* and the giving of any further or other notice is hereby waived.

CHAUNCEY G. PARKER,
Solicitor for Complainants.

FRANCIS LAFFERTY

By LOUIS HOOD,
Solicitor for Defendants.

Dated February 18, 1915.

IN CHANCERY OF NEW JERSEY.

Between HARRIET ELLA KREMELBERG, and others, *Complainants,* *and* EDITH K. TOMPKINS and others, *Defendants.*	*On Bills, &c.*

Testimony of GUSTAVE HILLEN taken on behalf of the complainants, pursuant to stipulation hereto annexed, at the office of Kremelberg & Co., No. 92 Water street, New York City, before Nicholas W. Bindseil, a Master in Chancery of New Jersey, on Friday, February 26th, 1915, at 2 P. M.

Appearances:

Mr. Chauncey G. Parker and Mr. S. S. Field (of the Maryland Bar) for complainants.

Mr. Louis Hood for defendants.

It is stipulated and agreed by and between the counsel for the respective parties that the testimony may be taken down in shorthand by the Master and afterwards reduced to typewriting.

GUSTAVE HILLEN, being duly sworn according to law, on his oath says:

Direct examination by Mr. Field.

Q Mr. Hillen, please state your name? A My full name is Ernst Gustave Hillen.

Q And your place of business? A 92 Water street, New York City.

Q What is your business now? A Commission merchant.

Q Are you not a member of a firm? A Now, yes, sir.

Q Who compose the firm? A Otto Brassler and myself.

Q What is the name of the firm? A Kremelberg & Co.

Q When did you first have any connection with the firm of Kremelberg & Co. in any capacity? A As office boy in 1871, I think.

Q Have you been with the firm ever since? A Ever since.

Q What position did you hold next after being office boy? A General clerk.

Q And what next? A I became bookkeeper in 1884. It is in my handwriting before, in 1883 or 1884. This book I have here is from 1884, and is in my handwriting.

Q What is the book to which you just referred? A The ledger; the other books are called account current.

Q The ledger of Kremelberg & Co.? A Yes.

Q What dates does it cover? A Since January 1st, 1884.

Q To this date? A Yes, sir; the books for last year are not closed yet; there is something pending yet; drafts have come back from the other side.

Q To this date, except that the accounts for 1914 are not closed? A Yes.

Q Have you or not any books of account of Kremelberg & Co. prior to January 1st, 1884? A No. I will explain that, if you will allow

me. We used to be in 160 Pearl street for forty years, and there was a fire once in the place above us; James P. Kernochan was the landlord; and our books and stationery that were not in the safe were soaked. There is a relic of it, that picture (indicating), and the books were not destroyed at the time, as I think, but only when we moved to this place. Mr. Engler had ordered them destroyed. It was about 12 years ago, and there was an accumulation of forty years.

Q I think you showed me some one book that ran back to 1882? A Yes.

Q Can you get that? A Yes, a cash book. It went back to 1883. You remember that one entry that went back to Didi.

Q That was in the year 1883? A Yes.

Q Mr. Hillen, will you be good enough to look at this account which I hand you, which purports to be an account headed "Geo. Kremelberg, New York, priv. a/c"? A That is what they always called it. There was only that one account in the books. There is an old book. (Producing book.)

Q This account which I am now showing you begins January 1st, 1884? A Yes.

Q And runs down to May 31, 1914? A Yes.

Q Will you please state whether or not that is a correct account taken from the ledger? A It is a correct account taken from the ledger.

Q When was it taken and by whose direction? A By my direction, and I added it over.

Q You compared it? A Yes.

Q By your direction, and taken at my request within the last ten days, wasn't it? A Yes.

Q Will you look at the ledger which is before you and state what pages of the ledger are

copied in this account to which you have just now testified? A Folio 142 to 153.

Q Both inclusive? A Yes.

Q Is the account which you produce a correct transcript of the books on the folios page 142 to 153? A Yes, it is.

Cross examination by Mr. Hood.

Q Mr. Hillen, you said that you figured it over? A I added it over.

Q You mean you added it together again? A Yes, so I know it is right.

Q What we are interested in knowing is whether this paper is an exact copy of this account in the books, running from page 142 to page 153? A Yes.

Q Whether it is an exact copy of your book? A Yes.

Q How do you know that it is an exact copy of the book; have you compared it? A No, but I added it over and it is right.

Q Then you haven't compared it with the book; how can you tell then that it is a copy? A It adds up right; there is no use of checking every item again.

Q Who made it? A A young man here in the office.

Q What is the clerk's name? A John Eilers, Jr.

Further direct examination by Mr. Field.

Q Will you be good enough to state what is the meaning of this heading of this account, which is as follows: "Dr. Geo. Kremelberg, New York, priv. a/c Cr."? A Private account; I took that from the former books; I don't know any other way. My account I put

the same way. It is customary; that is all I know.

Q Is there any other account in the books of the firm with George Kremelberg? A No.

Q Does this account or not contain a correct statement of his relations to the firm during those years? A Yes.

Mr. Field. I offer in evidence the account of "Geo. Kremelberg, New York, priv. a/c," appearing on pages 142 to 153, inclusive, of a book marked "Ledger C. K. & Co."

I also offer in evidence a copy of the account appearing on pages 142 to 153 inclusive.

(Marked Exhibit C 1.)

Q Will you be kind enough to look at this account and read off to the Master the profits which were credited to this account each year, beginning with 1884?

A	December 31, 1884,	$10,936.48
	December 31, 1885,	9,449.62
	December 31, 1886,	9,248.90
	December 31, 1887,	15,167.64
	December 31, 1888, (is a loss)	$5,926.87
	December 31, 1889,	10,900.93
	December 31, 1890,	6,372.89
	December 31, 1891,	4,379.97
	December 31, 1892,	10,868.62
	December 31, 1893,	16,338.08
	December 31, 1894,	16,209.16
	December 31, 1895,	14,811.41
	December 31, 1896,	14,325.30
	December 31, 1897,	17,700.45
	December 31, 1898,	21,933.95
	December 31, 1899,	6,418.43
	December 31, 1900,	6,381.08

December 31, 1901,	20,703.14
December 31, 1902,	18,856.53
December 31, 1903,	16,877.67
December 31, 1904,	13,544.95
December 31, 1905,	12,729.13
December 31, 1906,	11,272.66
December 31, 1907,	15,480.00
December 31, 1908,	7,165.52
December 31, 1909,	20,938.07
December 31, 1910,	10,941.97
December 31, 1911,	24,036.94
December 31, 1912,	27,928.53
December 31, 1913,	20,219.51

Q Please look at this account and read off what amounts, if any, were paid to the executors of George Kremelberg after his death, in settlement of this account? A $100,000, $40,000, $40,000, $23,000. That settled the account, a total of $203,000.

Q Can you give the dates of each of those payments? A September 19, 1913, $100,000; October 18, 1913, $40,000; November 12, 1913, $40,000; May 4, 1914, $23,000.

Q Please state whether or not I understood you correctly saying that every one of those items which you have read off were profits, with the exception of one year, in the period from 1884 to 1913? A Yes.

Q Let me ask you a word or two as to the manner in which this account is kept. I see on the debit side are quite a number of amounts of various items. What do they represent? Do they represent amounts drawn during the year by Mr. George Kremelberg? A Yes.

Q On the other side there are several items marked "By sdry. Debtors"? A For the particulars, you have to go in the other book.

Gustave Hillen, further direct.

Q Do these items "By sdry. Debtors" mean the collections of various kinds made by the firm for the credit of George Kremelberg? A Yes.

Q Please state whether or not interest was charged and allowed on the balance in these accounts; that is, charged when the balance was against George Kremelberg, and allowed when the balance was in his favor? A Yes.

Mr. Hood. Does that appear on the account?

Witness. Yes, but it doesn't appear in the ledger, but I made out a separate statement.

Q Will you please look at this statement I now hand you, marked Exhibit C 2 for identification, and state whether or not it shows correctly the amount of interest which was either charged against or credited to George Kremelberg in this account? A They are the correct amounts.

Q By whom was that done; under whose direction, and when? A John Eilers; I looked it over.

(Statement headed "Interest in Account," 1884 to 1913, marked Exhibit C 2 for identification.)

Q From what books have you read these items of interest charges? A From the account current from 1884 to 1913, H, I, J, K and L of Kremelberg & Co.

Q Were all those books kept by you? A Yes.

Q Are all of those items of interest which you have read included in the account of George

Kremelberg on the ledger which has been filed already? A Yes.

Q Does the ledger account designate the interest, or is it included in the larger item that is brought from the accounts current? A It is in the larger item.

Mr. Hood. What do you mean "Profit and Loss"; you said it was included in another item in the ledger?

Witness. Yes.

Q For example, we will take 1884; in what item is the interest that was charged that year included? A In the item December 31, $2,-441.01.

Q Let us come down to the item where the interest was charged; take 1913, and point out in what item the interest that was credited that year is included. A I think there is only one credit item there; it is the item $6,725.22.

Q Take the year 1910, for example; in what item is the interest credited? A $6,714, under December 31.

Q Take, for example, the year 1908, and see if the interest is specific; that is, included in something else? A $4,358.42.

Q In what item is interest included for the year 1908? A One check $1,362.40, interest $4,358.42; those two together must make $5,-720.82 in the ledger entry.

Q In this account in the ledger is the interest ever included in the profit and loss item? A The interest item, the interest account shows a profit and sometimes a loss.

Q In the items which you have read from this account, from year to year, of profit, is there any interest included in that item of

profit? A Yes, if the interest account shows a profit.

Q Of course we understand that if the interest account shows a profit, that profit goes into the general profit of the year? A Yes.

Q But the question I am asking you is this: is the interest which was credited to George Kremelberg on his balances ever included in the item of profit in his ledger account? A No, sir.

Q Was the interest charged or credited, as the balances might be, to Mr. Engler also? A Yes.

Mr. Hood. Who is Mr. Engler?

Q Who composed the firm during the running of these books from 1884 down to the death of George Kremelberg? A George Kremelberg and Adolph Engler.

Q Mr. Engler died when? A In 1909.

Q In what proportion were the profits divided between Engler and George Kremelberg from 1884 to 1909? A I will have to look that up. They were divided evenly up to a certain date.

Q Can you give us the date they were divided evenly, up to what date? A 1903.

Q After that what percentages were divided; won't your journal show that? A The day book shows that.

Q Begin with 1904; what percentage did each get? A By rights it ought to be figured out, because I got my ten per cent. in there, and it should not be.

Q Explain that. A Engler 37½, Kremelberg 52½ and I 10.

Q 1905? A Engler 30, George Kremelberg 60, Hillen 10.

Q 1906? A Adolph Engler 25, George Kremelberg 60, Hillen 15.

Q That continued up to his death? A Yes. After Mr. Engler's death in 1909, Mr. Hillen and Mr. Brassler became partners, and from then until Mr. Kremelberg's death, Mr. Kremelberg got 50 per cent., Mr. Hillen 25, and Mr. Brassler 25.

Q Will you state whether or not it was always the custom of this firm to charge or allow interest on balances due to or from the partners, just as if they were debts? A Yes.

Q Mr. Hillen, at what rate was the interest that you have read charged or credited? A Six per cent., five and four.

Q Look and see if the interest isn't six per cent. down to 1897? A Yes, six per cent. down to 1897 inclusive; 1898 at five per cent.

Q After 1898 was it four per cent? A Yes; that went on until 1909 and then the new partnership made it five per cent.

Q Will you look at the old book which you have prior to 1884, and see whether you can tell how early you were bookkeeper? A July, 1883.

Q By whose direction was that interest changed from six to five and then four per cent? A Mr. Engler.

Q When you first came with the firm as an office boy, who was the senior partner? A Mr. Engler was the oldest.

Q I mean in years who was considered the senior partner of the firm? A I cannot say.

Q Who was the boss if there was one? A Mr. Engler. I wouldn't say that he bossed Mr. J. D. Kremelberg, because I was a boy and he came here very seldom.

Mr. Parker. Who came here very seldom?

Gustave Hillen, further direct.

Witness. J. D. Kremelberg.

Q When you first came in here, what part did J. D. Kremelberg take in the affairs of Kremelberg & Co. of New York? A He came only here on visits.

Q What did he do for the firm; did he buy or sell or get customers? A He traveled a good deal on the other side.

Q For this firm of Kremelberg & Co. of New York? A For his firm in Baltimore.

Q Did he make sales for this firm? A Yes.

Q To what extent? A That I cannot say; that is so many years ago.

Q Have you found among the old papers of this firm the announcement of the death of Mr. J. D. Kremelberg? A Yes.

Q Will you please produce that? A Yes, sir, I produce it.

Q Is this the announcement of the death of Mr. J. D. Kremelberg? A Yes.

Mr. Field. I offer that in evidence; it is dated Baltimore, May 31st, 1882.

(Marked Exhibit C 3.)

"Baltimore, May 31st, 1882.

Sir:

It is our painful duty to inform you of the death of our highly esteemed senior partner, Mr. J. D. Kremelberg, on the 24th instant, at Philadelphia, where he had gone for medical advice.

The business in Baltimore, New York and Louisville will be continued as heretofore.

Yours very respectfully,
J. Fred Kremelberg,
Geo. Kremelberg, New York.
Ad. Engler, New York.
Julius Wille, Louisville."

Gustave Hillen, further direct.

Q Where did this paper come from, Mr. Hillen; where did you find it? A I found it among the papers of Kremelberg & Co. in New York. I found it in that table there (indicating).

Q I observe in that that Mr. J. D. Kremelberg is referred to as "Our senior partner"; did I understand you to say that Mr. Engler was older in years? A Mr. Engler died in 1909 and was 86, and he was the oldest.

Q Do you know which one was first in the firm? A No. I think the firm was started in 1863.

Q Will you look at the ledger and state on January 1, 1884, what was the state of George Kremelberg's account, whether he owed the firm or the firm owed him? A He owed $8,894.66 on January 1, 1884.

Q What was the state of Mr. Engler's account at that time? A He owed $4,013.83.

Q Who composed the firm prior to the death of J. D. Kremelberg? A J. D. Kremelberg, Adolph Engler and George Kremelberg.

Q Did you keep any capital account other than the accounts in the name of the partners? A No.

Q Turn now to the account of J. D. Kremelberg's estate and state how that stood on January 1, 1884. A A balance of $20,263.14.

Q Which way? A Credit in favor of J. D. Kremelberg's estate.

Q So that on January 1, 1884, what capital was there in the business of Kremelberg & Co.? A I will have to figure it out.

Mr. Hood. Was there any capital in the business?

Witness. No.

Q (Last question repeated.) "So that on January 1, 1884, what capital was there in the business of Kremelberg & Co.? A There was no capital.

Q And both Mr. George Kremelberg and Mr. Adolph Engler were indebted to the firm at that time? A Yes, that is plainly shown.

Q And George Kremelberg continued indebted to the firm how long? A Up to 1894; in 1895, it commenced with a balance to his credit.

Q What was the nature of the business of Kremelberg & Co. ever since you have been with it? A Commission business.

Q Handling what goods? A When I first came here they shipped cotton, petroleum, but of late years it has only been tobacco. Now and then we get an order for some merchandise, but it is mostly Kentucky tobacco.

Q When you first came in 1871, what did they handle besides cotton and petroleum? A Also tobacco.

Q What was the size of the business between 1870 and 1884 as compared with afterwards? A I cannot say.

Q Were they doing a big business when you came here as a boy? A I cannot say.

Q Was there any material change in the business between the death of Mr. J. D. Kremelberg in May, 1882, and January 1, 1884? A Some customers fell off and bought direct in the West, but there were a few customers who increased their orders.

Q You were bookkeeper as far back as 1883 in July? A I think so. At any rate, that is my handwriting.

Q I ask you to take your memory back one year—J. D. Kremelberg, according to this paper,

died on May 24, 1882, and this book begins January 1, 1884, which is about a year and a half afterwards—a year and eight months—was there not any material change in the business during that eighteen months? A That I cannot say.

Q Do you remember whether or not there was any material change in the amount due by the partners George Kremelberg and Adolph Engler to the firm? A The book shows.

Q The book only shows back to January 1, 1884. A Before that I don't know.

Q Do you remember about the failure of the New Orleans house? A I remember that they had a house there and it did not fail; they had a large loss; I cannot give the figures.

Q Who paid that loss? A It fell on this firm.

Q About when was that? A That was in—I cannot say; it was about that time.

Mr. Hood. About what time?

Witness. When Mr. J. D. Kremelberg died.

Q Was it before his death? A I cannot say.

Q Do you remember when Mr. Kremelberg lived in New York City? A Yes.

Q Didn't he own his property in New York City at that time? A Yes, he did.

Q I want to ask you whether or not Mr. George Kremelberg didn't have to sell his New York property as a result of this New Orleans loss? A I cannot say that.

Q Did he sell his house in New York before J. D. Kremelberg's death? A I cannot say; he moved from his house and moved to Orange, New Jersey, and has been there ever since.

Q Was he in Orange, New Jersey on January 1, 1884? A I cannot say.

Q Won't this book show where you paid the rent for the house in Orange and charged it to him? A I see a check drawn beginning of the month and the name of George Spottiswoode $75; that was the landlord. That was in January, 1884.

Q You have given the amount due by George Kremelberg to the firm on January 1, 1884, and the amount due by Engler to the firm January 1, 1884, and the amount due by the firm to the credit of the account of J. D. Kremelberg's Estate; I will ask you to look at the book and state what Kremelberg & Co. of New York, owed J. D. Kremelberg & Co. of Baltimore, on January 1, 1884? A $26,523.91.

Q Will you look at these statements which I now hand you and which are identified by the following dates: Balances December 31, 1884; Balances January 1, 1886; Balances January 1, 1887; Balances December 31, 1887; Balances January 1st, 1889; Balances January 1st, 1890; Balances January 1st, 1891; Balances January 1,1893; Baltimore January 1, 1884; Balances December 31, 1894; Balances December 31, 1895, and Balances December 31, 1896, and state whether or not they are in your handwriting? A Yes.

Q And whether or not they were sent by you to Miss H. Ella Kremelberg? A Mr. Engler sent them.

Q The first one has a signature at the bottom "Kremelberg & Co."; in whose handwriting is that? A Adolph Engler, the partner.

Q The second one has the signature of "Gustav Hillen, Bookkeeper;" that is your signature? A Yes.

Q You didn't use your first name at that time? A No; I sign different now.

Q The third is signed "Kremelberg & Co."; is that also by you? A Mr. Engler signed "Kremelberg & Co."

Q The fourth by you as bookkeeper? A Yes.

Q And the fifth by you as bookkeeper? A Yes.

Q And the sixth by you as bookkeeper? A Yes.

Q The seventh by you as bookkeeper? A Yes.

Q The eighth by you as bookkeeper? A Yes.

Q The ninth by you as bookkeeper? A Yes.

Q The tenth by you as bookkeeper? A Yes.

Q And the last by you as bookkeeper? A Yes. They were not continued after 1896.

Q I see one year, 1892, is not here; will you please look at your ledger? A The 1892 account appears on page 174 of the book.

Q The end of 1891 is what we want; what was the state of the account at the end of 1891? A Here it is.

Q What was the state of the account between J. D. Kremelberg & Co. of Baltimore and Kremelberg & Co. of New York at the end of 1891—January 1, 1892? A They had to their credit $23,093.40.

Q Which owed the other that much? A The New York firm owed the Baltimore firm.

Mr. Field. I offer these statements, the first one being December 31, 1884, and the last December 31, 1896, in evidence for identification.

(Marked Exhibit C. 4 for identification).

Gustave Hillen, further direct.

Q Will you please look at the ledger and state how long after 1884 Kremelberg & Co. of New York continued indebted to Kremelberg & Co. of Baltimore? A The indebtedness was always in January, and up to 1902 there was just $100.

Q Then after that does the indebtedness appear? A In 1903 they owed us, but 1904 we owed them again.

Q Can't you run through 1884 and state whether the New York firm was not continuously indebted to the Baltimore firm during that whole year? A I will have to look that up.

Mr. Hood. Suppose he prepares a copy of the account.

Mr. Field. I offer in evidence pages 166 to 175, being the account of J. D. Kremelberg & Co., Baltimore, contained in Ledger C, Kremelberg & Co., and the copy will be furnished as a part of the record.

Q I want to ask you if you have found any announcement of the fact that Mr. George Kremelberg was taken into the firm of J. D. Kremelberg & Co., of Baltimore? A I found this announcement among my papers.

Q Did you find it among the papers of Kremelberg & Co., of New York? A Yes.

Mr Field. I offer that paper in evidence.

"Baltimore, July, 1882.

Sir:

We beg to inform you that Mr. J. George Kremelberg, of New York, has become a member of our firm.

Please take notice of his signature at foot.

Yours very respectfully,

J. D. Kremelberg & Co.

Mr. J. George Kremelberg will sign:

J. D. Kremelberg & Co."

(Marked Exhibit C. 5).

Q Will you please state whether or not that signature "J. D. Kremelberg & Co." is a facsimile of George Kremelberg's handwriting? A Yes.

Q When you refer to George Kremelberg, do you mean J. George Kremelberg, late of this firm? A It is J. George Kremelberg.

Q When did the firm of Kremelberg & Co. of New York originate; how old is it? A I should judge during the Civil War, as I understand the Kentucky tobacco business came to New York then.

Q Have you or not made any agreement with Mrs. Tompkins to purchase her interest in the good will of Kremelberg & Co., and if so, what? A Yes.

Mr. Hood. I object to it as irrelevant and immaterial.

Q What was it? A We offered to pay $2,000 a year for five years.

Q Have you made any payment upon that agreement yet? A One payment.

Q Is the agreement in writing or verbal? A In writing.

Q Do you object to showing it? A (Producing paper).

Q Have you another copy of this agreement? A No.

Gustave Hillen, further direct.

Q Please state the date of that agreement and the parties. A This is an agreement between the Fidelity Trust Company of Newark, New Jersey, executor and trustee of John George Kremelberg, otherwise known as J. George Kremelberg, and Edith K. Tompkins, executrix of said last will and testament of said decedent, to sell the firm name of "Kremelberg & Co., together with the good will of the business heretofore conducted by the partnership formed by the said John George Kremelberg, otherwise known as J. George Kremelberg, Ernst Gustav Hillen and Otto Brassler, co-partners, to the partnership form by the said Ernst Gustav Hillen and Otto Brassler to continue the said business of Kremelberg & Co. and to the said duly formed partnership of Kremelberg & Company, and on the part of the said Ernst Gustav Hillen and said Otto Brassler, and said newly formed co-partnership of Kremelberg & Co., to buy the same." Dated October 23, 1913.

Q Has Mrs. Tompkins a copy of this agreement? A Certainly.

Q Have you made any payment under this agreement? A One payment I said $2,000.

Q I will ask you to look at the paper which I now show you and state what that is? A This is a copy of J. D. Kremelberg's estate account from 1884 to the end of 1913.

Q Taken from what? A From the ledger, and appearing on folios 126, 127 and 128 of book marked Ledger C, K. & Co.

Mr. Parker. These pages are offered in evidence and also the copy of said pages in lieu thereof.

(Copy marked Exhibit C 6.)

Gustave Hillen, cross.

Q Will you state whether or not that is a correct copy taken from this ledger? A Yes, sir.

Cross examination by Mr. Hood.

Q You say that you first got in touch with the firm of Kremelberg & Co of New York in what year? A 1871.

Q How old were you at that time? A Seventeen years of age.

Q Do you know who were the members of the firm of Kremelberg & Co. of New York when you entered the employ of the firm? A Adolph Engler, George Kremelberg and J. D. Kremelberg. I don't know whether I knew that when I entered as a boy.

Q Did you at any time find it out prior to the beginning of this bookkeeping in 1884? A Yes.

Q Have you any absolute knowledge as to what the interest of the three partners were in this firm, which you got as bookkeeper, or in any other way? A If you ask me absolute, I cannot answer.

Q Have you any knowledge? A I can answer that as far as I remember it.

Q That is what you remember, to the best of your remembrance of it? A To the best of my remembrance he had 20 per cent., the New York partners had 40 per cent.

Q Who had 20 per cent? A J. D. Kremelberg of Baltimore had 20 per cent.

Q And each of the New York partners had 40 per cent? A Yes.

Q Do you know whether that was the condition of affairs at the time when Mr. John D. Kremelberg of Baltimore died? A Yes.

Q I mean to the best of your remembrance? A Yes.

Q It appears that when Mr. J. D. Kremelberg of Baltimore died, there was sent out a notification, of which a copy was produced here, under date of May 31st, 1882; that seems to be signed by J. Fred. Kremelberg, Geo. Kremelberg, Ad. Engler and Julius Wille; after "Geo. Kremelberg" and "Ad. Engler" there is a bracket and the word "New York," and after "Julius Wille" there is the word "Louisville?" A Yes.

Q Can you tell me whether Mr. Julius Wille at the time of the death of Mr. John D. Kremelberg or at any time was a member of the firm of Kremelberg & Co of New York? A No.

Q Or whether Mr. J. Fred. Kremelberg was a member of this New York firm? A No.

Q You mean that he was or was not? A He was not.

Q So that of the signatures of the people represented by the signatures to this notice, Mr. George Kremelberg and Mr. Adolph Engler of New York were the only ones who were partners of this New York concern? A That is right.

Q You apparently opened up this ledger from which you have been testifying, did you not? A Yes.

Q And in opening up this ledger, it appears that in this Kremelberg estate account that you last spoke of, you opened up with an item of "Jan. 1, 1884, by balance carried 120 $20,-263.14," under credit? A Yes, from a prior ledger.

Q Where did you get that balance from? A From the ledger before this.

Q Have you any recollection about the account that showed this balance? A No; that was the account of J. D. Kremelberg.

Q You say this book, referring to current account Kremelberg & Co.—what do you say about it? A Page 248 the heading is "J. D. Kremelberg," and "Estate" put after that, as the heading.

Q Do you know whether that was written at the same time? A I cannot say.

Q What is your first item in 1884 on the debit side of the current account, on page 248, referring to this Kremelberg estate account in the ledger? A "To check order S. H. Taggart, executor, interest to June 1st on $19,577.91, $1,174.68."

Q That is the first item there? A Yes.

Q And the first credit item in the current account is what? A "Balance carried $20,263.14."

Q Can you tell me, going back now to your Kremelberg estate account in your ledger on page 126—it would seem that each year has only a very few entries? A The date of payment of interest was changed, the amount remains always the same, $19,300.

Q What are the other items that appear on the account? A That is also interest.

Q Is it anything but interest? A No.

Q Is there anything in that account except principal and interest? A Transferred to J. D. K. Jr., that should be one-sixth of that amount; that was in 1888, on May 18.

Q And the amount is $1,362.98? A Yes.

Q And that reduced then the principal to how much? A $16,340.93.

Q Now, I ask you whether that account of J. D. Kremelberg's estate contains anything except principal and interest? A Except that item.

Q Can you tell me what the rate of interest is? A Six per cent.

Q All the way through? A All those years.

Q When was this account terminated of J. D. Kremelberg's estate on page 126? A In December, 1913.

Q How was it terminated? A By sending a check to Miss Ella Kremelberg, for which we obtained four receipts from four ladies.

Q And the four ladies constituted, so far as this account goes, the estate of J. D. Kremelberg? A Yes. We paid them the amount.

Q You paid who the amount? A Miss Ella Kremelberg; we got a receipt from the four ladies.

Q To whom did you remit the interest during all this period of time? A It was transferred to J. D. Kremelberg & Co.

Q To whom did you remit the interest? A It was transferred to the account of J. D. Kremelberg & Co., with the exception of that first payment.

Q You mean the interest was carried over to John D. Kremelberg & Co.'s account in your books? A Yes.

Q How did they get their money? A We had an account with them; they drew on us.

Q How did the four children that you speak of, get their interest; didn't you have any arrangement about it? A No; I understand the Baltimore firm kept account of the four ladies and they divided that up.

Q You present four receipts, dated December 20, 1913; "Baltimore, December 20, 1913. I hereby acknowledge receipt from the firm of Kremelberg & Co. of New York of the sum of $4,111.36, being in full for my share of a loan

to the said firm of Kremelberg & Co. of $16,-314.93, with interest to date, said loan standing in the name of the J. D. Kremelberg Estate on the books of the firm of Kremelberg & Co.

(Signed) VIRGINIA DEGRAAFF,
Weinberg Strasse,
Weisbaden."

Another one in the same form, dated Baltimore, December 19, 1913 signed Mary A. Kremelberg. Another one in the same language, dated Baltimore, December 19, 1913, same amount, signed Annie Maria Kremelberg Gill. And the fourth dated December 19, 1913, in the same language, signed H. Ella Kremelberg, the same amount. Now, I want to direct your attention, Mr. Hillen, to what appears as Exhibit C 4 for identification, and it appears that that is in your handwriting? A Yes.

Q What does that purport to be? A To show how the account stands, balances.

Q You mean, is it the balance sheet of the year? A Yes, how the balance was carried over.

Q Does that appear in any of your books? A Yes.

Q In what books does it appear? A In the journal; I don't have the journal quite so far back.

Q How far back do you have the journal? A It can be checked up from the ledger.

Q I want to know whether that account just in the shape in which it appears on these sheets, appears in the same shape in any of your books? A Yes, the end of the year; take 1890 — refer to page 26 of the journal F of Kremelberg & Co., which gives the balance for the year 1890.

Q Take the statement for 1890; is that a transcript of this page? A Yes.

Q So that each of those pages contained in Exhibit C 4 for identification is a transcript of a page of a journal? A Yes.

Q Showing the balances of any given year? A Yes.

Q Have you the journal for January 1, 1892? A Yes. (Referring to page 125 of the same book, Journal F, Kremelberg & Co.)

Q Will you prepare for us a copy of that, so that we can get this matter complete? A Yes, page 125 of Journal F, Kremelberg & Co.

Q Did we have a transcript of the account of the transactions between the New York firm of Kremelberg & Co. and the Baltimore firm of Kremelberg? A No, that I am to make up.

Q That is the account that appears in Ledger C of Kremelberg & Co., on pages 166 to 175 inclusive? A Yes.

Q Is that the account that we were talking about, transactions between the New York firm and Baltimore firm? A Yes, sir.

Q Begins in 1884 and ends in 1913? A Yes.

Q The items for this account appear in what books? A In the account current for those years.

Q And have you the books to support this account from 1884 on? A Yes, the details.

Q I noticed when you went over the account of J. George Kremelberg in this ledger, page 142, that all the debtor items are "To sundry creditors?" A That is just an expression, because there may be a dozen items in the other books.

Q And all credit items are "By sundry debtors?" A Yes.

Q That is merely to show debit and credit? A No.

Q In itself doesn't express anything; you would have to go back to the items in order to find out what it is? A Yes.

Q As a matter of fact, did Mr. Kremelberg have any bills that he owed, paid through the firm? A Yes.

Q And they were charged against him? A Yes.

Q And then they would be lumped in with other items and appear in one lump item of a given day? A In the ledger.

Q That is, if there were a number of items that were paid for him on a given day, they would be lumped together in one sum and carried just as one sum? A Yes.

Q Once a month? A Yes.

Q Then you would lump everything that had been paid out during the month? A Yes.

Q Where would you have to go to get the items on that, also to the account current? A Yes.

Q Have you all the books that you call account current, to support this ledger, since 1884? A Yes.

Q Down to the present time? A Yes, sir

Q So that the details of all of those items can be found? A Yes.

Q This interest item that was carried in the account of Mr. J. George Kremelberg does not differ in any respect from the interest items that were carried in the individual accounts of the other partners of the firm, does it? A No.

Q It may differ in amount? A Yes.

Q But each account was there and debited or credited with interest according to what the account warranted? A Yes.

Q And that was either six per cent. or four per cent., as you have said? A Yes.

Q With regard to the time when you got to have an interest in the firm, I understood you to say that that was a certain per cent with a guarantee? A Yes, I had $2,000 salary guaranteed.

Q So that you were to get 10 per cent. of the profits of the business? A Yes.

Q And it was guaranteed to you that the ten per cent. should be $2,000 a year anyway? A Yes.

Q You didn't get your ten per cent. and your salary? A No.

Mr. Parker. It is understood that the copies of the books that have been shown to Mr. Hillen and made by his assistant here and marked as exhibits in this case, are admitted as evidence subject to correction from the books themselves?

Mr. Hood. I have no objection to admitting these copies for the sake of convenience as evidence in the case, reserving only the right that if it should appear that any error was made in the copy, it should be corrected by what the books themselves show.

Re-direct by Mr. Field.

Q You said you had no absolute knowledge as to the interest of the partners prior to the death of J. D. Kremelberg, but that to the best of your recollection Mr. J. D. Kremelberg had 20 per cent., and George Kremelberg and Adolph Engler each 40 per cent? A Yes.

Q What do you mean by your recollection; do you mean someone told you that? A I

don't know; I got it in my head; maybe I looked in the books.

Q Is there any book in existence now that would show what were the respective interests of John D. Kremelberg, George Kremelberg and Adolph Engler, prior to the death of J. D. Kremelberg? A No, there is no book in existence.

Q Have you any distinct recollection of any entry in the books by you as to the interest of these different members of the firm? A You mean while Mr. J. D. Kremelberg was alive?

Q Yes. A No.

Q J. D. Kremelberg died on May 24, 1882; were you bookkeeper prior to that time? A I think not.

Q Who was bookkeeper prior to that time? A A man by the name of Mueller.

Q Is he living? A No, he got sick and then I took his place.

Q Anybody else keep the books before you, except Mueller? A No.

Q Have you any letters or accounts of any kind prior to the death of J. D. Kremelberg that would show the interests of the respective partners? A No.

Q Any correspondence books prior to that time? A No.

Q So you cannot tell, Mr. Hillen, where you got the idea that Mr. J. D. Kremelberg had one-fifth and George two-fifths and Adolph Engler two-fifths; you don't know where you got it? A No.

Q You haven't any recollection of how the account stood at the time of J. D.'s death? A No.

Q This account that you turned to on cross examination in accounts current, H, pages 248

and 249, you said you didn't know when that word "Estate" was written there? A That occurred to me when we were looking at it the other day; I mean that shows that this was formerly J. D. Kremelberg's account.

Q The question now is, can you tell me when the word "Estate" was written after "Baltimore?" A Maybe it was written the same day the ledger was made and at the same time, and it was J. D. Kremelberg's Estate, and this says "J. D. Kremelberg," and "Estate" after.

Q Is that word "Estate" in your handwriting? A Yes. We have another account J. D. Kremelberg.

Q Is there any other account in the name of J. D. Kremelberg, senior, in any of your books? A No.

Q This account on page 248, accounts current, H, on the lefthand side is just headed "J. D. Kremelberg"; on the righthand side is headed "Baltimore," and after the word "Baltimore," is written the word "Estate"; you say that that indicates that it was—— A I wouldn't say that.

Q Isn't this brought forward from the former account of J. D. Kremelberg as a partner? A Yes, that is my—I know that.

Q This is the balance that stood to his credit at the time of his death? A I don't know.

Mr. Hood. He means except for interest.

Witness. Yes, that is the original account.

Q You think that the amount that stood to his credit at the time of his death was $19,577.91? A I don't know whether that was it; it may have been the end of that year.

Q As it stands on the books now from January 1, 1884, it is simply as a creditor of this firm? A Yes.

Q Who directed you to make the change from this account in the name of J. D. Kremelberg as a partner into this account as J. D. Kremelberg estate as a creditor? A I don't know who directed me. You cannot have two J. D. Kremelberg accounts, and call that the estate.

Q What is your recollection; did Mr. George Kremelberg give you any directions about that at the time you opened these books? A No, he didn't give me any directions at any time; Mr. Engler gave me the directions.

Mr. Hood. Did Mr. George Kremelberg have anything to do with the books?

Witness. No.

Mr. Parker. Is there a previous ledger?

Witness. No. Mr. Kremelberg attended to the tobacco business.

Mr. Hood. And Mr. Engler looked after the office business?

Witness. Yes.

Q Why did you say in answer to Mr. Hood, that J. Fred Kremelberg had nothing to do with the New York firm of Kremelberg & Co.? A He had nothing to do with it.

Q Have you any other reason, except that the word "New York" appears after the bracket in Exhibit C. 3, which includes Geo. Kremelberg and Adolph Engler; have you any other reason for saying that they were the only persons interested in the New York firm? A What reason?

Q You said in answer to Mr. Hood that Julius Wille, who has "Louisville" after his

name, had no interest in the New York firm? A No.

Q You also said that J. Fred Kremelberg, who has no place after his name, had no interest in the New York firm? A Yes.

Mr. Hood. How do you know or how don't you know whether he was a partner in the firm?

Witness. I have been so long with the firm that I think I ought to know the partners.

Q At the time of the death of J. D. Kremelberg did either Mr. George Kremelberg or Mr. Engler bring to your attention the provisions of the will of J. D. Kremelberg and give you any direction in reference thereto? A He did not.

Q You said George Kremelberg didn't give you any directions; do you remember receiving any directions from Mr. Engler about changing this account into J. D. Kremelberg's estate? A I do not remember whether I did it of my own account or had directions.

Examination by Mr. Parker.

Q These yearly statements which are marked Exhibit C. 4 for identification, I notice on the statement of January 1st, 1890, the words "Market value $12,500"; did you write that? A No, that is Mr. Engler's handwriting.

Q In 1891 there is another? A That is again Mr. Engler's handwriting.

Q 1894? A That is Mr. Engler's, too.

Q December 31, 1895, "Balance reduced since to about $10,000," is that Mr. Engler's, too? A Yes.

Re-cross examination by Mr. Hood.

Q When you took hold of the books, Mr. Hillen, was there a set of books in existence that undertook to show the accounts of the firm; did you take hold of an old set or begin a new set? A If I had to do with the books in 1883, which I do not remember, that I had the old books.

Q Have you any recollection of any set of books prior to those we have here today? A Yes, I have a recollection.

Q Do you remember whether or not you made any entries in those books? A I cannot say for sure.

Q Do you remember whether or not you ever examined those books? A No, I haven't examined them.

Q By examine, I mean to look into them, to look at accounts? A No.

Q You never looked in the old books at all? A To see if they were right or not?

Q To look to know what was in them? A Yes, I have to.

Q Do you know whether or not there was any account in them as to any capital account in them as to any capital account of J. D. Kremelberg? A No, I don't recollect.

Q You don't recall that there wasn't any? A There was none.

Q Or any capital account of Julius Wille of Louisville? A No.

Q Was there a capital account of John D. Kremelberg? A Yes, there was.

Q Was there a capital account of George Kremelberg? A Yes.

Q Was there a capital account of Adolph Engler? A Yes.

Gustave Hillen, re-direct.

Q Was there a capital account of any other individuals except John Kremelberg, George Kremelberg and Adolph Engler in those books? A No.

Re-direct examination.

Q If you remember that, why can't you remember something about how they stood when Mr. J. D. Kremelberg died, if you looked in those books; wasn't George Kremelberg indebted to the firm at that time, as well as he was on January 1, 1884? A I don't know, probably so.

Q How about Adolph Engler? A I don't know.

Q And wasn't the firm indebted to J. D. Kremelberg at the time of his death substantially as on January 1, 1884? A I cannot say.

Q Do you remember looking at the accounts in those old books? A I mean that, when did he draw on that firm last, or, when did we invoice that, I looked that up; otherwise, not.

Q At any rate, as far as you go back with these balances, which you have on January 1, 1884, they are brought from the prior ledger, at the end of the year 1883? A Yes.

Q And since you have been bookkeeper, the balances have only been made up once a year, at the end of each year? A We make so-called trial balances several times a year, but the regular balance of profit and loss is at the end of the year.

Q Will you prepare a copy of the account occurring on page 248? A Yes.

Certificate of Commissioner.

Adjourned to March 17th, 1915, for the purpose of procuring the signature of the witness and annexing copies of the exhibits which are to be prepared by the witness.

E. G. HILLEN,
ERNST GUSTAVE HILLEN.

Sworn to February 26, 1915,
and subscribed before me the
17th day of March, 1915.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss:*

I, Nicholas W. Bindseil, do hereby certify that the foregoing testimony of Ernst Gustav Hillen was taken on behalf of complainants, pursuant to stipulation hereto annexed, before me, as Master in Chancery of New Jersey, at the office of Kremelberg & Co., No. 92 Water street, New York City, on Friday, February 26th, 1915, at 2 P. M., in the presence of Mr. Chauncey G. Parker and Mr. S. S. Field (of the Maryland Bar), for complainants, and Mr. Louis Hood for defendants; that it was stipulated and agreed by and between the counsel for the respective parties that the testimony should be taken down in shorthand by me and afterwards reduced to typewriting; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony given before me and that the same was read over and signed by the witness in my presence.

Dated April 7th, 1915.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

Opening.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET ELLA KREMELBERG, *et als.*,

Complainants,

and

EDITH K. TOMPKINS,

Defendants.

Transcript of testimony taken in the above entitled cause before Hon. John R. Emery, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, May 11th, 1915, at 10 A. M.

Appearances:

Mr. Chauncey G. Parker and Mr. S. S. Field (of the Maryland Bar), for complainants.

Mr. Louis Hood, for defendant.

Mr. Parker. We offer in evidence the testimony of witnesses taken at Baltimore, which is here returned to the court, filed February 16, 1915.

Mr. Hood. In offering that testimony, there were some objections made while the testimony was being taken.

Court. I will hear that later.

Mr. Parker. We also offer Gustav Hillen's testimony taken in New York before Mr. Bindseil, and also offer the exhibits C. 1 to C. 8, referred to in Mr. Hillen's deposition.

Opening.

We also offer the exhibits annexed to the Baltimore depositions.

Mr. Field. We also offer in evidence a certified copy of the will of John George Kremelberg, marked Complainants' Exhibit A, and annexed to the bill.

(Marked Exhibit C. 9.)

We also offer in evidence a copy of the last will and testament of John D. Kremelberg annexed to the bill as Exhibit B, which is certified by the legal officer, who has the custody of the will in Baltimore.

(Marked Exhibit C. 10.)

Court. The proofs may be completed if you wished them exemplified.

Mr. Field. We offer the first and second administration accounts and guardian release in the estate of John D. Kremelberg—certified copy—being Exhibit C annexed to the bill.

(Marked Exhibit C. 11.)

We offer certified copy of a deed from John F. Kremelberg to George Kremelberg, dated the fourth of December, 1882, being Exhibit D annexed to the bill.

(Marked Exhibit C. 12.)

We next offer in evidence deed from John F. Kremelberg to Elizabeth V. Kremelberg, dated December 4, 1882—a certified copy—being Exhibit E annexed to the bill.

(Marked Exhibit C. 13.)

We next offer in evidence a certified copy of the appointment of J. George Kremel-

berg, as guardian of John D. Kremelberg, Jr., appointed May 4, 1883.

(Marked Exhibit C. 14.)

Also, certified copy of appointment of Harriet E. Kremelberg, as guardian of Anna G. M. Kremelberg and Mary M. Kremelberg.

(Marked Exhibit C. 15.)

We next offer certified copy of two inventories of the estate of John D. Kremelberg, all in one paper, both dated July 17, 1882; one refers to some live stock out in the country, and they put them in two inventories.

(Marked Exhibit C. 16.)

Mr. Parker. Mr. Hood, you were asked to produce all balance sheets or other statements received by J. George Kremelberg from the firm of John D. Kremelberg & Co., of Baltimore, from 1882 down to the death of the said J. George Kremelberg.

Mr. Hood. I have here some which I can give you. (Producing same.)

Mr. Parker. Have they been produced already?

Mr. Hood. No, they are practically what you had on the books, with the exception of one, which is of interest, and there is one statement that formed the basis of their rewriting the books after the Baltimore fire in 1902 or 1903.

Court. How many do you produce, Mr. Hood?

Mr. Hood. Twenty-five papers.

Opening.

Court. Purporting on the face to be balance sheets or statements?

Mr. Hood. Balance sheets or statements of the condition of the Baltimore firm on the dates of the respective papers.

Mr. Parker. We also asked you to produce all partnership papers or agreements of the firm of John D. Kremelberg & Co., from 1882 down to the death of the said J. George Kremelberg.

Mr. Hood. We have none.

Mr. Parker. We also asked you to produce all balance sheets or other statements of accounts received by said J. George Kremelberg from the firm of Kremelberg & Co., of New York, from 1882 down to the time of the death of J. George Kremelberg.

Mr. Hood. We have none.

Mr. Parker. We also asked you to produce all balance sheets or other statements which have been received by the defendants, or either of them, since the death of the said J. George Kremelberg, from the firm of Kremelberg & Co., of New York, or the firm of John D. Kremelberg & Co., of Baltimore.

Mr. Hood. There is a paper which I produce. (Producing paper.)

Court. You hand them a paper with the statement that you are advised that it contains the information they now ask for, and it may contain other information. The further call and answer for this paper is reserved for the present.

New Jersey State Library

Opening.

Mr. Parker. There was a further notice served on the solicitor for the defendants on February 1, 1915, to produce all books, papers and accounts showing the state of accounts between J. George Kremelberg and Kremelberg & Co., of New York, at the time of his death.

Mr. Hood. We have none.

Mr. Parker. Also, all books, papers and accounts showing any payments or settlements which have been made by Kremelberg & Co. to or with the defendants, or either of them.

Mr. Field. We have Mr. Hillen's testimony on that.

Court. That will be waived then for the present.

Mr. Parker. Also, all papers, books and accounts, which show any settlement between Kremelberg & Co. and the defendants, or either of them, in reference to the good will of Kremelberg & Co., and any agreement with reference to the same.

Mr. Hood. I produce agreement between Fidelity Trust Company of Newark, New Jersey, Executor and Trustee under the last will and testament of John George Kremelberg, otherwise known as J. George Kremelberg, deceased, and Edith K. Tompkins, Executrix of the said last will and testament of said decedent, parties of the first part, and Ernst Gustav Hillen and Otto Brassler, parties of the second part. It says it is a duplicate original, and apparently is dated on the 23d of October, 1913.

Mr. Parker. Also, all books, papers and accounts, which will show the state of accounts between J. George Kremelberg at the time of his death and the firm of John D. Kremelberg & Co., of Baltimore, and also any payment, settlement or agreement in reference thereto, made since the death of J. George Kremelberg.

Mr. Field. Mr. Baker testified to that.

Mr. Hood. Did you call for the partnership agreement between J. George Kremelberg and any of his partners? I have one here, I find, between him and Gustav Hillen and Otto Brassler, if you want it.

HARRIET ELLA KREMELBERG, being duly sworn according to law, on her oath says:

Direct examination by Mr. Field.

Q Are you a daughter of the late John D. Kremelberg of Baltimore? A Yes, I am.

Q Will you state the names of all of his children in the order of their ages? A John Frederick Kremelberg, Elizabeth Virginia De Graaff, then I come—Harriet Ella, then John Diederich Kremelberg, Annie Marie Kremelberg and Mary Augusta Kremelberg.

Q They were all of age at the time of your father's death?

Court. Your father died in what year?

A 1882. I know what my age was; by brother Fred was of age, and my sister Virginia was of age and I was of age. Do you want the other ages? My sister Anna was sixteen years old when my father died, and Mary was twelve years old.

Q John D., how old was he? A He was eighteen; he was two years older.

Q Which have married? A Elizabeth Virginia has married and Anna Marie.

Q Which have died? A John Frederick and John D.

Q When did J. Frederick die and where? A He died in Sydney, Australia, in 1892. My brother John D. died a year or two sooner, 1891. The youngest died first.

Q When did John Frederick leave this country? A In January, 1883.

Q What was the condition of his health at the last before the time he left? A He was at times dissipated and at times he was very much so.

Q Will you state whether or not he ever returned to the United States? A He never returned.

Q From where did he sail; did you see him? A I saw him sail on the boat from New York.

Court. Was he married?

Witness. No.

Q Did he leave any will? A No.

Q How about John D. Jr.; you say he died about six months or a year before Fred? A Yes.

Q Did he ever marry? A No.

Q Did he leave any will? A No.

Q Did J. F.'s mother die before him? A Yes.

Q When did Mrs. De Graaff marry and where? A She married in Baden Baden, in Germany, in 1884.

Q Did she marry in Germany? A Yes.

Q Were you there at the time? A Yes.

Q When had you gone to Germany, after your father's death? A We went to Europe thirteen months after my father's death.

Q You say "we" went; who went? A We all went; my sister wasn't married at that time, and my other two sisters, we four went.

Q That is, the four girls went? A Yes.

Q About thirteen months after your father's death, and his death was when? A 24th of May, 1882.

Q Was that in the summer of 1883? A We left the latter part of June, 1883.

Q The four girls went to Europe, and how long did you remain in Europe before you returned? A My sister, Mrs. De Graaff, married there and Mary was left at school, and Anna Marie and I came home eighteen months after my father's death.

Q You stayed there until after Mrs. De Graaff's wedding? A Yes, we stayed a couple of months longer.

Q And you say that took place in 1884? A 1885 she married—in 1884.

Q Where has she resided ever since her marriage? A In Germany.

Q Has she ever been in this country? A Never.

Q Where is she now? A She is now in Weisbaden or Frankfort.

Q When did Mrs. Gill marry? A She has been married nineteen years—eighteen or nineteen years.

Q After your father's death who was executor of his estate? A Mr. Samuel Tagart.

Q Who was he? A He was one of the chief lawyers in Baltimore and one of the most prominent citizens there.

Q What aged man was he at that time? A He was seventy-two at that time.

Q When did he die, do you recall? A 1892.

Q Had he all the papers in which you children were interested? A Everything.

Q And what did he do with them? A Afterwards he gave them to Mr. Martin.

Q Who was Mr. Martin? A Mr. Martin was brought up in my father's office and he was pretty nearly chief manager there, and he was one of the chief clerks there at the time of my father's death.

Q And after your father's death? A He was partner of the firm.

Q You say that Mr. Tagart turned over the papers in which the children were interested to Mr. Martin; how long did he keep them? A Who, Mr. Tagart?

Q Mr. Martin? A Up to his death.

Q And when was that? A 1903 In think when Mr. Martin died.

Q Where did Mr. Martin keep the papers belonging to you? A In the Mercantile Trust Company.

Q In a safe deposit box? A Yes.

Q What papers were they? A They were our securities and they were insurance papers.

Q What did Martin do for you with reference to your securities? A He did everything for us, he was our general manager and agent.

Q What would he specifically do about the securities? A He would cut off the coupons and put them down at the office, and would do according to our wants or needs.

Q What office do you mean? A At the firm office in Baltimore.

Q Of J. Kremelberg & Co.? A Yes.

Q After Mr. Martin's death in 1903, who came in possession of all these papers? A I did.

Q At that time did you look over the papers in the safe deposit box after Mr. Martin's death, to see what was there? A Yes.

Q I want to show you two original papers, one of them dated the fourth of December, 1882, signed George Kremelberg, sealed, and the other dated Baltimore, May 4, 1883, and signed J. George Kremelberg, attest S. H. Tagart; when and where did you first see these papers? A I saw them after Mr. Martin's death; in looking over them, I saw these papers for the first time.

Q Did you or not understand their meaning or effect at that time?

Mr. Hood. I object.

Court. That is rather too leading.

Q What did you do in regard to these papers when you saw them? A I put them back in the place where they were.

Q You mean back in the safe deposit box? A Yes.

Q State whether or not you consulted any lawyer with reference to them at that time? A No, I did not; I didn't know what they were.

Q Do you know the signature? A Yes; that is my uncle's signature.

Mr. Parker. Your attention is directed to a paper dated December 4, 1882, purporting to be signed by George Kremelberg, sealed and annexed to the deposition from Baltimore as Commission Exhibit No. 1; whose signature is that?

Witness. That is my uncle's signature, J. George Kremelberg.

Q Look at the paper which is dated May 4, 1883, and which purports to be signed J. George Kremelberg and which is annexed to the depositions taken in Baltimore as Commission Exhibit No. 2, and state whose signature that is? A That is my uncle's signature.

Q Do you know the signature of this witness attest? A Yes.

Q Whose signature is that? A Mr. Tagart's.

Q What Tagart? A Samuel H. Tagart, the executor of the estate.

Q What opportunities had you to become familiar with the handwriting of your uncle, J. George Kremelberg? A Because I corresponded with him and knew his signature.

Mr. Hood. I take it for granted she knew her uncle's handwriting.

Q You say you found these papers in the safe deposit box after the death of Mr. Martin, in 1903, and put them back in the box? A Yes.

Q Where was that safe deposit box? A At the Mercantile Trust Company, in Baltimore.

Q Did you or not at that time bring these papers to the attention of either of your sisters or your brother-in-law, or either of your brothers-in-law? A No, I never mentioned them.

Q When was the next time that you saw these papers? A After my Uncle George's death.

Q What did you do in reference to those papers after your Uncle George's death? A I showed them to my sister first and then I showed them to Mr. Gill.

Q And then what next? A A lawyer was consulted.

Q Who? A Mr. Field.

Q Then you consulted me in regard to them? A Yes.

Q Why didn't you make some inquiry as to what they meant in 1903, when you first saw them? A I had my uncle's signatures and he attended to everything; that was enough for me.

Q What were the relations that existed between you and your sisters on one side and your Uncle George on the other side, from your earliest recollection down to his death? A Most affectionate.

Q Who attended to any affairs between you and the firm of J. D. Kremelberg & Co. and the firm of Kremelberg & Co. of New York? A My uncle; he attended to the business part entirely.

Q You mean your Uncle J. George Kremelberg? A Yes.

Q Did you know at the time these papers were executed, or before these declarations of trust were executed, did you or not have any knowledge that your Uncle George was about to execute or had executed any declaration of trust? A I had no knowledge.

Q State whether or not at any time during your uncle's life he ever mentioned to you that he had executed any declaration of trust? A He never mentioned it.

Q How often did your Uncle George come to Baltimore? A Once or twice a year.

Q Where did he stay when in Baltimore? A Sometimes with us and sometimes at the hotel, but generally and very often with us.

Q Did you visit his home also? A Frequently.

Q Did his daughter visit your home in Baltimore after your Uncle George's death? A Yes, she visited and she was married from our home.

Q Mrs. Tompkins was married to her present husband at your home? A Yes.

Q With whom do you and your sister make your home in Baltimore? A With John Gill, Jr.

Q You have stated that your Uncle George attended to your relations with the firm of J. D. Kremelberg & Co. and Kremelberg & Co. of New York, for you and your sisters; did he ever discuss the details and tell you what he was doing? A No; he only spoke in general about business, but he never spoke about our interest or the details of it.

Q When you say he spoke in general, what do you mean? A If he had a good year, or if he had certain orders, he would sometimes tell us when we saw him.

Q You have stated that your Uncle George never mentioned either of these declarations of trust to you? Did he at any time during his life pay you or your sisters any money on account of these declarations or on any account? A No, he never did.

Court. You mean he never himself personally paid you any money; you got money from the firm?

Witness. Yes, sir, interest.

Court. He never personally paid you any money?

Witness. No, sir.

Q Take the New York firm first, the Kremelberg & Co. of New York, who were the partners in that firm prior to your father's death? A Adolph Engler and my Uncle George and my father.

Q Did you know, Miss Ella, what their respective interests were in the New York firm? A No.

Q How long did Mr. Engler continue a partner, up to the time of his death? A Yes.

Q Do you remember when he died? A A few years before my uncle; I cannot mention the date exactly.

Q You referred several times to your uncle; is this the only uncle you had? A Here in this country.

Q So when you referred to your uncle, you referred to J. George Kremelberg? A Yes.

Q After your father's death and your brother Fred had gone away, did you have any other male relative in this country except your Uncle George and your brother Diederich? A No near relative; I had a cousin, but I did not see him?

Q To what extent did you and your sisters repose confidence in your Uncle George? A He was like our father to us and he took the place of our father.

Q Have you in your possession or under your control any books or papers that would show the partnership relations in either of those firms? A No.

Q What was the date of your Uncle George's death? A May 13, 1913.

Q When you first saw these Declarations of Trust after Martin's death in 1903, do you recall whether or not you read them over? A I

glanced over them but I gave them no second thought.

Q State whether or not at any time prior to the time after your Uncle George's death you again saw these papers or looked them over? A I never looked at them.

Q After Mr. Martin's death who had access to his safe deposit box? A I had control of it.

Q Any one else? A My sister Mary was allowed to go to it.

Q Is that all? A Yes.

Q Was the Mercantile Trust Company in the fire zone in Baltimore? A No, that part wasn't touched.

Q Nothing in the box was injured? A No, sir.

Q What else was in the box? A There were some insurance papers and our wills and our securities.

Q Do you know when it was that Mr. Tagart turned over the various papers in which you were interested, to Mr. Martin? A I do not know.

Q Do you recall whether Mr. Martin was in charge of your affairs before you returned from Europe, when you went over and your sister was married? A I cannot remember.

Q (*By the Court.*) You got letters, of course, communications from time to time from Baltimore, business matters; did Mr. Martin write those? A Yes, he did, always.

Q (*By the Court.*) Mr. Martin wrote the business letters to you? A Yes.

Q In the New York firm of Kremelberg & Co. what have you children received from that firm since your father's death? A We re-

ceived six per cent. interest on the money we had there from my father.

Q Do you remember the amount? A $19,000.

Q Did either of you, directly or indirectly, receive any letters from the New York firm of Kremelberg & Co.? A No, sir, nothing.

Q Any part of the profits? A Nothing.

Q I have already asked you whether or not Mr. George Kremelberg ever personally paid you anything outside of what you received from either of these two firms? A No, only Christmas gifts he gave us; we exchanged Christmas gifts.

Q (*By the Court.*) Nothing in the way of payments of any kind? A No.

Q The Baltimore firm, what is your recollection as to what you received from that firm? A We at first received fifty per cent. for our capital which we left there.

Q And how long did that continue? A I think until 1895.

Q (*By the Court.*) You received what? A Fifty per cent. of the profits on the capital.

Q How much capital did you have in the Baltimore firm? A My father left there $31,000 and I think I had $8,000 and Mrs. DeGraaff and my brother had about the same, besides what my father left.

Q (*By the Court.*) Which brother? A J. Frederick.

Q Do you mean by that that you, Mrs. DeGraaff and your brother Fred had about $8,000 independently of what you received from your father? A Yes, sir.

Q And was that capital put in the firm directly after your father's death? A No, that was in there already.

Q If was left in there? A Yes.

Q So that altogether then you had in the firm directly after your father's death—say $24 and $31—about $55,000, you think? A Yes, I don't know exactly the sum, it was about that.

Q Was all that left there as long as you received the fifty per cent. of the profits? A Yes, and then we withdrew some.

Q Then you each left how much? A We each left $5,000.

Q That is $20,000? A Yes.

Q You have already stated your two brothers were dead before that time? A Yes.

Q (*By the Court.*) You each left $5,000; did you get the payment of some money? A We withdrew part of the capital.

Q (*By the Court.*) You mean money was paid to each of you? A Yes.

Q (*By the Court.*) Do you recall about how much? There was about $30,000 paid out; that would leave about $7,500 each? A It was divided differently.

Q (*By the Court.*) As you recall, about $30,000 was divided between you four? A Yes.

Q At all events you were paid all that you had above $20,000? A Yes, that is it.

Q After that, beginning with 1896, what did you receive for the $20,000? A We received six per cent. on our money and six per cent. interest of the profit.

Q Did that continue down until your uncle's death? A Yes, sir.

Q State whether or not this is all you received from the Baltimore firm of J. D. Kremelberg & Co.? A Yes.

Q It appears, Miss Ella, that on December 4th, 1882, your brother Fred assigned all the

interest that he had acquired under your father's will in the business. Do you mean to say that your Uncle George acted for you children in the arrangement with Mr. Martin? A Yes.

Q At the time when the amount of capital you had in the Baltimore firm—you and your sisters had in the Baltimore firm, was reduced to $20,000, did any arrangement or conversation in reference to the matter take place between you and your Uncle George? A It was always Mr. Martin.

Q Was there any with your Uncle George? A No.

Q What took place between you and Mr. Martin; what did he say to you or you to him? A When?

Q At the time when this money was withdrawn, before he was dissatisfied?

Mr. Hood. I object.

Court. I will take it subject to your objection.

Q At the time this money was withdrawn or before, what took place between you and Mr. Martin in reference to it? A He was dissatisfied with what he got and he wanted more; he wanted to have a larger percentage for himself.

Q (*By the Court.*) How did that talk result; in your getting some of your money out? A He thought he could use less capital; that the percentage was taking away from him if we got so much.

Q (*By the Court.*) That is what he said to you? A Yes.

Q (*By the Court.*) Was there any written agreement between you and the firm about it? A No.

Q Mr. Martin wanted you to take out some of your capital? A Yes.

Q State whether or not you withdrew the capital—you agreed to that and withdrew it, in pursuance of that arrangement? A Yes.

Q This was, you say, in 1895, which was about four years after the death of your brothers—of your brother Fred and your brother J. D.; will you state whether or not their shares were withdrawn at the time of their death or whether they remained? A They remained until we got it and then it discontinued.

Q (*By the Court.*) That is, when they came to draw out the capital, who of your family got what was drawn out? A We four sisters.

Q You got all that was drawn out? A Yes,

Q Will you state whether or not you were a party to the arrangement whereby the $31,000 that was due your father at the time of his death was left in this firm of J. D. Kremelberg & Co.? A Yes, I was in favor of it.

Q Who consulted you about it; whom did you have any talk with about it? A Mr. Tagart.

Q The executor? A Yes.

Q Did you have any talk with your Uncle George about it? A I think he was anxious for it.

Mr. Hood. I object.

Court. I will strike that out.

Q Did he say anything to you about it? A Yes, he said something he wanted.

Q What did he say?

Mr. Hood. I object.

Court. That is admitted subject to motion to strike it out.

A I cannot remember the names, but that they needed the money in the firms.

Q You say you were, I believe, 24 then; do you know of your own knowledge what was your Uncle George's financial condition at that time? A Yes.

Q What was it? A They were very straitened.

Q You say they were very straitened, how do you mean? A His finances were very straitened.

Q Do you know the cause of that, the principal cause? A They had some heavy——

Mr. Hood. I object.

Mr. Field. The purpose is to prove that they sustained heavy losses through the failure of the New Orleans house.

Court. I will take that subject to the objection.

A (Continuing)—the heavy losses in the New Orleans firm.

Q When did that New Orleans firm fail about? A 1874 I think, I really do not know the date.

Q Was it prior to your father's death? A Yes.

Q Did or not your father also suffer heavy losses through that failure? A Yes.

Q What was your father's financial condition when he made his will in 1874 as compared with it at the time of his death in 1882? A He was a very wealthy man at that time.

Q At which time do you refer to? A When he made the will, at least the whole style of living indicated that.

Q What was your father's age at the time of his death? A Fifty-five.

Q What was your Uncle George's age? A He was about ten years younger.

Q Who composed the firm of J. D. Kremelberg & Co. prior to your father's death? A My father and my brother Fred.

Q Do you know what interest your brother Fred had in it? A I do not know.

Q Did anyone else have any interest in the firm prior to your father's death? A No.

Q Did you or your sisters at any time during your uncle's life consult an attorney or even your brother-in-law, Mr. Gill, in reference to anything with regard to either of those firms? A No.

Q Why not?

Mr. Hood. I object.

Court. I will let her state that.

A We had such confidence in my uncle.

Q Can you remember who now was associated with your Uncle George after your father's death as partners in the firm of J. D. Kremelberg & Co., the Baltimore firm? A Mr. Charles A. Martin.

Q And after his death? A Mr. Hester—Louis Hester.

Q One of the Declarations of Trust mentions a man named Brancker; was he in the Baltimore firm at any time? A Not prior to my father's death, no.

Q After your father's death? A He wasn't in the capacity—I don't know what you would call it.

Q (*By the Court.*) Do you recall that name? A Yes, I knew the man.

Q (*By the Court.*) And he was in the Baltimore firm? A Yes.

Q How long? A Some years before my father's death.

Q You mean he was employed there before your father's death? A Yes.

Q But was he connected with Mr. George and Martin for awhile as partner? A Yes, for a short time.

Q For how long? A I think maybe a year, not longer; I don't remember.

Q Is he living or dead? A He died, I think he went to England.

Q I want to show you a letter dated December 25, 1893, addressed "Dear Miss Ella," signed "Ad. Engler"; state whether or not you are familiar with the handwriting? A I am.

Q Whose handwriting is it? A Mr. Engler's handwriting.

Q Adolph Engler? A Yes.

Q A member of the New York firm of Kremelberg & Co.? A Yes.

Q To whom is it addressed? A To me.

Mr. Field. We offer this letter in evidence.

Mr. Hood. I object to the offer of the letter. I don't see how a letter from Mr. Engler to her comes to be competent in this case.

Court. I will admit it subject to your objection. It may or may not be admissible.

Mr. Hood. I object to the letter. While it is true that it relates to business matters, nevertheless it is a letter written by Mr. Engler to this lady, and I do not see how a transaction between her and Mr. Engler, even if it relates to a business matter in which she and he may have an interest, involving others who have an interest, con-

cerning which inquiry is now had, is competent proof. My impression is that proof of that character is limited only to direct transactions between the parties where the parties themselves are parties to the record.

Court. I will admit it subjct to your objection. I won't even read it now. The advantage of admitting it that way is, if you have any questions on cross examination in reference to it, it may now be brought out, and when counsel propose to read it, they can call my attention to the particular bearing or relevancy they think it has. It is admitted subject to the objection.

(Marked Exhibit C 17—letter from Ad. Engler to Miss Ella Kremelberg.)

Mr. Field. The letter offered consists of two sheets of four pages each.

Court. You will prove, I understand, that Engler at that time was a partner in the New York house?

Mr. Hood. We admit that; there is no dispute about that.

Q I call your attention to a portion of this letter which says: "Of course interest on your capital in the firm must be saved first of all. After that 25 to 30 per cent. ought to come to you and 65 per cent. to Mr. Martin." To which firm does that relate? A To the Baltimore firm.

Mr. Hood. Doesn't the letter speak for itself?

Court. The witness can state what she understood it to apply to; that is as far as she can go. That statement, "To what

firm did you understand it to apply" does not prove the fact.

Q To what firm did you understand it to apply? A To the Baltimore firm.

Court. Was there any clause before that introducing that statement, as if it was an inquiry?

Mr. Field. There is another clause ahead of that.

Court. Is there a reference at the beginning of the letter as being an answer to a letter?

Mr. Field. Yes, of the 26th.

Q Have you any copy of the letter you wrote him? A No.

Q There is one other clause in this letter to which I want to call your attention, and that is "as to the letter of your father which had been in my keeping for a number of years before he died, I never learned of its contents except what George intimated to me, that he was to inherit a share in the Baltimore firm." Did you ever see that letter to which he referred? A I never saw the letter.

Q Did you ever learn of the contents of that letter? A No.

Court. That is apparently an answer to an inquiry.

Q Do you recall whether you had made an inquiry in your letter about any letter of your father's? A I don't remember, no.

Q You have mentioned that at the time of your father's death your Uncle George's finances were rather straitened? A Yes.

Q How long before he became in easier circumstances financially? A About in 1897, I think.

Q That would be about fifteen years? A Yes.

Q I show you the following balance sheets dated January 1, 1886, January 1, 1887, January 1, 1888, January 1, 1892, and December 31, 1892, and balance sheet of 1895, and ask you whether or not you received these from Mr. Martin or from the firm of J. D. Kremelberg & Co.? A Yes, sir, I received them from Mr. Martin.

Q Could you find any other balance sheet except these; are these all you could find? A All I could find.

Mr. Parker. We offer in evidence the following balance sheets:

Dated January 1, 1886, marked Exhibit C. 18.

Dated January 1, 1887, marked Exhibit C. 19.

Dated January 1, 1888, marked Exhibit C. 20.

Dated January 1, 1892, marked Exhibit C. 21.

Dated December 31, 1892, marked Exhibit C. 22.

Dated 1895, marked Exhibit C. 23.

Mr. Parker. Here is a bundle of accounts of the Baltimore firm; they are all fastened together; some are made in favor of Miss Mary A. Kremelberg, some in favor of Miss H. Ella Kremelberg, some in favor of Miss Kremelberg as guardian, some in favor of Miss Anna Marie Kremelberg; they cover

the years from 1884 to 1896; 1891 and 1895 are missing, but we have a balance sheet here for 1895.

Court. Those you produce as what?

Mr. Parker. We cannot prove the Baltimore accounts because they are lost.

Court. Do you offer them as papers received by the complainants?

Mr. Parker. Yes, sir.

Mr. Field. We now offer the individual statements as to the interest of these complainants.

Court. There must be some proof about them.

By the Court.

Q During this time did you or your sisters to your knowledge, receive at any time, or from time to time, statements of account from either of those firms? A Yes.

Q Have you preserved any or all of those statements? A Quite a number of them.

Q Have you produced here and given to your counsel all that you have found? A Yes, all I have.

Mr. Hood. I object to this subject to the right of cross examination.

By Mr. Field.

Q Does the bundle which I now show you contain all that you are able to find of these statements from the Baltimore firm? A Yes.

Mr. Field. They are attached together and I will ask to have them marked as one exhibit.

(Marked Exhibit C. 24.)

Q Did you also receive some statements from the New York firm of Kremelberg & Co.? A Yes, sir.

Q I now show certain statements that were filed with Mr. Hillen's testimony, purporting to be statements of the firm of Kremelberg & Co. of New York, and ask you to state whether or not those are the ones that you received and gave to your counsel? (Indicating Exhibit C. 4.) A Yes.

Q Have you produced all of the papers that you have, that you have received from any of the firms? A Yes.

Q From either of the firms? A Yes.

Cross examination by Mr. Hood.

Q I understand you are the second oldest in the family? A Living, yes.

Q And at the time of your father's death in May, 1882, your older sister was also at home and was unmarried? A Yes.

Q Both she and you were of age? A Yes.

Q Did you at that time know Mr. Tagart? A Yes.

Q He was a very intimate friend of your father's, was he not? A Yes.

Q He visited the family constantly? A Yes.

Q When your father died I suppose you acquainted yourself with the contents of his will? A I imagine so. I imagine I had it read to me, yes.

Q Mr. Tagart spoke to you about, did he not? A Well, I expect he did.

Q Have you no memory of it, madam? A Yes, it was read to us and that was all.

Q But besides reading the will to you, didn't Mr. Tagart speak to you about your father's

affairs and his administration of them? A Oh, yes.

Q As executor? A Yes.

Q Was he not in conference with the members of your father's family during all of the year of administration? A How do you mean?

Q During the year while he was executor and until things were settled up, didn't he come in and talk with you young ladies? A We were in Europe most of the time afterwards.

Q You were not in Europe until after the affairs were settled up? A No.

Q I am talking of between the time of your father's death and June, 1884, when you went abroad; that is the time when your affairs were being settled up by Mr. Tagart, were they not? A Yes.

Q During that time didn't he speak to the members of your family constantly about your father's affairs? A I don't think constantly, no.

Q Didn't he tell you what he was doing about them? A No, we left everything to him, he was the executor.

Q Didn't he tell you what he was doing? A I don't think he—

Q Don't you know there was a settlement made just before you went abroad in June, 1884? A What kind of a settlement?

Q A settlement dividing up the estate among the children of your father? A Oh, yes, that was made.

Q You remember that? A Yes.

Q Do you remember that your father's will gave anything to your Uncle George? A Yes.

Q Do you remember that your father's will gave the interest which he had in the Baltimore

and in the New Orleans and in the New York concern to his brother, that is, your Uncle George, and to your brother John? A Yes.

Q You remember that? A Yes, brother Frederick.

Q Is it Frederick you call him? A Fred he was called; his name was John Frederick, Jr.

Q After there was this division of the estate did you see anything more of Mr. Tagart? A Yes.

Q Did he continue to be a friend of the family? A Yes.

Q Did he continue to visit you and your sisters? A Yes.

Q And did that situation continue until the time of Mr. Tagart's death? A Yes.

Q And was Mr. Tagart a close friend of the family during those years? A Yes.

Q Your sister, you say, went abroad in June, 1884?

Court. They all went together.

A We all went together.

Mr. Field. 1883?

Witness. June, 1883.

Q And she never came back to America? A No.

Q Have you seen anything of her during these years? A Yes.

Q Have you seen her every year? A Pretty nearly every year.

Q Spend all your summers with her? A Part of them.

Q Both you and the American sisters? A One sister.

Q Which one? A The youngest, Mary.

Q The rest of the year have the sisters all lived together? A Yes.

Q How many of them here are married? A Two, one unmarried beside myself.

Q That is Mrs. Gill, your sister? A Yes.

Q That is the only one here in America that is married? A Yes.

Q And the other one is Mrs. de Graaff, in Germany? A Yes.

Q During those years, when the sisters have met, either here in America or abroad, have you spoken anything about your business affairs? A No.

Q And your interest in the business of Kremelberg & Co.? A Never.

Q And what money you got out of them? A No.

Q You never mentioned it at all? A No.

Q Your sister abroad was getting word of it, wasn't she? A She was getting her interest; that was sent to her.

Q She never mentioned anything to you about it? A No.

Q And all the time you were abroad on these visits you never talked about it? A No.

Q When did Mr. Tagart give up the papers to Mr. Martin? A I do not know the date.

Q Do you know the fact that he did give them up to Mr. Martin? A Yes.

Q You recall that fact? A I knew Mr. Martin had the papers, yes.

Q Do you remember any occurrence as the result of which the papers that Mr. Tagart held for you were delivered to Mr. Martin? A No.

Q Can you tell me whether or not the papers were delivered by Mr. Tagart himself in his

lifetime or came to Mr. Martin after Mr. Tagart's death? A No, during his lifetime.

Q (*By the Court.*) You recall then that during his lifetime he had the papers? A Yes, sir, towards the latter part.

Q After Mr. Tagart settled up your father's affairs did he give to you, or to your older sister, or to any of your other sisters, any of the papers connected with your father's estate? A No.

Q Do you know that there were papers connected with your father's estate at that time? A No.

Q Didn't you know, Miss Kremelberg, that there were some papers executed when Mr. Tagart settled his accounts in court? A How do you mean, the accounts of the estate?

Q Yes. A I expect we had copies of them; I mean nothing further than when any estate is settled.

Q I didn't say anything further than any estate. A We got a list of our securities.

Q Was it talked over with you how the estate was to be settled, how much each of you was to get? A No.

Q Nothing was said about that? A No.

Q Weren't you all interested in how much you were to get? A We knew how much securities we had received.

Q Wasn't there some preliminary talk even before the arrangement as to how the settlement should be carried out?

Court. In giving the securities to each other? A Mr. Tagart divided it and he gave each our share.

Harriet Ella Kremelberg, cross.

By the Court.

Q When you say he gave you each your share, do you mean that—? A In securities.

Q (Continuing) —at a meeting anywhere with Mr. Tagart you had all those securities there? A No.

Q And then he gave over to you part of it? A No.

Q What do you mean by saying then that he divided the shares; what was done that you now speak of as being a division? A We received a paper stating what securities we had received.

Q From whom did you get that? A From, I think, Mr. Martin; he sent it to us through Mr. Tagart.

By Mr. Hood.

Q Mr. Martin sent it to you through Mr. Tagart? A I mean Mr. Tagart had given it to Mr. Martin, and Mr. Martin sent it to us.

Q Did Mr. Tagart continue to represent you after your father's death? A In a friendly way he attended to our securities.

Q He was your lawyer after your father's death, was he not? A Yes.

Q And he continued your lawyer after your father's death how long? A Until his death.

Q Until his own death? A Yes.

Q During the time that he represented you as a lawyer, did he have your papers, your securities? A He had them until he handed them to Mr. Martin; the date I do not know.

Q Do you remember whether he handed those to Mr. Martin shortly before his death? A I don't know the date.

Q Can't you give it to me approximately? A I really cannot.

Q Don't you recall any incident that led up to his surrendering these papers to someone else? A No, I don't remember the date.

Q He didn't deliver them to Mr. Martin of his own accord, did he? A I expect he did.

Q Didn't you ask them to give them to Mr. Martin? A Mr. Martin attended to it; I know Mr. Tagart directed Mr. Martin what to do.

Q But Mr. Martin was your man of business, was he not? A Yes.

Q He took care of your affairs? A Yes.

Q You selected him to take care of your affairs, did you not? A He was there, yes, I expected, or Mr. Tagart may have selected him.

Q But Mr. Tagart didn't select him without your consent, did he? A No, I expect not.

Q He spoke to you about turning those things over to Mr. Martin, how he did so, did he not? A I do not remember that.

Q Haven't you any memory at all as to how it came about that Mr. Tagart surrendered your papers, including your securities, to Mr. Martin? A No.

Q Have you no recollection how it came about that Mr. Martin was selected as your man of business? A Because he had been in my father's office ever since he was a small boy and my father had the greatest confidence in him and no doubt had told Mr. Tagart about that.

Q So that Mr. Martin was attached to the family? A Not attached; attached to the business.

Q By attached to the family, I mean that he was interested in the family? A I am sure he was.

Q And that the family had great faith in him? A Yes.

Q As a good business man? A Yes.

Q And as an honest man? A Yes.

Q Mr. Tagart himself was one of the distinguished lawyers of Baltimore, wasn't he? A Yes.

Q Your father was a leading citizen of Baltimore? A Yes.

Q And stood in very high repute? A Yes.

Q Your Uncle George was also a man who stood in high repute, didn't he? A Yes.

Q And the relations between your families were very close and intimate, is that right? A Yes.

RECESS.

Q You said something about a safe deposit box that you had? A Yes.

Q How long did you have that? A I had control of it since Mr. Martin's death.

Q Did you have the box before Mr. Martin's death? A It was in Mr. Martin's name.

Q Do you know whether you had a box while Mr. Tagart was living? A I do not know.

Q Did you have any access to the box while Mr. Martin was living? A Yes.

Q Any one else of your family have access to it while Mr. Martin was living? A No.

Q Only you and Mr. Martin? A Yes.

Q During the time that Mr. Martin was living did you go to the box any? A I went there twice.

Q Did you examine on those occasions the contents of the box? A No.

Q What did you go there for? A I got out some bonds.

Q Didn't look at anything else? A No.

Q When Mr. Martin died you looked at the contents of the box? A Yes.

Q And you then found these declarations of trust—I don't remember the numbers of the exhibits—made by your Uncle George? A Yes.

Q You found those? A Yes.

Q Did you also find the conveyance from your brother John F. to your Uncle George? A That paper, yes.

Q In the box? A Yes.

Q (*By the Court.*) He is now asking you whether in addition to the trust papers you found another one? A No.

Q (*By the Court.*) Then that paper that the counsel asks you about finding there in addition, was a paper in which John Frederick, your brother, gave a deed to your Uncle George?

Mr. Parker. Don't you think it would be a good idea to have the witness shown the paper?

Q I call your attention to the paper that I am now speaking of, which is marked No. 3, the Commissioner's Exhibit in the Baltimore depositions; will you kindly look at it; that is your brother's signature? A Yes.

Q Was this paper in the box also? A Yes.

Q Did you see it at the time when you saw these other two declarations of trust, which are marked No. 1 and No. 2 of the Baltimore exhibits? A I didn't pay any attention to those. They were together and I glanced over them.

Q I ask you whether you saw them at that time? A I saw them, yes.

Court. Then you saw three papers instead of two?

Witness. Yes, if they were together, yes.

Court. Were they fastened together, the papers that you saw; have you any recollection about that?

Witness. They were in one envelope together, yes.

Q All three were in one envelope together? A Yes.

Q Were there any other papers in that envelope? A Not that I remember, no.

Q Wasn't there a conveyance made about the same time from your brother John Frederick to you of other property that he had at that time, which did not form part of the Kremelberg businesses? A No, I did not see that paper.

Q I asked you whether there was another paper conveying property to you? A It didn't convey anything to me.

Q Nothing was conveyed to you? A No, it was to my sister, Mrs. de Graaff.

Q Did you see that paper? A No.

Q Did you see it at any time? A No.

Q Did you know anything about it? A Not until after my brother's death.

Q How long after your brother's death did you know about that? A After they settled his estate.

Q That must have been about what year? A The same year he died.

Q About 1892 or 1893? A Yes, sir, 1893.

Q Was that about the same time that you examined your safe deposit box and found these papers? A No.

Q Which happened first, your finding of this deed from your brother to your sister or the finding of those three deeds? A I didn't find

that at all. These I found after Mr. Martin's death in 1903.

Q By "these" you mean the two declarations of trust and the deed? A Yes, I think this was with it.

Q (*By the Court.*) You are asked what you now have to say about that paper, and carry your mind back to the time and state whether you have anything further to say; you have already said that that paper was with it. I think you have said both things. Think it over and tell me what you have to say about all three of the papers being there; the paper signed by your brother and also the two papers, the declarations of trust, signed by your uncle. A They were all together.

Q Are you sure you saw three? A Yes, because after my Uncle George's death I gave all papers to my brother-in-law, Mr. Gill, and all the papers were together.

Q At that time the three papers were together, when you gave them to your brother-in-law, Mr. Gill? A Yes.

Q And you found these three papers in this safe deposit box? A Yes.

Q Who had access to this box beside yourself since 1893? A My sister could go, but she didn't go.

Q How do you know she didn't? A Because I know it; she went twice with me.

Mr. Field. You mean 1893 or since Martin's death?

Witness. Since 1903.

Mr. Hood. Since 1903.

Q You say these three papers were together in an envelope? A Yes.

Q Have you any distinct recollection about it? A It got that out and gave them to my brother-in-law.

Q That was in 1913, but I am talking now about 1903. A I beg your pardon; I don't understand.

Q I want to get all that you remember about finding these three papers that we are now talking of, in that envelope in your safe deposit box? A Yes.

Q (*By the Court.*) After Mr. Martin's death? A After Mr. Martin's death.

Q What do you recall about it? Tell me all that you recall. A I looked over the papers and saw this signature of my uncle and gave it no further thought until after his death.

Q They were enclosed in the envelope, were they? A Yes.

Q You opened the envelope and took the papers out? A Yes.

Q Did you look them over? A I glanced over them.

Q Did you read any part of them? A Not intelligently, no.

Q I am not asking whether you read them intelligently; did you read any part of them? A I glanced over them.

Q Just what do you mean when you say you glanced over them? A I saw my uncle's signature and inferred that it was some business arrangement, and put them back.

Q Did you read none of the body of the instrument? A No.

Q Did you carry away no impression at all of what those papers were about? A None whatever.

Q Do you mean to say that you carried away none at that time, or you have no recollection now of carrying any away? A None at that time.

Q You have a recollection that at that time you carried none away? A No.

Q What did you do with them then? A Put them just where I found them.

Q That is, back in the envelope and back in the box? A Yes.

Q I think you told me that you understood that under your father's will your Uncle George was to get half of the businesses? A Yes.

Q You understood that at that time? A The will—I don't remember that part.

Q I am asking you whether you now remember that at the time of your father's death your Uncle George became the beneficiary to a half interest in the businesses in New York and Baltimore? A I don't believe I remember that at all, no.

Q You don't remember that? A No.

Q Do you mean to say you never heard of that? A I heard after of it, after those papers were found.

Q You mean to say you never heard of it between 1882 and 1913? A No.

Q Never heard of that at all? A No.

Q Have you any recollection as to whether or not under the arrangement that was made in 1883, your Uncle George procured or obtained any interest in those businesses? A In the Baltimore business; yes, sir.

Q What is your recollection about that? A How do you mean?

Q I want to know what you remember about it. A He left the capital there and the business continued on our capital.

Q Do you remember anything about his giving up any rights that he had under the will? A No.

Q Did Mr. Tagart represent you in that adjustment; that was after your father's death? A Yes.

Q And in connection with that adjustment, do you remember whether he had any talks with you and your sisters and your brothers? A About the capital being left in the business; we did talk about that.

Q Do you remember what Mr. Tagart told you about that? A He thought it was rather risky.

Q Did he tell you what the arrangement was about leaving the capital in the business? A No.

Q When he told you it was rather risky, did he explain to you what it was that was risky? A Any money in a business is risky.

Q He said any money in the business was risky, nevertheless you made an arrangement about your money remaining there? A Yes.

Q And the arrangement that you made was, that you were to get half of the profits of the business? A Yes.

Q Was that arrangement which you made at that time reduced to writing? A I do not believe so; I didn't see it.

Q Who was it, as you now remember it, that talked over that arrangement? A I do not remember.

Q About your leaving money in the business and getting half of the profits of the business? A I do not remember who told me.

Q Was your sister, Mrs. DeGraaff, there at the time; was it talked over with her? A She

was there but she didn't remember anything of it.

Q How do you know what she remembers? A Because last summer, after we found these papers, I spoke to her about it.

Q What I want to know of you is, whether you remember that your sister, Mrs. DeGraaff, was there when this thing was talked over? A I do not remember.

Q Do you remember whether your brother, John Frederick, was there at the time it was talked over? A No, I don't think he was there.

Q Was he not in the country at that time? A He left in January, 1883.

Q Who made the arrangement about his share remaining in the business? A I imagine my Uncle George must have made that.

Q Wasn't your brother John Frederick of age? A Yes, but he was in a delicate state.

Q (Question repeated.) A Yes.

Q Do you know whether he was consulted about it at all? A I do not know.

Q Your sister, Mrs. De Graaff, was still at home at that time, was she not? A She left in June, 1883.

Q She was still at home? A Yes.

Q What about your other sisters, were they at home? A Yes, but they were not of age.

Q Was the matter talked over with them? A No.

Q You remember that it was not talked over? A Yes; they were never consulted. I know they were not consulted.

Q I am asking you whether you remember now that it was not talked over with them? A Yes.

Q This arrangement that was made, was it an arrangement that was limited as to time? A No.

Q Was it an arrangement that was at any time before 1893 changed in any respect? A I do not remember; I don't think so.

Q I want to call your attention to what you say about that matter in your bill of complaint on page 8; you say "The said sum of $31,980.74 remained with the firm of J. D. Kremelberg & Co. of Baltimore and with other moneys added by Elizabeth Virginia Kremelberg and Harriet Ella Kremelberg, was considered as capital contributed by the children of John D. Kremelberg hereinbelow mentioned, under an arrangement made by J. George Kremelberg, whereby the said children were to receive interest on said sum and share in the profits of the said Baltimore firm as hereinbelow more particularly set out." Was there any partnership agreement drawn between you? A No.

Q Was it your understanding that the members of your family become partners in the firm of Kremelberg & Co.? A Yes.

Q I now refer you to some statement on page 18 of the bill of complaint: "The money which the said John D. Kremelberg & Co. owed to said John D. Kremelberg at the time of his death, to wit, $31,980.74, together with other funds contributed by the said Harriet Ella Kremelberg and Elizabeth Virginia Kremelberg, now Mrs. De Graaff, amounting in all to about $46,000, was left with said firm for the use of which the children of John D. Kremelberg were given one-half of the profits plus six per cent. on said sum." That happened in 1883, did it not? A Yes.

Q "That subsequently, on February 2, 1885, the said Brancker retired from said partnership and the same was continued by the said J. George Kremelberg and the said Charles Martin, the latter actually conducting the business, and the children of John D. Kremelberg. The latter continued to receive six per cent. on said sums and one-half of the profits, for their said capital." At the time when Mr. Brancker got out, was there any new arrangement made about this thing? A I do not know.

Q You do not know about it? A No.

Q Then you continue: "That thereafter on January 1, 1889, an agreement was made extending the agreement of February 2, 1885, with certain modifications, except as to John Diedrich Kremelberg, who withdrew." What was this agreement of January 1, 1889? A I think I know what the agreement was.

Q Was it a written agreement? A I do not know; I didn't see it; I don't know.

Q What do you know about an arrangement that was made in 1889? A I know nothing about that.

Q What do you know about modifications except as to John Diedrich Kremelberg? A I don't understand your question.

Q It is said here in your bill of complaint: "That thereafter on January 1, 1889, an agreement was made extending the agreement of February 2, 1885, with certain modifications, except as to John Diedrich Kremelberg, who withdrew." Do you remember about John Diedrich Kremelberg withdrawing? A Yes.

Q You remember that? A Yes.

Q Did you have anything to do with the transaction? A Nothing to do with it, no.

Q How did you come to know about it? A Because he had spent some money and he had to have it; he used it.

Q Where was he living at that time? A What date, please?

Q This was on January 1, 1889. A I think he was—he travelled a great deal and I don't know if he was in Indianapolis at that time or not; I cannot tell you where he was at that date.

Q Under this agreement of January 1, 1889, was the rest of the money of the children to remain with John D. Kremelberg? A It remained so I expect it—

Q What do you remember about it? A I remember nothing about it.

Q Was there any change made with regard to whether interest at six per cent. was to be paid on that money? A No, no change.

Q Was there any change made with regard to the profits that were to go to the children of John D. Kremelberg? A I don't think so.

Q Did you after January 1, 1889, get six per cent. on the money that was there and half the profits of the business? A I think we did.

Q Although John D. had withdrawn his money? A Yes.

Q "That subsequently this arrangement was again changed, the said J. Frederick Kremelberg and John D. Kremelberg having in the meantime died, the surviving sisters, Mrs. de Graaff, Miss Harriet Ella Kremelberg, Miss Anna Marie Kremelberg and Miss Mary Augusta Kremelberg withdrew part of their money, leaving $5,000 each, total $20,000, in the firm under an agreement whereby they were to receive six

per cent. on the said $20,000 and also to receive six per cent. on said sum in lieu of any interest in the profits of the firm." Do you remember that? A Yes.

Q Did you participate in the arrangement? A Mr. Martin and my Uncle George arranged it and they told us.

Q Did you participate in the arrangement? A What do you mean?

Q I mean as to whether or not you, either acting for yourself or acting for the remaining members of the Kremelberg family, made an arrangement with the other partners of the firm, by which this was to be done? A We agreed to it, yes, sir.

Q Was that arrangement which you made at that time occasioned in any respect by a big loss that the firm had suffered? A It was not; the arrangement was made because Mr. Martin was not satisfied with his money he got.

Q Do you recall that about this time the firm of Kremelberg & Co. suffered a great loss over in Europe? A They did have a loss, yes, sir.

Q And that the question arose as to whether or not the Kremelberg would not be responsible as partners in case of insolvency? A No, I do not; it had nothing to do with that.

Q You do remember that they suffered a great loss? A They had loss, yes, sir.

Q Do you remember that the question arose as to whether in case of insolvency of the firm, the Kremelberg children might not be held as partners? A No, I don't remember anything of that kind.

Q And wasn't it because the children of the Kremelberg family wanted to avoid responsibility as partners that the arrangement was

changed? A No, it was Mr. Martin's dissatisfaction with his money.

Q But at all events there was a specific arrangement made at that time? A Yes.

Q And there was also a specific arrangement made at the beginning under which you were to get half the profits of the firm? A Yes.

Q For leaving your money in the business? A Yes.

Q You knew at that time that the business needed money? A Yes.

Q Mr. George Kremelberg had suffered great losses? A Yes.

Q He had no money? A No.

Q He owed the New York firm money? A Yes.

Q The other partner in New York, Mr. Engler, had no money either? A No.

Q He owed the firm money? A Yes.

Q And the interest that Mr. George Kremelberg had in the New York firm was the only real money in the New York firm, was it not? A Of Mr. George Kremelberg?

Q Of Mr. John Kremelberg, your father? A Yes.

Q That was the only money there? A Yes.

Q And the interest that your father had in the Baltimore concern was the only money that was there? A Besides what we had there.

Q Until you added some to it? A No, it was there already.

Q Had been there? A Yes.

Q (*By the Court.*) Before your father's death? A Yes.

Q Your father had some of your money invested there? A Yes.

Q Just as an investment, getting interest on it? A Yes.

Q So that all that you left there was what already was in the business? A Yes.

Q You didn't take any from any other sources and add to it in order to make up the amount? A No.

Q (*By the Court.*) While the money was there before your father's death what did you get on it? Interest? A Yes, interest on the money.

Q (*By the Court.*) Did you get anything but the interest? A No.

Q (*By the Court.*) He paid you interest on your money that you had there? A Yes.

Q Do you remember how much you had? A I think about $8,000; I do not remember the exact sum.

Q Did your sister, Mrs. De Graaff, have any? A She had the same.

Q How about the other children? A My brother—they had nothing.

Q Can you tell me whether as a matter of fact—

Mr. Field. You said awhile ago Fred had some, too.

Witness. My brother Fred did, yes, sir. My brother Fred and my sister Virginia and I had some.

Q How about the rest of the children? A They didn't have any.

Q But your brother Fred was a partner in the concern? A Yes.

Q Do you know what his capital account was in the concern at that time? A No.

Court. Do you mean that he had put in money as a partner? You were not a partner, and your sister; your father first had the money and the firm paid you interest?

Witness. Yes.

Court. The money that your brother had in there, wasn't that money as a partner, or money like yours and your sister's?

Witness. Money like mine and my sister's, I think it was.

Court. Do you know anything about it?

Witness. He had inherited it.

Court. From some other source he inherited money and you understood that went in the business?

Witness. Yes, it was put in before he was a partner.

Q Do you remember when he inherited that money? A I was a small child, so it must have been—

Q Years ago? A Yes.

Q Do you remember when he became a partner? A Yes, we have the date of it.

Q What is the date of it? A May I ask a question?

Q If you have any papers here that will refresh you.

Witness. Mr. Field, have you got a paper when my brother was made a partner of the firm?

Mr. Field. Mr. Baker said in his testimony that was 1878 or 1879.

Q After he was admitted as a partner, did he continue as a partner until your father's death? A Yes.

Harriet Ella Kremelberg, cross.

Q And I understood you to say you don't know what his interest in the business was? A No.

Q Do you know whether or not when he was made a partner he contributed what before had been an investment in the business? A I do not know.

Q So that as a matter of fact you don't know whether what he had in the business at the time when your father died, was there as capital or was there as an investment pure and simple? A No.

Q At the time when you made the arrangement in 1883, do you recall as to what was to happen to the remaining fifty per cent. of the profits; who was to get those? A The other partners.

Q Who were those partners that were to get them? A Mr. Martin and Mr. Engler and George.

Q Who else? A I imagine Mr. Brancker.

Q Then the arrangement at that time was that the children of John D. were to have fifty per cent. of the profits and that the three partners, J. George Kremelberg, Mr. Brancker and Mr. Martin, were to get the other fifty per cent. of the profits of the business? A Yes.

Q Did you know in what proportion they were to get them? A I do not remember at the time; I have heard it now.

Q Wasn't this the proportion: that your Uncle George was to get twenty per cent. and each of the other gentlemen were to get fifteen? A I expect that was it.

Q I am asking you now? A I have heard it since, but at the time I did not know the division.

Harriet Ella Kremelberg, cross.

Q Having heard it since, does it in any way refresh your memory, so that you can tell us now that you recall that at that time that was the arrangement? A No, I did not know.

Q But you do recall that the arrangement was that the other fifty per cent. was to go to the other three partners? A Yes.

Q Now, with regard to Mr. Brancker, he was an old employee of your father's, was he not? A Yes.

Q Had been in the business for twenty or thirty years at the time of your father's death? A No.

Q How long? A I do not know.

Q Quite a long time? A I have no idea how long.

Q Do you recall how long he remained connected with the Kremelberg firm after your father's death? A I think a year or two.

Q What happened to him then? A I think he went back to—

Q He stepped out of the firm? A Yes.

Q At the time when he stepped out of the firm was there any rearrangement made about how the profits were to be divided? A I do not know.

Q Isn't that the time that you referred to before, when you say, "Subsequently on February 2, 1885, the said Brancker retired from said partnership and the same was continued by the said J. George Kremelberg and the said Charles Martin (the latter actually conducting the business) and the children of John D. Kremelberg. The latter continued to receive six per cent. on said sum and one-half of the profits, for their said capital." At that time wasn't there some

specific talk about that? A I do not remember.

Q Mr. Martin had been a long time with the firm? A Yes.

Q And he continued with the firm after your father's death until he died? A Yes.

Q Do you know whether during this time he received always the same share of the profits—Mr. Martin? A I believe there were some changes; I do not know, though.

Q Were you consulted about those changes? A Mr. Martin used to speak to me about that.

Q He would come and tell you that there would have to be a new arrangement about the profits? A Yes.

Q And up to the time he died he got pretty much all of them, didn't he, something like ninety per cent.? A No, I do not think so; I think the books would show that.

Q You got a statement from this Baltimore firm right along, didn't you? A Up to—you look at the dates.

Q Didn't you get statements from the firm until the time when this arrangement was changed, so that you got twelve per cent. interest instead of profits? A Yes.

Q And wasn't that the time when they changed and didn't send you any more statements? A Yes.

Q So that the statements which you received show who was interested in the firm and what profits they were making? A Yes, I think so, those papers would show.

Q How often did you get the statements? A Once a year.

Q Who got them; to whom were the statements given? A To me.

Q Were you the representative of the several members of the family? A They seem to have made me that, yes, sir.

Q They were rendered to you with the consent of the other members of the family? A Yes.

Q They knew about it? A That I received them, yes, sir.

Q What did you do with those papers that you got—the statements? A I put them away with the other papers.

Q Did you look at them? A Yes, I looked at them.

Q Did you examine them to see how much profits you made for the preceding year? A Sometimes, yes; I was interested in that.

Q Did you examine them to find out how much your capital account stood at? A I expect I did, too.

Q Did you examine that for the purpose of finding out how much money Mr. Martin had in the business? A No.

Q You didn't look? A I wasn't interested in that.

Q Did you examine them for the purpose of finding out how much money your Uncle George had in the business? A There wasn't any there until the latter part.

Q Did you examine them for the purpose of finding out how much profits Mr. Martin was drawing out of the business? A No.

Q Did you examine them for the purpose of finding out how much money your Uncle George was getting out of the business? A No.

Q Those things were altogether on the statements, weren't they? A Yes, but might have been ignored.

Q What? A I examined them for myself.

Q Did the other members of the family examine them with you? A They left it mostly to me.

Q The other members of the family were at home with you? A Yes.

Q During that time you were all living together? A We travelled a great deal; we were together.

Q But in January you were home in Baltimore, ordinarily, when you got your statements? A Some years, yes; other years, not.

Q Hasn't it been your practice to be in Baltimore during the winter and abroad during the summer? A Yes, the last years, but not before that.

Q But when you travelled, you travelled together? A Yes.

Q So that you were all together when you got the statements? A Yes.

Q Do you recall talking the matter of the statements over with the other members of the family? A Not very much, no, sir.

Q Do you remember calling their attention to the fact that you had statements? A They saw them arrive, I suppose.

Q How did they come? A By mail.

Q Were they interested; did they seek to inquire as to how much money they had in the business? A They were very indifferent about it.

Q Or how much profits they had made? A Also indifferent.

Q They left it all to you? A Yes.

Q You saw your sister, Mrs. DeGraaf, once a year? A Yes.

Q And you stayed with her for quite a period of time in the summer? A Yes.

Q Did you talk the statements over with her? A No.

Q Did you take the statements with you to show her what the interest was? A She had an individual balance sheet, I think.

Q She got a balance sheet, too? A Not a balance sheet, an individual account of her account.

Q That simply showed what her interest was in the business? A Yes.

Q What you got showed the entire state of affairs in the business? A Yes.

Q When you went over didn't you take those with you, to show her what they were? A No.

Q Tell me where you kept these statements that you got? A They were in a box in my home.

Q You kept them conscientiously? A No, I had to search for them afterward.

Q You put them away because you wanted to keep them? A Yes, with other letters, not specifically that they were balance sheets, but with letters I put them away.

Q You put them away because you wanted to keep them and preserve them? A Yes, I expect so.

Q Did you put them in your safe deposit box? A No.

Q And in the course of time you forgot where you kept them? A Yes.

Q You had quite a long hunt in order to get them now? A Right you are.

Q To go back for a moment to this arrangement in 1883; we have talked about the Balti-

more concern; what was the arrangement about the New York concern? A We got six per cent. on our money.

Q And that was by specific arrangement, wasn't it? A Yes.

Q Who participated in making that? A Mr. Tagart and my uncle.

Q And Mr. Tagart again represented you, did he not? A Yes.

Q Was that arrangement that you should leave the money there for any fixed period of time? A No.

Q You could call it any time you wanted to? A I think so, yes, sir.

Q And that as long as it was there you were to get six per cent. on it? A Yes.

Q You withdrew some of it shortly after you put it there, didn't you? A No.

Q Didn't you withdraw Diedrich's share? A Yes, he wanted his.

Q When was that? A I do not know.

Q That was only a few years after it was left there, is that not so? A The books will show that.

Q Did you know that Diedrich had withdrawn his share? A Yes.

Q At the time when it was withdrawn? A I don't remember that?

Q I understand that you have received that money? A Which money?

Q The $19,000 minus what Diedrich had withdrawn? A Received it after my uncle's death.

Q And I understand that until your uncle's death you received interest at six per cent. on it? A Yes.

Q It was reduced to about $16,000 after Diedrich withdrew? A Yes, about that; his share was withdrawn.

Q And you got the six per cent. until your uncle died? A Yes.

Q And when you got the principal you got also the interest from the date of your uncle's death until the time you got the money? A Yes.

Q And you each signed a receipt for it, did you not? A Yes.

Q Do you remember when you gave those receipts? A Mr. Hillen must have said that; I am not good at dates.

Q I think Mr. Hillen said you gave it to him on December 20, 1913? A Yes.

Q In December after your uncle's death? A Yes.

Q Who was Mr. Hillen? A He was my uncle's bookkeeper.

Q Over in the New York firm? A Yes.

Q And he is the one with whom you made the arrangement? A Yes.

Q Each of you signed a paper there, didn't you? A Yes.

Q Where did you get the papers that you signed? A How do you mean?

Q Who handed you the papers that you signed? This is what you signed, did you not, when you got that: "I hereby acknowledge receipt from the firm of Kremelberg & Co. of New York of the sum of $4,101.36, being in full for my share of a loan to the said firm of Kremelberg & Co. of $16,314.93, with interest to date, said loan standing in the name of J. D. Kremelberg Estate on the books of the firm of Kremelberg & Co."? A Did Mr. Hillen send me that?

Q I asked who gave you those papers; who drew those receipts? A My brother-in-law, Mr. Gill.

Q And he drew four of them, didn't he? A Yes.

Q One for each of the girls? A Yes.

Q And you sent Mrs. DeGraaff's out to Germany for signature? A Yes, sir.

Q Those papers all bear date December 20, 1913? A If you say so, yes, sir.

Q These papers all bear date December 20, 1913; what I want to know is, whether this paper sent to Mrs. DeGraaff was dated before it was sent out to her, or whether it was dated when it came back? A I do not remember.

Q There was shown you a letter by Mr. Field, I think from Mr. Engler, marked Exhibit C. 17; do you remember receiving that letter from him? A Yes.

Q Did you receive it about the time that it bears date, in December, 1913? A I must have, yes, sir.

Q Do you know what you did with it when you got it? A Put it in that box that holds all my letters.

Q Have you seen anything of it from that time on until you recently produced it? A No.

Q But you remember receiving the letter? A I only remembered it after I saw the letter.

Q Do you remember whether as the result of this letter you had a conversation with your uncle? A I had no conversation with him.

Q Do you remember whether as the result of the letter anything was done with regard to your interest in the Baltimore firm? A No.

Q Do you remember as the result of the letter, whether anything was done in regard to

your loan to the New York firm? A Nothing was done.

Q The thing simply stopped with this letter? A Yes.

Q That was all there was to it? A Yes.

Q You produced also some other statements, Exhibits C. 18 to C. 23; what can you tell me with regard to these statements? A These are the balance sheets.

Q How did you get them? A Mr. Martin sent them to me.

Q And were they examined by you when you got them? A I did the same thing with this lot.

Q (*By the Court*) These were all sent to you as representing the family; just one was sent, and that was sent to you? A Yes.

Q Did you examine them as you did the other statements? A Just like the other statements.

Q Did you put them away as you did the other statements? A Yes.

Q So all you said with regard to the receipt and the examination and the putting away of the other statements is applicable to these statements, is that right? A Yes.

Q There is still a third set of statements, marked Exhibit C. 4, in Hillen's deposition; these are statements from the New York firm? A Yes.

Q Were they sent to you, too? A Yes.

Q As the representative of your family? A Yes, I got them.

Q You are the only one that got them? A Yes.

Q Did you examine those? A Like the others.

Q Did you put them away like the others, too? A Yes.

Q So that all you said with regard to the first set of statements which I showed you, is applicable to these other sets of statements that I have shown you? A Yes, sir.

Q Do you recall the announcement of Mr. George Kremelberg's admission to the Baltimore firm as a member of that firm? A Did I see it; I don't remember that I saw it; I do not remember.

Q I show you Exhibit C. 5 in Mr. Hillen's deposition:

"Baltimore, July, 1882.

Sir:

We beg to inform you that Mr. J. George Kremelberg, of New York, has become a member of our firm.

Please take notice of his signature at foot.

Yours very respectfully,

J. D. Kremelberg & Co.

Mr. J. George Kremelberg will sign:"

A I never saw that.

Q Did you see any such announcement as that? A No.

Q Do you know that in July, 1882, Mr. J. George Kremelberg was admitted as a member of the firm? A Yes.

Q Do you know whether there was any formal announcement that the children of Mr. John D. Kremelberg were admitted as members of the firm? A No, I do not know.

Q You don't know whether there was or not? A No.

Q I think you told me that you kept all these statements and this letter from Mr. Engler in a box? A Yes.

Harriet Ella Kremelberg, cross.

Q Where did you keep the box? A In my room.

Q Who had access to it? A The maids and my sister.

Q You mean one sister or all the sisters? A Access to the box?

Q Yes. A They never went to the box.

Q I want to know who had access to it. A No authoritative.

Q (*By the Court.*) Was it a box with a lock; where did you keep it; what sort of a box was it? A A wooden box.

Q An ordinary wooden box? A No, a fancy box.

Q About how large? A As large as this desk, maybe; a low box.

Q How high a box was it, a foot or foot and a half? A About a foot and a half high.

Q Where did you keep it? A In my room.

Q Open? A Yes.

Q One of these fancy things that ladies have? A No, it was a wooden one, very strong one; it was solid.

Q It wasn't one of those things that was decorated with chintz or silk stuff; just plain wooden box? A Wooden box with brass nails.

Q Was there a lock to it? A No.

Q Was there a lid to it? A Yes.

Q So that access to it was quite simple? A Yes, very simple.

Q In the safe deposit box that you had were there many papers? A Besides securities you mean?

Q I am talking of all the contents, what was kept in this box? A Securities, bonds, stocks, some old non-paying bonds, fire insurance papers, other worthless papers, bonds that didn't pay—what you would keep in your box.

Q What was considered valuable was there? A Yes.

Q And when you found this envelope containing the two deeds of trust and the deed from your brother John, you considered it as one of the valuable papers? A Mr. Tagart must have, because he wouldn't have put it in that box.

Q Your curiosity was not at all surprised that these papers were mixed up with your securities? A No.

Q You were not even enough interested in it to see just what it was? A No.

Q Why these particular papers should be lying there with your best papers? A No.

Q Because your best papers were there, were they not? A Yes.

Q After Mr. Martin's death how many times a year on the average did you go to the box? A Once a month, when I was in this country at home.

Q When did you go away, in June? A Sometimes in June, sometimes in May.

Q And come back about October? A October or November.

Q When you went to your box did your sisters go with you? A Very seldom.

Q Which of your sisters went with you? A My youngest sister, Mary.

Q Did Mrs. Gill go with you at any time? A No.

Q How many interviews do you recall with Mr. Tagart in 1883 relating to the adjustment of your affairs in your father's business? A I cannot recall how many.

Q Was it a matter that extended over some period of time? A He didn't talk much to us about our affairs; he arranged them himself.

Q He represented you in the arrangement, didn't he? A Yes.

Q You don't mean to say that you didn't know what the arrangement was that he made for you, do you? A After he made it, he would tell us, but we left it all to him.

Q But yet you say that he said you ought not to leave your money in the business? A He did that.

Q Nevertheless you left the money in the business? A I did, to help my uncle.

Q Didn't you, under those circumstances, talk the thing over with him? A No doubt I did at that time.

Q And asked him to fix it so that you might get the greatest security? A I did not ask him, no.

Q In making these arrangements did you know whether he made them with your uncle? A Yes.

Q And do you know whether in making them with your uncle, papers were drawn? A I do not know.

Q Mr. Tagart was at your house every day, wasn't he? A I don't think so, no.

Q When you lived at the old large house at the corner of the street—Charles street and some other street—he lived next door to you, didn't he? A Yes.

Q And wasn't he there pretty much every day? A I don't think he was. He was an old gentleman, I don't expect he came every day, no sir. We were on very friendly terms, very closely connected.

Q How long after your father's death did you continue to reside as Mr. Tagart's neighbor? A The house was sold within a year, I think, after that time.

Q Then you moved further along in Charles street? A We went to Europe.

Q And when you came back you took up your residence again on Charles street? A The first year we lived on Calvert street.

Q Did Mr. Tagart call on you there? A I think so. We moved once on Biddle street; on Calvert street, I think Mr. Tagart was dead.

Q Mr. Tagart didn't die until 1892 or 1893? A We didn't go right to housekeeping, we lived at the hotel for some time.

Q After you got back from Europe did you see quite a little of Mr. Tagart? A While he was alive we saw a good deal of him.

Q The friendly relations continued? A Yes.

Q Did you know that your brother had been named as one of your father's executors? A I did not know that.

Q Did you know that your Uncle George had been named as one of your father's executors? A I do not believe that I remember that either.

Q Have you any recollection as to both of them renouncing and allowing Mr. Tagart to administer the estate? A I knew Mr. Tagart arranged everything; I do not know what preceded that.

Q And in arranging everything, he represented you? A Yes.

Q And the other children of your father? A Yes.

Re-direct by Mr. Field.

Q I don't believe you told—do you recall what time in June, 1883, you went abroad? A About the middle of June I think it was; I do not remember the date quite.

Harriet Ella Kremelberg, further cross.

Q You said in answer to Mr. Hood, that Mr. Tagart remained your lawyer until his death. Did he or not ever attend to any legal business for you after the settlement of your father's estate? A No, we had none.

Q Or for either of your sisters? A No.

Q You told Mr. Hood that you couldn't recall when the papers passed from the hands of Mr. Tagart to Mr. Martin; I will ask you again if you can recall whether or not while you were in Europe you received remittances from Mr. Martin or knew in any way that the papers had been—— A Yes, we received all our remittances from Mr. Martin.

Q Does that or not indicate to your mind that the papers had passed to him before——

Mr. Hood. Objected to.

(Objection sustained.)

Q Did or not Mr. Tagart ever make any remittances at all, send you any money from your father's estate? A No, never.

Mr. Hood. I forgot to ask one question.

Further cross examination by Mr. Hood.

Q Did you sign any release to Mr. Tagart when he settled the accounts? A I think we did; we must have; the Court would have required that, wouldn't it?

Q Did you only just for yourself or sign one also for the others? A I no doubt signed it for my sisters, as I was the guardian for them.

Mr. Hood. I see you have only one release attached to the account.

Mr. Field. The bill alleges releases were given by each of them.

Q What do you recall about signing the releases on the day of settlement; the one that is

here is signed J. George Kremelberg, and I suppose they were all signed the same date; it is dated the 20th of June, 1883; what do you recall about it? A I don't recall anything about it.

Q You don't even recall that you signed one? A No.

Q You don't know anything about it at all? A No, I don't remember it.

Q All you do know is, that you were the guardian of your infant sisters? A Yes.

Q And did you sign releases for yourself and for them? A Yes.

Q You remember that fact? A I don't remember the date.

Q You remember the fact that you did? A Yes.

Further re-direct by Mr. Field.

Q Mr. Hood asked you whether you talked over with Mr. Tagart the question of leaving the money in these firms and he advised you not to do it; upon whose advice did you do it, if you didn't follow Mr. Taggart's advice? A On my affection for my uncle.

Q Who asked you to do it? A I don't know that anybody did.

Q (*By the Court.*) Are you speaking of all the money of the estate or money of your own you had there? A Money I had there and of my sisters whom I was guardian for.

Mr. Hood. Of all money that was in the business?

Witness. Yes.

Q At the time that question came up, about whether or not the money should be actually paid over to the executor or should be left in

the business, left with the New York firm and the Baltimore firm, that was before you went to Europe the first time? A Yes.

Q Of course that was long before you knew anything about these declarations of trust or this other instrument? A I didn't know anything.

Q You spoke of the arrangement whereby in consideration of the money you left in the firm, you and your sisters and brothers were to get half of the profits? A Yes.

Mr. Hood. She hasn't said anything of the kind.

Q I want to make it clear to which firm that stood? A To the New York firm principally; what was that?

Q That you were to get half the profits? A Oh, only the Baltimore firm.

Q I think you said you never received any profits from the New York firm in your life? A No.

Q Either you or your sisters? A No.

Q Mr. Hood has asked you about Mr. Tagart visiting you frequently after you returned from Europe; do you recall now the remainder of the time until his death—you returned in 1884 and he died in 1892, that would be eight years? A Yes, but in between that we went back to Europe again.

Q Can't you tell us how much you saw of him during those eight years? A When we were in Baltimore we saw him a great deal; we used to go and see him in the evening, social calls.

Q You never had any legal business with him? A No.

Harriet Ella Kremelberg, re-cross.

Re-cross by Mr. Hood.

Q May I ask you, Miss Kremelberg, when it was that you first understandingly read these declarations of trust? A Not until after my brother-in-law read them.

Q Can you fix the time for me when that was? A That was in the latter part of June, I think, in 1913,

Q That would be shortly after your uncle's death? A Yes, about a month.

Q Then you read them understandingly? A When they were explained to me.

Q And it was then that he explained them to you, in June, 1913? A Yes.

Q (*By Mr. Field.*) This box that you had in your room, the wooden box in which these accounts were kept, were these declarations of trust ever in that box? A Never; I never saw them.

Q Except for this business connected with the settlement of your father's estate, did you have any legal business up to the time of Mr. Tagart's death? A No.

Q You didn't employ any other lawyer? A No.

By the Court.

Q You spoke of the box in the safe deposit company in which your securities were kept; were the papers of any other person kept in that box? A No.

Q There were no papers of Mr. Martin there? A No.

Q None of his own private papers? A No.

Q No papers were kept in that box except those that belonged to your family? A Yes.

Q And the box itself was kept in whose name? A At first it was in Mr. Martin's name, in his lifetime.

Q In Mr. Martin's lifetime, then, it was kept in his name? A Yes.

Q And after that changed to yours? A Yes, and my sister Mary.

Q Did you have personally anything to do with putting the securities in the box originally? A No.

Q Were these securities that were there part of the estate of your father which were divided between you and your sisters? A Yes.

Q That is as you understood it? A Yes.

Q And all the papers that belonged to all the sisters were there. A All the securities that were divided among the family, except my married sisters, were in that box.

Q And no other papers were in it, of Mr. Martin's or anyone else? A No.

Q Do you recall during Mr. Martin's lifetime about paying for the box? A Yes.

Q Did you pay it? A Yes, the firm paid it and charged it to me.

Q And did any member of the firm, except Mr. Martin, have access to it, so far as you know? A No.

Q Were Mrs. Gill's papers in that box? A Not after her marriage.

Q But up to the time of her marriage? A Up to the time of her marriage her papers were there.

Q (*By Mr. Hood.*) Only the single ladies' papers continued in the box? A Yes.

Q Miss Kremelberg, I want you to recall now as clearly as you can your finding the papers in the envelope in the box; was there

a single large envelope in which they all were? A Yes, sir.

Q Was there more than one envelope? A One envelope.

Q One large envelope? A Yes.

Q Where is the envelope? A When I took the papers out I expect I destroyed the envelope; I haven't the envelope.

Q Do you especially recall doing anything about it? A No.

Q Was the envelope sealed? A I do not recall that.

Q Did the envelope have anything written on it? A I do not recall that.

Q Do you recall anything about the size of the envelope? A Yes, they are always the same size; that size (indicating) the usual size.

Q That paper is very large. A It fitted in the envelope.

Q You say you had never seen any of those papers before? A No.

Q And never had opened that envelope? A No, I had never seen the envelope. I never had examined the box until after Mr. Martin's death.

Q Didn't you sometimes go to deposit securities? A Mr. Martin did that.

Q You yourself did not, then? A No.

Q You do not recall going into the box at all during his lifetime? A Yes, a few times I went.

Q But you didn't go through all the papers in the box until after Mr. Martin's death? A No.

Q In that envelope do you recall how these papers were, how many there were or how many you took out? A No, I looked at them and put

them right back; I don't remember anything about that.

Q You don't now recall how many there were? A No.

Q Whether there were two or three? A No, I don't remember.

Q Two of them were signed by your uncle and one was signed by your brother? A Yes.

Q Did you see all three of them? A I do not remember.

Q And then you put them back. A Yes.

Q And they remained in that box? A Yes.

Q Until when? A Until after my uncle's death, the middle of June after his death.

Q Then in the middle of June after his death you did what? A I took them out and took them home.

Q You took them all home? A Yes.

Q And in the envelope? A Yes.

Q The same envelope that was there? A Yes, sir.

Q Where were you then living? A In Baltimore, with my brother-in-law.

Q Did you show the envelope to him? A I expect I handed them to him in the envelope.

Q You handed to him all the papers that were there, did you? A Yes.

Further cross by Mr. Hood.

Q You handed Mr. Gill all the papers with the envelope? A In the envelope.

Q Did you take any other papers out of that box for Mr. Gill except just this envelope? A Only that envelope.

Q That is the only thing you took out? A Yes.

Q Had you made any examination of the papers in the envelope on any preceding day be-

fore you took them out and took them to Mr. Gill? A No, I never did.

Q Did you make any examination of them on that day before you took them out and gave them to Mr. Gill? A Yes.

Q Where did you make an examination of them? A I think I read them at the safe deposit and took them home.

Q At that time you read them, did you? A Yes.

Q All three of them? A I don't remember that I read them all.

Q That isn't so long ago. A I think I no doubt did read them.

Q I am trying to see what your recollection is; did you see all three of them? A Well, I read them then.

Q All three? A Yes.

Q You have a distinct recollection of reading the deed of your brother? A Yes.

Q And the two declarations of trust? A Yes.

Q That is the only paper you took out? A Yes.

Q I understood you to say—and this is only to clear up something—that you had access to the box while it stood in Mr. Martin's name? A Yes.

Q Did you have a key? A Yes.

W. ADDISON BAKER, sworn for defendants.

Direct examination by Mr. Hood.

Court. It is understood that Mr. Baker's evidence taken in Baltimore will go in and this is additional evidence for the defendant.

Q You are the bookkeeper for J. D. Kremelberg & Co. down in Baltimore? A Yes, sir.

Q And you are now interested in the firm? A In a small way.

Q You have been connected with the firm for how many years now? A First between 1872 and 1879, and the last time I came back was in 1894, to the present time.

Q And you have been in continuous service from 1894 to the present time? A Yes.

Q In what capacity? A In charge of the books and looking after the general detail of the office.

Q How far back do the books of J. D. Kremelberg & Co. go? A We only have them from 1904, because of the fire.

Q You had a big fire and they were destroyed in that fire? A Yes.

Q Have you on your books now any account with the children of J. D. Kremelberg? A Yes, sir.

Q Will you turn to it, please? A They are under separate accounts. Which one do you wish?

Q Turn to Miss Ella. A Here is Mrs. DeGraaff's.

Q Mrs. DeGraaff's account appears on what page? A Pages 2 and 3.

Q Of a book you call what? A Ledger.

Q That is the same book you testified from in Baltimore? A Yes.

Q And from what date does it run? A From December 21, 1904, until the first of January, 1915.

Q On the first of January, 1904, is that the first entry? A That represents the balance that was brought forward on that day.

Q Where did you get that from? A The old books were burned but we had to have that

supplied; we had to write to all our customers; we had a very hard matter to get our books fixed after the fire; it was only in such cases as we could do it.

Q These books were then reconstructed after the Baltimore fire, which occurred on the first of February, 1904? A Yes.

Q All entries from the first of February, 1904, were entries, I suppose, made as they occurred? A Yes.

Q But whatever you have here before the first of February, 1904, is something that you got from other sources? A Yes, through all of our customers.

Q What is the first item that you have there? A The balance.

Q What is the balance? A $5,027.22.

Q A balance to her credit of $5,027.22; how do you get that? A We have settled always at the end of each year what is known as an account current, and each individual got the account current. We had to write for the account current and settle it in that way.

Q Then you got that really from her, from a return of the statement you had already made? A Yes.

Q What was the credit item on this book at the time of the closing of this account? A $4,982.84.

Q And when did that happen? A That represented to December 31, 1914.

Q What is there charged from 1904 to the end of this account on the credit side; how much are the credit items? A The interest is one item.

Q Interest earned where? A Both in New York and in Baltimore.

Q How did you come to credit on this account the interest items that were earned in New York? A Because we had an account on our ledger with Kremelberg & Co. of New York, in which each year at the end of the closing of the year they asked us to be kind enough to credit to each lady's account the amount of interest due.

Q In other words, they remitted through you? A Yes, that is the idea.

Q Do you know what the interest was in New York? A Six per cent.

Q Do you know what the interest was in Baltimore? A Six per cent.

Q What is the next account, and where does that appear? A Here is Miss H. Ella Kremelberg.

Q That appears on pages 4 and 5? A Yes, and 318 and 319 carried forward.

Q It also runs from the first of January, 1904? A Yes.

Q And it also finishes on the first of January, 1915? A Yes.

Q How much was her credit balance at the beginning of 1904? A $5,783.66.

Q How much was her credit balance at the close of the account? A $4,980.39.

Q How much did you give her, six per cent, or twelve per cent? A They got six per cent. on the running account and six per cent. on the balance.

Q Interest in New York $244.73, interest as per A. C.? A Account current.

Q That is 12 per cent. on $5,000? A Yes.

Q You credited six per cent. every six months? A It was six per cent. on the capital invested; six per cent. on the running account;

for instance, there were some credits which came in after, of the various investments that were made for her, and we gave her credit for the use of the money.

Q And then practically you credited her twelve per cent? A I suppose it amounts to that much.

Q I want to know what the fact is. A Yes.

Q Now, we come to Miss H. Ella Kremelberg's account and there you said that it was on pages 4 and 5 and 318, and starts off with a credit item January 1, 1904, of $5,783.66 balance? A Yes.

Q You said it closed on the first of January, 1915, with a balance of $4,980.39; does this account also contain a six per cent. interest item collected through the New York firm? A That does not include 1914.

Q Exclusive of that? A Yes.

Q And did it also contain practically twelve per cent. on the investment in this concern, just as the other account? A Yes.

Q The third lady interested was Mrs. Anna M. Gill, and that appears on pages 6 and 7 of the ledger? A Yes.

Q It also begins on the first of January, 1904, by a balance $5,000? A Yes.

Q And ends on the first of January, 1915, by balance $4,997.50? A Yes.

Q And does this account also show six per cent. interest collected on the New York firm? A It does with the exception of the last year.

Q And twelve per cent. approximately on the balance, as here? A Yes.

Q The fourth is Miss Mary A. Kremelberg, and that appears on pages 8 and 9 of the ledger, and is carried forward to 320, and runs also

from the first of January, 1904, to the first of January, 1915? A Yes.

Q The balance on the first of January, 1904, was $5,277.90 and the balance on the first of January, 1915, was $4,989.03, is that correct? A Yes.

Q And is credited here, too, the interest from New York at six per cent? A With the exception of 1914.

Q And is there also credited practically twelve per cent. on the investment in this firm? A Yes.

Q And is that the fourth? A Yes.

Q Are there any other accounts in this book that you have? A No, sir.

Q You were talking about an account current? A Yes.

Q Have those balances been settled? A All except these balances; they are still there.

Q (*By the Court.*) These balances are still there? A Yes.

Q The money is still there? A Yes.

Q That hasn't been collected? A No.

Q The new firm of Kremelberg & Co. have retained these accounts; is that what you mean to say? A Yes.

Q What do you mean by an account current? A It means a running account beginning with January first and ending with December 31st in any one year, and all charges and credits that have occurred on that account during the year, and the interest, of course, is averaged on the interest bearing account.

Q I am showing you a paper that is entitled Balance Sheet, No. 1, ending December 31, 1903, J. D. Kremelberg & Co. on the margin, and is one of the papers that I produced in answer to

the call of counsel; have you ever seen that paper before? A Yes, sir; I made it out myself.

Q And is that the balance sheet for the year 1903? A Yes, sir.

Q As it then appeared on the books? A Yes.

Q And before the fire? A Yes, that was before the fire in 1903.

Q And is that the paper that you had, or a similar paper? A I rather expect it is.

Q From which you reconstructed the books? A Yes.

Q Will you compare the balances as they appear on this balance sheet with these four accounts, and see whether they are properly transcribed? A It is correct.

Q I show you another one which I have also produced in response to counsel's call—it does not seem to have any heading; it has two separate sheets, but is also entitled "Balance sheet ending December 31, 1903"; what is the difference between the two; is that yours, too? A That is mine; I made that out.

Q Taken from the books? A I don't recollect why I made the two at this time.

Q One you call Balance Sheet No. 1 and the other you call Balance Sheet; this No. 1 seems to be a more extensive document? A One seems to be an abstract; it may be I made that out for Mr. Hester; I don't recall just how or why I did it; I was frequently called on for accounts, and I cannot say why that was made.

Mr. Hood. I desire to offer in evidence these pages of the ledger which I have called attention to.

Court. If you want copies of those, you can have them put in.

Mr. Hood. If it is agreeable that Mr. Baker will make copies and send them to me——

Mr. Parker. That is satisfactory.

Cross examination by Mr. Field.

Q Turn to the account of Mr. J. George Kremelberg in that book and state whether or not he was credited with six per cent. interest every year on whatever balance appeared in his account? A That is right.

Q In addition to his share of the profits? A Yes.

Q So every year each partner was credited with six per cent. interest on his balance? A Yes, for the use of the money.

Q Was that the custom of the firm ever since you have been with it? A Yes.

Q So that each of the partners received six per cent. on their balances and the Misses Kremelberg received an additional six per cent? A Yes.

Q Unless that additional six per cent. be called a share of the profits, they received no share of the profits?

(Objected to.)

(Objection sustained.)

By the Court.

Q This six per cent. interest that was credited to them on their accounts, to what account of the firm was that charged, expense account? A Interest account.

Q That is an expense account? A Yes.

Opening.

Q And is deducted before any profits are declared? A Yes.

Q To what account of the firm is the credit of the account current on their accounts charged? A It all went to interest account.

Q And none went to profit account? A None of it went to profit account; the interest account shows a very large amount every year.

By Mr. Field.

Q And the same way on the partners' interest? A Yes.

Mr. Hood. I desire to offer in evidence the two statements I showed the witness, for identification.

(Marked Exhibit D. 1 and D. 2 for identification).

Adjourned to May 12th, 1915, at 10 o'clock in the forenoon.

Continuation of testimony and proceedings in the foregoing cause, before Hon. John R. Emery, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, May 12th, 1915, at 10 a. m., in the presence of counsel as before stated.

Mr. Parker. Referring to page 19 of the bill, my associate calls my attention to an inaccuracy, about the eighth or tenth line: It says "That the said J. George Kremelberg subsequently associated with himself G. Louis Hester, who continued until his death in 1908." The fact was that the association was in 1908, aand the partnership continued until the death of J. George Kremelberg.

Court. When it says "his death," that meant George's death?

Mr. Parker. Yes, sir. It is corrected by the proof. J. George died in 1913. It should say, properly, "that the said J. George Kremelberg subsequently in the year 1908 associated with himself G. Louis Hester, who continued until J. George Kremelberg's death in 1913."

Court. Is it a sworn bill?

Mr. Parker. No, sir.

Court. I will make the memorandum in pencil on the bill.

Mr. Field. The accounts, balance sheets, etc., of J. D. Kremelberg & Co., produced by the defendant in response to notice to produce, all relate to the year 1902 and subsequent; there are none prior to 1902. The statement for 1902 shows a profit credited to J. George Kremelberg of $1,286.50, and total profits for that year of $6,387.16.

The statement for 1903 shows a total profit of $7,943, and a profit credited to J. George Kremelberg of $6,107.25. It shows also that there was at the same time charged to J. George Kremelberg an amount due by C. A. Martin $1,694.

The statements from 1904 to date are immaterial, because we have the books from 1904.

Court. Except for convenience.

Mr. Field. I suppose they are the same as the books.

Court. They can be used and corrected by the books.

Mr. Hood. I merely produced them because they were asked for.

Court. He must offer them then if you want them offered.

Mr. Hood. Certainly. There are twenty-five papers.

Mr. Parker. We offer them as one exhibit. They cover the years 1902 to 1911.

(Marked Exhibit C. 25).

ANNIE MARIA KREMELBERG GILL, sworn for complainants.

Direct examination by Mr. Field.

Q You are a daughter of the late John D. Kremelberg and a sister of the witness who has just preceded you? A I am.

Q Have you or not recently made a copy from the files of the Baltimore Sun as to the date of the entrance of your brother Fred into the partnership of J. D. Kremelberg & Co.? A Yes, I did.

Mr. Hood. I think I said I would admit the date.

Q What is the date? A January 1, 1878.

Q Did you or not also go to the Record Office in Baltimore City and verify the memorandum on the margin of the record as to the delivery of the original deed from John F. Kremelberg to Elizabeth V. Kremelberg and from John F. Kremelberg to J. George Kremelberg? A I did.

Q Please look at this memorandum.

Mr. Hood. Assuming that the witness knows anything about what appears on the original records in Baltimore, and she has

inspected them and she is competent to testify, she must testify either from her memory, or if she has no memory, from a memorandum, and refresh her memory from that.

Court. I take it, it is the proof of an examined copy of the entry on a record; I will admit it subject to the objection and see to what extent it is proved.

Q Look at the paper which I now hand you, please, and state whether or not you compared this paper with the entry on the margin of the record book in Baltimore R. T. A., No. 591, folio 507, and whether this memorandum of receipt is a memorandum that is written on the margin of that record book? A Yes, it is.

Mr. Hood. It is not necessary for me to continue to object?

Court. No, I will take all this subject to your objection as to the relevancy and extent of the proof.

Q What is the memorandum? A "John F. Kremelberg to Elizabeth V. Kremelberg trust," receipt on margin "From S. Tagart May 2, 1883."

Q I will ask you if you looked at the record book of the assignment from John F. Kremelberg to J. George Kremelberg, recorded in R. A. T. 951, folio 508, among the land records of Baltimore city, and saw the memorandum on the margin of that record, and what that memorandum is? A "S. Tagart May 2, 1883."

Q Are you familiar with the handwriting of your Uncle J. George Kremelberg? A I am.

Q I will ask you to look at a paper which is filed with the depositions which were taken in

Baltimore, as Commissioner's Exhibit No. 1, dated the fourth day of December, 1882, and purporting to be signed "Geo. Kremelberg," and state whose signature that is? A That is my uncle's signature, George Kremelberg.

Q I will ask you to look at a paper which is annexed to the same deposition, and marked Complainant's Exhibit No. 2, dated Baltimore, May 4, 1883, and signed "J. Geo. Kremelberg," and state whose signature that is? A My uncle's signature.

Q Your uncle?—A George.

Q Your uncle, J. George Kremelberg? A Yes.

Q What was your first knowledge of the existence of either of these two papers which have have just been shown you? A When my sister showed them to me in the middle of June.

Q Middle of June when? A 1913; my sister Harriet Ella.

Q How do you fix the day in June, 1913? A It was after my uncle's death; it was the middle of June the year my uncle died.

Q Prior to that time state whether or not you had any knowledge of the existence of any Declaration of Trust signed by your Uncle George? A None whatever.

Q The first question I asked you was when you first saw these papers—that was June, 1913—state whether or not you had any knowledge of the existence of either of these Declarations of Trust prior to June, 1913? A No, I had not.

Q What was the date of your marriage? A The second of March, 1897.

Q And before your marriage, when your sister Ella went abroad—as she usually did every summer, she testified—did you go with her? A Yes.

Q How has it been since your marriage? A I haven't gone since.

Q Where have you lived since your marriage? A In Baltimore, on Charles street.

Q From your earliest recollection what were the relations between you and your sisters and your Uncle J. George Kremelberg? A Most affectionate.

Q How often did he visit Baltimore? A Once or twice a year.

Q You mean not oftener than that? A No.

Q To what extent was confidence reposed in him by you and your sisters? A We looked upon him almost as our father.

Q When he came to Baltimore did he or not always come to see you? A Yes, he generally stayed with us.

Q Whether he stayed with you or not, did he always come to see you? A Oh, yes, sir.

Q Will you state whether or not you and your sisters visited him in East Orange? A Yes, we did quite often.

Q Where was his daughter married to her present husband, Mr. Tompkins? A She was married from our home.

Q When was that? A I think it was the third of June, 1913.

Q Was it before or after you saw these Declarations of Trust? A It was before.

Q (*By the Court.*) Before her father's death? A No, after her father's death. He died May 13, and she was married June 3rd.

Q Who represented you and your sisters, from your earliest recollection, in all your relations with the firm of Kremelberg & Co. and J. D. Kremelberg & Co.? A My uncle, George Kremelberg.

Q State whether or not in conversation or correspondence your Uncle George ever said anything to you about either of these Declarations of Trust?

Mr. Hood. I object, it being a conversation and transactions with deceased.

Mr. Field. Not what they were, but whether there were any.

Court. No, that would be a transaction; I think that would be subject to the same objection. That is a statement as to whether there was; it would be transaction, if she said "Yes." Your question indicated the subject. I will admit it subject to the objection. It is quite possible in some point of view it may not be covered by the statute, but my present impression is that it is, and that it must be stricken out. I will take the answer.

A He did not.

Q State whether or not either in conversation or correspondence he ever mentioned to you anything about any Declaration of Trust?

Court. The form of that is objectionable. You speak as to the contents of letters; if she has any letters, they would be admissible, but the contents could not be spoken of without producing them, or accounting for their absence.

Q State whether of not you have any letters from your Uncle George now in existence? A I have not.

Q (*By the Court.*) You have no letters at all from your Uncle George? A No, I have no letters from him.

Q State whether or not your Uncle George ever mentioned to you anything about any Declaration of Trust in favor of yourself and your sisters?

Mr. Hood. Same objection.

Court. Same ruling.

A He never did.

Q State whether or not your Uncle George ever discussed with you the relations of you and your sisters and either of these firms.

Mr. Hood. Same objection.

Court. All conversations with the uncle—all these statements are admitted subject to your objection. There is only one case where the failure may possibly be evidence, although statements of anything he said might not be.

A No, he never did.

Mr. Hood. I understand you said one objection is enough to cover—

Court. Yes, to cover all answers as to conversations or omissions of conversations between the witness and deceased.

Q State whether or not you ever received any payment of any money or anything from your Uncle George personally? A No, I never did.

Q You have heard your sister testify as to the fact that you four girls received certain profits from the Baltimore firm and interest on the money due from the New York firm; outside of those receipts testified to by your sister, state whether or not you ever received anything either from your Uncle George or from either of the firms of Kremelberg & Co. or J. D. Kremelberg & Co.? A No, I never did.

Anna Maria Kremelberg, cross.

Q Have you in your possession or under your control any books or papers relating to the affairs of either of these firms, other than those your sister Ella has produced? A No, I have not.

Q At the time of your father's death your age was what? A Sixteen.

Q Did you yourself take any part in the arrangements that were made after his death in reference to either of these firms? A No, I did not.

Q Mrs. Gill, when Miss Ella showed you these two Declarations of Trust in June, 1913, do you or not recollect or remember whether this assignment from J. Fred Kremelberg to your uncle was shown you at the same time? A I really cannot remember, I really don't remember, whether she showed me that.

Q Do you remember whether or not you saw an envelope at the time? A No, I don't remember that.

Cross examination by Mr. Hood.

Q I understood you to say that you took no part in the arrangements that were made at the time of your father's death, is that correct? A Perfectly.

Q You were then a girl about sixteen, were you not? A Yes.

Q Your age and Mrs. Tompkins' is about the same? A Yes.

Q Mrs. Tompkins is your Uncle George's only daughter, in fact, the only child? A Yes.

Q Do you remember anything as to whether there were conferences at that time? A No, I don't remember.

Q Were you at home then? A Yes.

Q Do you remember Mr. Tagart? A Perfectly.

Q Do you remember his being at the house in connection with matters relating to the settlement of your father's estate? A No, I do not.

Q Do you remember reading your father's will? A No, I don't remember reading it.

Q Or having heard your father's will read? A No, I did not hear it read.

Q Do you recall as to whether you were at that time advised that your Uncle George had any interest under your father's will? A No, I don't remember.

Q When did you first have knowledge of the fact that your Uncle George was a beneficiary under your father's will? A I don't know when that was.

Q You don't know that you ever knew it? A I knew he was a member of the firm.

Q But did you know whether or not anything was given to him under your father's will? A No.

Q Did you ever know about that? A No, I did not.

Q Did you know that anything was given under your father's will specifically to your brother, John F., with regard to the business in which your father was engaged? A No, I don't remember it; I don't know.

Q It appears that you haven't at any time taken any particular interest in this property that came to you through your father? A No.

Q You haven't taken any hand in the management of it at all? A No, I did not.

Q Did you have anybody manage it for you? A My sisters looked after it.

Q Your sister—which sister was that? A My sister Ella.

Q How long has she been taking care of it for you? A Up to the time I married.

Q That was in 1897? A Yes.

Q What happened then? A Nothing happened then.

Q Who had your papers up to 1897? A My sister had them.

Q Do you know where she kept them? A Mr. Martin had them.

Q Do you recall where Mr. Martin kept them? A He kept them in the safe deposit.

Q In what institution? A The Mercantile Trust Company.

Q Did you know what Mr. Martin had to do with your papers? A He attended to our business.

Q You understood that Mr. Martin was your man of affairs? A Yes, perfectly.

Q How soon after your marriage did you get your papers that either Mr. Martin or your sister had? A I got them shortly after I was married.

Q You remember the event? A No, I don't recall that particularly.

Q Do you remember where you met for the purpose of getting them? A No, I do not.

Q Was there anybody that took care of that thing for you? A What thing?

Q Getting your papers from Mr. Martin or your sister. Perhaps I had better bring it a little more positively to your mind. Among the papers that your sister or Mr. Martin had for you were interest bearing securities, were there not? A Yes.

Q Some of those have been allotted to you in the division of your father's estate? A Yes.

Q And perhaps there were some other papers besides those? A I don't recall that.

Q Those papers were placed in the custody of your sister Ella at first? A Yes.

Q And eventually in the custody, you say, of Mr. Martin? A Yes.

Q Do you remember whether Mr. Tagart ever had the custody of them? A I don't remember.

Q But you do recall that your sister Ella and Mr. Martin had the custody? A Mr. Martin had them; Mr. Tagart gave them to Mr. Martin.

Q How do you know that? A Because Mr. Martin attended to our business.

Q Can you tell me when it was that Mr. Martin got those papers from Mr. Tagart? A No, I cannot tell you that.

Q Can you say whether it was shortly after your father's death, or whether it was shortly before Mr. Tagart's death? A I cannot tell you that.

Q When did Mr. Martin begin to take care of your affairs; can you tell me that? A Mr. Martin always sent us the money; we were abroad after my father's death.

Q But that happened through the firm of Kremelberg & Co.? A That is the reason I cannot tell you more than that.

Q You had assets in that firm? A Yes.

Q And when you wanted money you drew on the firm? A Yes.

Q And they sent you the money? A Yes.

Q And that wasn't Mr. Martin particularly, was it? A Yes, that was Mr. Martin that sent us that.

Q Only in so far as Mr. Martin had the management of the business in Baltimore? A In so far he sent it.

Q How do you know that? A How do I know that Mr. Martin sent it?

Q Had the management of the business in Baltimore?

Mr. Parker. That he only did it in so far as he had the management of the business in Baltimore.

Q How do you know that Mr. Martin had the management of the business in Baltimore? A Because Mr. Martin sent us the money, he attended to the business.

Q How do you know that? A I don't know any more than that.

Q How do you know that?

Court. What is there in your mind that makes you say that "Mr. Martin sent us the money"; what do you recall now that makes you say "Mr. Martin sent us the money" rather than that anybody else sent the money?

Witness. There was nobody else. It came from the business and Mr. Martin was a partner.

Court. Might not some other partner have sent it?

Witness. We had no other partner.

Court. Were there any letters?

Witness. No, I never had any letters.

Court. Were there letters from Martin enclosing money, do you recollect about that?

Witness. No, I never saw any.

Court. You cannot now state what makes you say that?

Witness. No.

Q You say there were no other partners? A My Uncle George Kremelberg was a partner.

Q How about yourself, you and the rest of the children, weren't they partners too? A Yes, but we were not down at the office.

Q You mean actively engaged in the business? A Yes.

Q To go back where we started from—I want you to tell me what you can, at the time when you received your share of the papers that had been in the custody of Mr. Martin? A I got my own papers after I was married; I don't recall who gave them to me.

Q Did you get them personally? A I don't recall who gave them to me.

Q Did your husband get them for you? A He may have gotten them, but I got my own box then and put them in my own box.

Q Your husband is a lawyer? A Yes, sir.

Q What I want to know is, what you remember about getting your own papers; do you recall anything at all about it? A No, I don't recall anything.

Q Do you recall whether or not you went to any place and opened this box which contained all your papers, in order to pick out from it the ones that belonged to you? A No, I don't recall that.

Q Your memory is an absolute blank on the subject? A An absolute blank.

Q Your memory is ordinarily pretty good? A No, it is not particularly good.

Q Is your memory good as to events that occurred way back in 1882 and 1883? A No, very poor, but you can ask questions and if I can remember them, I will tell you.

Q But generally speaking, I want to know? A No, I have a very poor memory, generally speaking.

Q But you did speak of the family relations between you and your Uncle George, and I think you said they were affectionate? A Very.

Q By that you mean on both sides? A Yes.

Q Have you any recollection about your Uncle George giving up to you children whatever was given to him under your father's will? A No, I have not.

Q That is pretty broad, because I think the will gives him some pictures, too; have you any recollection of your Uncle George giving up to you children the interest that had been given to him by your father's will? A No.

Q You say that your Uncle George represented you with the firm; just what do you mean by that? A I didn't say that.

Q What did you say about your uncle? A He was a partner in the firm.

Q What did he have to do, so far as your interest in the firm was concerned, anything? A No, not that I know of; I don't understand.

Q Do you remember Mr. Martin? A Perfectly.

Q Do you recall when it was that he became a partner with you in the firm of Kremelberg & Co.? A The date and year, no, sir.

Q Do you remember how long he remained a partner in the firm? A Up to his death.

Q Do you recall when that happened? A Yes, he died in 1903, I think.

Q Do you recall as to whether while he was a partner of the firm his percentage of interest was changed? A Did I recall then or now?

Q Do you recall now that there were any changes as to what his share should be in the profits of the firm? A I know now what this bill is, what came up.

Q Irrespective of what we have written in the paper, I ask you if you have any memory? A No.

Q As to things of that kind? A No.

Q You haven't any except such as have been refreshed by something that happened in this case? A Yes.

Q As refreshed by something that happened in this case, have you any memory about it now? A You know what is in this case.

Q I am not asking you what I know; I am trying to find out what you remember about it.

Mr. Field. About what?

Q This particular thing as to whether or not Mr. Martin's interest in the share of the profits was changed in the course of the partnership? A Yes, it was changed, because he was dissatisfied with his interest in the business.

Q In connection with the change of his interest in the business were you consulted? A No.

Q Who was consulted for you? A My Uncle George.

Q Anybody else? A No.

Q Wasn't your sister Ella consulted? A No.

Q You say she was not? A She was not consulted by my Uncle George.

Q I am not asking you that; I am asking you whether she was consulted in connection with that change of interest? A Not that I know of.

Q Do you remember when it happened? A What year?

Q Yes. A No.

Q Do you remember whether Mr. Engler wrote any letters about it at that time? A I don't think so.

Q Do you remember seeing that letter at any time, Exhibit C. 17? A I have seen it

since this case came up; I don't remember otherwise.

Q Have you any recollection about that at all? A No, sir.

Q Did Miss Ella represent you generally in matters then? A Yes.

Q So she would have a right to act about that without conferring with you specially? A Yes.

Q Her power so far as your interests are concerned were unlimited? A Absolutely.

Q You say you have received nothing from your Uncle George or from his firm; do you mean by that since his death or do you mean during all these years? You don't deny receiving moneys from the firm during all these years since your father's death, some money? A No.

Q You don't deny receiving the profits from the Baltimore firm? A Interest.

Q Profits, not interest, a share of the profits? A Yes.

Q And you don't deny receiving the interest on the moneys that was with the New York firm? A No.

Q What you mean to say, except those things or except sums that you may have drawn on account of moneys that you had with the Baltimore firm, you had nothing, is that the idea? A Yes.

Q You haven't received anything from them since your uncle's death? A The payment of the money that was in the New York firm.

Q You received that and gave a receipt for that? A Yes.

Q And in that receipt you stated that it was in payment of the loan that you had made them, didn't you? A That was the paper that was drawn up.

Q And that is the one you signed? A Yes.

Q You still retain your interest in the Baltimore firm? A Yes.

Q But your accounts with the New York firm have been settled? A Have been closed, yes, sir.

MARY A. KREMELBERG, sworn for complainants.

Direct examination by Mr. Field.

Q You are the youngest child of John D. Kremelberg? A I am, yes, sir.

Q What was your age at the time of your father's death? A I was twelve years old.

Q Were you in any way consulted or know anything about what took place with regard to the settlement of his estate and the arrangements with the firm of J. D. Kremelberg & Co. and Kremelberg & Co.? A I knew nothing; I wasn't consulted.

Q Are you familiar with your Uncle George's handwriting? A Yes.

Q I will ask you to look at the paper which is filed as an exhibit with the depositions taken in Baltimore, and on the cover marked Commissioner's Exhibit No. 1, dated the fourth day of December, 1882, purporting to be signed "Geo. Kremelberg"; state whose signature that is? A That is my uncle's signature.

Q Your uncle, J. George Kremelberg? A My uncle, J. George Kremelberg.

Q Look at the paper which is also filed with the depositions taken in Baltimore and marked Commissioner's Exhibit No. 2 on the cover, and dated Baltimore, May 4, 1883, signed "J. Geo. Kremelberg," and state whose signature that is? A My uncle's, George Kremelberg.

Q When was the first time you ever saw either of these papers? A The first time was about the middle of June in 1913, about four weeks after my uncle's death.

Q Had any event transpired after your uncle's death before you saw these? A My cousin was married the beginning of June.

Q Where? A In Baltimore, from our house.

Q State whether or not prior to June, 1913, you had any knowledge of the existence of either of these papers to which your attention has just been called? A I didn't know anything of it.

Q State whether or not prior to June, 1913, you had any knowledge from any source of any declaration of any kind signed by your Uncle George in favor of you and your sisters? A No, I had no knowledge.

Q I call your attention to another exhibit filed with the depositions from Baltimore, marked on the cover Commissioner's Exhibit No. 3, being an assignment from J. F. Kremelberg to J. George Kremelberg, dated December 4, 1882, and will ask you whether or not you recall that you saw that paper at the same time you saw the two other papers, the Declarations of Trust, in June, 1913? A I think I did.

Q Let me ask you whether you recall seeing any envelope in which these papers were? A I don't recall the envelope.

Q Are you familiar with your brother's signature? A Yes, that is his signature. (Referring to assignment of December 4, 1882.)

Q I neglected to ask your sisters—to the left is, as one of the witnesses, the signature "Geo. Kremelberg"; do you know that signa-

ture? A That is my Uncle George's signature.

Q Your sister has testified that when you all went abroad, thirteen months after your father's death, that you remained in school in Germany? A Yes.

Q How long did you remain at school, do you recall? A I think it was three years and a half or four years after that.

Q So that would make your return to this country about— A 1888.

Q From that time until the death of your uncle, J. George Kremelberg, what were the relations between you and your sisters on the one side and your Uncle George on the other? A They were always the most affectionate.

Q To whom did you and your sisters look in reference to any connection between you and either of these firms? A We looked to him usually.

Q To what extent did you repose confidence in him? A Absolute confidence in him.

Q After your return to Baltimore, in 1888, from that time down to his death, how often did he visit you at Baltimore?

Court. Her sisters have spoken of that, unless you wish to add to it.

Q Miss Kremelberg, state whether or not your Uncle George ever said anything to you about your interest in either of these firms?

Mr. Hood. I object.

Court. That is admitted subject to the same objection.

A He never spoke to me about it.

Q Have you any letter in existence from him? A Not in existence, no.

Q State whether or not your Uncle George ever said anything to you about any Declaration of Trust? A No.

Mr. Hood. Same objection.

Court. Same ruling.

Q You have heard the testimony of your sisters as to what was received by them and you from the Baltimore firm and from the New York firm; with the exception of those sums, state whether or not you ever received anything from Kremelberg & Co., or J. D. Kremelberg & Co., or from your uncle, J. George Kremelberg? A From my Uncle George I received Christmas presents, and twice I received —I painted two portraits for him and he gave me money for them each time.

Q (*By the Court*) You received nothing from him outside of money for presents or painting portraits? A No.

Q You are an artist? A Yes, I am.

Q Have you in your possession or under your control any books or statements showing interest in either of these firms, other than those produced by your sister? A No, I have not.

Cross examination by Mr. Hood.

Q I take it, Miss Kremelberg, that you have followed your vocation ever since you came back to America in 1888? A No, not since right away—a few years after.

Q I suppose you studied art while you were abroad? A Yes.

Q And you didn't trouble yourself after you came back to America very much with your interests in Kremelberg & Co., in Baltimore? A No, I have never troubled myself.

Q Did you have anybody to look those up and take care of you? A Yes, I always had some one to look after me.

Q Who was that? A First Mr. Martin, until his death, and then my sister Ella.

Q Mr. Martin had unlimited power with regard to it? A Yes.

Q And your sister since Mr. Martin's death has had the same power? A Unlimited power, yes, sir.

Q Do you recall Mr. Tagart? A Yes, I do.

Q He was a friend of the family, wasn't he? A Yes.

Q Do you remember his being at the house after your father's death? A No, I don't remember that.

Q You don't recall that? A No.

Q Of course, you were away, you say, from 1883 to 1888; do you remember seeing anything of Mr. Tagart after you came back? A Yes, frequently.

Q Was he still a friend? A Yes, a friend.

Q Used to come to see you pretty much every day? A We used to go to see him.

Q He got to be old by that time? A Yes.

Q Do you recall whether any business matters connected with the Kremelberg firm or with your father's will was brought to your specific attention at any time since your father's death? A No, I don't think it was ever brought to my attention.

Q You never discussed any matter connected with your business with any other member of the firm? A No, I never did.

Q You wouldn't be bothered with it? A Well, art and business are not supposed to go together.

Q When you say that the relations between you and your uncle were very affectionate, I suppose you mean on both sides? A Yes.

Q The family relations were very close between the two families? A Very.

Q You came down here to East Orange or Orange to visit Mr. George Kremelberg and his family? A Yes, sir.

Q And they came up to see you in Baltimore? A Yes.

Q And that close friendly relation continued all the time until Mr. George Kremelberg's death? A Yes.

Q You had just as much faith in him when he died as you had fifteen or eighteen years before that? A I always had faith in him, yes, sir.

Q And have faith in him still? A I would like to, yes, but—

Re-direct examination by Mr. Field.

Q Miss Kremelberg, you say Mr. Martin had unlimited power in regard to your affairs; what do you mean? A I mean by that, that he used to go and cut off the coupons and place the money in the bank for us, and in that way took care of our securities.

Re-cross examination by Mr. Hood.

Q You knew that you had an interest in Kremelberg & Co. of Baltimore, didn't you? A Yes, I knew that.

Q If anything had to be done about that by you, or anything ought to be done by you, was your sister empowered to do that? A My sister always.

Q Who looked after your other interests, except clipping coupons while Mr. Martin was

living? A My business interests Mr. Martin and my Uncle George always looked after, as far as the firm interests were concerned.

Q They looked after those generally? A Yes.

Q I don't suppose your attention was called to that letter of Mr. Engler's at the time when he came, Exhibit C. 17? A No, I only saw it after 1913.

Q Since your uncle's death? A Yes.

SAMUEL S. FIELD, sworn for complainants.

Direct examination by Mr. Parker.

Q You are a practicing lawyer and a member of the bar of Maryland? A I have been a member of the bar of the courts of Maryland since 1886.

Q You live and practise in Baltimore? A Yes.

Q And have been for the last four years city solicitor of Baltimore? A Of the municipality.

Q You have acted for the children of Mr. John D. Kremelberg in relation to this matter? A I was consulted by them in the latter part of 1913 in relation to this matter; that was the first legal business I had attended to for them.

Q You are acquainted with the exhibits produced at the Baltimore examination, marked Commissioner's Exhibits Nos. 1, 2 and 3, that are annexed to the Baltimore depositions? A They were brought to my attention by Judge Gill and his wife and sisters some time in the latter part of 1913.

Q When these papers were brought to you, did you notice whether or not they were con-

tained in any envelope or other package? A They were brought to me in an envelope, which I have in my hand.

Q Did that envelope have any writing on it? A It had no writing on it at the time; the endorsements which are now on the envelope were made by me after the envelope was delivered to me.

Q (*By the Court*) That is your own memorandum? A Yes. The endorsements are "J. D. K. & Co. original papers and letters." The letters referred to the letter from Adolph Engler which has been offered in evidence and to one letter and two portions of a letter which we have from Charles A. Martin, which have not been produced in evidence. I will be glad to show them to the other side; they are not material, I think.

Mr. Parker. We produce and offer this envelope.

(Marked Exhibit C. 26.)

Witness. Will your honor permit me to testify also that in Baltimore in the land record office, which is kept in the office of the clerk of the Superior Court of Baltimore City for Baltimore, it has always been the custom of the clerk to endorse upon the margin of the record, that is, the book in which the deed is recorded, the person to whom the deed was delivered after being recorded. It has always been the custom to require the deed to be left for some time with the clerk. Now it is only two weeks; formerly it was longer. And after the lapse of that time, it is delivered and the endorsement is made on the margin, either in the shape of a receipt by the party who receives

the original deed, or if it is delivered simply upon the return of the ticket which the clerk gives when he received the original deed, the endorcement is sometimes "Delivered per ticket," with the date of the delivery. In this case I looked at the records testified to by Mrs. Gill, and the endorsement on the margin shows that both of these deeds, originals were delivered to Dr. Samuel Tagart at the dates which she has given.

Q Do you know whether the officer who has charge of the records keeps any receipt book which shows receipts for the deeds when they are delivered back to the parties? A No, the custom is when the deed is left for record the clerk gives a ticket or receipt; if that ticket is returned and the deed is delivered, the clerk takes the ticket.

Q (*By the Court*) Does the ticket state the person to whom it is delivered? A The ticket which the clerk gives is simply a memorandum of the deed from John Smith to John Jones, and the date that it is left for record.

Q It don't state who delivered it? A It don't say who delivered it to the clerk. Then after the deed stays in the clerk's office for the necessary time to have it transcribed upon the records, if the ticket is returned, the clerk delivers the deed, takes the ticket, files it away, and marks on the margin of the record, "Delivered per ticket." If the ticket is lost or mislaid and any reputable attorney comes for the deed, and put his receipt on the margin, the clerk delivers the deed to the attorney and takes his receipt on the margin of the record.

Q So there isn't any book of receipts kept? A No, sir.

Cross examination by Mr. Hood.

Q I don't quite understand this memorandum on the margin of this record, which you say you inspected yourself; is that in the handwriting of Mr. Tagart? A That is in the handwriting of Mr. Tagart. I don't mean that I can testify to his handwriting from my knowledge of his handwriting, but I mean to say that the man who receives the deed, signs a receipt.

Q It is a receipt signed by him? A Yes, sir, on the margin.

Q (*By the Court*) It purports to be his signature? A Yes.

Q What I wanted to get at is whether that is a memorandum that the clerk makes or made by the man who is supposed to get the paper? A The man who gets the paper signs the name; the clerk may write "Received this date." If it was delivered "per ticket," the clerk makes the memorandum.

Q In this particular case there is a memorandum showing the delivery of these papers and Mr. Tagart's name appears at the bottom? A Yes.

Q And you believe this to be his name, so far as you know anything about it? A Yes.

Q Who was Mr. Tagart? A He was before my time; I don't know of my own knowledge except by reputation; he wasn't dead when I first came to Baltimore, but he was an old practitioner at that time and I was young.

Q He didn't die until 1893, you came there in 1886; didn't you know of him? A Yes;

it was a prominent firm; it was formerly Tagart & Steele. Me Steele was even a more prominen lawyer than Mr. Tagart.

Q Is he the father of Charles Steele? A Yes, one of his sons is in New York now.

Q So that Mr. Tagart was a member of a very prominent law firm in Baltimore at the time of his decease? A That I don't know; I don't know when the firm was dissolved.

Q At all events, he was man of good repute in the profession at the time when this thing occurred? A No doubt about that.

Q With regard to this envelope, Exhibit C. 26, you were consulted,. you say, toward the end of 1913? A I think it was the latter part of 1913; it might have been in the summer.

Q Was it as early as June? A I don't think so, but I am not positive about that, Mr. Hood.

Q Do you recall as to whether or not those receipts that were given over in New York were presented to you for approval? A No, I think not.

Q You don't know anything about that? A I don't think I knew anything about those; I think they were prepared by Mr. Gill, perhaps, or some one else.

Q Is Mr. Gill a lawyer? A Yes; I should have mentioned that, perhaps. Mr. Gill has been a member of the bar longer than I have; he was and is a very prominent lawyer in Baltimore and was a member of Congress for a number of terms.

Q And a man of high repute? A Oh, yes.

Q And has his office with you? A I ought to mention, perhaps, that for four years before Mr. Preston was elected Mayor of Balti-

more, Mr. James H. Preston and Mr. Gill and myself were law partners.

Q And you are not partners with Mr. Gill now? A No, sir.

Q But you and he still occupy the same offices, don't you? A We still occupy the same offices; our firm was dissolved; Mr. Preston was elected Mayor and I was appointed city solicitor and that takes pretty nearly all my time.

Q But you still have a private office? A I still keep the office, but I don't often get there.

Q And Mr. Gill still keeps his office there, too? A Yes.

Q Do you recall who presented the matter to you first; was it Mr. Gill or the Kremelberg children? A My recollection is that they came together—made an appointment and came together to the office, the first time that I was consulted about the matter; that is my recollection.

Q At the time of this consultation you say they brought you this envelope? A That is my recollection, yes, sir.

Q And you say that at the time when they brought you this envelope, when it was handed to you it contained two Declarations of Trust, the deed from J. F. Kremelberg to George Kremelberg, and the letter from Mr. Engler, and portions of two letters, they were all in there at that time? A I didn't mean to say that exactly. I know that when it was first brought to me it contained the two Declarations of Trust; I think that it also contained the deed, because I have no recollection of getting the deed subsequently—I mean the deed from J. Fred to J. George. I think

that the letters were gotten subsequently upon my asking them to look for any letters or papers; that is my recollection, and I think that the first endorsement is earlier than the latter endorsement; in other words, I think when I first received it I wrote, "J. D. Kremelberg & Co." on this paper and put it in the safe, and at some later time I put the additional memorandum on there to show what was in the envelope at the time that was put on there, "Original papers and letters."

Q The ink is slightly different? A The ink looks slightly different, and indicates that they were written at different times.

Q So as a matter of fact, then, these memoranda you made on there were made at different times? A I think so.

Q And as to showing the contents of the envelope, some papers were added after the original envelope with the contents were passed to you? A That is my recollection, and before the second memorandum.

Q But it is your recollection that when the envelope was first handed to you, and there wasn't any memorandum on it of any kind or any endorsement, it then contained the two Declarations of Trust and the deed from J. F. Kremelberg to J. George Kremelberg? A I think that, I am positive about the two Declarations of Trust, and, of course, I went over them and gave an opinion as to their meaning. I think that the deed was also in there at that time, because I filed a certified copy of the deed with the bill, and I have no recollection of making any examination of the records to find the deed, and think that I knew where to get a certified copy by having the original in my possession.

Q Your bill wasn't filed until February, 1914, was it? A Whatever the date is; I don't recall that. I try to keep a memorandum of various things that occur, and trust to them more than my memory of dates.

Q Then I take it, you haven't any very distinct recollection that the deed itself was in the envelope, and the reason why you say that it was in the envelope is that you haven't any recollection of its coming to your hands subsequently? A That is one reason; that is my best recollection on the subject.

HARRIET ELLA KREMELBERG, recalled.

Direct examination by Mr. Field.

Q Do you remember testifying in regard to the Declarations of Trust? A Yes.

Q Being in the envelope? A Yes.

Q And you gave some testimony trying to describe the envelope to his Honor? A Yes.

Q I want you to look at this envelope and see whether or not your recollection is that the envelope was an envelope like this marked Exhibit C. 26? A Yes, just exactly like that.

Cross examination by Mr. Hood.

Q By saying that it was an envelope like this, do you mean that it was a large brown envelope? A Do you call this brown?

Q What would you call it, buff? A I think buff.

Q Is that what you mean to say? A Yes, this envelope.

Q And you say it was this particular one? A Now that I see it, this one or one exactly like it.

Q Is there anything about this particular one that can make you identify it? A I handled this afterwards when I got it out of the safe.

Q I am asking you whether there was any particular mark on it that enables you to say now that it is the one? A No, there was no mark on the envelope.

Q On the envelope that you handled was the word "J. F. Kremelberg & Co." written? A I do not remember.

Q You don't remember whether they were or were not? A I do not remember.

Q On the envelope which you handled were the words "Original papers and letters" written? A I do not remember.

Q You don't know whether they were or not? A No.

Mr. Parker. We rest.

Mr. Hood. I desire leave to produce the rest of the receipts that are attached I offer the receipts and releases on the part of every one who signed them on the settlement of the father's estate by Mr. Tagart.

Court. Were they also recorded? The defendant is to have leave to put in copies of the releases referred to at the close of paragraph 7 of the bill, on page 9, the complainants on their case having offered one—the one release by J. George Kremelberg as guardian of John D. Kremelberg. He has a right to offer them.

Mr. Field. The accounts are identical.

Mr. Hood. They were receipts in connection with the New York payments, D. 1 and D. 2 for identification. I would like to offer these in evidence.

(Marked Exhibits D. 1 and D. 2.)

I also offer an agreement, so to speak, bearing date March 28, 1903, which was made by the administratrix of Charles A. Martin, deceased, with the firm of Kremelberg & Co., and explains an item in the account of J. George Kremelberg.

I simply desire to fix a date by offering a letter written by Miss Ella Kremelberg to "My dear Edith," dated Baltimore, November 11, 1913, and signed "Ella."

You (addressing Mr. Field) will admit that to be her handwriting, without my calling her?

Mr. Field. Yes.

Mr. Hood. This letter refers to Mr. Field, and it fixed it as November 11, as being already within the case.

Court. Does that refer to having seen him previously; what date do you fix by that letter, the date of the consultation with Mr. Field?

Mr. Hood. That Mr. Field had been consulted prior to November 11, yes.

Court. It is only admitted for that purpose.

Mr. Parker. We will admit that is so, if it is stated in the letter.

Mr. Field. It also contains a demand before bringing suit.

Mr. Hood. I will admit it for that purpose.

Mr. Field. Have you my letter of December 22, 1913?

Mr. Hood. Yes, sir. (Producing same.)

Mr. Field. I offer letter from myself as attorney for the complainants, addressed to the Fidelity Trust Company at Newark, New Jersey, and Mrs. Edith K. Tompkins, executrix of the last will and testament of J. George Kremelberg, making formal demand for compliance with the Declaration of Trust.

(Marked Exhibit C. 27.)

Mr. Hood. I would like to withdraw my objection to the letter sent by Mr. Engler, the letter of 1893, and suggest to your Honor that unless we can agree to the items of $150 apiece that appear about Christmas time on the Baltimore accounts, we better have some testimony to explain it. My understanding was—and I think it was in the evidence—that those were Christmas presents.

Court. It is possible they are.

HARRIET ELLA KREMELBERG, recalled.

Direct examination by Mr. Field.

Q Miss Kremelberg, it appears that in the statements of the account with J. George Kremelberg & Co.—

Court. For a number of years there is in Mr. George Kremelberg's account a charge against him of a check to you to the amount of $150; those charges appear to be about the date of Christmas, or when that is omitted, to be within the early part of the months following; what have you to say in reference to those payments that seem to have been made?

Exhibit C. 3.

Witness. For the last seven years my uncle sent us each $50.

Court. That made $150?

Witness. Christmas gift, and before that we got $25; after my aunt's death we received $50.

Court. And that charge to you of $150 would be the amount—

Witness. For three sisters, and he sent my sister abroad the same.

Court. Those were presents?

Witness. Yes.

Q You testified you never received anything from your uncle except these Christmas presents; did you at any time borrow any money from him? A I borowed once, yes.

Q What was the amount? A I borrowed in 1884 $1,000, and I paid it back some years after; he asked me for it and I paid it back with interest.

Q That is all you ever borrowed from him? A Yes.

Receipts and releases referred to on page 144 offered in evidence and marked Exhibits A, B, C, D and E on behalf of defendants.

EXHIBIT C. 3.

Baltimore, May 31st 1882

Sir:—

It is our painful duty to inform you of the death of our highly esteemed senior partner,

MR. J. D. KREMELBERG

on the 24th instant at Philadelphia where he had gone for medical advice.

Exhibits C. 5-C. 17.

The business in Baltimore, New York and Louisville will be continued as heretofore.

Yours very respectfully,

J. FRED KREMELBERG
GEO. KREMELBERG) New York
AD. ENGLER) New York
JULIUS WILLE, Louisville,

EXHIBIT C. 5.

Baltimore, July 1882

Sir:—

We beg to inform you that Mr. J. George Kremelberg of New York, has become a member of our firm.

Please take notice of his signature at foot.

Yours very respectfully,
J. D. Kremelberg & Co.

Mr. J. George Kremelberg will sign
SIGNED J. D. Kremelberg & Co.

EXHIBIT C. 17.

KREMELBERG & Co.,

P. O. Box 2715, Office, No. 160 Pearl Street,
New York, Dec. 25th, 93.

Dear Miss Ella

Yours of 22" came to hand Saturday, was sent down from Home. But I could not find time to answer it sooner.

George intends to be over some day this week; I thought he might come during the holiday, for I do not see what day he may be able to spare, having pressing cablegrams for shipping Tobacco, which he must arrange.

You ask my advice and kindly state you that you would not like to disarrange our firms as

Exhibit C. 17.

they exist at present. My hearty thanks for your expressed good will and kindness.

George does not seem to fully understand the situation, or appreciate it, if the Balto. firm should be dissolved, and all sorts of enquiries are made by parties from whom we enjoy our large credits and reputation.

I am anxious to uphold our present status and am able to do so—but I fear scrutinizing enquiries from outside parties, as to change of capital etc etc. We are getting along well, with payments running up to $50/75000 a week, and we have to borrow for several days, very often some 40/50000 of it.

You will understand my anxiety in this respect. George's ideas about finances are rather crude.

Now my opinion; I have thought over the matter a good deal. Of course interest on your Capital in the firm must be paid first of all. After that 25. 30% ought to come to you, and 65% to Mr. Martin, with the condition that he does accumulate part of his earnings for paying off capital to you.

Whether George will be satisfied with 5% I would not like to decide upon; he ought to be!

As to the letter of your father, which had been in my keeping for a number of years before he died, I never learned of its contents except what George mentioned to me "that he was to inherit a share in the Balto. firm." This is all; I never heard that Fred. was to have a share in our business here.

Since Mr. Tagart must have had this letter among his papers, you will be better posted on it. —If, at the time of your father's death, you had demanded the money due to his account, we

Exhibit C. 17.

could not have continued business here, and George would have been obliged to come there to make his living.

As I stated to you once before, we had not made up our large losses in 1876/77, occasioned by the N. O. house, and of which we had to bear the largest share here.

The Balto. business is not a risky one with a careful man like Mr. M. who, no doubt, invests his earnings, instead of speculating with them. I therefore think you are perfectly safe as to your Capital.

And I do hope to see my way clear in a few years, that we can pay you off, if required.

Of course Capital is always useful to us, and I should not have to borrow so much if G's account was in a better condition. But it looks now, as if he will reduce that balance by degrees and be out of debt to the firm entirely. We do not run risks and our Comm. acct. has been quite satisfactory for some years.

I do not know if Mr. M has ever written to George; think he ought to in a matter like such a change. What M. says about his work and business being acquired by him, is a mere bluff, G. says.

I think myself that a man must work for his business; and M got into a "good birth" to make him comfortable, and carry him along in the establishment which was built up so many years. He will not find it easy if he does begin for himself.

With kindest regards and best wishes for you all, with compliments of the season

Yours most sincerely

(Signed) ED. ENGLAR.

Exhibit A.

EXHIBIT A—MAY 12, 1915.

KNOW ALL MEN BY THESE PRESENTS

THAT I, J. George Kremelberg, Guardian of John D. Kremelberg, Infant son and one of the legatees under the Will of John D. Kremelberg, late of said city, deceased, do hereby acknowledge to have received from Samuel H. Tagart, the executor in full of my Wards share in said estate

1/6 Int. in Certif. Membership Corn & Flour Exchange	$ 50.00
1/6 Int. in 37½ shares of Navasco Phosphate Co.	62.50
1/6 Int. in 50 shares of Maryland Fire Ins. Co.	41.67
1/6 Int. in 20 shares of Merchants Mutual Ins. Co.	166.67
1/6 Int. in Farming Implements, Horses, &c.	595.49
Whole int. in 125 shares Despard Coal Co.	500.00
Whole int. in 20 shares Mechanics Bank	220.00
1/6 Int. in Sundry stocks of no value as shown in Inventory	
	$ 1,636.33
And in cash the sum of	19,697.57
Making together the sum of	$21,333.90

AND in consideration thereof I do hereby release, acquit, exonerate and discharge the said Samuel H. Tagart, Executor as aforesaid, his heirs, executors and administrators of and from all and every action, suit, claim or demand which could or might possibly be brought, exhibited or prosecuted against him them or any of them, for or on account of the above mentioned property

Exhibit A.

Securities and Cash or the payment thereof, hereby declaring myself satisfied, contented and paid as above specified.

Given under my hand and seal this 20th day of June in the year eighteen hundred and eighty-three.

(Signed)

J. GEORGE KREMELBERG, [L. S.]
Guardian of John D. Kremelberg.

Signed, Sealed and Delivered
in the presence of
GEO. MCCAFFRAY.

Received to be recorded on the 21st day of June 1883, before Register of Wills, Baltimore City.

Opinion.

Filed October 20, 1916.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET ELLA KREMELBERG, *et als.*, *Complainants,*

and

EDITH K. TOMPKINS, *et als.*, *Defendants.*

On Bill, &c.

Mr. Chauncey G. Parker and Mr. S. S. Field (of Baltimore), Mr. Louis Hood for defendants.

STEVENS, *V. C.*

This is a bill for an accounting. The complainants are the children of John D. Kremelberg, late of the City of Baltimore. The defendant is the daughter and sole heir at law of J. George Kremelberg, deceased, a brother of John.

The effort is to charge George's estate with a sum amounting to several hundred thousand dollars, on the theory that he failed to account for property derived from his brother, which, it is said, he held in trust for complainants. The property, in respect of which this trust is alleged to have arisen, was, if I understand complainants' position aright, John D. Kremelberg's share of the good will of a commission business carried on by him in New York and Baltimore, which after his death, came into the hands of

George, and thereafter, it is said, produced large profits. The defendant denies the existence of any trust unperformed.

The facts are these: John D. Kremelberg was at the time of his death in May, 1882, a commission merchant, engaged in the business of exporting tobacco. The Baltimore firm was known as J. D. Kremelberg & Co. Of this, John D. was almost sole owner, his son Frederick having a small but unknown and negligable interest that had been given to him by his father. The New York firm was known as Kremelberg & Company. It consisted of John D. Kremelberg, whose interest was twenty per cent., of J. George Kremelberg, whose interest was forty per cent., and of Adolph Engler, whose interest was also forty per cent. The business had no fixed capital, but John had allowed a part of his profits to remain undrawn and this constituted the capital for both firms. Other than this, they had no capital and no property. At the time of John's death, the business appears to have been fairly profitable and John was reputed to be wealthy. His estate, however, realized only $136,000. of which $50,000. come from the sale of the house in which he lived.

His will, made eight years before he died, contained the following clauses: "I give, devise and bequeath to my brother, George, and my son J. Frederic, in equal proportions, all my interest in the following business houses, namely, Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Schaefer & Co., New Orleans (this last named firm has ceased to exist at his death) and in the assets and property of every kind of said houses or firms. * * * It is my will and I hereby direct that all my

just debts and funeral expenses and the entire interest to which my wife may be entitled in my estate, real and personal, shall be paid out of the proceeds of the rest and residue of my estate above mentioned, so that my interest in the business houses and firms above mentioned and devised to my brother George and my son J. Frederick shall remain wholly undisturbed and be in no way interfered with." He appointed his brother, George, his son, Frederick, and his friend, Samuel H. Tagart, his executors. Of these only Tagart qualified. He was a prominent Baltimore lawyer and a personal friend of the family.

None of the persons who took an active part in the settlement of John's estate, except John's daughter Ella, are alive. His two sons died a few years after their father. The complainants base their case upon documents, of whose contents, it is said, complainants were until recently ignorant, and these I will take up in the order of their dates.

The first is the notice sent out by the surviving partners, "Baltimore, May 31, 1882. Sir, It is our painful duty to infom you of the death of our highly esteemed senior partner, Mr. J. D. Kremelberg, on the 24th instant at Philadelphia, where he had gone for medical advice. The business in Baltimore, New York and Louisville will be continued as heretofore. Yours very respectfully, J. Fred Kremelberg, George Kremelberg, Ad. Engler, New York; Julius Wille, Louisville."

The inventory of testator's tangible property, made in July 1882, does not appraise or even refer to testator's interest in the two firms. The paper next in order of date is a deed from

Frederick Kremelberg to his Uncle George, dated on December 4, 1882, by which, in terms that are absolute and unconditional, he transfers to him all his "Estate, right, title, interest, claim and demand whatsoever in and to all the property devised and bequeathed by the aforesaid item of said last will and testament," that is, the item giving John's interest in the business houses above mentioned. Contemporaneously, George executed a trust deed as follows:

"Know all men by these presents that whereas by deed of even date herewith, perfected before the execution hereof, John Frederick Kremelberg conveyed and assigned to me all the interest bequeathed to him in and by the will of his father, the late John D. Kremelberg, in and to the business houses Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Shaefer & Co., New Orleans, and in the assets and property of every kind of said houses and firms;

Now I hereby declare that the said assignment and conveyance to me was made and that I now hold the said property in trust for the said John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Marie Kremelberg and Mary Augusta Kremelberg, in equal proportions share and share alike." The only explanation offered as to why this trust deed was made was Frederick's dissipated habits. It is one of the two deeds on which this action is based.

The other trust deed bears date on May 4, 1883, and reads as follows:

"Know all men by these presents that whereas John D. Kremelberg, late of the City of Baltimore, deceased, in and by his last will and testa-

ment dated the 18th of September, 1874, among other things, devised and bequeathed as follows: 'I give, devise and bequeath to my brother George and my son J. Frederick, in equal proportions, all my interest in the following business houses, namely Kremelberg & Co., New York; J. D. Kremelberg & Co., Baltimore; Kremelberg, Shaefer & Co., New Orleans, and in the assets and property of every kind of said houses or firms.' Now for divers good causes and valuable consideration me thereunto moving, I do hereby declare that I hold and possess the one-half part of the property devised and bequeathed to me in and by the aforesaid clause or item of said will in trust for John Frederick Kremelberg, Elizabeth Virginia Kremelberg, Harriet Ella Kremelberg, John Diedrich Kremelberg, Anna Maria Kremelberg and Mary Augusta Kremelberg, in equal proportions, share and share alike and agree with them to grant and assign the same to them whenever requested so to do, I paying to Messrs. Brancker and Charles Martin each fifteen per cent. of the profits of said half part of the property devised and bequeathed to me as aforesaid and holding the other twenty per cent. thereof to my own use."

The first question is, what did the property so bequeathed and held in trust consist of. What the parties thought at the time it consisted of, is not doubtful. On the day before the second deed was executed Mr. Tagart swore to his first account, and in that account he charged himself with the following items:

"Deceased interest in firm of Kremelberg & Co., $19,577.91; deceased interest in firm of J. D. Kremelberg & Co., $31,980.74." The firm's books show, and it is conceded, that these figures rep-

resent the precise amount of the accumulated earnings left by John in the two firms named, for use as capital.

If these earnings constituted the whole of John's interest in the two firms, the complainants have no case, for the money has been fully accounted for. The insistent is that Mr. Tagart's account is wrong, in that he failed to charge himself with the value of the good will and that George has, by the two deeds above set out, declared a trust in respect of it as well as of the money, and is now chargeable, not with its market value at the time of John's death, but with the earnings of both firms, made after their execution, as far as those earnings are attributable to John's interest. I have already said that this was made up of the entire interest in the Baltimore concern and of a one-fifth or, it is said, a greater interest in the New York concern. These earnings, cover a period of thirty years and amount, it is asserted, to over $580,000. The rather startling claim is made that they belong to the defendants, less an allowance for management.

The question that arises on this contention is, was there a good will that was valuable?

John Kremelberg died at the age of fifty-five. He appears to have begun business as a commission merchant in New York in 1863. When he began in Baltimore does not appear; nor does it appear what profits he made between 1863 and 1882. All that is fairly inferable from the testimony is that he lived well and was reputed wealthy.

The good will of an established business like Wanamaker's or Altman's, is no doubt, very valuable and may long survive its creator. The

good will of the business of a successful professional man, practising alone, if good will it may be called, dies with him. He is employed because of his personal ability and reputation.

The good will of the business of a commission merchant, originating with himself and carried on without fixed capital for fifteen or twenty years would seem rather to resemble that of a doctor or lawyer than that of a retail merchant. John Kremelberg's business transactions were with European correspondents and he was, we may conjecture, trusted and employed by them because he was found to be a man of integrity and business capacity and because, as is testified to by Mr. Stellman, "he had relations abroad which enabled him to obtain money to almost any extent."

The case of the two firms is somewhat dissimilar and will be considered separately.

First, as to the New York firm. The partners in 1882 were John D. Kremelberg, George Kremelberg and Adolph Englar. John lived in Baltimore; George and Adolph Englar in or near New York. On January 1, 1884, Englar owed the firm $4,013.83; George, $8,894.66. The New York firm owed the Baltimore firm $26,523.91. There was, as far as appears, no other assets and no other debts, except the debt, if so it may be called, which the New York firm owed John D. Kremelberg's estate and which amounted to $31,980.74. This sum represented, probably, John's share of accumulated profits and, as I have said, constituted the firm's only capital. Now it is at once apparent that had the executor of John's estate demanded payment, the New York firm would have been hopelessly insolvent. Its assets were less than $13,000 and its liabilities $57,-

000. I say this on the assumption—the only one that can be made—that the situation on January 1, 1884, did not differ materially from the situation at the time of John's death in May, 1882.

The question is what was the good will of a firm thus circumstanced worth? Would any one have given anything for the mere name, J. D. Kremelberg & Co.? Had it been sold, George Kremelberg and Adolph Englar would have had the right to continue the business of commission merchants under an appropriate name. Would the European buyers have been likely to have thereafter dealt with the stranger who acquired the name, rather than with George Kremelberg and Englar, whom they had long known and trusted and of whose business ability they had had satisfactory proof? Tagart, the executor, evidently thought the name of no pecuniary value. I say this because as a lawyer of long experience, the friend, as well as the legal adviser of John, and the friend of his children as well as the temporary custodian of their property, he could not have been ignorant of that species of property called good will and he must have desired to obtain for them all that the estate was capable of yielding and yet, in his account, he did not attribute any value to it.

It seems to me that the evidence fails to show that the good will of the New York concern had any substantial value.

Then we come to the Baltimore firm. This was composed of John D. Kremelberg and his son, Frederick, a young man of dissipated habits, whom he had admitted as a partner with so small an interest that no witness is able to say what it was. The firm was for all practical purposes John D. Kremelberg. At an earlier date,

he had dealt in cotton, petroleum, lard and other products as well as tobacco, but prior to and after his death, he and his successors appear to have confined themselves chiefly to tobacco. The business required but few persons to conduct it; a manager under John, and a few clerks. It had been successful because of John's ability and effort, coupled with his personal connections. If it retained its old *clientele* it was, no doubt, because George, the partner in the New York concern, with which it was intimately affiliated, was able, in a measure, to supply the place of his brother and continue the business without apparent change.

In the case of *Mullin* v. *Mullin,* 96 Atl., 997, Mr. Justice Swayze, speaking of the good will of an undertaker's business uses this language: "The business of the decedent as distinguished from the tangible assets of the estate consisted only of such good will as might attach to the name, 'Estate of Peter M. Mullin.' We think it doubtful whether in a business of that character consisting of personal services and evidently dependent largely, if not entirely, upon the personal characteristics of the individual, there could be any good will even as late as four or five years after a man's death." If these remarks were true of Mullin's undertaking business, as the case shows it to have been conducted, *a fortiori* are they true of this commission business. If the new firm succeeded, continuous success was due, not to the name, but to the satisfactory way in which the tobacco was being bought for and shipped to European correspondents.

Mr. Tagart, at least, did not attribute any money value to the name, for he only charges

himself "with deceased interest in firm of Kremelberg & Co., $19,577.91," a sum which, as I have said, represented the precise amount of accumulated profits left with the firm at John's death.

But whether the name had a money value or not, is quite immaterial, for it conclusively appears that the interests of the children were safeguarded and that they got all the benefit from it that they were entitled to.

At the time of John's death the capital consisted of the $19,577.91 just mentioned and of $32,000, which belonged to four of the children, $8,000 to each. There were two gentlemen who were chiefly concerned in its conduct under John viz. Brancker and Martin. John's will, as I have said, gave all his interest to his son Frederick and his brother George. Frederick conveyed his share to George, who thus became the sole owner. As far as appears, he was not under the slightest obligation to give his own half to anyone. That he was under an obligation to declare a trust of Frederick's share appears only from the fact that he did so on the day on which Frederick conveyed to him. There was considerable argument on what was meant by the words of bequest "interest in the business houses." I have no doubt whatever that they included the accumulated profits. That Tagart thought so appears from the fact that he charged himself with them. It is hardly open to doubt that George intended to declare a trust in respect of what had been bequeathed and of that only. Before he declared the trust of May 4, 1883, Messrs. Brancker and Martin had come into the business as partners. The agreement was that the $19,577.91 and the $32,000 should remain as capital; that the

children of John should receive fifty per cent. of the profits; that Brancker and Martin should each receive fifteen per cent. and that he (George) should receive the remaining twenty per cent. Miss Ella Kremelberg, the second daughter of John, who became guardian of her younger sisters, and who acted, as far as necessary for the family, so states. This is her testimony:

Q Was it your understanding that the members of your family become partners in the firm of Kremelberg & Co.?

A Yes.

Then after testifying that the agreement was that the children were to have one-half of the profits plus six per cent. on the capital invested, she is asked:

Q At the time when you made the arrangement in 1883, do you recall as to what was to happen to the remaining fifty per cent. of the profits? Who was to get those?

A The other partners.

Q Who were those partners who were to get them?

A Mr. Martin, Mr. Englar and George.

Q Who else?

A I imagine Mr. Brancker.

Q Then the arrangement at that time was that the children of John D. were to have fifty per cent. of the profits and that the three partners, J. George Kremelberg, Mr. Brancker and Mr. Martin were to get the other fifty per cent. of the profits of the business?

A Yes.

Q Did you know in what proportion they were to get them?

A I do not remember at the time. I have heard it now.

Q Wasn't this the proposition: That your Uncle George was to get twenty per cent. and each of the other gentlemen were to get fifteen?

A I expect that it was.

Now this was the arrangement made contemporaneously or almost contemporaneously with the execution of the trust deeds. Ella says, "Mr. Martin and Uncle George arranged it and they told us." It continued to be the arrangement from 1883 until 1895, when the children withdrew a part of their capital and made a new arrangement.

Complainants, disregarding the rest of the arrangement, put themselves on the trust deeds alone, but it is evident that these trust deeds were but a part of the entire transaction. They do not in the least conflict with it. In the deed of May 4, 1883, George agrees to hold the one-half part of the property bequeathed to him, in trust for the children, "I paying to Messrs. Brancker and Charles Martin each fifteen per cent. of the profits of said half part of the property devised and bequeathed to me as aforesaid and holding the other twenty per cent. thereof to my own use."

This harmonizes exactly with the arrangement testified to by Ella. As to Frederick's half, George had in the December previous agreed to hold *that* for the children in equal proportions. If it can be supposed that George then had in view the future conduct of the business, the deed itself makes no reference to it. Perhaps the details had not then been worked out. It is in no wise inconsistent with the arrangement actually made, viz. that in the case of this share

too, as in the case of the other, Martin and Brancker were each to have fifteen per cent. and George twenty.

It could hardly have been imagined that Martin and Brancker would come into the business as principals without suitable compensation.

There is another consideration which seems to have been overlooked in complainants' argument. There is nothing whatever to indicate that the gifts to Frederick and George were not gifts out and out. If John had intended a trust there was nothing to have prevented him from declaring it. He did not and Frederick and George took absolutely. They generously surrendered to John's children a valuable interest worth over $50,000. In doing so they had the right to impose terms and conditions.

One of the underlying falacies of complainants' position consists in the assumption that the profits of the business made through thirty years were the fruit of the name and not of the efforts and ability of those who carried it on. In a case circumstanced as this is, the name would at best serve only as an introduction, if introduction were necessary, to the one who had acquired it. Thereafter success, as I have said, would depend upon the business ability of its purchaser.

I have found that the trust deeds were but parts of one arrangement; but if we consider them alone, the result would not be greatly different. George did not thereby undertake to continue the business and give John's children the profits. Nothing of this sort can be found in these papers. All that he undertook to do was to hold the interest bequeathed, that is the capital and good will as they stood at John's

death, for the benefit of the children. He would have performed his whole duty, had he called in or realized on the capital, including the good will, if saleable and paid it over. Had he done so, it is absurd to suppose that the children would have received as much as they did receive. These children are now claiming not only what George obtained for them, but on the basis of his gift, raise up a claim to that which he did not give. They affirm the arrangement as far as it has benefited them; they repudiate it, as far as it has not given them all. They base their repudiation on the impossible notion that the profits have, for thirty years past, come solely from the good will, a good will which, if it had any value at all, had only an insignificant one and has long since ceased to exist. In any case the court would, after a lapse of thirty years, be reluctant to disturb a completed arrangement. Here there is nothing at all to provoke action.

I have not thought it necessary to mention or consider the changes in the partnership agreement. The first arrangement lasted for twelve years. Whatever changes took place afterwards were made after all the children had come of age and with their knowledge and consent.

The bill is devoid of all equity and should be dismissed.

Decree Dismissing Bill.

Filed November 8, 1916.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET ELLA KREMELBERG, *et als.*,

Complainants,

and

EDITH K. TOMPKINS, *et als.*,

Defendants.

On Bill, &c.

Decree Dismissing Bill.

This matter coming on to be heard in the presence of Chauncey G. Parker, of counsel with complainants, and Francis Lafferty, of counsel with defendants, and the chancellor having considered the allegations, proofs and arguments of counsel and having adjudged that the complainants are not entitled to the relief prayed for in their bill of complaint and that their claim is devoid of all equity.

IT IS on this eighth day of November, 1916, by the Chancellor, ORDERED, ADJUDGED AND DECREED that the complainants' bill of complaint in this cause be and the same is hereby dismissed, with costs.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

Appeal.

Appeal.

Filed December 13, 1916.

IN CHANCERY OF NEW JERSEY.

Between

HARRIET ELLA KREMELBERG, *et als.*,
Complainants,

and

EDITH K. TOMPKINS, *et als.*,
Defendants.

} *Appeal.*

The complainants hereby appeal from the final decree made in this court in the above stated cause and bearing date, November 8, 1916, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 9, 1916.

CHAUNCEY G. PARKER,
Solicitor for and of Counsel with Complainants.

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

CHAUNCEY G. PARKER,
Of Counsel with Complainants.

Petition of Appeal.

Filed December 13, 1916.

New Jersey Court of Errors and Appeals

Between

HARRIET ELLA KREMELBERG, *et als.*,

Appellants,

and

EDITH K. TOMPKINS, *et als.*,

Respondents.

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

The petition of HARRIET ELLA KREMELBERG, MARY AUGUSTA KREMELBERG, ELIZABETH VIRGINIA DE GRAAFF, and ANNA MARIA GILL, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 8th, 1916, in a cause wherein the said appellants were complainants, and Edith K. Tompkins, Fidelity Trust Company of Newark, New Jersey, executors of the last will and testament of J. George Kremelberg and Edith K. Tompkins, individually, were defendants, in this respect, to wit: That the said decree adjudges that the complainants' bill of complaint should be and

the same was thereby dismissed with costs, and your petitioners humbly appeal from the whole and every part of the said decree upon the ground that the same is erroneous for that the said complainants were entitled to relief upon their bill of complaint in the said cause. Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem just.

CHAUNCEY G. PARKER,
Solicitor for and of Counsel with the Appellants.

Common Answer on Appeal filed January 11, 1917.

Notice of Motion to Strike Out Bill.

Acknowledged March 10, 1914.

IN CHANCERY OF NEW JERSEY.

Between HARRIET E. KREMELBERG, *et als.*, *Complainants.* and EDITH K. TOMPKINS, *et als.*, *Defendants.*	*On Bill, &c.* *Notice of Motion to Strike Out Bill.*

TO CHAUNCEY G. PARKER, ESQUIRE,
Solicitor of Complainants.

PLEASE TAKE NOTICE, that I shall apply to the Chancellor at the Chancery Chambers in the City of Newark, on the twenty-fourth day of March, instant, at ten o'clock in the forenoon of that day, or so soon thereafter as counsel can be heard thereon, for an Order striking out the Bill of Complaint, filed in the above entitled cause for the following reasons:

1. The complainants show no equity.

2. The Bill of Complaint does not allege that the interest of John D. Kremelberg at the time of his death in the partnerships known as J. D. Kremelberg & Company, of Baltimore; Kremelberg & Company, of New York, and Kremelberg, Schaefer & Company, of New Orleans, was in excess of the amount credited to his estate and which the Bill of Complaint admits has been paid to the complainants.

3. It does not appear by the bill that John D. Kremelberg had any interest in the partnerships above named, or any of them in excess of the sum specifically referred to in the bill, and which the bill admits has been fully paid.

Notice of Motion to strike out Bill.

4. The Bill of Complaint does not allege that the assets of the above named partnerships were more than sufficient to satisfy the liabilities of said partnerships.

5. It does not appear from the Bill of Complaint that the Declarations of Trust therein referred to were intended to be or were in fact broad enough to include any such alleged interest, or that any such alleged interest passed thereby.

6. It does not appear that any such alleged interest in said partnerships, as is relied on in said bill, would pass or was competent to be passed by the Declarations of Trust therein referred to.

7. The alleged Declarations of Trust were insufficient to create any interest in any property thereafter acquired by John George Kremelberg.

8. It does not appear from the allegations of the bill that the alleged Declarations of Trust were ever delivered or intended to be delivered.

9. No sufficient excuse appears from said bill why the complainants have delayed so long in asserting their alleged rights.

10. The said Bill of Complaint is prolix and contains much scandalous and impertinent matter to the issues sought to be raised thereby.

11. Because said Bill of Complaint for other reasons is insufficient and fails to show a cause of action.

Dated Newark, New Jersey, March 10, 1914.

FRANCIS LAFFERTY,

Solicitor of Defendants, Edith K. Tompkins and Fidelity Trust Company as executors of the last will and testament of John Geo. Kremelberg, deceased, and Edith K. Tompkins, individually.

Order Denying Application.

Filed July 15, 1914.

IN CHANCERY OF NEW JERSEY.

Between HARRIET E. KREMELBERG, *et als.*, *Complainants.* and EDITH K. TOMPKINS, *et als.*, *Defendants.*	*On Bill, &c.* *Order.*

The defendants, having given notice of an application for an order striking out the Bill of Complaint filed in this cause for reasons set forth in said notice, and said application coming on to be heard and having been duly argued by counsel, and the court having taken time to consider the same and being of opinion that the said application should be denied;

IT IS now on this fourteenth day of July, A. D. 1914, on motion of Chauncey G. Parker, solicitor for and of counsel for the complainants, ORDERED, that said application to strike out the said Bill of Complaint be and the same is hereby denied with costs to be taxed, and that the defendants have thirty days in which to plead or answer.

E. R. WALKER,
C.

Respectfully advised:

FREDERICK W. STEVENS,
V. C.

A true copy:

ROBERT H. MCADAMS,
Clerk.

Exhibit C. 2.

EXHIBIT C. 2.

			DR.	CR.
1884.				
Dec. 31.	To	Interest.....	$743.83	
1885.				
Dec. 31.	"	"	623.82	
1886.				
Dec. 31.	"	"	543.37	
1887.				
Dec. 31.	"	"	484.17	
1888.				
Dec. 31.	"	"	1.17	
1889.				
Dec. 31.	"	"	767.17	
1890.				
Dec. 31.	"	"	574.58	
1891.				
Dec. 31.	"	"	608.55	
1892.				
Dec. 31.	"	"	820.08	
1893.				
Dec. 31.	"	"	622.10	
1894.				
Dec. 31.	"	"	508.13	
1895.				
Dec. 31.	"	"	134.87	
1896.				
Dec. 31.	By	Interest.....		$ 258.52
1897.				
Dec. 31.	"	"		541.50
1898.				
Dec. 31.	"	"		944.07
1899.				
Dec. 31.	"	"		1,356.62
1900.				
Dec. 31.	"	"		1,484.59

Exhibit C. 2.

				DR.	CR.
	1901.				
	Dec. 31.	"	"	.....	1,487.53
	1902.				
	Dec. 31.	"	"	.....	2,196.61
	1903.				
10	Dec. 31.	"	"	.....	2,340.12
	1904.				
	Dec. 31.	"	"	.....	2,600.81
	1905.				
	Dec. 31.	"	"	.....	2,810.11
	1906.				
	Dec. 31.	"	"	.....	3,172.93
	1907.				
	Dec. 31.	"	"	.....	3,733.27
	1908.				
20	Dec. 31.	"	"	.....	4,358.42
	1909.				
	Dec. 31.	"	"	.....	4,457.81
	1910.				
	Dec. 31.	"	"	.....	6,007.14
	1911.				
	Dec. 31.	"	"	.....	6,448.25
	1912.				
	Dec. 31.	"	"	.....	7,540.64
	1913.				
30	Dec. 31.	"	"	.....	6,725.62

40

EXHIBIT C. 8.

EXHIBIT C. 8.

Dr.	J. D. KREMELBERG			Cr.	BALTIMORE ESTATE		
1884				1884			
June 21	To check of S. H. Tagart, Ex Int. to June 1st on $19,577.91	55	$ 1,174.68	Jan. 1	By Balance carried from G.	257	$20,263.14
Dec. 31	To balance carried		20,263.14	Dec. 31	By Int. 6% on $19,577.91	129	1,174.68
			$21,437.82				$21,437.82
1885				1885			
May 1	To transfer to J. D. K. & C., 11 mo. int. on $19,577.91	145	$ 1,076.79	Jan. 1	By balance carried		$20,263.14
Nov. 30	To transfer to J. D. K. & C., 6 mo. int. on $19,577.91, p Nov. 1	180	587.34	Dec. 31	By Int. 6% on $19,577.91	183	1,174.68
Dec. 31	To balance carried		19,773.69				$21,437.82
			$21,437.82	1886			
1886				Jan. 1	By balance carried ($19,577.91 p Nov. 1)		$19,773.69
Oct. 30	To transfer to J. D. K. & Co., Int. 1 yr. to Nov. 1	226	$ 1.174.68	Dec. 31	By Int. 6% on $19,577.91	234	1,174.68
Dec. 31	To balance carried		19,773.69				$20,948.37
			$20,948.37	1887			
1887				Jan. 1	By balance carried ($19,577.91 p Nov. 1)		$19,773.69
Nov. 1	To transfer to J. D. K. & C., 1 yr. int. to Nov. 1	269	$ 1,174.68	Dec. 31	By Int. 6% on $19,577.91	277	1,174.68
Dec. 31	To balance carried		19,773.69				$20,948.37
			$20,948.37	1888			
1888				Jan. 1	By balance carried ($19,577.91 p Nov. 1)		$19,773,69
May 18	To transfer to J. D. Kremelberg 1/6 of $19,577.91 Nov. 1/87	289	$ 3,262.98	Dec. 31	By Int. 6% on $16,314.93-$32.63 a/c J. D. K.	315	946.26
Nov. 1	To transfer to J. D. K. & C., 1 yr. Int. on $16,314.93	306	978.89				$20,719.95
Dec. 31	To balance carried		16,478.08	1889			
			$20,719.95	Jan. 1	By balance carried ($16,314.93 p Nov. 1)		$16,478.08
1889				Dec. 31	By Int. 6% on $16,314.93		978.89
Nov. 2	To transfer to J. D. K. & Co., 1 yr. Int. to Nov. 1	348	$ 978.89				$17,456.97
Dec. 31	To balance carried	248	16,478.08				
			$17,456.97				

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Exhibit 4—(Baltimore).

EXHIBITS.

EXHIBIT 4 (BALTIMORE)

Statement of Investment.

J. Geo. Kremelberg.				
Decem 31, 1904	By	Balance	$11149.53	
	"	Profit—75% on $8363.23	" 6272.42	$17421.95
G. Louis Hester.				
Decem 31, 1904	By	Profit—25% on $8363.23	$ 2090.81	
		Less Debit Balance Dec. 31	" 237.27	$ 1853.54
		Present Worth.		$19275.49
J. Geo. Kremelberg				
Decem 31, 1905	By	Balance	$18271.02	
	"	Profit—75% on $6701.43	" 5026.07	$23297.09
G. Louis Hester				
Decem 31, 1905	.....			
		Present Worth		$23297.09
J. Geo. Kremelberg				
Decem 31, 1906	By	Balance	$11000.00	
	"	Profit—60% on $6901.96	" 4141.18	$15141.38
G. Louis Hester				
Decem 31, 1906	By	Profit—40% on $6901.96	$ 2760.78	
		Less Debit Balance Dec. 31	" 439.26	$ 2321.52
		Present Worth		$17462.90
J. Geo. Kremelberg				
Decem 31, 1907	By	Profit—60% on $5922.59	$ 3553.55	
	"	Balance	" 7400.83	$10954.38
G. Louis Hester				
Decem 31, 1907	By	Profit—40%	$ 2369.04	
		Less Debit Balance Dec. 31	" 1792.54	" 576.50
		Present Worth		$11530.88

Exhibit 4—(Baltimore).

J. Geo. Kremelberg				
Decem 31, 1908	By	Balance	$11245.67	
	"	Profit—30% on $7265.89	" 2179.77	$13425.44
G. Louis Hester				
Decem 31, 1908	By	Profit—70%	$ 5086.12	
		Less Debit Balance Dec. 31	" 3928.18	$ 1157.94
		Present Worth		$14583.38
J. Geo. Kremelberg				
Decem 31, 1909	By	Balance	$13898.44	
	"	Profit—30% on $12769.03	" 3830.71	$17729.15
G. Louis Hester				
Decem 31, 1909	By	Profit—70%	$ 8938.31	
		Less Debit Balance Dec. 31	" 5348.93	$ 3589.39
		Present Worth		$21318.54
J. Geo. Kremelberg				
Decem 31, 1910	By	Balance	$18642.65	
	"	Profit—30% on $14461.78	" 4338.53	$22981.18
G. Louis Hester				
Decem 31, 1910	By	Balance Capital Acct.	$ 3743.79	
	"	Profit 70%	"10123.25	
			$13867.04	
		Less Debit Balance on his Acct.	$ 4374.98	$ 9492.06
		Present Worth		$32473.24
J. Geo. Kremelberg				
Decem 31, 1911	By	Balance	$24091.61	
	"	Profit—27-½% on $17709.41	" 4870.09	$28961.70
G. Louis Hester				
Decem 31, 1911	By	Balance Capital Acct.	$10685.85	
	"	Profit 67-½%	"11953.85	
			$22639.70	
		Less Debit balance on his Acct.	$ 5538.24	$17101.46
		Amt. Forward		$46063.16

Exhibit 4—(Baltimore).

W. Addison Baker				
Decem 31, 1911	By	Balance	$ 732.61	
	"	Profit 5%	" 885.47	
			$ 1618.08	
		Less Excess over Salary	" 293.34	" 1324.74
				$47387.90
J. Geo. Kremelberg				
Decem 31, 1912	By	Balance Capital Acct.	$28232.03	
	"	Profit—27-½%—$10492.63	" 2885.47	$31117.50
G. Louis Hester				
Decem 31, 1912	By	Balance Capital Acct.	$ 5411.20	
	"	Profit—67 ½%	" 7082.53	
			"12493.73	
		Less Debit Balance his/acct	" 5542.83	" 6950.90
W. Addison Baker				
Decem 31, 1912	By	Balance Special Acct.	$ 1451.94	
	"	Profit 5%	" 524.63	
			$ 1976.57	
		Excess over Salary	" 458.14	$ 1518.43
		Present Worth		$39586.83
J. Geo. Kremelberg				
Decem 31, 1913	By	Balance	$32772.77	
	"	Profit—27-½%, $10124.83	" 2784.33	$35557.10
G. Louis Hester				
Decem 31, 1913	By	Balance Capital Acct.	$ 6208.10	
	"	Profit—67-½%	" 6834.26	
			$13042.36	
		Less Debit Balance his/acct.	" 5692.93	" 7349.43
W. Addison Baker				
Decem 31, 1912	By	Balance Special Acct.	$ 1667.96	
	"	Profit 5%	" 506.24	
			$ 2174.20	
		Less Debit Balance his/acct.	" 673.65	" 1500.55
		Present Worth		$44407.08

Exhibit C. 4.

EXHIBIT C-4

Balances Decbr. 31, 1884.

Tobacco account	2	18450.67	
Charges a/c	12		1250.00
Cash	40	7891.63	
J. D. Kremelberg's Estate	50		20263.14
Ad. Engler	60	1326.78	
Geo. Kremelberg	142	7585.06	
J. D. Kremelberg & Co.	166		27301.58
K. & Co. Louisville	176	22363.64	
Kremelberg Schaefer & Co.	186	1.90	
Germ. Amerc. Bank Stock	190	5556.25	
Germ. Amerc. Ins. Stock	192	2281.25	
Warehouse in Marietta	194	1400.00	
F. W. Beck	196	5.00	
Phil. Bruns	197	5.00	
Office Furniture	195	250.00	
Sdry. Debtors & Creditors in United States	224		22831.45
Cgmts. to Laarman & Co.	238	2500.13	
Friedr. M. Victor Sohne	244	1893.75	
W. F. Fallenstein	254	1386.83	
J. Gabizon	270	256.45	
J. Caesar & Co.	276	336.00	
J. Caesar & Co.	316	153.37	
Sdry. Debtors & Creditors in England	340		26.25
Joh. Berenberg, Gossler & Co.	350	135.36	
St. Lurman & Sohn	356	115.14	
Friedr. M. Victor Sohne	362		1047.11
A. von Harlessem	368	127.47	
W. F. Fallenstein	374		371.47
Louis F. Kalkmann & Co.	380	1.40	
Fr. Grave & Co.	386	18.98	
Sdry. Debtors & Creditors in Germany	445		458.61
Goll & Co.	456	353.65	
Laarman & Co.	496		2239.58
Sdry. Debtors & Creditors in Holland	507	1287.05	
Banque Centrale	519	107.73	
G. & C. Kreglinger	386		1.30
		$ 75790.49	$ 75790.49

KREMELBERG & CO.

Exhibit C. 4.

(Exhibit C-4—2)

Balances January 1, 1886.

Tobacco Account	$ 15399.75	
Charges "		1000.00
Cash "	8317.90	
J. D. Kremelberg's Estate		19773.69
Ad. Engler		1167.30
Geo. Kremelberg	5610.86	
J. D. Kremelberg & Co.		29644.82
Kremelberg & Co., Louisville	11577.16	
Kremelberg Schaefer & Co.	1.90	
Germ. Amerc. Bank Stock	5556.25	
Germ. Amerc. Ins. Co. Stock	2281.25	
Warehouse in Marietta	1400.00	
F. W. Beck	5.00	
Phil. Bruns	5.00	
Office Furniture	250.00	
Sdrs. in United States		9015.94
Consignments to Laarman & Co.	1225.68	
Friedr. M. Vietor Sohne	3959.85	
A. von Harlessem	3871.29	
W. F. Fallenstein	6381.29	
J. Gabizon	256.45	
J. Caesar & Co.	20.90	
Sdrs. in England		117.85
Joh. Berenberg Gossler & Co.	10.45	
St. Lurman & Sohn	89.35	
Friedr. M. Vietor Sohne		1752.72
A. von Harlessem		472.10
W. F. Fallenstein		2466.32
Louis F. Kalkmann & Co.	2.70	
Fr. Grave & Co.	18.98	
Sdrs. in Germany	462.33	
Goll & Co.		268.22
Laarman & Co.		867.14
Sdrs. in Holland		271.77
Banque Centrale	120.60	
G. & C. Kreglinger		7.07
	$ 66824.94	$ 66824.94

GUSTAV HILLEN
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—3)

Balances January 1st,1887.

Tobacco Account	$ 30455.27	
Merchandise		1818.00
Charges		1200.00
Cash	7815.27	
J. D. Kremelberg's Estate		19773.69
Ad. Engler		3657.52
Geo. Kremelberg	5352.50	
J. D. Kremelberg & Co.		19978.09
K. & Co., Louisville	170.90	
Kremelberg Schaefer & Co.	1.90	
Germ. Amerc. Bank Stock	5556.25	
Germ. Amerc. Ins. Co. Stock	2281.25	
Warehouse in Marietta	1400.00	
F. W. Beck	5.00	
Phil. Bruns	5.00	
Office Furniture	250.00	
Sdrs. in United States		14257.45
Cgmts. to Laarman & Co.	10.00	
A. von Harlessem	1650.00	
W. F. Fallenstein	5850.00	
J. Caesar & Co.		64.05
Sdrs. in England		27.85
Joh. Berenberg Gossler & Co.	10.45	
St. Lurman & Sohn	91.05	
Fried. M. Vietor Sohne	696.41	
A. von Harlessem	2072.29	
W. F. Fallenstein		3035.30
Louis F. Kalkmann & Co.	2.70	
Sdrs. in Germany	1790.37	
Goll & Co.	320.50	
Laarman & Co.	513.03	
Sdrs. in Holland	1062.87	
Banque Centrale	36.75	
G. & C. Kreglinger		7.07
	$ 65609.39	$ 65609.39

GUSTAV HILLEN,
Bookkeeper.
KREMELBERG & CO.

Exhibit C. 4.

(Exhibit C-4—4)

Balances December 31, 1887.

	Dr.	Cr.
Tobacco a/c	$ 51949.34	
Merchandise		459.09
Charges a/c		2000.00
Cash a/c	7033.63	
J. D. Kremelberg's Estate		19773.69
Ad. Engler		12611.84
Geo. Kremelberg		2976.48
J. D. Kremelberg & Co.		19765.48
K. & Co., Louisville	7315.92	
Kremelberg Schaefer & Co.	1.90	
Germ. Amerc. Bank Stock	5556.25	
Germ. Amerc. Inc. Co. Stock	2281.25	
Warehouse in Marietta	1400.00	
Office Furniture	250.00	
Sdry Debtors & Creditors in U. S.		34559.51
Cgmts. to Laarman & Co.	10.00	
Friedr. M. Vietor Sohne	1204.24	
A. von Harlessem	1740.00	
W. F. Fallenstein	14825.90	
J. Caesar & Co.		24.11
Sdrs. in England	232.89	
Joh. Berenberg Gossler & Co.	10.45	
St. Lurman & Sohn	92.89	
Friedr. M. Vietor Sohne	73.50	
A. von Harlessem	1164.41	
W. F. Fallenstein		1050.59
Louis F. Kalkmann & Co.	2.70	
Sdrs. in Germany		2150.35
Goll & Co.	196.00	
Laarman & Co.	37.93	
Sdrs. in Holland		650.75
Banque Centrale	695.00	
H. Albert de Bary & Co.		52.04
	$ 96073.93	$ 96073.93

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—5)

Balances January 1st, 1889.

	Dr.	Cr.
Tobacco a/c	$ 40537.22	
Charges a/c		3000.00
Cach a/c	2504.88	
J. D. Kremelberg's Estate		16478.08
Ad. Engler	254.75	
Geo. Kremelberg	9899.97	
J. D. Kremelberg & Co.		28240.15
K. & Co., Louisville	4205.07	
Kremelberg Schaefer & Co.	1.90	
Germ. Amerc. Bank Stock	5556.25	
Germ. Amerc. Ins. Co. Stock	2281.25	
Warehouse in Marietta	1400.00	
Office Furniture	250.00	
Sdrs. in United States		30568.80
Cgmts. to Friedr. M. Vietor Sohne	9241.65	
A. von Harlessem	732.95	
W. F. Fallenstein	558.68	
J. Caesar & Co.	420.49	
J. Caesar & Co.	684.36	
Sdrs. in England	2078.34	
Joh. Berenberg Gossler & Co.	10.00	
St. Lurman & Sohn	94.69	
Friedr. M. Vietor Sohne		5451.04
A. von Harlessem	1560.87	
W. F. Fallenstein	270.95	
Louis F. Kalkmann & Co.	2.70	
Sdrs. in Germany	216.39	
Goll & Co.	78.60	
Laarman & Co.	83.69	
Sdrs. in Holland	592.46	
Banque Centrale	272.00	
H. Albert de Bary & Co.		52.04
	$ 83790.11	$ 83790.00

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—6)

Balances January 1st, 1890.

		Dr.	Cr.
Tobacco a/c		$ 58908.15	
Charges "			4000.00
Cash "		889.82	
J. D. Kremelberg's Estate			16478.08
Ad. Engler			4383.20
Geo. Kremelberg		6360.98	
J. D. Kremelberg & Co.			10320.41
K. & Co., Louisville		1552.55	
Kremelberg Schaefer & Co.		.76	
Germ. Amerc. Bank Stock	Market value	5556.25	
Germ. Amerc. Ins. Co. "	$12500.	2281.25	
Warehouse in Marietta		1400.00	
Office Furniture		250.00	
Sdry. Debtors & Creditors in U. S			44809.75
Cgmts. to Friedr. M. Vietor Sohne		12368.25	
A. von Harlessem		1300.00	
J. Caesar & Co.		550.00	
J. Caesar & Co.			463.93
Sdrs. in England		2611.20	
Joh. Berenberg Gossler & Co.		10.00	
St. Lurman & Sohn		94.69	
Friedr. M. Vietor Sohne			9707.87
A. von Harlessem			180.64
W. F. Fallenstein		796.77	
Reinhd Badecker		153.61	
Sdrs. in Germany		1131.77	
Goll & Co.			142.52
Sdrs. in Holland			5703.53
Banque Centrale		26.50	
Sdrs. in Belgium			52.62
		$ 96242.55	$ 96242.55

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—7)

Balances January 1, 1891.

		Dr.	Cr.
Tobacco a/c		$ 15437.78	
Charges a/c			5000.00
Cash a/c		8398.30	
J. D. Kremelberg's Estate			16478.08
Ad. Engler			4633.05
Geo. Kremelberg		7179.05	
J. D. Kremelberg & Co.			24530.66
K. & Co., Louisville			4318.78
Kremelberg Schaefer & Co.		.76	
Germ. Amerc. Bank Stock	$12000	5556.25	
Germ. Amerc. Inc. Co. Stock	Present value	2281.25	
Warehouse in Marietta		1400.00	
Office Furniture		250.00	
Sdry. Debtors & Creditors in U. S.		36.23	
Cgmts. to Friedr. M. Vietor Sohne		15387.42	
" " J. Caesar & Co.		1482.73	
J. Caesar & Co.			400.66
Sdrs. in England		11.25	
Friedr. M. Vietor Sohne			5288.23
A. von Harlessem		2246.03	
W. F. Fallenstein		33.53	
Reinhd Badecker		141.00	
Sdrs. in Germany		919.69	
Sdrs. in Holland			716.60
Banque Centrale		34.60	
Sdrs. in Belgium		570.19	
		$ 61366.06	$ 61366.06

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—8)

Balances Janr. 1, 1893.

		Dr.	Cr.
4	Tobacco a/c	$ 12059.36	
52	Charges a/c		7000.00
72	Cash a/c	12731.73	
126	J. D. Kremelberg's Estate		16478.08
134	Ad. Engler		9365.21
144	Geo. Kremelberg	6942.70	
168	J. D. Kremelberg & Co.		28423.12
178	K. & Co., Louisville		2140.55
186	Kremelberg Schaefer & Co.	.76	
190	Germ. Amerc. Bank Stock	5556.25	
192	Germ. Amerc. Ins. Co. Stock	2281.25	
194	Warehouse in Marietta	1400.00	
195	Office Furniture	250.00	
226	Sdrs. in United States		6437.78
246	Cgmts. to Friedr. M. Vietor Sohne	4407.09	
276	" J. Caesar & Co.	1290.11	
251	" A. von Harlessem	1939.28	
317	J. Caesar & Co.	230.64	
341	Sdrs. in England		180.26
363	Friedr. M. Vietor Sohne		2188.87
369	A. von Harlessem		418.66
375	W. F. Fallenstein	122.74	
403	Reinhd Badecker	155.57	
446	Sdrs. in Germany		321.04
498	Sdrs. in Holland	23604.67	
508	Banque Centrale	102.30	
538	Sdrs. in Belgium		120.88
		$ 73074.45	$ 73074.45

GUSTAV HILLEN,
Bookkeeper.

May 31/93 $13,500 Cr.

Exhibit C. 4.

(Exhibit C-4—9)

Balances Janr. 1, 1894.

		Dr.	Cr.
5	Tobacco a/c	133551.87	
43	Commission a/c		6000.00
63	Charges a/c		1000.00
73	Cash a/c	3971.73	
126	J. D. Kremelberg's Estate		16478.08
135	Ad. Engler		17345.69
145	Geo. Kremelberg	4868.97	
169	J. D. Kremelberg & Co.		15515.03
179	K. & Co., Louisville	7335.78	
190	Germ. Amerc. Bank Stock Market value	5556.25	
192	Germ. Amerc. Ins. Co. Stock abt $12,000	2281.25	
194	Warehouse in Marietta	1400.00	
195	Office Furniture	250.00	
227	Sdrs. in United States		4025.96
246	Cgmts. to Friedr. M. Vietor Sohne	975.26	
250	" A. von Harlessem	2846.74	
318	J. Caesar & Co.		28.32
342	Sdrs. in England		297.85
364	Friedr. M. Vietor Sohne		103.65
369	A. von Harlessem	595.59	
375	W. F. Fallenstein	141.40	
406	Joh. Lange Sohn's Ww & Co.	1569.53	
447	Sdrs. in Germany	1141.15	
499	Sdrs. in Holland	1123.26	
508	Banque Centrale	136.00	
522	Gustave Pereire		106899.42
539	Sdrs. in Belgium		50.78
		$ 167744.78	$ 167744.78

New York, 29 March 1894.

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—10)

Balances Dec. 31, 1894.

		Dr.	Cr.
6	Tobacco account	$120837.76	
43	Commission "		24000.00
64	Charges "		1000.00
74	Cash "	38103.19	
127	J. D. Kremelberg's Estate		16478.08
136	Ad. Engler		23952.37
146	Geo. Kremelberg		1843.27
169	J. D. Kremelberg & Co.		22091.75
190	K. & Co. Louisville		3937.96
190	Germ. Amerc. Bank Stock Market value	5556.25	
192	Germ. Amerc. Ins. Co. Stock abt $12,000	2281.25	
194	Warehouse in Marietta	1000.00	
195	Office Furniture	250.00	
228	Sdrs. in United States		6830.99
246	Cgmts. to Friedr. M. Vietor Sohne	4283.40	
251	" A. von Harlessem	6728.84	
342	Sdrs. in England		3.44
346	Friedr. M. Vietor Sohne	1013.99	
369	A. von Harlessem	2.99	
375	W. F. Fallenstein	29.75	
406	Joh. Lange Sohn's Ww. & Co.	523.99	
447	Sdrs. in Germany		4865.76
500	Sdrs. in Holland	31032.41	
509	Banque Centrale	188.00	
522	Gustave Pereire		106786.79
539	Sdrs. in Belgium		41.41
		$ 211831.82	$ 211831.82

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—11)

Balances December 31, 1895.

Fol.			Dr.	Cr.
6	Tobacco account		$339373.51	
43	Commission "			33000.00
53	Interest		3076.90	
64	Charges			500.00
74	Cash		47373.67	
101	Traveling Expenses		440.00	
127	J. D. Kremelberg's Est.			16478.08
136	Ad. Engler			30621.53
146	Geo. Kremelberg			7325.23
169	J. D. Kremelberg & Co.	Balance reduced since to about $10,000.		23407.06
180	K. & Co. Louisville			8440.56
190	Germ. Amerc. Bank Stock	Value	5556.25	
192	Germ. Amerc. Ins. Co. Stock	$12,500	2281.25	
194	Warehouse in Marietta		1000.00	
195	Office Furniture		250.00	
228	Sdrs. in United States		7778.30	
251	Cgmts. to A. von Harlessem		4131.38	
284	" Joh. Lange Sohn's Ww. & Co		2400.00	
342	Sdrs. in England			185.95
350	Joh. Berenberg Gossler & Co.		331.87	
364	Friedr. M. Vietor Sohne		116.73	
370	A. von Harlessem		3587.02	
376	W. F. Fallenstein		31.80	
406	Joh. Lange Sohn's Ww. & Co.		3369.27	
448	Sdrs. in Germany		15390.22	
500	Sdrs. in Holland			5554.20
508	Banque Centrale		4014.83	
522	Gustave Pereire			314864.02
539	Sdrs. in Belgium			126.37
			$ 440503.00	$ 440503.00

New York, April 18, 1896.

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 4.

(Exhibit C-4—12)

Balances Dec. 31, 1896.

			Dr.	Cr.
6	Tobacco a/c		295435.80	
15	Merchandise		9941.49	
44	Commission			40000.00
54	Interest		1063.93	
64	Charges			1000.00
74	Cash a/c		15639.48	
127	J. D. Kremelberg's Estate			16478.08
136	Ad. Engler			38471.54
146	Geo. Kremelberg			13041.18
169	J. D. Kremelberg & Co.			10947.01
180	K. & Co., Louisville			1248.28
190	Germ. Amerc. Bank Stock	Market value	5556.25	
192	Germ. Amerc. Ins. Co. Stock	$15,000	2281.25	
194	Warehouse in Marietta		1000.00	
195	Office Furniture		250.00	
229	Sdrs. in United States		11839.07	
252	Cgmts. to A. von Harlessem		2091.20	
350	Joh. Berenberg Gossler & Co.		3303.82	
364	Friedr. M. Vietor Sohne		126.73	
370	A. von Harlessem		1333.75	
376	W. F. Fallenstein		33.95	
406	Joh. Lange Sohn's Ww. & Co.		982.43	
410	H. A. Warneken & Co.		2653.78	
448	Sdrs. in Germany		9798.79	
458	Discon to Maatschappy		779.24	
500	Sdrs. in Holland		9850.42	
508	Banque Centrale Anversoise		985.15	
522	Gustave Pereire			253597.78
540	Sdrs. in Belgium			162.66
			$ 374946.53	$ 374946.53

GUSTAV HILLEN,
Bookkeeper.

Exhibit C. 6.

EXHIBIT C-6

J. D. Kremelberg's Estate

Dr.						Cr.			
1884					1884				
June 30	To sdry Creditors	288	$ 1174.68	Jan. 1	By Balance carried	120	$20263.14		
Dec. 31	" Balance carried		20263.14	Dec. 31	" sdry Debtors	312	1174.68		
			$21437.82					$21437.68	
1885					1885				
May 31	To sdry Creditors	333	$ 1076.79	Jan. 1	By Balance carried		$20263.14		
Nov. 30	" "	365	587.34	Dec. 31	" sdry Debtors	373	1174.68		
Dec. 31	" Balance carried		19773.69						
			$21437.82					$21437.82	
1886					1886				
Oct. 31	To sdry Creditors	419	$ 1174.68	Jan. 1	By Balance carried		$19773.69		
Dec. 31	" Balance carried		19773.69	Dec. 31	" sdry Debtors	431	1174.68		
			$20948.37					$20948.37	
1887					1887				
Nov. 30	To sdry Creditors	476	$ 1174.68	Jan. 1	By Balance carried		$19773.69		
Dec. 31	" Balance carried		19773.69	Dec. 31	" sdry Debtors	483	1174.68		
			$20948.37					$20948.37	
1888					1888				
May 31	To sdry Creditors	500	$ 3262.98	Jan. 1	By Balance carried		$19773.69		
Nov. 30	" "	521	978.89	Dec. 31	" sdry Debtors	528	946.26		
Dec. 31	" Balance carried		16478.08						
			$20719.95					$20719.95	
1889					1889				
Nov. 30	To sdry Creditors	14	$ 978.89	Jan. 1	By Balance carried		$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	22	978.89		
			$17456.97					$17456.97	
1890					1890				
Nov. 30	To sdry Creditors	69	$ 978.89	Jan. 1	By Balance carried		$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	74	978.89		
			$17456.97					$17456.97	
1891					1891				
Nov. 30	To sdry Creditors	117	$ 978.89	Jan. 1	By Balance carried		$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	122	978.89		
			$17456.97					$17456.97	
1892					1892				
Nov. 30	To sdry Creditors	165	$ 978.89	Jan. 1	By Balance carried		$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	171	978.89		
			$17456.97					$17456.97	
1893					1893				
Nov. 30	To sdry Creditors	209	$ 978.89	Jan. 1	By Balance carried		$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	216	978.89		
			$17456.97					$17456.97	
1894					1894				
Nov. 30	To sdry Creditors	265	$ 978.89	Jan. 1	By balance carried	126	$16478.08		
Dec. 31	" Balance carried		16478.08	Dec. 31	" Interest	271	978.89		
			$17456.97					$17456.97	

Exhibit C. 6.

1895					1895			
Nov. 30	To sdry Creditors	320	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" Interest		323	978.89
			$17456.97					$17456.97
1896					1896			
Nov. 30	To sdry Creditors	377	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" Interest		386	978.89
			$17456.97					$17456.97
1897					1897			
Nov. 30	To sdry Creditors	443	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" Interest		450	978.89
			$17456.97					$17456.97
1898					1898			
Nov. 30	To sdry Creditors	489	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" Interest		495	978.89
			$17456.97					$17456.97
1899					1899			
Nov. 30	To sdry Creditors	537	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		542	978.89
			$17456.97					$17456.97
1900					1900			
Nov. 30	To sdry Creditors	19	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		24	978.89
			$17456.97					$17456.97
1901					1901			
Nov. 30	To sdry Creditors	68	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		73	978.89
			$17456.97					$17456.97
1902					1902			
Nov. 30	To sdry Creditors	117	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		119	978.89
			$17456.97					$17456.97
1903					1903			
Nov. 30	To sdry Creditors	159	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		164	978.89
			$17456.97					$17456.97
1904					1904			
Nov. 30	To sdry Creditors	202	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		207	978.89
			$17456.97					$17456.97
1905					1905			
Nov. 30	To sdry Creditors	242	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		247	978.89
			$17456.97					$17456.97
1906					1906			
Nov. 30	To sdry Creditors	282	$ 978.89	Jan. 1	By Balance carried			$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors		286	978.89
			$17456.97					$17456.97

Exhibit C. 6.

1907				1907			
Nov. 30	To sdry Creditors	322	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	327	978.89
			$17456.97				$17456.97
1908				1908			
Nov. 30	To sdry Creditors	359	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	362	978.89
			$17456.97				$17456.97
1909				1909			
Nov. 30	To sdry Creditors	401	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	405	978.89
			$17456.97				$17456.97
1910				1910			
Nov. 30	To sdry Creditors	439	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	442	978.89
			$17456.97				$17456.97
1911				1911			
Nov. 30	To sdry Creditors	475	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	2	978.89
			$17456.97				$17456.97
1912				1912			
Nov. 30	To sdry Creditors	31	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" Balance carried		16478.08	Dec. 31	" sdry Debtors	34	978.89
			$17456.97				$17456.97
1913				1913			
Nov. 30	To sdry Creditors	62	$ 978.89	Jan. 1	By Balance carried		$16478.08
Dec. 31	" " "	64	16445.44	Dec. 31	" sdry Debtors	65	946.25
			$17424.33				$17424.33

Exhibit C. 16.

EXHIBIT C-16

A TRUE AND PERFECT INVENTORY

of all and singular the goods, chattels and personal estate of John D. Kremelberg, late of Baltimore City, deceased, appraised by us, the subscribers, Thomas W. Johnson and Adolphe Prevost, jointly we having been first legally authorized, and having taken the oath prescribed by law, as will be seen by the warrants to appraise, and Certificate thereto annexed.

(Sundry articles, household furniture including silver and office furniture details of which appear in inventory)			$ 10,528.55
1 Certificate of Membership, Corn & Flour Exchange of Baltimore			300.00
1 Share of Stock of the Wednesday Club, No. 136. No personal value			
11 Shares of Stock of the Germania Club House Association of Baltimore City, No. 42. No personal value			
			$ 10,828.55
#7			
500 Shares of Stock of the Brooklyn Company, No. 11. No personal value			
37½ Shares of Stock of the Nevassa Phosphate Co., No. 557		10	375.00
1000 Shares of Stock of the American Gas Coal Company, No. 461. No present value			
50 Shares of Stock of the Maryland Fire Insurance Company, No. 177		5	250.00
5 Shares of Stock of the Fountain Hotel Company, No. 93. No personal value			
10 Shares of Stock of the "Concordia of Balto. City, No. 51. No present value			
			$ 11,453.55

Exhibit C. 16.

#8

			$ 11,453.55
10	Shares of Stock of the Baltimore and Sarauna Steamship Co., No. 90 (old stock). No present value		
500	Shares of Stock of the Chesapeake Oil Co. of Cherry Run Nenargo Co., Pa., No. 141. No personal value		
500	Shares of Stock of the Kingsmount Gold Mining Co. of Balto., No. 13. No personal value		
500	Shares of Stock of the Union Mining Co. of Balto., No. 5. No present value		
$1000	Shares of Stock of the Agricultural & Mechanical Assn, No. 181. No present value		
20	Shares of Stock of the Merchants Mutual Ins. Co. of Baltimore, No. 272	50	1,000.00
			$ 12,453.55

#9

12	Shares of Stock of the Baltimore Southern Transportation Company, No. 113. No present value		
12	Shares do No. 272. No present value		
70	Shares of Stock of the Despard Coal Co., No. 46	4	280.00
80	Shares do No. 47	"	320.00
100	" " 198	"	400.00
100	" " 45	"	400.00
100	" " 44	"	400.00
100	" " 43	"	400.00
100	" " 42	"	400.00
100	" " 41	"	400.00
13	Shares of Stock of the Mechanics Bank of Balto., No. 492	11	143.00
45	Shares do No. 633	"	495.00
24	" " 1903	"	264.00
38	" " 799		418.00
	Amt of Appraisement		$ 16,773.55

#10

Exhibit C. 16.

WE, THE SUBSCRIBERS, DO CERTIFY that the aforegoing is a true and just inventory, and valuation of all and singular, the goods, chattels and personal estate of the said John D. Kremelberg, deceased, so far as the same have come to our sight and knowledge; and as valued and appraised by us in dollars and cents, according to the best of our skill and judgment.

IN TESTIMONY OF ALL OF WHICH, we hereunto subscribe our names, and affix our seals, this 13th day of July, 1882.

THOMAS W. JOHNSON (Seal)
ADOLPHE PREVOST (Seal) } *Appraisers.*

Amount of appraisement as above,	$16,773.55
Cash in the house at time of deceased's death	.....
Cash in bank " " " " "	.....
Whole amount of inventory,	$16,773.55

Test.

S. H. TAGART,
Executor.

BALTIMORE CITY, SS:

On the 17th day of July 1882, came Samuel H. Tagart, Executor of John D. Kremelberg, deceased, and made oath in due form of law that the foregoing is a true and perfect Inventory of all and singular the Goods and Chattels of the said deceased, that have come to his hands, knowledge or possession at the time of making thereof, that what has since or shall hereafter come to his hands, knowledge or possession, he will return in an additional Inventory, that he know of no concealment, nor suspect any to be, that if he should hereafter discover any conceal-

Exhibit C. 16.

ment, or suspect any to be, he will make the Register of Wills for Baltimore City acquainted therewith, that the same may be inquired into according to law.

Sworn to in open Court. Test:

ROBERT T. BANKS,
Register of Wills for Baltimore City.

A TRUE AND PERFECT INVENTORY of all and singular the goods, chattels and personal estate of J. D. Kremelberg, late of Baltimore City, deceased, appraised by us, the subscribers, jointly we having been first legally authorized, and having taken the oath prescribed by law, as will be seen by the warrants to appraise, and Certificate thereto annexed.

No. 16	(Sundry horses, colts, stock and farm chattels, details of which appear in inventory)	$3,572.95

WE, THE SUBSCRIBERS, DO CERTIFY that the aforegoing is a true and just inventory, and valuation of all and singular, the goods, chattels and personal estate of the said J. D. Kremelberg, deceased, so far as the same have come to our sight and knowledge; and as valued and appraised by us in dollars and cents, according to the best of our skill and judgment.

IN TESTIMONY OF ALL OF WHICH, we hereunto subscribe our names, and affix our seals, this 10th day of July, 1882.

his
JAMES X GARDNER (Seal)
mark
JAMES W. CROSS (Seal)
} *Appraisers.*

Exhibit C. 16.

Amount of appraisement as above, $3,572.95
Whole amount of inventory, $3,572.95

Test: S. H. TAGART,
Exr. &c.

BALTIMORE CITY, SS:

On the 17th day of July, 1882, came Samuel H. Tagart, Executor of John D. Kremelberg, deceased, and made oath in due form of law, that the foregoing is a true and perfect inventory of all and singular the Goods and Chattels of the said deceased in Anne Arundel County that have come to his hands, knowledge or possession at the time of making thereof, that what has since or shall hereafter come to his hands, knowledge or possession, he will return in an additional inventory; that he know of no concealment, nor suspects any to be, that if he should hereafter discover any concealment, or suspects any to be he will make the Reigster of Wills for Baltimore City acquainted therewith, that the same may be inquired into according to law.

Sworn to before the subscriber, Register of Wills for Baltimore City.

Test

ROBERT T. BANKS,
Register of Wills for Baltimore City.

Exhibit C. 18.

EXHIBIT C-18

Balance Sheet for 1885

J. D. Kremelberg & Co.

January 1, 1886.

		Dr.	Cr.	Profit	Loss
35	First Nat. Bank	4,138.71			
38	Produce Account				25.08
50	Charges Account				3,674.86
5	do Tobacco Brokerage			3,526.00	
58	Commission Acct.			7,562.41	
59	Western Tobacco Acct.				181.89
64	Interest Account				1,369.91
84	K & CO. Louisville	55.32			
103	Reynes Bros. & Co.	40.04			
108	Pemberton & Pem	101.00			
109	Holt Schaefer & Co.	1,058.26			
118	Virginia Tob. Acct.	6,026.47		74.19	
124	K & Co. New York	29,644.82			
128	Tobacco Account	13,394.37		296.96	
139	Exchange Account			59.14	
142	J. D. Kremelberg	.....	.....	.....	.....
142	E. Vd G. Trust I. F. K. see 2nd P.		8,161.72		
143	Eliz. Vig. de Graaff for guardian		12,469.72		
144	J. Fred Kremelberg		8,611.72		
144	H. Ella Kremelberg		13,415.71		
145	Chas. A. Martin	3,205.49			
160	Shpmts. L. F. Kalkmann Co.				46.82
163	" P. J. Cokart & Sonn	857.30			
166	" Gerd. Rossem & Co.	2,132.30			
169	" W. F. Fallenstein			191.71	
179	" Gilleat & Co. London	1,504.23			
181	" T. P. Jose & Sons	541.09			
		62,779.40	42,658.87	11,710.41	5,298.56
181	Shpmts Gilliat & Co Lurpln	2,094.65			39.17
187	do H. Ade Bary & Co.	387.08			14.69
199	Ponlain Devan	404.76			
218	W. F. Fallenstein		40.89		
243	de Ewen de T. Jr. A		145.57		
254	Minderop & Sonen		2.40		
256	Gerdoan Rossem & Co.		33.38		
258	M. Aoan Hees	1,759.80			
291	Gg. K. Guad J. D. K		4,164.17		
295	Farm Account		527.34		
296	H. E. K. Guard. A. M. K		4,279.39		
296	do " " M. A. K.		5,306.31		
307	Avon Harlessem		441.13		
311	Goll & Co.	254.00			
329	M. F. Fallenstein our/acct.	2,549.51			
333	F. M. Vietor Sohne "	16.38			
339	L. F. Kalkman & Co. "	83.76			
342	St. Linman & Sohn "	19.08			
361	J. Caeser & Co. "	144.28			

Exhibit C. 19.

		Dr.	Cr.	Profit	Loss
364	Gerd vRossem & Co. "	60.17			
366	H. Ade Bary & Co. "	2.24			
369	Emil Sanders "	76.06			
371	M. R. Mayer "		3.44		
376	Anna Meusing		4,840.27		
72	European Trou Acct				320.00
278	Theod Schonewald		32.08		
		70,631.17	62,475.24	11,710.41	5,672.42
357	Mees & Moens our/acct	22.99			
359	P. J. Cokart & Soon "		19.88		
364	Laarman J & Co. our/acct.	345.62			
368	Theo. P. Jose & Co "		228.38		
370	John K. Gilleat & SO. Lnod. "		11,741.40		
137	Gg. Kremelberg	266.66			
	Cash account		763.55		
		71,266.44	65,228.45	11,710.41	5,672.42
			6,037.99		6,037.99
		71,266.44	71,266.44	11,710.41	11,710.41

EXHIBIT C-19.

Balance Sheet for 1886

January 1, 1887

J. D. Kremelberg & Co.

		Dr.	Cr.	Profit	Loss
5	J. Fred. Kremelberg		7,515.13		
7	E. Vde Graaf Trustee J. F. K.		10,004.85		
10	Eliz Virg de Graff, Berlin		11,860.90		
13	Harriet E. Kremelberg		13,951.74		
16	Anna Maria Kremelberg		4,133.14		
19	H. E. K. Guard. Mary A. K.		5,651.63		
			53,117.39		
22	Geo. K. Guard J. D. K	23.55			
24	Farm Account		748.23		
26	J. Geo. Kremelberg		444.36		
27	J. D. Kremelberg Pauance		23.95		
28	Chas. A. Martin	3,000.00			
31	J. Fred. Tesdorff	405.			
36	First Nat. Bank	728.84			
39	Tobacco Account	13,170.75			581.09
45	Western Tobacco Acct.	1,012.97		272.97	
51	Virginia Tobacco Acct.	7,840.72		1,254.32	
57	Produce Account			1.25	
60	Charges Account				3,081.03
	" Tobacco Brokerage			3,700.	
72	Commission Account			6,064.20	
80	Interest Account				2,210.79
86	Exchange Account			33.52	

Exhibit C. 19.

		Dr.	Cr.	Profit	Loss
97	Lynchburg Strip Acct.				552.59
99	Kremelberg & Co. N. Y.	19,978.09			
110	Kremelberg & Co. Louisville		144.81		
118	Holt Schaefer & Co.	55.01			
120	Pallard Pettns & Co.		334.03		
		46,214.93	54,812.77	11,326.26	6,425.50
122	Pemberton & Penn		497.45		
126	N. F. Smith & Son	2,490.60			
130	Reynes Bros. & Co.	522.99			28.65
132	Shpmts. to Avon Harlessem				794.95
135	" Gerdo Rossem & Co.				563.59
136	" N. F. Fallenstein	3,168.43			56.10
140	" J. Caesar & Co.	3,249.63			135.89
142	" J. K. Gilleat & Co.				50.48
144	" Thos. P. Jose & Sons				
145	" J. K. Gilleat&Co. Lvrpl	2,094.65			103.67
146	" L. F. Kalkman & Co.				
154	N. F. Fallenstein his/acct.	1,251.96			
160	Gebr. Burglenth/acct.		45.62		
166	Laarman & Co. "		6.29		
168	N. Bechenngh & Soon "	2,110.80			
169	Gebr. Noordenjn "	925.42			
172	Gerdvoan Rossem & Co. "	2,072.59			
176	P. J. Cookart & Soon "	814.31			
180	De Ewen de Wed JoNille	43.33			
326	Va Stem Account		477.67		
327	Kabo Md. Venture		348.38		
329	Aoon Harlessem our/acct.		670.96		
331	N. F. Fallenstein "	814.63			
334	Louis F. Kalkman & Co.	541.09			
335	Goll & Co. our/acct.	15.20			
336	J. Caeser & Co. "		2,536.12		
		66,376.18	59,349.64	11,326.26	8,158.83
339	St. Lurman & Son our/acct.	19.57			
341	Emil Sanders "	76.06			
343	J. D. Gilliat & Co. Lond. "		429.24		
344	M. R. Mayer our/acct.		19.85		
347	Anna Meusing "		4,840.27		
349	Meess Mows "	17.83			
355	Gerdoan Rossem & C. "	515.78			
357	Finke & Meinlig "		28.28		
	Cash Account	829.29			
		67,834.71	64,667.28	11,326.26	8,158.83
	Profit		3,167.43		3,167.43
		67,834.71	67,834.71	11,326.26	11,326.26

Exhibit C. 20.

EXHIBIT C-20

Balance Sheet for 1887

Jany. 1, 1888

		Dr.	Cr.	Profit	Loss
5	J. Fred Kremelberg		6,215.05		
7	E. V. de Graaff, Trust J. F. K.		10,947.06		
10	Mis Eliz Vigde Graaff		11,253.56		
13	Harriet E. Kremelberg		15,142.95		
16	Anna M. Kremelberg		4,877.38		
19	H. E. Kremelberg Guard. MAK.		7,006.75		
			55,432.75		
24	Farm Account		691.78		
26	J. Geo. Kremelberg		483.00		
27	J. D. Kremelberg		107.82		
28	Chas. A. Martin	3,482.00			
31	J. Fred. Tesdroff	525.00			
33	Albert Ziegler		200.00		
35	Edward Ziegler		100.00		
36	First Nat. Bank	1,655.35			
40	Tobacco Account	34,552.19		2,874.91	
46	Western Tobacco Acct.			223.70	
52	Virginia Tobacco "	6,676.29		2,949.53	
57	Produce Account				1.38
60	Charges Account		1,085.99		3,828.37
	do Tobacco Brokerage			5,010.00	
72	Commission Acct.			7,933.58	
80	Interest Account				2,300.37
88	Exchange Account			2.38	
96	European Travel Acct.				275.00
99	Kremelberg & Co. N Y.	19,765.48			
110	Kremelberg & Co. Louisville	317.83			
118	Holt Shaefer & Co.	169.50			
		67,143.64	58,111.34	18,994.10	6,405.12
122	Pemberton & Penn		474.89		
124	Leiws & Thomas		6.78		
132	Shpmts. to Av. Harlessem	400.00			102.85
137	" W. F. Fallenstein	2,627.22		444.61	
140	" J. Caesar & Co.	3,249.63			
144	" J. K. Gilliat Lvrpl.	2,094.65			
146	" L. F. Kalkman & Co.			46.53	
152	Areus Hellmers & Co.		201.23		
154	W. F. Fallenstein his/acct.	1,251.96			
160	Gebr. Burglen th/acct.	45.62			
166	Laarman & Co. "	130.98			
168	W. Beckeringh & Zoon "	234.72			
172	Gerd. V.s Rossem & Co. "		41.53		
178	Minderop & Zonen "		84.77		
180	De Esoende Wed lv. Nelle "		160.54		
329	Avon Harlessem our/acct	166.49			
331	W. F. Fallenstein "	1,024.94			
334	Louis F. Kalkman & Co. "	33.68			
335	Goll & Co. "	15.20			
336	J. Caesar & Co. "		2,661.70		
339	St. Lurmann & Sohn "	19.86			
343	John K. Gilliat & Co., Lond.		429.24		

Exhibit C. 21.

		Dr.	Cr.	Profit	Loss
347	Miss Anna Mensing	"	4,840.27		
349	Mees & Moens	" 14.65			
355	Gerd V. Roessem & Co.	" 91.25			
357	Finke & Weinlig	"	99.62		
		78,544.49	67,111.91	19,485.24	6,507.97
	Cash Account	1,544.69			
	Profit	80,089.18	67,111.91	19,485.24	6,507.97
	Profit		12,977.27		12,977.27
		80,089.18	80,089.18	19,485.24	18,485.24

EXHIBIT C-21

Balance Sheet for 1891

January 1, 1892

J. D. Kremelberg & Co.

		Dr.	Cr.	Profit	Loss
5	J. Fred Kremelberg		2,710.19		
8	E. V. deGraaff, Trustee		10,756.03		
10	Eliz Vig de Graaff		11,500.76		
14	Harriet E. Kremelberg		9,655.17		
17	Anna M. Kremelberg		4,642.78		
20	Mary A. Kremelberg		7,589.91		
23	J. D. Kremelberg	2,480.95	46,854.84		
25	Farm Account		2,900.79		
26	J. Geo. Kremelberg		4,218.44		
29	Chas. A. Martin	4,642.14			
31	J. Fred Jesdorpf				200.00
37	First National Bank	281.82			
42	Tobacco Account	25,623.81		1,919.97	
48	Western Tob. Acct.				28.70
55	Virginia Tob. Acct.	376.40		439.53	
66	Charges Account		137.67		4,212.04
	do Tobacco Brok'g			4,272.00	
74	Commission Acct.			6.713.42	
82	Interest Account				1,873.43
104	Kremelberg & Co. NY.	23,093.40			
119	Holt Schaefer & Co.	700.61			
123	Pemberton & Penn	25.50			
133	Shpmts. Av. Harlessem				117.09
139	" W. F. Fallenstein	3,381.17		185.68	
140	" J. Caesar & Co.			152.04	
146	" L. F. Kaldman & Co.				67.68
154	W. F. Fallenstein his/acct.	582.80			
		61,188.60	54,111.74	13,682.64	6.498.94

Exhibit C. 22.

		Dr.	Cr.	Profit	Loss
166	Laarman & Co. th/acct.		7.18		
175	Gerd Van Rossem & Co. "	774.39			
182	De. Emude W. JvNelle "		179.85		
198	W. Hoisbendahl "		123.23		
209	C. A. Lewis "	1,950.00			
232	J. Greeno "	39.40			
275	Kremelberg & Co. Louisv	650.91			
296	Exchange Account			82.82	
303	H. Jvan derLeemo		298.33		
305	Th. von Darteln		22.49		
302	F. Anna Osborn		856.64		
334	L. F. Kalkmann & Co.	224.81			
336	J. Caesar & Co. Lour /acct	718.35			
339	St. Lurman & Sohn "	20.16			
342	R. A. Will "	54.04			
346	K. K. Tabak Regie "	3,218.19			
347	Anna Mensing "		4,840.27		
349	Mees & Moens "	12.57			
355	Gerd v. Rossem & Co. "	11.58			
362	Avon Harlessem "	421.35			
364	W. F. Fallenstein		1,132.51		
	Cash Account	455.59			
		69,284.35	62,017.83	13,765.46	6,498.94
	Profits		7,266.52		7,266.52
		69,284.35	69,284.35	13,765.46	13,765.46

EXHIBIT C-22

December 31st, 1892

Balance Sheet

		Dr.	Cr.	Profit	Loss
2	J. D. Kremelberg Child	6,872.72			
11	Eliz. Vig. deGraaff		9,475.20		
15	H. E. Kremelberg		13,907.19		
17	A. M. Kremelberg		13,398.01		
20	J. A. Kremelberg		14,151.27		
			50,931.67		
26	J. George Kremelberg		5,181.72		
43	Tobacco Acct.	13,957.98		644.84	
49	Western Tob. Acct.			76.87	
96	European Trovel Acct.	150.			
67	Charges Acct.		1,650.31		4,211.31
	do Tob. Brok'g.			4,364.	
74	Commission Acct.			7,969.81	
83	Interest Acct.				2,116.24
96	European Travel Acct.	150.			
107	Kremelberg & Co. N. Y.	21,183.57			
123	Pemberton & Germ. Danv.		1,761.27		
139	W. F. Fallenstain Shipmts.	328.80		311.55	
140	J. Caesar & Co. "	1,571.76			21.79
151	Ad. Hagens & Co.		9.52		
153	Arens Hellmers & Co.		15.83		

Exhibit C. 23.

		Dr.	Cr.	Profit	Loss
159	Heimr Olderkatt & Co.	56.08			
166	Laarmann & Co.		7.18		
175	Gerd. Van Ropan & Co.	140.78			
183	De. Even de Wed lv. Nelle		209.27		
191	Conrad Langaard	781.19			
209	C. A. Lewis & Co.	2,972.24			
211	Walter B. Boyd	2,183.69			
225	W. G. Morris		13.		
		55,923.37	59,779.77	14,125.56	6,621.84
233	J. Grimmo		176.73		
248	Schilling & Buinning	1,973.60			
258	Victor Jacobs	486.13			
275	Kremelberg & Co. Louisv.	140.46			
278	Holt, Schaefer & Co.	565.46			
302	Miss F. Anna Osborn		803.42		
303	H. Jvan derLienno		480.56		
305	Th v. Dartelu		8.22		
307	Chas. A. Martin	2,924.44			
312	Exchange Acct.	7,239.24		143.01	
318	First Nat. Bk.	1,285.38			
336	J. Caesar & Co.		1,512.36		
339	St. Luhmann & Co.	20.16			
342	Richard A Will	54.04			
347	Anna Mensing		4,840.27		
348	Mees & Moens	12.57			
355	Gerd. Van Ropsem & Co.	11.58			
362	A. Von Harlessem	60.35			
364	W. F. Fallenstein & Co.	755.79			
366	Louis F. Kalkmann & Co.	84.87			
367	K. K. Tabak Regie	3,594.08			
	Cash acct.	116.54			
	Profits for 1892		7,646.73		7,646.73
		75,248.06	75,248.06	14,268.57	14.268.57

EdeG	12/42 of 45—12 6/7
HEK	10/42 of 45—10 5/7
AMK	6/42 of 45— 6 3/7
J. F. K.	6/42 of 45— 6 3/7
MAK.	8/42 of 45— 8 4/7
	45

EXHIBIT C-23

Balance Sheet

1895

		Dr.	Cr.	Profit	Loss
11	Mrs. E. V. deGraaff		9,306.13		
15/95	H. E. Kremelberg		9,309.05		
18	A. M. Kremelberg		7,549.86		
21	M. A. Kremelberg		11,161.45		
			37,316.49		

Exhibit C. 23.

		Dr.	Cr.	Profit	Loss
50	Western Tob. Acct.	24.25		164.32	
58	Virginia Tob. Acct.	1,462.37			1,585.50
70	Charges Acct.		1,287.20		3,479.14
70	" Tob. Brok'g.			6,347.75	
75	Commission Acct.			5,051.65	
77	Tob. Acct.	14,335.65		209.07	
78	J. Geo. Kremelberg		7,682.85		
84	Interest Acct.				1,821.61
121	P. F. de Gournay	150.00			
130	Jno. T. Dowell & Co.	250.00			
133	Shipmts. Avon Harlessem				103.13
141	" Friedr. Grave & Co.			39.03	
151	Ad. Hagens & Co. Bremen		9.52		
165	W. AvanHees		4.12		
187	De ErvendeWed. J. Van Nella		100.52		
191	Conrad Langaard	260.47			
183	Florent Levoir		16.53		
198	W. Hoistendahl		107.58		
208	Venture with C. Lewis & Co.	2,632.32			659.79
209	C. A. Lewis & Co.	631.38			
234	J. Gruno.	947.45			
243	G. C. Vocke & Co.	990.32			
244	Louis F. Kalkman & Co.		38.80		
		21,700.19	46,543.61	11,811.82	7,649.17
251	Schilling & Bruning th/acct.	1,224.86			9,650.00
261	Arens & Heinsohn		21.17		
266	Shipmts. W. F. Fallenstein	430.88			217.37
269	Gerd van Rossem & Co.	127.13			
276	Kremelberg & Co. Louisv.		323.05		
286	" N. Y.	23,407.06			
302	Miss F. Anna Osborn		652.02		
309	Chas. A. Martin	4,229.14			
316	Exchange Account			16.42	
319	First Nat. Bk.	1,184.54			
339	St. Lurman & Sohn our/acct.	20.16			
348	Mrs. Anna Mensing "		4,840.27		
349	Mees & Moens "	12.57			
352	Schilling & Bruning "			6.86	
354	Friedr. Grave & Co. "	135.71			
362	Avon Harlessem "		8.39		
365	W. F. Fallenstein "		413.90		
	Cash Account	330.17			
	Losses in 1895			5,681.44	
		52,802.41	52.802.41	17,516.54	17,516.54

Baltimore Jany. 1, 1896
J. D. Kremelberg & Co.

Agreement on the part of Fidelity Trust Company of Newark, New Jersey, Executor and Trustee under the last will and testament of John George Kremelberg, otherwise known as J. George Kremelberg and Edith K. Tompkins, Executrix of said last will and testament of said decedent, to sell the firm name of "Kremelberg & Company," together with the good will of the business heretofore conducted by the partnership formed by the said John George Kremelberg, otherwise known as J. George Kremelberg, Ernst Gustav Hillen and Otto Brassler, co-partners to the partnership formed by the said Ernst Gustav Hillen and Otto Brassler to continue the said business of Kremelberg & Company and to the said duly formed partnership of Kremelberg & Company and on the part of the said Ernest Gustav Hillen and the said Otto Brassler and the said newly formed co-partnership of Kremelberg & Company to buy the same.

WHEREAS, J. George Kremelberg otherwise known as John George Kremelberg residing at East Orange in the County of Essex in the State of New Jersey died on the 13th day of May, 1913, leaving a Last Will and Testament which was thereafter on the 24th day of May, 1913, duly admitted to probate by the Surrogate of Essex County, New Jersey, to whom jurisdiction in that behalf belonged, and

WHEREAS Letters Testamentary were thereupon duly issued to the Fidelity Trust Company of Newark, New Jersey and to Edith K. Rhodes now Edith K. Tompkins of 140 Harrison Street, East Orange, New Jersey, as Executors, and

WHEREAS in and by the eighth paragraph of said decedent's Last Will and Testament the Fidelity Trust Company was constituted trustee

of a certain fund set apart for the benefit of the said Edith K. Tompkins, and

WHEREAS the said Fidelity Trust Company and the said Edith K. Tompkins have duly qualified and are now acting as Executors of the said Last Will and Testament of the said J. George Kremelberg otherwise known as John George Kremelberg, and

WHEREAS the said Fidelity Trust Company has accepted the trust under the said eighth paragraph of said decedent's Last Will and Testament, and

WHEREAS the said J. George Kremelberg otherwise known as John George Kremelberg, sole member of the firm of Kremelberg & Company of New York entered into a certain agreement of co-partnership with Ernst Gustav Hillen and Otto Brassler on the 18th day of August, One Thousand Nine Hundred and Ten, and

WHEREAS in and by said agreement of co-partnership it was provided that

> "The firm name of Kremelberg & Company, together with the good will of the business heretofore conducted by the said J. George Kremelberg, and hereafter to be conducted by the partnership hereby formed, were contributed by the said J. George Kremelberg, and the same shall revert to him and be his sole individual property upon the dissolution of the firm or partnership hereby formed,"

and

WHEREAS at the time of the death of the said J. George Kremelberg otherwise known as John George Kremelberg, the said co-partnership articles were in full force and effect and the said

co-partnership was continuing to do business thereunder, and

WHEREAS the said partnership of said Kremelberg & Company maintained its principal place of business at its office in the Borough of Manhattan, City and State of New York and a branch thereof in the City of Louisville, State of Kentucky, and

WHEREAS the said partnership of said Kremelberg & Company dissolved by reason of the death of the said co-partner J. George Kremelberg otherwise known as John George Kremelberg, and

WHEREAS the surviving partners, the said Ernst Gustav Hillen and the said Otto Brassler are desirous of continuing the said business of Kremelberg & Company under the firm name of Kremelberg & Company, and

WHEREAS the said Ernst Gustav Hillen and the said Otto Brassler have filed or are about to file and publish as by law provided a certificate of the continued use of the said firm name of Kremelberg & Company in accordance with the agreement herein.

NOW, THEREFORE, this agreement made the 23rd day of October in the year One Thousand Nine Hundred and Thirteen between Edith K. Tompkins of East Orange, New Jersey, individually as beneficiary and as residuary legatee and as Executrix of the Last Will and Testament of the said J. George Kremelberg otherwise known as John George Kremelberg and the said Fidelity Trust Company of Newark, New Jersey, as Executor and Trustee of the Last Will and Testament of the said J. George Kremelberg otherwise known as John George Kremelberg of the first part and the said Ernst Gustav Hillen and the said Otto Brassler individually and as mem-

bers of the firm of Kremelberg & Company and the said newly formed firm of Kremelberg & Company of the second part,

WITNESSETH that the said parties of the first part for the consideration hereinafter stated agree to sell to the said parties of the second part and the said parties of the second part agree to buy of the said parties of the first part the name of Kremelberg & Company together with the good will of the business heretofore conducted by the said co-partnership of Kremelberg & Company and the full and unrestricted use of the same.

The said parties of the first part do sell said name of Kremelberg & Company and the good will of the said business to the said parties of the second part for the sum of Ten Thousand Dollars, ($10,000.00) payable in five (5) installments of Two Thousand Dollars ($2,000.00) each at the place of business of the said parties of the second part in the City of New York on the fifteenth day in the month of December in the years 1914, 1915, 1916, 1917 and 1918, it being understood and agreed, however, that the said parties of the second part shall have the right to anticipate and make any and all of the payments aforesaid or any part or portion thereof or of either of such payments at such time or times before the same shall have become due as they shall elect.

IT IS FURTHER AGREED in consideration of the premises that in the event of the dissolution of the said newly formed or continuing partnership of Kremelberg & Company before the expiration of the period within which such payments are to be made and before the said payment of the said total sum of Ten Thousand Dollars, ($10,000.00) has been fully made, the whole of said

sum or the part thereof remaining unpaid by the said parties of the second part shall forthwith become due and payable to the said parties of the first part at the election of the said parties of the first part and upon default the said firm name of Kremelberg & Company shall revert to the said parties of the first part at the election of the said parties of the first part.

It Is Further Understood and Agreed in consideration of the premises that in the event of the failure of the said parties of the second part to make payment of any installment, the said name of Kremelberg & Company and the right to use the same shall at the election of the said parties of the first part revert to and become the property of the said parties of the first part and the said parties of the second part shall lose all right to the use of the said name of Kremelberg & Company from and after the date of such election, and

It Is Further Understood and Agreed in consideration of the premises that upon the final and complete payment of the said sum of Ten Thousand Dollars ($10,000.00) as herein provided by the said parties of the second part to the said parties of the first part, the right of the said parties of the second part to the use of the said firm name of Kremelberg & Company and the good will of the business of said co-partnership dissolved by the death of the said J. George Kremelberg otherwise known as John George Kremelberg aforesaid, shall become absolute, and

It Is Further Understood and Agreed in consideration of the premises that in the event of the dissolution of the said newly formed or continuing partnership of Kremelberg & Company before the expiration within which such payments are to be made and before said payment of the

total sum of Ten Thousand Dollars, ($10,000.00) has been fully made, or in the event of the failure of the said parties of the second part to make payment of any installment, the sums, if any, theretofore paid by the said parties of the second part to the said parties of the first part shall be retained by and absolutely belong to the said parties of the first part as and for payment for the use of the said good will and name of Kremelberg & Company for the period thereby terminated, and

IT IS FURTHER UNDERSTOOD AND AGREED in consideration of the premises that this agreement is to apply to and to bind the heirs, executors and administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the said parties herein have hereunto set their hands the day and year first above written.

(Signed)
ERNST GUSTAV HILLEN
OTTO BRASSLER
EDITH K. TOMPKINS
FIDELITY TRUST COMPANY

By JEROME TAYLOR,
Trust Officer
as executors of the Last Will of John George Kremelberg, deceased.

In Presence of
GEO. H. COREY
THEODORE HAMPSON
as to Edith Tompkins

Attest
HENRY SCHNEIDER,
Asst. Secretary (Seal)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

On this 30th say of October, 1913, before me personally appeared Edith K. Tompkins to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

THEODORE HAMPSON,
A Commissioner of Deeds for New Jersey.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

On the 31st day of October in the year 1913 before me personally came Jerome Taylor to me known who being by me duly sworn did depose and say that he resided in the City of Newark, State of New Jersey; that he is the Trust Officer of the Fidelity Trust Company the corporation which is one of the parties described and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

THEODORE HAMPSON,
A Commissioner of Deeds for New Jersey.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

On this 23rd day of October, 1913, before me personally appeared Otto Brassler, to me known and known to me to be one of the individuals described in and who executed the foregoing in-

strument, and he duly acknowledged to me that he executed the same.

GEO. H. COREY,
Notary Public 617
New York County.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

On this 23rd day of October, 1913, before me personally appeared Ernst Gustav Hillen, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

GEO. H. COREY,
Notary Public 617
New York County.

IN CHANCERY OF NEW JERSEY.

Between HARRIET ELLA KREMELBERG, *et al.*, *Complainants,* *and* EDITH K. TOMPKINS, *et al.*, *Defendants.*	*Stipulation June 14, 1916.*

Before His Honor, Vice-Chancellor Stevens.

Mr. Chauncey G. Parker, and Mr. S. S. Field for the complainants.

Mr. Louis Hood for the defendants.

Transcript of shorthand report in the above entitled matter, at the Chancery Chambers, Newark, New Jersey, on Wednesday, June 14, 1916.

Mr. Hood. It appears in the testimony that the New York business was a commission business, but it does not appear in the testimony that the Baltimore business was a commission business, and I understand that there is no dispute about that fact.

Mr. Parker. We admit that.

Mr. Field. There is no dispute that both businesses were commission businesses. I do not mean by that that they did not perhaps buy some tobacco, but that the main business was commission business in both companies.

Mr. Hood. I think it ought to appear upon the record that under the Maryland law a female is of age at eighteen for the purpose of having an accounting from her guardian and receiving the property that he holds for her.

Mr. Field. If your Honor please, that is partially correct.

Mr. Hood. I will read the article. "Article 93, Section 193, of Code of Maryland. On a ward's arrival at age, or on the marriage of a female ward, the guardian shall exhibit a final account to the orphans court, and shall deliver up, agreeably to the court's order, to the said ward, all the property of such ward in his hands, including bonds and other securities; and on failure, his bond may be put in suit and he shall be liable to attachment and fine not exceeding three hundred dollars; and a female shall be of age at eighteen years, for the purposes of this section."

The Court. Well, you will admit that that is a correct transcript of the Maryland provision on the subject?

Mr. Field. Yes. I was going to ask my brother, if it is material, that your Honor might take the Maryland code as the Maryland law.

Mr. Hood. Certainly.

Mr. Field. The reason I said that his statement was not altogether correct, while she is of age at eighteen to receive her money, her release is not binding until she is twenty-one, she is not of age to give a release.

The Court. Well, that also appears by the code.

Mr. Field. It appears by the decisions of the Court of Appeals; I do not know that it appears in the code about the release.

Mr. Parker. I think it will be agreed that on this point either side may cite any cases in the Maryland courts on this subject.

Mr. Hood. Oh, yes.

The Court. The decisions of the Maryland Court of Appeals may be referred to as authoritative evidence of what the law of Maryland is.

EXHIBIT C-24.

Dr. Harriett E. Kremelberg, Guardian for Anna M. Kremelberg, in account with J. D. Kremelberg & Co. Cr.

1884				1885			
Decbr.	31	To	transfer from J. D. Kremelberg's Children	$1304.20	Jany 1	By	Balance	$4631.33
"	"	"	Cash	78.00	Decbr 31	"	Interest @ 6%	277.86
"	"	"	transfer from J. D. Kremelberg's Estate	20.78	"	"	" Transfer from Income a/c.	782.95
"	"	"	" " Profit & Loss Acct.	399.99	"	"	" do " Farm "	368.46
"	"	"	Balance	4257.63				
				$6060.60				$6060.60
							By Balance	$4257.63

E. &. O. E. Jany. 1, 1885

Baltimore, December 31st, 1884.

J. D. KREMELBERG & CO.

Dr. Anna Maria Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1885						1885				
Decbr	31	To	Balance of Nbrs	16639		Jany	1	By	Balance	360 15328 $4257.63
"	"	"	Transfer from J. D. K.'s Children		$1577.90	Feby	28	"	1 Coupon Railway Equipment Co.	303 45 15.00
"	"	"	do " J. D. K.'s Estate		30.67	"	"	"	Dividend 17½ shs. Navassa Phosphate Co.	303 246 43.75
"	"	"	Balance			"	"	"	Dividend 150 shs. Despard Coal Co. @ $2.50	303 37.50
						May	1	"	1/6 of 11 mos. interest from K. & Co. to date	240 430 179.46
						"	31	"	1 Coupon Railway Equipment Co.	210 143 15.00
						"	"	"	Ground rent A. B. Debring, Due Mch. 1	210 52.50
						June	30	"	Interest on part Ground rent W. F. Frick $3000.-Jany 1-May 1. 4 Mos @ 6%	181 109 60.00
						July	31	"	5 Coupons Northern Central R. R. Co.	150 225 150.00
						Aug.	31	"	1 Coupon Railway Equip. Co.	120 18 15.00
						Octb.	31	"	Ground rent A. B. Debring, due Sept. 1	60 31 52.50
						Novbr	1	"	1/6 Interest 5 Mos. K. & Co. to date	60 59 97.89
						"	30	"	1 Coupon Railway Equipment Co.	31 5 15.00
						Decbr	31	"	Interest on part Ground rent W. F. Frick $3000.—6 Mos. to Nov. 1 @ 6%	90.00
						"	"	"	1/6 Profit on Lynchburg Property	306.27
						"	"	"	1/6 Income from Farm	223.14
						"	"	"	Interest 16639 Nbs. @ 6%	277.32
						"	"	"	Proportion of profit in 1885	
				16639						16639

E. & O. E.

Baltimore, December 31, 1885.

J. D. KREMELBERG & CO.

Balance 4498.74

Dr. Harriet E. Kremelberg, Guardian, Mary A. Kremelberg, in account with J. D. Kremelberg & Co. Cr.

1885							1885						
Jany	22	To our remittance on Berlin MJ 544.05 @ 96	339	444	$ 130.52		Jany	1	By Balance	360	16902	$4694.82
"	29	" our remittance on Berlin MJ 150. @ 96	332	120	36.00		Feby	28	" 1 Coupon Railway Equpmt Co.	303		15.00
Decbr	31	" Balance of Numbers		17592			"	"	" Dividend on 20 shs Navassa Phosphate Co.	303	312	50.00
"	"	" Transfer from J. D. K.'s Children			828.77		"	"	" Dividend on 150 shs Despard Coal	303		37.50
"	"	" do " J. D. K.'s Estate			30.67		May	1	" 1/6 of 11 mos Interest K&Co to date	240	430	179.46
"	"	" Balance					"	"	" 1 Coupon Railway Equipmt Co.	210	32	15.00
							June	30	" Interest on part Ground rent W. F. Frick $4500.—Jany 1. May 1— 4 Mos @ 6%	181	163	90.00
							"	"	" Dividend Maryland Fire Insurance Co.	181	15	7.50
							July	31	" 5 Coupons Northern Central R. R. Co.	150	225	150.00
							Aug.	31	" 1 Coupon Railway Equipmt Co.	120	18	15.00
							Novbr.	1	" 1/6 of 5 Mos Interest K&Co. to date	60	59	97.89
							"	31	" 1 Coupon Railway Equipment Co.			15.00
							Decbr.	31	" Interest on part Ground rent W. F. Frick $4500.—May 1-Nov. 1— 6 Mos @ 6%			135.00
							"	"	" Dividend Maryland Fire Insurance Co.			7.50
							"	"	" 1/6 Profit on Lynchburg Property			306.26
							"	"	" 1/6 Income from Farm			223.14
							"	"	" Interest 17592 Nbrs @ 6%			293.20
							"	"	" Proportion of profit in 1885			
				18156							18156	

E. & O. E.

Baltimore, December 31, 1885.

J. D. KREMELBERG & CO.

Balance 5,548.21

Dr. J. D. Kremelberg's Children in account with J. D. Kremelberg & Co. Cr.

1885							1885					
Jany	31	To Cash	330	776	$ 235.00		Decbr 31	By Balance of Numbers			7200	
Feby	28	" do	303	515	170.00		"	" " transfer to Miss H. Ella Kremelberg				
March	31	" do	270	810	300.00			Cash from office ($800.+$10.)	$790.00			
Apl	9	" Payment of K&Co.	262	262	100.00			Steamer Passage	125.00			
May	23	" Passage tickets	218	545	250.00			Proportion of Mark Paymts MJ 4490 @ 95.34	1070.20			
"	31	" Cash	210	1365	650.00			Proportion of interest	55.00			
June	15	" Payment of Avon Harlessem MJ 5000. @ 95	196	2328	1187.50							2040.20
Oct.	21	" Payment of Avon Harlessem MJ 3000. @ 95¼	70	499	714.37		"	" " transfer to Miss Anna M. Kremelberg				
Decbr.	17	" our remittance to Avon Harlessem on W. F. Fallenstein MJ 3000. @ 96	14	100	720.00			Cash from office ($675.+$10.)	$ 665.00			
"	31	" Interest @ 6% on 7200 Nbrs			120.00			Steamer Passage	125.00			
								Proportion of Mark Paymts MJ 3100. @ 95.34	738.90			
								Proportion of interest	49.00			
												1577.90
							"	" " transfer to Miss H. E. Kremelberg Guardian for Miss Mary A. K.				
								Proportion of Mark Payments MJ 3410. @ 95.34	$ 812.77			
								Proportion of interest	16.00			
												828.77
				7200	$4446.87						7200	$4446.87

E. & O. E.

Baltimore, Decbr 31, 1885.

J. D. KREMELBERG & CO.

Dr. Harriet Ella Kremelberg in account with J. D. Kremelberg & Co. Cr.

1885						1885				
March	6	To	our Remittance to Avon Harlessem MJ 289.18 @ 95	295	203	$ 68.68	Jany 1	By	Balance	360	47416	$13170.56
May	29	"	Loan to J. D. Kremelberg	212	7208	3400.00	" 31	"	Dividend 95 shs Mechanics Bank 3%	330	96	28.50
July	31	"	Freight on package	150	3	2.25	Feby 28	"	Dividend 150 shs Despard Coal Co. 25c	303	115	37.50
Decbr.	31	"	Payments to Gosman $4.20 Dr. Miles $10.			14.20	May 1	"	1/6 Interest K&Co. 11 Mos to date	240	430	179.47
"	"	"	Balance of Nbrs		48730		" 29	"	Proceeds 4 shs 1st Nat Bk @ 131+$524. Less Brok 50c psh. 2.	212	1107	522.00
"	"	"	Transfer from J. D. K.'s Children			2040.20	June 3	"	do 123 shs 1st Nat Bk @ 129 $2967. Less Brok 50c psh. 13.50	208	6144	2953.50
"	"	"	" " J. D. K.'s Estate			30.67	" 29	"	Interest from J. D. K. on $3400. 1 Mos @ 6%	182	31	17.00
"	"	"	Balance				" 17	"	Interest from Francis Rogue on Mtge $3800. 6 Mos @ 6%	194	184	95.00
							May 16	"	Dividend 30 shs 1st Nat Bank $3000. @ 4% less taxes	225	182	81.21
							July 31	"	6 Pittsburg & Connellsville Coupons @ $35.	150	315	210.00
							" 31	"	Dividend on 95 shs Mechanics Bk 3%	150	45	28.50
							Novbr. 1	"	1/6 Interest from K&Co. 6 Mos to date	60	59	97.89
							" 31	"	Dividend 3 shs 1st Nat Bank @ 4%	30	4	12.00
							Decbr. 16	"	Francis Rogue, interest on Mtge	15	14	95.00
							" 31	"	1/6 Profit Lynchburg Property			306.27
								"	1/6 Income from Farm			223.14
							" 29	"	6 Mos Interest on loan J. D. K. $3400.—6%	2	2	102.00
							" 31	"	Interest 48730 Nbrs. @ 6%			812.17
								"	Proportion of Profit in 1885			678.48
					56144						56144	

E. & O. E.

Baltimore, December 31, 1885.

J. D. KREMELBERG & CO.

Balance 14093.69

Dr. Harriet Ella Kremelberg, Guardian for Mary A. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1886						1886				
Decbr.	31	To	Balance of Numbers	21318		Jany	1	By	Balance	360 19973 $5548.21
"	31	"	Proportion of Payments in Bremen MJ 4450. @ 24.69		$1098.73	"	6	"	5 Coupons Northern Central R. R. Co.	355 533 150.00
"	31	"	Transfer from J. D. Kremelberg's Estate		43.17	"	23	"	Dividend on 50 Shares Md. Fire Insce Co.	338 27 7.50
"	31	"	Balance		5666.50	May	1	"	2 Coupons Railway Equipment Co. Feby 1. May 1	240 72 30.00
						June	4	"	Interest on part Mtge W. F. Frick due May 1 $4500. 6 Mos @ 6%	207 279 135.00
						July	1	"	5 Coupons Northern Central R. R. Co.	180 270 150.00
						Novbr.	1	"	1/6 Interest from K&Co. New York 1 year 6%	60 118 195.78
						"	10	"	2 Coupons Railway Equipment Co. Aug. 1. May 1	51 15 30.00
						Decbr.	8	"	Interest on part Mtge W. F. Frick due Nov. 1 $4500. 6 Mos @ 6%	23 31 135.00
						"	31	"	Dividend Md Fire Insce Co. due July 1	7.50
						"	31	"	1/6 Income from Farm	49.24
						"	31	"	Interest on 21318 Numbers @ 6%	355.30
						"	31	"	Proportion of Profit in 1886	14.87
				21318	$6808.40					21318 $6808.40
						1887				
						Jany	1	By	Balance	$5666.50

E. & O. E.

Baltimore, December 31, 1886.

J. D. KREMELBERG & CO.

Dr. Anna Maria Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1886					1886				
Decbr	31	To	Proportion of Payments in Bremen MJ 6100. @ 24.69	$1506.13	Jany	1	By	Balance	360 16196 $4498.74
"	31	"	Transfer from J. D. Kremelberg's Estate	43.17	"	6	"	5 Coupons Northern Central R. R. Co.	355 533 150.00
"	31	"	Balance of Numbers 17542		May	1	"	2 Coupons Railway Equipment Co. Feby 1-May 1	240 72 30.00
"	31	"	Balance	4146.62	"	19	"	Ground rent A. B. Debring due Mch 1	222 118 52.50
					June	4	"	Interest on part Mortgage W. F. Frick due May 1 $3000 6 Mos @ 6%	207 184 90.00
					July	1	"	5 Coupons Northern Central R. R. Co.	180 270 150.00
					Novbr	1	"	1/6 Interest from K&Co. New York 1 year 6%	60 118 195.78
					"	10	"	2 Coupons Railway Equipment Co. Aug. 1-Nov. 1	51 15 30.00
					Decbr	3	"	Ground rent A. B. Debring due Sept. 1 $52.50 Interest 3 Mos @ 6% 1.31	28 15 53.81
					"	8	"	Interest on part Mortgage W. F. Frick $3000. 6 Mos @ 6% Novbr 1	23 21 90.00
					"	31	"	1/6 Income from Farm	49.24
					"	31	"	Interest on 17542 Numbers @ 6%	292.37
					"	31	"	Proportion of profit in 1886	13.48
			17542	$5695.92					17542 $5695.92
					1887				
					Jany	1	By	Balance	$4146.62

E. & O. E.

Baltimore, December 31st, 1886.

J. D. KREMELBERG & CO.

Dr. Miss Harriet E. Kremelberg, Guardian for Mary A. Kremelberg in account with J. D. Kremelberg & Co. Cr.

Dr. Miss Harriet E. Kremelberg, Guardian for Mary A. Kremelberg in account with J. D. Kremelberg & Co. Cr.

1887									
July	10	To	$4000. Col. & Greeno. 1st Mtge Bonds at average price of whole purchase ($1055.455)	171		$ 4221.82			
		"	$500. R. R. Equipment Co. Bond 5%		8078				
			June & Decbr. at par, & Interest 30 days	171		502.08			
Decbr.	31	"	Payments MJ 4530. @ 24.46			1108.03			
"	31	"	Transfer from J. D. Kremelberg's Estate			45.04			
"	31	"	Balance of Numbers-		24547				
"	31	"	Balance			7755.86			
					32625	$13632.83		32625	$13632.83
1888									
Jany	1	By	Balance						$ 7755.86

1887							
Jany	1	By	Balance	360	20401	$ 5666.50	
"	3	"	Dividend Md. Fire Insurance Co.	358	29	7.50	
"	7	"	5 Coupons Northern Central R. W. Co.	354	531	150.00	
Febry	9	"	Dividend on 20 shares Navassa Phosphate $3. p. shre.	322	193	60.00	
"	12	"	1 Coupon R. R. Equipment Co. due Febry 1	319	198	15.00	
"	15	"	1/5 share Brooklyn Property	316	1179	372.55	
May	10	"	Interest on part Mortgage W. F. Frick $4500. 6 Mos @ 6% due May 1	231	312	135.00	
July	7	"	5 Coupons N. C. R. W. Co.	174	261	150.00	
"	10	"	3/8 Proceeds Frick Mortgage Account	171	7710	4509.28	
Aug.	5	"	1/6 Proceeds Arkansas Property $563.87 Amount due as per statement 584.12	146	1676	1147.99	
Novbr	1	"	1/6 Interest from Kremelberg N. Y. 1 year to date	60	118	195.78	
Decbr	2	"	3 Coupons R. R. Equipment Co., May, Aug. Nov. $15. ea.	29	17	45.00	
"	2	"	1 Coupon $500. R. R. Equipment Co.@ 5% due Dec. 1	29		12.50	
"	31	"	Dividend Md Fire Insce Co. July 1			7.50	
"	31	"	Interest @ 6% on 24547 Number			409.12	
"	31	"	Proportion of Profit in 1887			749.11	
					32625	$13632.83	

E. & O. E.

Baltimore, December 31st, 1887

J. D. KREMELBERG & CO.

Balance on hand Jany 1/87		$5666.50
Add Principal a/c—Brooklyn Property	$ $372.55	
Frick Mortgage	4509.28	
Arkansas Property	1147.99	
	$6029.82	
Less Invested, C. & G., & R. R. E. Co.	4723.90	
		1305.92
Total Principal		$6972.42
Add Income a/c—Interest on Investments	$1187.40	
Profits from J. D. K. & Co.	749.11	
	$1936.51	
Less Expended in 1887	1153.07	
Saved from Income		783.44

Dr. Miss Anna Maria Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1887						1887			
July	10	To	$3000. Col. & Greeno. 1st Mtge Bonds at average price of whole purchase ($1055.455)	171	5414	$ 3166.37	Jany 1 By Balance	360	14929	$ 4146.62
Decbr	31	"	Payment MJ 6020. @ 24.46			1472.48	" 7 " 5 Coupons Northern Central R. W. Co.	354	531	150.00
"	31	"	Transfer from J. D. Kremelberg's Estate			45.04	Feby 9 " Dividend 17½ Shs. Navassa Phosphate $3. p. sh.	322	169	52.50
"	31	"	Balance of Numbers		18728		" 12 " 1 Coupon R. R. Equipment Co., due Feby 1	319	48	15.00
"	31	"	Balance			5556.73	" 15 " 1/5 Share of Brooklyn Property	316	1179	372.55
							Apl 30 " Interest on Ground rent A. B. Debring d. Mch 1	241	125	52.50
							May 10 " Interest on part Mortgage W. F. Frick $3000. 6 mos @ 6% due May 1	231	208	90.00
							July 7 " 5 Coupons Northern Central R. W. Co.	174	261	150.00
							" 10 " 2/8 Proceeds Frick Mortgage Acct. ($12024.76)	171	5140	3006.20
							Aug. 5 " 1/6 Proceeds Arkansas Property $563.87			
							Amount due as per statement 409.12	146	1421	972.99
							Novbr 1 " 1/6 Interest from Kremelberg & Co. N. Y. 1 year to date	60	118	195.78
							Decbr 2 " 3 Coupons R. R. Equipment Co., May, Aug., Novbr. @ $15.00	29	13	45.00
							" 31 " Interest on 18728 Numbers & 6%			312.13
							" 31 " Proportion of Profit in 1887			679.35
					24142	$10240.62			24142	$10240.62
							1888			
							Jany 1 By Balance			$ 5556.73

E. &. O. E.

Baltimore, December 31st, 1887.

J. D. KREMELBERG & CO.

Balance on hand Jany 1, 1887		$4146.62
Add Principal a/c—Brooklyn Property	$ 372.55	
Frick Mtge	3006.20	
Arkansas Property	972.99	
	$4351.74	
Less Invested in C. & G. 1st Mtge	3166.37	
		1185.37
Total Principal		$5331.99
Add Income a/c—Interest on Investments	$1062.91	
Profits from J. D. K. & C.	679.35	
	$1742.26	
Less Expended in 1887	1517.52	
Saved from Income		224.74
Balance Jany 1/88 as above		$5556.73

Interest from A. B. Debring on Mtge for $1750 for 6 mos @ 6%—$52.50 due Sept. 1/87 had not been paid until this spring, when it was paid with interest, and will appear in the account of 1888. The security is perfectly good, but Debring is very slow pay. I shall be glad, if at some future time when here, you would sell this out and invest in something else.

Dr. Miss Harriet Ella Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1887							1887						
May	31	To	Subscription to "Sunday American"	210	2	$ .75	Jany	1	By	Balance	360	50375	$13993.46
"	31	"	Payments MJ 8450. @ 24.46			2066.86	"	7	"	6 Coupons Pittsbg & Connelsv. R. R.	354	743	210.00
"	31	"	Transfer from J. D. Kremelberg's Estate			45.04	Feby	1	"	Dividend Mechanics Bank $9.50. @ 3%	330	96	28.50
"	31	"	Balance of Numbers	54616			"	15	"	1/5 Share of Brooklyn Property	316	1179	372.55
"	31	"	Balance			17244.45	June	16	"	Interest on Mortgage F. Rogue	195	185	95.00
							"	29	"	Interest on Loan to J. D. Kremelberg $3400. 6 mos 6%	182	186	102.00
							July	7	"	6 Coupons Pittsbg & Connelsv. R. R.	174	365	210.00
							Aug.	5	"	1/6 Proceeds Arkansas Property $563.86 Amount due as per statement 364.12	146	1355	927.98
							Novbr	1	"	1/6 Interest from Kremelberg & Co. N. Y. 1 year to date	60	118	195.78
							Decbr	16	"	Interest on Mortgage F. Rogue	15	14	95.00
							"	29	"	Interest on Loan to J. D. Kremelberg $3400. 6 mos	2	2	102.00
							"	31	"	Dividend First Nat. Bank due May 1.—less taxes			4.06
							"	31	"	Dividend First Nat. Bank due Novbr. 1			9.00
							"	31	"	Interest on 54616 Numbers @ 6%			910.27
							"	31	"	Proportion of Profit in 1887			2101.50
				54618		$19357.10						54618	$19357.10

1888
Jany 1 By Balance $17244.45

E. & O. E.

Baltimore, December 31st, 1887.

J. D. KREMELBERG & CO.

Dividend due in July 1887 on 95 shs Mechanics Bank—$950. @ 3% —$28.50 was overlooked to be collected then, and was collected with the Jany /88 dividend. It therefore appears in the 1888 account.

Balance Jany 1, 1887		$13993.46
Add Principal a/c—Brooklyn Property	$ 372.55	
Arkansas Property	927.98	
		1300.53
Total Principal		$15293.99
Add Income a/c—Interest on Investments	$1961.61	
Profits from J. D. K. & Co.	2101.50	
	$4063.11	
Less Expended in 1887	2112.65	
Add—Saved from Income		1950.46
Balance Jany 1/88 as above		$17244.45

Exhibit C. 24.

Dr. Miss Harriet Ella Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1888									1888								
July	7	To	1/6 part Compromise "Jenkins Suit"	174	666	$ 383.33			Jany	1	By	Balance	360		$17244.45
									"	1	"	Dividend 95 Shares Mechanics Bank 3% for July, 1888	360	62183	28.50
Decbr	31	"	1/6 Expenses J. D. Kremelberg's Estate			36.94			"	3	"	6 Coupons Pittsb. & Connelsv. $7000.—@6%	358	752	210.00
"	"	"	Proportion of Payments			2082.86			"	10	"	Dividend 95 Shares Mechanics Bank 3%	351	102	28.50
"	"	"	Balance of Numbers		63325				June	16	"	Interest on Mortgage Francis Rogue	195	185	95.00
"	"	"	Proportion of Loss in 1888			562.63			"	29	"	Interest on Loan to J. D. Kremelberg $3400.—6%	182	186	102.00
"	"	"	Balance			16702.74			July	2	"	6 Coupons Pittsbg & Connelsville R. R.	179	376	210.00
									"	10	"	Dividend 95 Shares Mechanics Bank	171	50	28.50
									Novbr	1	"	1/5 Interest from K. & Co. New York	60	118	195.78
									Decbr	1	"	Dividend 1st Nat. Bank May 15 $6.35 Nov. 15 $9.	30	5	15.35
									"	16	"	Interest on Mortgage Francis Rogue	15	14	95.00
									"	26	"	1/6 Proceeds of Arkansas Property	5	18	358.00
									"	29	"	Interest on Loan to J. D. Kremelberg	2	2	102.00
									"	31	"	Interest on 63325 Numbers @ 6%			1055.42
					63991	$19768.50								63991	$19768.50
1889															
March	30	To	$5000.—C. F. & Yadkin Valley 1st Mtge 6% Bond Series B. @ 98½+¼			$ 4937.50			1889						
									Jany	1	By	Balance			$16702.74

E. & O. E.

Baltimore, December 31st, 1888.

J. D. KREMELBERG & CO.

Dr. Miss H. E. Kremelberg, Guardian, Mary A. Kremelberg, in a/c with J. D. Kremelberg & Co. Cr.

1888							1888						
Apl	25	To	Assessment 20 Shs Navassa Phosphate @ 30c p. share	246	15	$ 6.00	Jany	1	By	Balance	360	27922	$7755.86
July	7	"	1/6 Compromise "Jenkins Suit"	174	666	383.34	"	3	"	4 Coupons Columbia & Greenville R. R. $4000.—@ 6%	358		120.00
Decbr	31	"	1/6 Expenses J. D. Kremelberg's Estate			36.94	"	"	"	5 Coupons Northern Central R. W. $5000.—@ 6%	358	967	150.00
"	"	"	Proportion of Payments			1487.95	Jany	31	"	Dividend Md Fire Insurance Co.	330	26	7.50
"	"	"	Balance of Numbers		28979		May	1	"	2 Coupons R. R. Equipment Co. Febry 1—May 1	240	72	30.00
"	"	"	Proportion of Loss in 1888			200.56	June	1	"	1 Coupon R. R. Equipment Co. $500.—5%	210	27	12.50
"	"	"	Balance			7305.33	July	2	"	4 Coupons Columbia & Greenville R. R. $4000—6%	179		120.00
							"	"	"	5 Coupons Northern Central R. W. $5000.—6%	179	483	150.00
							Aug.	25	"	Dividend Md Fire Insurance Co.	126	10	7.50
							Novbr	1	"	1/5 Interest from Kremelberg & Co. New York	60	118	195.78
							"	3	"	2 Coupons R. R. Equipment Co. Aug.1—Novbr. 1	58	17	30.00
							Decbr	26	"	1/6 Proceeds Arkansas Property	5	18	358.00
							"	31	"	Interest 28979 Numbers @ 6%			482.98
					29660	$9420.12						29660	$9420.12

1889
Jany 1 By Balance $7305.33

E. & O. E.

Baltimore, December 31st, 1888.

J. D. KREMELBERG & CO.

Interest on $500.—R. R. Equipment Co. Bond due Decbr 1st—$12.50 was not collected until 1889, and will be credited in that year.

Dr. Miss Anna Maria Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1888								1888					
Apl	25	To	Assessment Navassa Phosphate 17½ sh. @ 30c p. sh.	241	12	$ 5.25		Jany	1	By	Balance	360	20005	$5556.73
July	7	"	1/6 share Compromise "Jenkins Suit"	174	666	383.33		"	3	"	3 Coupons Columbia & Greenville R. R. $3000.—@ 6%	358		90.00
Decbr	31	"	1/6 Expenses J. D. Kremelberg's Estate			36.94		"	"	"	5 Coupons Northern Central R. W. $5000.—@ 6%	358	859	150.00
"	"	"	Proportion of Payments			1487.96		March	5	"	Ground rent A. B. Debring due Sept. 1/87 $52.50			
"	"	"	Balance of Numbers		21066						Interest 4 Mos @ 6% 1.05	296	160	53.55
"	"	"	Proportion of Loss in 1888			181.88		May	1	"	2 Coupons R. R. Equipment Co. Febry. 1—May 1	240	72	30.00
"	"	"	Balance			5067.54		July	2	"	3 Coupons Columbia & Greenville R. R.	179		90.00
								"	"	"	5 Coupons Northern Central R. W.	179	430	150.00
								Sept.	1	"	Ground rent A. B. Debring due March 1 $52.50			
											Interest 6 Mos @ 6% 1.57	120	65	54.07
								Novbr	1	"	1/5 Interest from Kremelberg & Co. New York	60	118	195.77
								"	3	"	2 Coupons R. R. Equipment Co. Aug. 1—Nov. 1	58	17	30.00
								Decbr	26	"	1/6 Proceeds of Arkansas Property	5	18	358.00
								"	31	"	Ground rent A. B. Debring due Sept. 1 $52.50			
											Interest 4½Mos @ 6% 1.18			53.68
								"	"	"	Interest 21066 Numbers @ 6%			351.10
				21744		$7162.90						21744		$7162.90
								1889						
								Jany	1	By	Balance			$5067.54

E. & O. E.

Baltimore, December 31st, 1888.

J. D. KREMELBERG & CO.

Ground rent from A. B. Debring due in 1887 was paid in March, 1888.

Exhibit C. 24.

Dr. Miss Harriet Ella Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1889								1889					
Jany	19	To	payment to George Kremelberg	342	4094	$ 1197.00		Jany	1	By	Balance	360	60131	$16702.74
March	30	"	$5000.—Yadkin Valley 1st Mtge Bond @ 98½+¼	271	13382	4937.50		"	2	"	6 Coupons Pittsburg & Connelsv. $6000.—@ 7%	359	744	210.00
Decbr	31	"	1/6 Expenses J. D. Kremelberg's Estate			22.51		"	3	"	Dividend 95 Shares Mechanic Bank @ 30c p. sh.	358	104	28.50
"	"	"	Proportion of payments & Interest on same			2169.72		May	7	"	Interest from F. Rogue, on Mtge Loan due June 16	234	222	95.00
"	"	"	Balance of Numbers		44843			June	2	"	5 Coupons Yadkin Valley $5000.—@ 6%	209	314	150.00
"	"	"	Balance			11559.91		"	29	"	Interest on Loan to J. D. Kremelberg $3400.—6% for 6 mos	182	186	102.00
								July	1	"	6 Coupons Pittsburg & Connellsv. $6000.—@ 7%	180	430	210.00
								"	1	"	Dividend 95 Shares Mechanics Bank	180		28.50
								Novbr	1	"	1/5 Interest from Kremelberg & Co. N. Y. 1 year	60	118	195.78
								Decbr	1	"	Dividend 1st Nat. Bank May $6.77—Novbr $9.	30	5	15.77
								"	2	"	5 Coupons Yadkin Valley R. R. $5000.—@ 6%	29	44	150.00
								"	11	"	Interest from F. Rogue on Mtge Loan due Dec. 16	20	19	95.00
								"	29	"	Interest from J. D. Kremelberg for 6 Mos	2	2	102.00
								"	31	"	1/6 Payment of Note "Arkansas Property"			194.70
								"	"	"	Interest on 44843 Numbers @ 6%			747.38
								"	"	"	Proportion of Profit for 1889			859.27
					62319	$19886.64							62319	$19886.64
								1890						
								Jany	1	By	Balance			$11559.91

E. & E. O.

Baltimore, December 31st, 1889.

J. D. KREMELBERG.

Dr. Miss Anna Maria Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1889						1889				
Decbr	31	To	1/6 Proportion Exp. J. D. Kremelberg's Estate		$ 22.51	Jany	1	By	Balance	360 18245 $5067.54
"	"	"	Proportion of payments & Interest on same		1550,52	"	2	"	3 Coupons Columbia & Greenv. $3000.—@6%	359 862 90.00
"	"	"	Balance of Numbers	19869		"	2	"	5 Coupons N. C. R. Wy Co. $5000.—@6%	359 150.00
"	"	"	Balance		5378.27	May	25	"	2 Coupons R. R. Equipmt Co. $1000.—@6%	216 65 30.00
						July	1	"	3 Coupons Columbia & Greenv. $3000.—@6% Febry 1—May 1	180 432 90.00
						"	1	"	5 Coupons Northern Central R. Co. $5000.—@6%	180 150.00
						"	20	"	Ground rent A. B. Debring due Mch 1 $52.50 Interest 4 Mos @6% 1.05	161 87 53.55
						Aug.	21	"	1 Coupon R. R. Equipment Co. $1000.—@6% Aug. 1	130 20 15.00
						Novbr	1	"	Interest from Kremelberg & Co. N. Y. 1 year	60 118 195.78
						"	1	"	Ground rent A. B. Debring due Sept. 1 $52.50 Interest 2 Mos @ 6% .52	60 32 53.02
						"	9	"	1 Coupon R. R. Equipment Co. $1000.—@6% Novbr 1	52 8 15.00
						Decbr	31	"	1/6 Payment of Note Arkansas Property	194.70
						"	"	"	Interest 19869 Numbers @6%	331.15
						"	"	"	Proportion of Profit 1889	515.56
				19869	$6951.30					19869 $6951.30
						1890				
						Jany	1	By	Balance	$5378.27

E. & O. E.

Baltimore, December 31st, 1889.

J. D. KREMELBERG & CO.

Dr. Miss H. Ella Kremelberg, Guardian for Mary A. Kremelberg, in a/c with J. D. Kremelberg & Co. Cr.

1889							1889				
July	3	To	Payment to Dr. Keech	178	82	$ 46.00	Jany	1	By	Balance	360	26298	$7305.33
Decbr	31	"	1/6 Expenses J. D. Kremelberg's Estate			22.51	"	2	"	4 Coupons Columbia & Greenville $4000.—@6%	359		120.00
"	"	"	Proportion of Payments & Interest on same			1504.98	"	2	"	5 Coupons Northern Central Rwy $5000.—@6%	359	1016	150.00
"	"	"	Balance of Numbers		27992		"	2	"	1 Coupon R. R. Equipment Co. $500.—@5% due Dec. 1/88	359		12.50
"	"	"	Balance			7928.76	"	31	"	Dividend Md Fire Insce Co. $250.—@3%	330	26	7.50
							May	25	"	2 Coupons R. R. Equipment Co. $1000.—@6% due Febry 1—May 1	216	65	30.00
							July	1	"	5 Coupons Northern Central R'wy $5000.—@6%	180		150.00
							"	1	"	4 Coupons Columbia & Greenville $4000.—@6%	180	509	120.00
							"	1	"	1 Coupon R. R. Equipment Co. $500.—@5%	180		12.50
							Aug.	1	"	Dividend Md Fire Insce Co. $250.—@3%	150	12	7.50
							"	21	"	1 Coupon R. R. Equipment Co. $1000.—@6% due Aug. 1	130	20	15.00
							Novbr	1	"	1/5 Interest from Kremelberg & Co. N. Y. 1 year	60	118	195.77
							"	9	"	1 Coupon R. R. Equipment Co. $1000.—@6% due Nov.1	52	8	15.00
							Decbr	13	"	1 Coupon R. R. Equipment Co. $500.—@5% due Dec. 1	18	2	12.50
							"	31	"	1/6 Payment of Note "Arkansas Property"			194.70
							"	"	"	Interest on 27992 Numbers @ 6%			466.53
							"	"	"	Proportion of Profit for 1889			687.42
					28074	$9502.25						28074	$9502.25
							1890						
							Jany	1	By	Balance			$7928.76

E. & O. E.

Baltimore, December 31st, 1889.

J. D. KREMELBERG & CO.

Exhibit C. 24.

Dr. Miss Mary A. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1890								1890							
Jany	31	To	Court expenses, releasing guardian	330	10	$	2.80	Jany	1	By	Balance	360	28544	$7928.76
Decbr	"	"	Transfer from J. D. Kremelberg's Estate				6.99	"	2	"	Coupons Col & Greenville $4000.—@6%	359		120.00
"	"	"	Transfer from J. D. Kremelberg's Children				1671.58	"	"	"	Coupons North Central R. R. Co. $5000.—6%	359	969	150.00
"	"	"	Balance of Numbers		30268			"	11	"	Dividend Md Fire Insurance Co.	350	28	7.50
"	"	"	Balance				8313.87	May	1	"	Coupons R. R. EquipmentCo. $1000.—@6% Febry 1—May 1	240	72	30.00
								June	1	"	Coupons R. R. Equipment Co. $500.—@5%	210	27	12.50
								July	1	"	Coupons Col & Greenville $4000.—@6%	180	216	120.00
								"	2	"	Coupons North Central $5000.—@6%	179	269	150.00
								"	15	"	Dividend Md Fire Insurance Co.	166	13	7.50
								Novbr	1	"	Interest from Kremelberg & Co. New York	60		195.78
								"	1	"	Coupons R. R. Equipment Co. $1000.—@6% Aug.—Novbr	60	136	30.00
								Decbr	1	"	Coupons R. R. Equipment Co. $500.—@5%	30	4	12.50
								"	31	"	1/6 payment Arkansas Property			51.71
								"	"	"	Interest @ 6% on 30268 Numbers			504.47
								"	"	"	Proportion of Profit			674.52
					30278		$9995.24						30278	$9995.24
								1891						
								Jany	1	By	Balance			$8313.87

E. & O. E.

Baltimore, December 31st, 1890.

Exhibit C. 24.

Dr. Miss Anna M. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1890						1890					
Decbr	31	To	Transfer from J. D. Kremelberg's Estate		$ 6.98	Jany	1	By	Balance	360 19361	$5378.27
"	"	"	Transfer from J. D. Kremelberg's Children		1642.76	"	2	"	Coupons Col & Greenville $3000.—@6%	359 862	90.00
"	"	"	Balance of Numbers	21021		"	2	"	Coupons Nor. Central Rwy Co. $5000.—@6%	359	150.00
"	"	"	Balance		5478.30	May	1	"	Coupons R. R. Equipment Co. $1000.—@6% Febry—May	240	30.00
						"	1	"	Ground rent A. B. Debring, due Mar. 1 $52,50		
									Interest 2 Mos @ 6% .52	240 199	53.02
						July	1	"	Coupons Col. & Greenville $3000.—@6%	180 432	90.00
						"	1	"	Coupons Nor. Central Rwy Co. $5000.—@6%	180	150.00
						Novbr	1	"	Coupons R. R. Equipment Co. $1000.—@6% Aug.— Nov.	60	30.00
						"	1	"	Interest from Kremelberg & Co. New York	60 167	195.78
						"	1	"	Ground rent A. B. Debring, due Sept. 1 $52.50		
									Interest 2 Mos @6% .52	60	53.02
						Decbr	31	"	1/6 payments Arkansas Property		51.71
						"	"	"	Interest @6% on 21021 Numbers		350.35
						"	"	"	Proportion of Profit		505.89
				21021	$7128.04					21021	$7128.04
						1891					
						Jany	1	By	Balance		$5478.30

E. & O. E.

Baltimore, December 31st, 1890.

Dr. Miss H. Ella Kremelberg, in account with J. D. Kremelberg & Co., Baltimore. Cr.

1892								1892							
June	29	To	Purchase of Ground rent from J. D. K. less loan	182	4428	$ 2433.33		Jany	1	By	Balance	360	37562	$10433.73
Novbr	3	"	$3000.&Sav. Am. & Montg 1st mtg bond 6%	58	1386	2388.75		"	2	"	$6000.—Pittsburgh Connev. 1st mtg 7%	359	754	210.00
"	12	"	Loan to Tac. Prk. Md. on 1st mtg bond 6%	49	1470	3000.00		"	31	"	div. 95 shs. Nat. Mechanics Bank 3%	330	96	28.50
June	29	"	Transfer from J. D. Kremelberg	182	62	33.63		Febry	10	"	$2000.—Chat. El. R. R. 1st mtg bonds	321	193	60.00
Decbr	31	"	Transfer from J. D. Kremelberg's estate			637		Apl	1	"	$1000.—Va. Midl. 5th Series 5%	270	68	25.00
"	"	"	Transfer from J. D. Kremelberg's Children			2604.25		May	25	"	Transfer from Miss H. E. K. Adm'x	216	138	64.05
"	"	"	Balance of Numbers		45339			June	29	"	6 mos. Interest on loan to J. D. K.	182	186	102.00
"	"	"	Balance			12163.20		"	1	"	$5000—Cape Fear & Y. V. 1st mtg bonds 6%	210	315	150.00
								July	1	"	$6000—Pittsburgh & Connev. 7%			210.00
								"	1	"	$4000—Columbia & Greenv. 6%	180	774	120.00
								"	1	"	$4000—Salem bonds 5%			100
								Oct.	1	"	Repayment of Loan to Francis Rayne			3800.00
								"	1	"	Interest due on same	90	3563	158.07
								"	1	"	Magistrate costs			.75
								Novbr	1	"	¼ Interest on $16314.93 from Kremelberg & Co. N. Y.	60	147	244.72
								"	2	"	$2000.—Chat. El. R. R.			60.00
								"	2	"	$1000.—Va. & Midl.	59	68	25.00
								"	2	"	$1000.—N. W. N. Car			30.00
								"	10	"	div. 30 shares 1st National Bank due May 10	51	9	8.03
								"	"	"	div. 30 shares 1st National Bank due Novbr 10			9.00
								"	1	"	div. 95 shares Nat. Mec. Bank 3% due July 10	60	17	28.50
								June	30	"	Transfer from Mrs. E. V. de Gr. Trustee	181	6657	3677.71
								Decbr	15	"	$5000.—C. F. Y. V. R. R. due Decbr 1	16	24	150.00
								"	29	"	Interest from Mrs. Anna S. Renthe	2	3	145.83
								July	1	"	Transfer from Farm Acct	180	111	1172.73
								Decbr	31	"	Proportion of Profit for 1892			860.26
								"	31	"	Interest Numbers 45339/6%			755.65
					52685	$22629.53							52685	$22629.53

Baltimore, December 13st, 1892.
E. & O. E.

1893
Jany 1 By Balance $12163.20

Dr. Miss Mary A. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1893						1893					
Decbr	31	To	Transfer from J. D. Kremelberg's Estate		$ 63.50	Jany	1	By	Balance	360	47473	$12842.28
"	"	"	Transfer from J. D. Kremelberg's Children		2256.09	"	1	"	$1000.—Pittsburgh & Conne. due Jany 1	7% 360		35.00
"	"	"	Balance Numbers	48676		"	1	"	$4000.—Columbia & Greenville due Jany 1	6% 360		120.00
"	"	"	Balance		13112.73	"	1	"	$3000.—Georgia Pacific due Jany 1	6% 360		90.00
						"	1	"	$5000.—Denver & Rio G. due Jany 1	4% 360		100.00
						May	6	"	$1000.—Va. Mid. R. due Mch 1	5% 235		25.00
						"	"	"	$2000.—Bristol due May 1	6% 235	200	60.00
						"	27	"	$3400.—6 Mths 5% Mtge E. Blackford	214	182	85.00
						July	1	"	$1000.—Balto Traction Co. due June 1	5% 180		25.00
						"	"	"	$1000.—Pittsburgh & Conn. due July 1	7% 180		35.00
						"	"	"	$5000.—Denver & Rio G. due July 1	4% 180	288	100.00
						Aug.	1	"	$1000.—R. R. Equip. Co. due June 1	5% 150		25.00
						"	"	"	$4000.—Col. & Greenville due July 1	5% 150		100.00
						"	"	"	$3000.—Georgia Pacific due July 1	5% 150	300	75.00
						Novbr	1	"	¼ Interest on $16314.93 from K. & Co. N. York 1 yr	6% 60	147	244.72
						"	8	"	$2000.—Bristol due Nov. 1	6% 53	32	60.00
						"	26	"	$3400.—6 Mths 5% Mtge E. Blackford	35	30	85.00
						"	29	"	$1.000.—Balto Traction Co. due Dec. 1	5% 32		25.00
						"	"	"	$1000.—Va Mid. R. due Sept. 1	5% 32		25.00
						"	"	"	$1000.—R. R. Equip. Co. due Dec. 1	5% 32	24	25.00
						Decbr	31	"	Dividend on Md Fire Insce Co. due Jany 93			7.50
						"	"	"	Dividend on Md Fire Insce Co. due July 93			7.50
						"	"	"	Interest Numbers 48676 @ 6%			811.27
						"	"	"	Porportion of Profit			424.05
				48676	$15432.32						48676	$15432.32
						1894						
						Jany	1	By	Balance			$13112.73

E. & O. E.

Baltimore, January 1,1894.

J. D. KREMELBERG & CO.

Exhibit C. 24.

Dr. Miss Anna M. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1893						1893							
Decbr	31	To	Transfer from J. D. Kremelberg's Estate		$ 63.49	Jany	1	By	Balance		360	44960	$12159.01
"	"	"	Transfer from J. D. Kremelberg's Children		2196.07	"	1	"	$5000.—Northern Central R. R. due Jany 1	6%	360		150.00
"	"	"	Balance Numbers	46151		"	1	"	$3000.—Columbia & Greenville due Jany 1	6%	360		90.00
"	"	"	Balance		12290.95	"	1	"	$3000.—Georgia Pacific due Jany 1	6%	360		90.00
						"	3	"	$1000.—Salem due Jany 1	5%	358	90	25.00
						Feby	13	"	$2000.—Chat. El. St. R. due Feby 1	6%	318	191	60.00
						May	6	"	$1000.—Va Mid. R. due Mch 1	5%	235	59	25.00
						July	1	"	$1000.—Salem due July 1	5%	180	45	25.00
						Aug.	1	"	$5000.—Northern Central R. R. due July 1	6%	150		150.00
						"	1	"	$2000.—Chat. El. St. R. due Aug. 1	6%	150		60.00
						"	1	"	$1000.—Balto Traction Co. due June 1	5%	150		25.00
						"	1	"	$3000.—Col. & Greenville due July 1	5%	150		75.00
						"	1	"	$3000.—Ga. Pacific due July 1	5%	150	578	75.00
						Septbr	1	"	A. B. Debering 6 Mths Grd Rent due Mch 1 $5250 & Int. $1.05		120	65	53.55
						Novbr	1	"	¼ interest on $16314.93 fr. K. & Co. New York 1 yr	6%	60	147	244.72
						"	29	"	$1000.—Va Mid. R. due Sept. 1	5%	32		25.00
						"	"	"	$1000.—Balto Traction Co. due Dec. 1	5%	32	16	25.00
						Decbr	31	"	Interest Numbers 46151 @	6%			769.18
						"	"	"	Proportion of Profit				424.05
				46151	$14550.51							46151	$14550.51
						1894							
						Jany	1	By	Balance				$12290.95

E. & O. E.

Baltimore, January 1, 1894.

J. D. KREMELBERG & CO.

Exhibit C. 24.

Dr. Miss H. Ella Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1893						1893					
Decbr	31	To	Transfer from J. D. Kremelberg's Estate		$ 63.50	Jany	1	By	Balance	360	44975	$12163.20
"	"	"	Transfer from J. D. Kremelberg's Children		2686.09	"	"	"	$6000—Pittsburgh & Conne'v due Jany 1 @ 7%	360		210.00
"	"	"	Balance Numbers	47439		"	"	"	$4000—Columbia & Greenville due Jany 1 @ 6%	360		120.00
"	"	"	Balance		12728.72	"	3	"	$4000—Salem due Jany 1 @ 5%	358	358	100.00
						Feby	18	"	$2000—Chat. El. St. R. due Feby 1 @ 6%	313	188	60.00
						May	6	"	$1000—Va Midd R. due Mch 1 @ 5%	235	59	25.00
						"	27	"	$3000—6 Mths Interest D. G. Purman	214	193	90.00
						June	7	"	$5000—Cape Fear Y. V. R. R. @ 6%	204	306	150.00
						"	6	"	Mrs. Reuthe 6 Mths Ground Rent due June 29	205	299	145.83
						July	1	"	$6000—Pittsburgh & Connev. due July 1 7%	180	378	210.00
						Aug.	1	"	$2000—Chat. El. St. R. due Aug. 1 6%	150	90	60.00
						"	"	"	$4000—Salem due July 1 5%	150	150	100.00
						"	"	"	$4000—Col. & Greenville due July 1 5%	150	150	100.00
						Novbr	16	"	$3000—6 Mths Interest D. G. Purman	45	41	90.00
						"	29	"	Dividend First Natl Bank (May $8.03—Novbr $9.00)	32		17.03
						"	"	"	$5000—Cape Fear Y. V. R. R. due Decbr 1 6%	32		150.00
						"	"	"	$1000—Va Midd R. due Sept. 1 5%	32		25.00
						"	"	"	Dividend 95 Sh. Natl Mech. Bank (Jany $28.50—July $28.50)	32	80	57.00
						"	1	"	¼ Interest on $16314.93 fr. K. & Co. N. York 1 yr 6%	60	147	244.72
						Decbr	14	"	Mrs. Reuth 6 Mths Ground Rent due Dec. 29	17	25	145.83
						"	31	"	Interest Numbers 47439 @ 6%			790.65
						"	"	"	Proportion of Profit			424.05
				47439	$15478.31						47439	$15478.31
						1894						
						Jany	1	By	Balance			$12728.72

E. & O. E.

Baltimore, January 1, 1894.

J. D. KREMELBERG & CO.

Dr. Miss Mary A. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

Apl	11	To	City of Richmond 5% $1000.—@ 101¼ & Int.		260	2670	$ 1026.53	1894 Jany	1	By	Balance		360	47207	$13112.73
Sept.	1	"	City of Athens 5% 1922 $2000.—@ 103½	$2070.00				"	11	"	6 Mths Interest on $5000.—Denver & Rio G. 4% due Jany 1	$ 100.00			
			121 days Interest 5%	33.61	120	2525	2103.61				6 Mths Interest on $1000.—Pittsbrg & Connellv. 7% due Jany 1	35.00	350	473	135.00
Decbr	31	"	Balance of Numbers			48748	2384.20	"	15	"	Dividend on 50 Shares Md. Fire Iusce Co. 3%		346	28	7.50
"	"	"	Transfer from J. D. Kremelberg's Children				12893.05	March	9	"	6 Mths Interest on $3000.—Ga. Pacific 5% due Jany 1	$ 75.00			
"	"	"	Balance								6 Mths Interest on $4000.—Col. & G. 5% due Jany 1	100.00	292	511	175.00
								Apl	6	"	Sale North Balto Traction Co. Bond $1000.—@ 100¾	$1007.50			
											Less Commission	2.50	265	2663	1005.00
								May	9	"	6 Mths Interest on $1000.—Va Midl. 5% due Mch 1	$ 25.00			
											6 Mths Interest on $2000.—City of Bristol 6% due May 1	60.00	232	197	85.00
								"	31	"	6 Mths Interest on $3400.—Mtge E. Blackford 5%		210	179	85.00
								July	2	"	6 Mths Interest on $1000.—Pittsbg & Connells. 7% due July 1	$ 35.00			
											6 Mths Interest on $5000.—Denver & Rio G. 4% due July 1	100.00			
											R. R. Equipment Car Trust Bond	500.00			
											6 Months Interest on same 5%	12.50			
											R R. Equipment Car Trust Bond	500.00			
											6 Months Interest on same 5%	12.50	179	2076	1160.00

		"	3	"	6 Mths Interest on $4000.—Col. & G. 5% due July 1	$ 100.00			
					6 Mths Interest on $3000.—Ga. Pacific 5% due July 1	75.00			
					6 Mths Interest on $1000.—City Richmond 5% due July 1	25.00	178	356	200.00
		Novbr	1	"	¼ Interest fr. Kremelberg & Co. N. Y.		60	147	244.72
		"	3	"	6 Mths Interest on $2000.—City of Athens 5% due Nov. 1	$ 50.00			
					6 Mths Interest on $1000.—Va Midl 5% Sept. 1	25.00			
					6 Mths Interest on $2000.—City of Bristol 6% due Nov. 1	60.00	58	78	135.00
		"	28	"	6 Mths Interest on $3400.—Mtge E. Blackfd 5%		33	28	85.00
		Decbr	31	"	Dividend on 50 Shares Md. Firfe Insce Co. 3%				7.50
		"	"	"	Interest Numbers 48748 @ 6%				812.47
		"	"	"	Transfer from J. D. Kremelberg's Estate				9.34
		"	"	"	Proportion of Profit 1894				1148.13
								53943	$18407.39
53943	$18407.39								
		1895 Jany	1	By	Balance				$12893.05

E. & O. E.

Baltimore, January 1, 1895

J. D. KREMELBERG & CO.

Exhibit C. 24.

Dr. Miss H. Ella Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1894								1894							
May	9	To	Merchantile Trust & Deposit Co. for assessment on 5 C. F. & Y. V. 1st Mtge Bds		232	35	$ 15.00	Jany	1	By	Balance		260	45824	$12728.72
Sept.	29	"	City of Athens 5% $1000.—@103½ Net	$1035.00				"	11	"	6 Mths Interest on $4000.—Salem 5% due Jany 1	$100.00			
			Interest 149 do. 5%	20.70							6 Mths Interest on $6000.—Pittsbg & Conn. 7% due Jany 1	210.00	350	1085	310.00
		"	City of Waco 5% $2000.—@100	2000.00				"	15	"	Dividend on 95 Shares Natl Mech. Bank 4%		346	131	38.00
			Interest 5 Mths & 29 do.	49.44	92	2857	3105.14	March	9	"	6 Mths Interest on $4000.—Col. & Greenville 5% due Jany 1		292	292	100.00
Decbr	31	"	Balce of Numbers			46151		May	9	"	6 Mths Interest on $1000.—Va Midl 5% due Mch 1	$ 25.00			
"	"	"	Transfer from J. D. Kremelberg's Children				2755.04				6 Mths Interest on $2000.—Chatt E. S. Ry 6% due Feby 1	60.00	232	197	85.00
"	"	"	Balance				10637.57	"	19	"	6 Mths Interest on $3000.—Mtge D. G. Purman 6% due May 1		222	200	90.00
								June	8	"	6 Mths Interest on Mtge Mrs. Anna S. Reuth 5% due June 29		203	296	145.83
								July	1	"	6 Mths Interest on $4000.—Salem 5% due July 1		180	180	100.00
								"	2	"	6 Mths Interest on $6000.—Pittsbg & Conn. 7% due July 1		179	376	210.00
								"	3	"	6 Mths Interest on $4000.—Col. & Greenville 5% due July 1		178	178	100.00

			Novbr	1	"	¼ Interest from Kremelberg & Co. N. Y.	60	147	244.72
			"	3	"	6 Mths Interest on $1000.—City of Athens 5% due Nov. 1 $ 25.00			
						6 Mths Interest on $2000.—City of Waco 5% due Oct. 1 50.00			
						6 Mths Interest on $2000.—Chatt E. S. Ry. 6% due Aug. 1 60.00			
						6 Mths Interest on $1000.—Va Midl 5% due Sept. 1 25.00	58	93	160.00
			"	17	"	6 Mths Interest on $3000.—Mtge D. G. Purman 6% due Nov. 1	44	40	90.00
			Decbr	28	"	6 Mths Interest on Mtge Mrs. Anna S. Reuth 5%	3	4	145.83
			"	31	"	Dividend on 95 Shares Natl Mech. Bank			38.00
			"	"	"	Interest Numbers 46151 @ 6%			769.18
			"	"	"	Transfer from J. D. Kremelberg's Estate			9.34
			"	"	"	Proportion of Profit 1894			1148.13
49043	$16512.75							49043	$16512.75
			1895 Jany	1	By	Balance			$10637.57

E. & O. E.

Baltimore, January 1, 1895.

J. D. KREMELBERG & CO.

Dr. Miss Anna M. Kremelberg, Baltimore, in account with J. D. Kremelberg & Co. Cr.

1894								1894							
Apl	11	To	City of Richmond 5% $1000.—@101¼ & Int.		260	2670	$ 1026.52	Jany	1	By	Balance		360	44248	$12290.95
Sept.	29	"	City of Athens 5% $1000.—@103½ Net.	$1035.00				"	11	"	6 Mths Interest on $1000.—Salem 5% due Jany 1	$ 25.00			
			Interest 149 days 5%	20.69							6 Mths Interest on $5000.—N. C. Ry. 6% due Jany 1	150.00	350	613	175.00
			City of Waco 5% $1000.—@100	1000.00				March	1	"	6 Mths Grd Rent A. B. Debring due Sept. 1/93	$ 52.50			
			Interest 5 Mths & 29 days 5%	24.73	92	1914	2080.42				Interest to Mch 1/94	1.57	300	162	54.07
Decbr	31	"	Balance of Numbers			44643		"	9	"	6 Mths Interest on $3000.—Ga. Pacific 5% due Jany 1	$ 75.00			
"	"	"	Transfer from J. D. Kremelberg's Children				2215.43				$3000.—Col. & Greenville 5% due Jany 1	75.00	292	438	150.00
"	"	"	Balance				11176.52	Apl	6	"	Sale Nth Balto Traction Co. Bond $1000.—@100¾	$1007.50			
											Less Commission	2.50	265	2663	1005.00
								May	9	"	6 Mths Interest on $1000.—Va Midl 5% due Mch 1	$ 25.00			
											6 Mths Interest on $2000.—Chatt E. S. Ry 6% due Feby 1	60.00	232	197	85.00
								July	1	"	6 Mths Interest on $1000.—Salem 5% due July 1		180	45	25.00
								"	2	"	6 Mths Interest on $5000.—N. C. Ry. 6% due July 1		179	269	150.00
								"	3	"	6 Mths Interest on $3000.—Col. & Greenville 5% due July 1	$ 75.00			
											6 Mths Interest on $3000.—Ga. Pacific 5% due July 1	75.00			
											6 Mths Interest on $1000.—City of Richmond 5% due July 1	25.00	178	312	175.00

		Novbr	1	"	¼ Interest fr. Kremelberg & Co. N. Y.		60	147	244.72
		"	"	"	6 Mths Grd. Rent A. B. Debring due Mch 1/94	$ 52.50			
					6 Mths Interest 6%	2.10	60	33	54.60
		"	3	"	6 Mths Interest on $1000.—City of Athens 5% due Nov. 1	$ 25.00			
					6 Mths Interest on City of Waco 5% due Oct. 1	25.00			
					6 Mths Interest on $2000.—Chatt E. S. Ry. 6% due Aug. 1	60.00			
					6 Mths Interest on $1000.—Va Midl 5% due Sept. 1	25.00	58	78	135.00
		"	20	"	6 Mths Grd. Rent A. B. Debring due Sept. 1/94	$ 52.50			
					2 Mths Interest 6%	.53	41	22	53.03
		Decbr	31	"	Interest Numbers 44643 @ 6%				744.05
		"	"	"	Transfer from J. D. Kremelberg's Estate				9.34
		"	"	"	Proportion of Profit 1894				1148.13
49227	$16498.89						49227		$16498.89
		1895 Jany	1	By	Balance				$11176.52

E. & O. E.

Baltimore, Jany 1, 1895.

J. D. KREMELBERG & CO.

Dr. Miss Mary A. Kremelberg, in account with J. D. Kremelberg & Co. Cr.

1896							1896						
		To Rent No. 1534 Linden Ave. Principal	$3272.72				Jany	1	By Balance		360	40144	$11151.45
		23 days' Ground Rent	11.50				"	2	" 6 Mths Interest on $1000.—Pittsb'g & Connellsv. 7%	$ 35.00			
		2 Acknowledgements	.60	338	11103	$ 3284.82			6 Mths Interest on $4000.—Columb & G. 5%	100.00			
	29	" Insurance on Ground Rent No. 1534 Linden Ave	$ 5.00						6 Mths Interest on $3000.—Ga. Pacific 5%	75.00			
		Exam & Insce of Title, Conveyancing and Recording on above	27.00	302	97	32.00			6 Mths Interest on $5000.—Denver & Rio G. 4%	100.00			
June	10	" Mortgage Jno. W. Jackson, Laurel, Md. 1 year from May 29/96 @6%		201	2010	1000.00			6 Mths Interest on $1000.—Ga. So. & Fla. 5%	25.00	359	1203	335.00
June	10	" Mortgage Jno. W. Jackson, Laurel, Md. 1 year from June 11/96 @6%	$1000.00				"	15	" Dividend Md. Fire Insce Co.		346	28	7.50
		Mortgage N. Naomi Fisher } Jno. T. Fisher { Oxen Hill, Md. 1 year from July 1/96 @6%	1000.00	184	3680	2000.00	March	2	" 6 Mths Interest on $1000.—Metropol Ry. 5%	$ 25.00			
									6 Mths Interest on $1000.—Va Midl 5%	25.00	299	150	50.00
July	1	" 1½ Shares Prefd Stk Southern Ry. transferred from Mrs. E. V. de Graaff per Jany 18/95		702	379	54.00	May	15	" 6 Mths Interest on $2000.—City of Bristol 6%	$ 60.00			
Sept.	11	" Ohio & Mississippi Ry 1st Mtge 7% @101¼	$1012.50						6 Mths Interest on $2000.—City of Athens 5%	50.00	226	249	110.00
		Commission	2.50	110	1116	1015.00	"	27	" 6 Mths Interest on $3400.—Mortgage E. Blackford 5%		214	182	85.00
Decbr	31	" Transfer from J. D. Kremelberg's Estate				10.92	June	29	" 1/3 Amount from Proceeds of Sale of $1000.—Southn Ry Co. @ 92½ +¼	$922.50			
"	"	" Transfer from J. D. Kremelberg's Children				2206.49			$50.—Scrip. Southn Ry Co. @83½	41.75			
"	"	" Balance Numbers			26825					$964.25 1/3 part	182	584	321.41
"	"	" Balance				5244.73	July	1	" 6 Mths Interest on $4000.—Columb.& G. 5%	$ 100.00			
									6 Mths Interest on $3000.—Ga. Pacific 5%	75.00			
									6 Mths Interest on $5000.—Denver & Rio G. 4%	100.00			

			6 Mths Interest on $1000.—Ga. So. & Fla. 5%	25.00	180	540	300.00
	"	18	" Proceeds from Sale of $1000.—Pittsbg & Connellsville R. R. Co. 1st Mtge 7% Bonds @ 109.20	$1092.00			
			Less (proportionate) charges	.50	163	1780	1091.50
	"	15	" Dividend on 50 Shares Md. Fire Insce Co.		166	13	7.50
Sept.	11	"	6 Mths Interest on $1000.—Metropol Ry 5%	$ 25.00			
			6 Mths Interest on $1000.—Va Mdl 5%	25.00	110	55	50.00
Novbr	1	"	Interest from Kremelberg & Co. New York		60	147	244.72
"	4	"	6 Mths Interest on $2000.—City of Bristol 6%	$ 60.00			
			6 Mths Interest on $2000.—City of Athens 5%	50.00	57	63	110.00
"	13	"	6 Mths Ground Rent on No. 1534 Linden Ave. due July 1/96	$ 90.00			
			Interest to Nov. 1/96 4 mths 6%	1.80	48	44	91.80
"	28	"	6 Mths Interest on $3400.—Mortgage E. Blackford		33	28	85.00
Decbr	31	"	6 Mths Interest on $2000 —Mortgage Jno. W. Jackson				60.00
"	"	"	Interest Numbers 26825@6%				447.08
"	"	"	Interest on $5000.— 1 year 6%				300.00
45210	$14847.96					45210	$14847.96
1897 Jany	1	By	Balance				$ 5244.73

E. & O. E.

Baltimore, December 31, 1896.

J. D. KREMELBERG & CO.