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New Jersey Court of Errors and Appeals

UNION COUNTY ORPHANS' COURT

In the Matter
of
The Estate of Hannah L. Bowdoin,
Deceased.

Testimony

Transcript of stenographer's notes of evidence taken in the above entitled matter, before HON. JAMES C. CONNOLLY, Judge, at the Union County Court House, City of Elizabeth, New Jersey, on the fourteenth day of January, A. D., 1916, at 10 a. m.

Appearances:
Charles F. Edsall, Esq., for the heirs.
Vail & McLean, for Mrs. Harriet L. Biggs, claiming Residuary Estate.
Orlando H. Dey, Esq., for the Executor.

MRS. HARRIET L. BIGGS, produced as a witness, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Vail:

Q. Where do you live, Mrs. Biggs? A. Evanstown, Illinois.

Q. Your husband's name? A. Foster H. Biggs.

Q. Were you formely known as "Charity Ann Johnson"? A. At one time; yes.

Mr. Edsall: I object, your Honor; she has no knowledge of her own as to that, I don't believe. I do not think the witness competent—

Mr. Vail: I am asking the question.

Mr. Edsall: I object as incompetent, irrelevant and immaterial.

The Court: I will allow evidence to go in and pass upon its relevancy when I consider the case.

Mr. Edsall: Allow me an exception on all this?

The Court: Yes.

Exception allowed, sealed accordingly.

Judge.

Q. Do you recollect being known as "Charity Ann Johnson"? A. No.

Q. I say, do you recollect being known as— A. No, I was too young.

Q. How do you know you were Charity Ann Johnson? A. Miss Cole, who knew all about it, took me to Mr. Mead.

(Answer repeated by the stenographer.)

Q. I do not want to come down to recent days, as a child do you know how you were known? What name you were known by as a child? A. I can't ever remember being "Charity Ann Johnson."

Q. You don't recollect being known as Charity Ann Johnson? A. No.

Q. What was your name as a child, as far as you know? A. They called me "Lulu," and "Hattie," very seldom called me any name. They called me a very many pet names.

Q. Did you ever see this paper? A. Yes.

Q. Where did you see it? A. First I saw it in my mother's trunk.

Q. How long ago? Who did you call your mother? A. Mrs. Bowdoin.

Q. Mrs. Bowdoin. When did you first see that paper? A. I was a little girl.

Q. Yes, and how small, how young? A. Eleven or twelve; I didn't know what it meant.

Q. You say you saw this paper in Mrs. Bowdoin's box? A. In her trunk.

Q. In her trunk. Then do you recollect James W. Bowdoin? A. Oh yes, he was my father.

Q. How long did you live—what is your earliest recollection of Mr. and Mrs. Bowdoin? A. Why always so far as I remember I remember them.

Q. As far back as you—A. As I can remember.

Q. Do you recollect at what time you were taken out of this institution in New York? Do you recollect that? A. No.

Q. You don't recollect that; the papers say you were two years old, so you probably would not. Then you do recollect being baptized? A. Faintly I do remember it.

Q. In what church, can you say? A. In my mother's parlor at her old home; by Dr. Abercrombie; I remember that.

Q. Episcopal rector? A. Yes.

Q. Those records of your own produced—A. I remember discussion about the name.

Q. Do you ever recollect hearing the name "Charity Ann Johnson" in your younger days, I mean; I don't mean recently. A. I did remember that name until I saw that paper.

Q. You say you saw this paper when you were ten or eleven years old? A. Along there about that time.

Q. How did you come to see that paper? A. I was rummaging in my mother's trunk.

Q. And you found that? A. I came across those.

Q. Did you say anything to Mrs. Bowdoin about it? A. No, I didn't understand what they meant.

Q. Did you ever say anything to her about it? A. When I was fourteen I asked her if I was adopted—

The Court: No, did you say anything to her about this paper?

A. No. Later, yes.

Q. Later? A. Yes.

Q. How much later? A. About fourteen.

Q. When you were fourteen? A. That would be the day I went with her to the orphanage to visit the orphanage was the first time I remember talking to her about the papers.

Q. What orphanage? A. At thirtieth or Thirty-first Street; it moved.

Q. Is this what you call the orphanage? A. Yes, we often went there to visit.

Q. When you were fourteen or thereabouts? A. I went before that.

Q. You went before that? A. Yes, but not with any papers.

Q. What happened then? A. Miss Penfield was away, but some other lady was there.

Q. Not what some lady said.

Mr. Vail: I submit anything Mrs. Bowdoin might have said would be competent because she is—

Mr. Edsall: I do not think anything Mrs. Bowdoin said is admissible.

The Court: I will pass upon the evidence as it comes out.

Q. Did you have any conversation with Mrs. Bowdoin that day? A. Yes.

Q. About these papers? A. Yes, sir.

Q. What was it?

The Court: I will allow it and you may take an exception.

Mr. Edsall: Exception.

Exception allowed; sealed accordingly.

Judge.

Q. What was it? A. She was talking in the office of the institution with one lady—or two ladies at first, and then one and they went all over the papers carefully.

Q. No. What did Mrs. Bowdoin say about it? A. She turned to me and said "that paper makes you an heir."

Q. What paper? A. That paper there.

Mr. Edsall: Will you allow me to object at this time; if there is a paper in evi-

dence if there was an agreement to make Mrs. Biggs any relative or any relationship of Mrs. Bowdoin, that agreement, if reduced to writing, is the only permissible evidence of the agreement.

The Court: That is correct; but this is a conversation that was made—that was had at between this witness and Mrs. Bowdoin at the time that the paper was made.

Mr. Edsall: No.

The Court: At the time the paper was produced, and it is not offered for the purpose of enlarging the terms of the paper.

Q. That paper was the one in her hands at the time? A. Yes.

Mr. Edsall: I wish to enlarge upon the objection to the question. She says that Mrs. Bowdoin said—will you please read the answer to that question—that "This paper makes you an heir."

The Court: I shall allow the testimony to stand.

Mr. Edsall: This is all under exception, of course.

The Court: I will allow all this.

Mr. Edsall: Exception.

The Court: Yes, you may take an exception.

Exception allowed, sealed accordingly.

Judge.

Q. What became of the paper afterwards? This paper? A. It was put on the pile of papers; other bills or papers.

Q. Do you know what become of this paper? Did she take it or did you take it, or who took it? A. It was left at the home.

Q. This paper was left at the home? A. One of them was left at the home. There were two papers; one was left at the home.

Q. What became of the other? A. She took charge of it herself.

Q. Did you see it afterwards? A. Yes.

Q. Where? A. I frequently saw it in her jewelry box; in her trunk—

Q. Home? A. Home.

Q. For how long a time before her death? A. I saw that identical paper when I was about twenty years old.

Q. Look at this paper and see if you can identify that as the papers you saw in her trunk? A. Yes.

By the Court: Q. You are testifying to one or both? A. One.

Q. Which one? A. The one she had.

Q. Where is that?

By Mr. Vail: Q. Which one of these papers? A. The one that the home signed.

Q. You look at these papers and see which one of them, Mrs. Biggs. Can you say which one? A. I can simply say an adoption paper.

Q. You said you identified one of these papers as the papers in the box; can you say which one it was?

The Court: Take your time and look over them before you answer.

(Witness examines papers.)

A. Why this would be the one.

Q. Do you recognize that as the one? A. I simply knew them as adoption papers.

Q. No matter what they are, or what their effect is, do you recognize that as the paper you saw, the particular paper? A. Looks exactly like it.

Q. Did you ever see any other paper look like it? A. No, I remember that was that blue tint; that is the most I could say.

Mr. Vail: I think that is all. If the Court please, this particular paper was produced by Mr. Mead as the Executor, and I asked that it be impounded in the hands of the Surrogate.

The Court: Has it been in evidence here today?

Mr. Vail: It is just offered.

The Court: Is this the one she recognized as the one she saw?

Mr. Vail: Yes.

The Court: You may impound it in the hands of the Surrogate. Mark it for identification.

Indenture of Charity Ann Johnson marked Exhibit P No. 1 for identification, and entered.

The Court: How about the other paper.

Mr. Vail: I have no objection to offering that now. This paper was handed to us by the association in New York, and I will offer it now or later, and I will impound it at the same time; it makes no difference to me.

The Court: There is no testimony on that?

Mr. Vail: No.

The Court: Then yon need not impound that. You may cross-examine if you desire.

CROSS-EXAMINATION by Mr. Edsall:

Q. Mrs. Biggs, how old did you say you were when you went over to the society with your mother, with the lady you called your mother in the testimony? A. My mother took me over as a habit every Christmas time when I was a little girl. We took gifts.

Q. At the time which you testify of seeing this paper, how old did you say you were? A. An account of my being there is on file at the orphanage.

The Court: Answer the question.

Q. How old did you say you were in your testimony when you saw this paper at the asylum? A. Between twelve and fourteen; somewhere thereabouts.

Q. You recollect very clearly at which one of those visits you saw that paper you speak of? A. Yes, the last visit.

Q. That was the last time you were at the asylum? A. With her, yes.

Q. How did you come to converse, can you tell us the circumstances leading up to the conversation you had at that time in regard to the paper?

The Court: Conversation which she had? This witness?

Q. The conversation which occurred at the time you testified to? A. Yes. It had been a habit to go there every Christmas time, and mama used to tell me to pick out a little girl I wanted for a

sister and perhaps she would adopt a little girl. I had picked one out and was more interested in the child than with her business. She was in the office with the lady who had charge of the business and they went all over these papers carefully. And then mother seemed to be delighted, and she turned to me and said "There, Hattie, is the paper that makes you an heir." She often repeated that conversation in later years which makes it so clear to my mind.

Mr. Edsall: I object to that.

Q. You say you remember this paper in your mother's trunk by its color? A. Yes.

Q. You wouldn't know it except for that? A. Yes; I was old enough to read and I read it. The children in school had told me I was adopted and I always said it wasn't, it was nonsense, and when I saw this paper it gave me the thought perhaps I was. And first I went to our family minister, Mr. Van Antwerp, and Mr. Van Antwerp—

Q. That is not responsive; why did you think you were not adopted? A. I had always been treated better than own children.

Q. Why did you think you were not adopted? A. For the same reason that anyone told a thing of that kind they would think they were not adopted. I was their own child; everyone knew I was their own child.

Q. That is enough. How long did you live with the Bowdoins? A. I lived there until I was married, but I taught for five years.

Q. How long? A. I was about twenty-four—I was married in eighty-nine.

Q. You didn't live in their home all this time, did you say—you taught for five years? A. Yes,

I did. I taught. I was home every summer; winter times I taught music in South New Jersey.

Q. Did you have any conversation with your mother thereafter relative to your relationship? A. Yes.

Q. Will you tell us just before your marriage— is that your signature? A. Yes.

Mr. Edsall: I want to mark that paper for identification.

The Court: Mark it for identification.

Paper marked D No. 1 for Identification.

Mr. Edsall: I think that is all.

Your Honor, you will permit me again to note on the minutes my objection to all Mr. Bowdoin's testimony, direct testimony on the grounds I noted before. That it is not the best evidence; that it is incompetent, irrelevant and immaterial, and because they are conversations with the deceased; transactions and conversation with the deceased.

The Court: You brought it out again yourself.

Mr. Edsall: That was merely on cross.

The Court: That is the same thing. You simply asked her what the conversation was.

Mr. Edsall: After that has been admitted under my exception I have a right to cross-examine on the same subject, haven't I?

The Court: Yes. I do not think it was cross-examination; that was all I was observing. Your objection is entered and if

the stenographer has neglected to do it heretofore, he will not set out an objection for you.

UNION COUNTY ORPHANS' COURT

In the Matter
of
The Estate of Hannah L. Bowdoin,
Dec'd.

Transcript of stenographer's notes of evidence, taken in the above entitled matter, before Hon. James C. Connolly, Judge of the Court of Common Pleas, in the Union County Court House, in the City of Elizabeth, New Jersey, ond the twenty-eighth day of January, A. D., 1916, at 11 a. m.

Appearances:

Messrs. Vail & McLean, Benj. A. Vail, Esq., Present, for Mrs. Biggs.
Charles F. Edsall, Esq., Adolph Ulbrich, Esq., William C. Webb, Esq., for the Heirs and next of Kin.
Orlando H. Dey, Esq., for the Executor.

MISS MARY L. COLEMAN, produced as a witness, on behalf of the Claimant, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Vail:

Q. Where do you live, Miss Coleman? A. Trenton, New Jersey.

Q. Trenton, New Jersey.

The Court: Do you know what city?

A. Trenton, New Jersey.

The Court: You must speak a little louder.

A. I can turn this way so as to face you.

Q. And did you know Mr. and Mrs. Bowdoin in their lifetime? A. I have known them for over forty years; been intimately acquainted with them. I can't tell the exact number of years; but I know it is this long.

Q. Do you know Mrs. Biggs? A. I do.

Q. When did you first know Mrs. Biggs? A. When Mr. and Mrs. Bowdoin first adopted her.

Q. And when was that? A. I can't remember just the date; but it was somewhere in the sixties I was at their house at the time they adopted her.

Mr. Edsall: If this evidence is being given to show that there was an actual adoption—

Mr. Vail: It is not for that purpose.

Mr. Edsall—(continued) it is altogether incompetent.

The Court: It may be simply offered to corroborate other testimony that has been or will be offered.

Mr. Vail: I will say it is offered for the purpose of identifying that child with Mrs. Biggs.

Q. You recollect her being brought to the house? A. I do; I was in the house and the first person who received her when she was brought in. She was brought in by Mr. and Mrs. Bowdoin herself, bringing her from New York. But I can't give you the dates because I never charge my mind with them.

The Court: It was in the sixties, you say?

A. It was in the sixties sometime.

Q. Do you recall what Mr. and Mrs. Bowdoin said when they brought the child in? A. They said she was their own little girl now. We would all take her right to ourselves now. They said she was their own little girl. I remember that perfectly because I was the only one in the house, not in the house, but in that part of the house, in the room where they brought her.

Mr. Edsall: I wish to object to that testimony on the ground it is in no wise competent to prove a statutory adoption.

The Court: I will allow the testimony to stand.

Mr. Edsall: On that point may I have an exception?

The Court: You may, sir. Don't be so prolix.

(The last sentence to the witness.)

Q. Do you recollect that they said what the name of the child was? A. Well—you mean what it was when they brought her there?

Q. Yes, what it was when they brought her there? A. They said Charity Ann Johnson, and the child, when I asked her the name, she said—she wasn't able to speak distinctly.

Q. She was then only two years of age? A. Yes, sir.

Q. And did you know the child after that? A. I have always known her ever since; always kept in touch with her.

Q. Did you know of her marriage? A. Yes; I know when she was married.

Q. And you now know that that child is the per-

son, Mrs. Biggs? A. Well, as far as keeping in touch with a person all that time. Of course, I haven't been with her, but I can testify.

The Court: Why do you not answer that question? Either simply yes or no.

A. All right, if you want yes or no, I can judge.

The Court: Is the person who represents herself as Mrs. Biggs the child that was brought to the home of the testatrix in the sixties?

A. Yes, sir.

Mr. Vail: Cross-examine.

The Court: Do you desire to examine?

Mr. Edsall: (Nods no.)

The Court: You may step down.

MR. BENJAMIN C. MEAD, produced as a witness on behalf of the Claimant, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Vail:

Q. You are the Executor of Hannah L. Bowdoin's estate? A. Yes, sir.

Q. And after her death you took possession of her papers? A. I did.

Q. You found a safe deposit box? A. Yes.

Q. Did you ever see that paper? A. Yes.

Q. Where did you first see it? A. First saw it on one occasion when Mrs. Bowdoin opened the safe deposit box in my presence.

Q. That was in her lifetime? A. Yes.

Q. You saw it then in the box? A. Next time when it was opened by the Comptroller.

Q. It was opened by you in the presence of the officer of the State Comptroller? A. Yes, sir.

Q. And you found it there? A. Yes, sir.

Q. And you then produced it in Court upon my request, did you? A. Yes, sir.

The Court: On Friday of last week? A. Yes, sir.

Mr. Vail: Two weeks ago.

I offer the paper now in evidence.

Mr. Edsall: I object, the paper is not proven. It does not comply with the laws of the State in regard to the acknowledgment and the proofs of acknowledgment, that it is in no way binding upon Mr. and Mrs. Bowdoin and is not signed by them; that it does not constitute an adoption under the laws of the State.

Mr. Vail: I offer the paper for what it is worth upon the ground that it is over thirty years old, and, therefore, is admissible in evidence without further testimony.

Mr. Edsall: We will admit—

The Court: Now I will listen to Mr. Vail at length.

Mr. Vail: I am through.

Mr. Edsall: I will admit the presumption as to a paper over thirty years, but that presumption is rebutted by evidence of the fact that there is no certificate in accordance to the laws of this State as to this acknowledgment.

The Court: I will allow the paper in evidence for what it is worth, and as I do not intend to conclude this case today—that is dispose of that phase of the case today—I will request counsel to furnish me with any citations they desire in support of their

respective sides. I will then dispose of the matter.

Mr. Vail: I am willing to do that today, I am able to do it today.

The Court: I will give counsel on the other side an opportunity to do the same thing.

Mr. Edsall: You will allow me an exception to this admission. It is evidence on its face it is not binding on Mr. and Mrs. Bowdoin.

The Court: You can argue that in your brief.

P No. 1 for identification entered in evidence and marked P No. 1 in evidence.

Mr. Vail: The only further testimony, if the Court please, that we have is to offer the companion paper of that, which was in the custody of the home in New York, up to the time it was delivered to us by their solicitor. The solicitor will be here by eleven o'clock but he is not here now, and I cannot prove that it is a companion paper to that. I will offer the paper on the ground that it is admissible on the same ground I offer the other. It is over thirty years old. I desire to offer the New York Statutes, forty-nine, seventy-three and eighty-seven, which he will have with him. And then the books of the institution to show the surrender of the child to the institution; and that is all the testimony.

The Court: I will adjourn the matter over until eleven o'clock unless you have something in the meantime.

Argument

Mr. Edsall: We should reserve our objections on this point until they are offered again at eleven o'clock.

The Court: Do you intend to examine this witness?

Mr. Edsall: No, sir; not at present.

At this point an adjournment was taken until 11 a. m.

Eleven a. m., session.

Mr. Vail: I will first offer the will of James W. Bowdoin in which appears in Book "M" of wills, of this County, page 531, the object of this is to show that James W. Bowdoin recognized this complainant as his adopted daughter. And I have a copy of the will which I have attached to the petition.

The Court: Read into the record the material parts of the will.

Mr. Edsall: I will note my objection now that this evidence is incompetent, irrelevant, and immaterial and not the best evidence that there was an adoption, and not binding upon Mrs. Bowdoin anyway.

The Court: I will overrule your objection.

Mr. Edsall: Exception.

The Court: Exception granted.

Exception allowed, sealed accordingly.

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Judge.

Argument

Mr. Vail: I will just read the part of it.

"I hereby give, devise and bequeath unto my wife Hannah L. Bowdoin all the property of every description of which I may die possessed, in trust for the following uses and purposes, to wit: to apply the income thereof for the support and education of our adopted daughter, Harriet Lulu Bowdoin, so long as she shall live, and in case upon her dying she leaves lawful issue, then thereafter to apply the same for the support and education of such issue so long as my said wife shall live."

That is all I care to read into the record.

Mr. Edsall: Will you—

Mr. Vail: The will was dated twenty-seventh day of June, 1870.

The Court: Eighteen what?

Mr. Vail: 1870.

The Court: And probated?

Mr. Vail: Probated the twenty-fourth day of September, 1894.

The Court: Any caveat filed against it?

Mr. Vail: No. And I merely offer the book in evidence.

Mr. Edsall: All the book?

The Court: The book will be marked, in evidence.

Book entered in evidence, and marked Exhibit P No. 4.

GEORGE H. WHITTLESEY, produced as a witness on behalf of the claimant, being duly sworn on his oath, according to law, saith:

Direct-examination by Mr. Vail:

Q. Mr. Whittlesey you are an attorney and counsel of the State of New York? A. I am.

Q. And are you counsel for the American Female Guardian Society? A. My partner Mr. Matthew C. Fleming is official counsel, is official counsel for the Society, American Female Guardian Society and Home for the Friendless, and I am associated with him representing the society.

Q. And in 1866 the name was the American Female Guardian Society? A. Yes, that is the name by which it was incorporated originally.

Mr. Edsall: I object to that, that he is not qualified to speak of what the name of the society was, it is not the best evidence.

The Court: I think there is some method to your objection in that respect. I do not know that it is going to hurt you however.

Mr. Edsall: It has no particular bearing in the matter.

The Court: I am going to admit all the testimony in the case. It may be when I come to consider that testimony, if it should be of any materiality in the case I would reject it.

Mr. Edsall: I withdraw my objection.

Q. Did you ever see these books? A. I did.

Q. What are they? A. These are two books which were entrusted to me by the Secretary of the American Female Guardian Society, one of

them—they are the official records of the society. One is known as "Book Number B Three of Surrender of Children."

Q. What is the other? A. The other one is known as "Record of Adoptions."

Q. When did you receive those books? A. I received those books yesterday afternoon.

Q. For the purpose of bringing them here? A. Yes, sir.

By the Court: Q.You are not the custodian of those books, are you? A. I am not official custodian; I am custodian at present.

The Court: Why do you offer them?

Mr. Vail: I am not offering them now. I will prove them afterwards.

Mr. Edsall: I think I should object; that is not within his knowledge to say what those books are.

The Court: I will—

A. They were so described to me.

The Court: I will pass upon that question. I will allow, for the present, the questions and answers as made by this witness to stand; presuming that Judge Vail will produce other testimony to prove that these documents are what the witness represents them to be.

Mr. Vail: That is just what I propose to do.

Q. Did you ever see that paper before? A. I did.

Q. Where did you first see it? A. That paper was brought to my office by the Corresponding Secretary of the American Female Guardian Society.

Q. Who was that, Miss Meritt? A. No, that was before Miss Meritt; I think the lady's name was Miss Young. She has died since. The present corresponding secretary is a Miss Meritt.

Q. It was brought to you by the Corresponding Secretary? A. Either brought personally or sent to me by mail.

Q. What did you do with it? A. I delivered it to—

Q. Sent it out to me? A. Sent it out to you and then it came back to me. A few days ago I turned it over to you and took your receipt.

Mr. Vail: I now offer this paper as a thirty-year-old document. It is the corresponding paper to the one offered before; they are not duplicates.

Mr. Edsall: I object to that; it has not been proved that this paper has been produced from proper sources on the point of its being thirty years old. I object to the paper also on the ground it is incompetent, irrelevant and immaterial and that it is not proved inasmuch as it does not contain the separate acknowledge by Hannah L. Bowdoin and, of course, on the ground that it confers no right of inheritace or property right upon her.

The Court: I understand the witness to say that he is one of the attorneys of the home of the girls from which the beneficiary, or the adopted daughter of the—

Mr. Edsall: That he is an associate attorney for—

The Court: Did I conclude my remarks?

(Courts remarks repeated by the stenographer.)

The Court: (Continued)—testatrix, was taken at the time of her adoption. Am I correct in making that statement?

A. Yes, your Honor, you are. I will say my partner, Mr. Fleming, he is official counsel whose name appears on their printed reports and so on. I advise them as an attorney in a great many matters, a great deal more than Mr. Fleming does, and this was sent to me as an attorney for the society representing the society in this matter, as I have in other matters; by letter addressed to me.

By the Court: Q. Did you request it to be sent to you? A. Yes.

Q. You requested it to be sent to you and it was sent to you, accompanied by a letter from the custodian? A. I am not quite certain in my recollection whether it was brought to me in person by the Secretary in response to my telephone request that she bring it down to me, or whether it was sent to me.

Q. And after you received it you forwarded it to Judge Vail? A. I did. In October, 1914. I think.

Q. And he subsequently sent it back to you? A. Mr. McLean, his partner, brought it back to me in person.

Q. And since then you have sent it back to Judge Vail? A. Mr. McLean took it away again, and he furnished a receipt for it; I previously had Judge Vail's acknowledgment by letter.

Q. And you recognized it as the document you received from the home and which you sent to Judge Vail? A. It is the same.

Q. It is the same?

The Court: I will admit it in evidence.

Mr. Vail: I now desire to offer the New York Statues—

The Court: Judge, will you furnish me with a copy of these statutes afterwards?

Mr. Vail: Yes, I will merely offer the statutes, and will agree to furnish you with a copy.

Paper entered in evidence and marked Exhibit P-5.

Q. 1849, chapter 244—

The Court: I suppose you ought to have some member of the bar, learned in the law who will testify that—

Q. You are familiar with the New York Statutes? A. I am.

Q. Did you produce certain statutes here this morning? Did you? A. I did.

Q. Now look at those and tell us what they are? A. Volume of laws of New York, for the seventy-second session, known as Laws of 1849.

Q. Will you turn to chapter 244? A. On page 364 and the following is Chapter 244, entitled "An Act to incorporate the American Female Guardian Society." Passed April sixth, 1849.

Q. What I particularly offer in this statute is section six. Now, I will ask you what is the next volume? A. The volume which I now hold is the Laws of 1873, State of New York, printed Volume on which page 1243 of the volume, and following appears Chapter 830, of the laws of 1873, entitled "An Act to legalize adoption of minor children by adult persons." Passed June 25th, 1873.

Q. Sections ten and thirteen of that Act.

Mr. Edsall: He might as well offer these statutes as a whole and the act as a whole.

Mr. Vail: There is only one more.

The Court: Wait until we get them all before the Court.

Q. What is the other volume? A. I have also volume, printed volume of Laws of 1887, of the State of New York, on which page 909 of that volume occurs Chapter 703, entitled "An Act to amend Chapter 830 of the Laws of 1873 entitled 'An Act to legalize adoption of minor children by adult persons.' Passed June 25, 1887.

Q. That is 703? A. 703.

The Court: How can that affect the proceedings, having been adopted so long after the adoption of the child?

Mr. Vail: At the time of the adoption there was no right of inheritance, and the act of 1873 confirmed it, but still there was no right of inheritance; the Act of 1887 gave the right of inheritance, and the decisions of the New York Court of Appeals says that Act is retroactive, and binds adoptions made previous to that. I offer those statutes and I will furnish the Court with copies.

The Court: I would like to request that you furnish counsel of the other side with a carbon copy of the copy you furnish me.

Mr. Edsall: I object to the introduction of these statutes as incompetent, irrelevant, and immaterial. In the first place this was not a New York adoption; the child wes never within the State of New York, nor the parents within the juris-

diction of the State of New York from that time to this. And I also would like to say that the statutes should be offered as a whole if they are accepted. I do not know whether you want any more argument on that.

The Court: I understand the statutes are offered as a whole, but particular reference is made to certain sections; that statement was made.

Mr. Edsall: I object again that they have no bearing on persons domiciled in this state.

The Court: Well, the Court will allow them in evidence.

Mr. Edsall: You will allow me an exception of course.

The Court: I certainly will, and I shall take notice of anything you may say. I hope you will not simply rest satisfied with taking an exception, but that you will submit the Court a brief so that I may have all that you possess by way of knowledge on those matters to which you refer. It may be that I will come to the conclusions that you entertain on those matters; I do not know. I am going to hear arguments, but I will allow the statutes in evidence; and grant you an exception.

Statutes of New York State admitted as a whole in evidence and marked, collectively, Exhibit P-5.

Exception allowed, sealed accordingly.

The Court: Cross-examine the witness.

Mr. Edsall: No, thank you.

The Court: You are a New York attorney, are you not?

Mr. Edsall: Yes, sir.

The Court: You are cognizant of the existence of those different statutes are you not?

Mr. Edsall: Yes, sir.

MRS. CHARLOTTE ELIZABETH DEVINS, produced as a witness, on behalf of the claimant, being duly sworn on her oath, according to law, saith:

Direct-examination by Mr. Vail:

Q. Where do you reside? A. Englewood, New Jersey, at the present.

Q. How long have you lived there? A. Oh, almost five years.

Q. You were formerly connected with the American Female Guardian Society of New York? A. I was.

Q. In what capacity? A. Assistant Secretary.

Q. When? A. From 1875 to 76 to 1886.

Q. Up to what time?

(Answer repeated by the stenographer.)

Q. And as Corresponding Secretary did you have custody of books? A. I did.

Q. And you recognize that book? A. I do. One of the books of the Society; "Surrender of Children."

Q. What do they call it? A. They call it "Book of Surrender of Children."

The Court: Got any special number?

Q. It is marked "B.3" on the back; was that its designation? A. I should judge so.

Q. Can you refer to the page here of the adoption of Charity Ann Johnson? A. I don't know exactly where to find it. It is a pretty large book to look through.

Q. Referring to "Surrender Book B.3," page 187, what do you recognize that entry to be? A. Surrender of the child Charity Ann Johnson.

Mr. Edsall: I object to it on this point; She is no more competent than I am to recognize this surrender of Charity Ann Johnson; she was not there at the time.

The Court: This is one of the records of the society. She does not know anything more about the actual surrender of that child than I do or you do.

Mr. Vail: I do not claim she does.

The Court: She has testified simply to the records.

Mr. Vail: That is all.

Q. Was that one of the books came into your custody as Corresponding Secretary? A. Yes, sir.

Q. And remained in your custody as long as you were Corresponding Secretary? A. Yes.

Q. What became of that book after you left there? A. Left it in the institution.

Q. Do you recognize that book? A. I do.

Q. What is that? A. Book of Records; giving the records of the children.

Q. Number seven? A. Their history.

Q. Do you recognize that book as what? A. History of the Children.

Q. It is marked on back "History," is it not? A. Yes.

Q. Number seven. And what is the entry on page four? A. Admission of the child Charity Ann Johnson to the society.

Q. Do you know the handwriting? A. Not of that part there.

Q. You don't know. A. No, sir.

Q. Was this one of the books that came into your possession? A. It did.

Q. And remained in your possession until you left the society? A. It did.

Q. And then surrendered by you to your successor? A. Yes.

Mr. Vail: I suppose I may have that copied?

The Court: I think, Judge Vail, you better read it into the record.

Mr. Vail (reading): "Charity Ann Johnson—

Mr. Edsall: Will you pardon me to make my objection to this. I object on the ground that it is incompetent, irrelevant and immaterial, for the reason that no act of that society should force an adoption by Mr. and Mrs. Bowdoin. That an adoption is an act of the adopting parents. That society can't make an adoption. Whatever their records show it has no bearing on the question.

The Court: Objection overruled.

Mr. Edsall: Exception.

Exception allowed, sealed accordingly.

Judge.

Mr. Vail: That is all, the record.

Mr. George Whittlesey (reading): Charity Ann Johnson—

Mr. Edsall: I do not think this gentleman is qualified to tell us how to read that record.

The Court: He is going to read the record.

Mr. George Whittlesay (reading): "Born in Lebanon, New Jersey, October 19, 1863, and legally surrendered by her mother, Hannah O. Johnson, January 17, 1866, with her brother, William P. Johnson. She has had one of the diseases of childhood and has not been baptized or vaccinated. February 23d, 1866: dismissed to the parental care of James W. and H. Louisa Bowdoin of Rahway, New Jersey, friends of Mrs. Kelly. February 27, 1866, committed to the socy. (society) by John P. Hoffman, Mayor, May third, 1866, Mr. and Mrs. B. called at the home and reported C is well and the joy of their hearts. Ditto, under October 19, 1866. Letter written to them relative to taking Willie. May 23d, 1867, Mrs. Penfield visited Charity Ann and found her well, and doing well, January 1868, reported by Mrs. Kelly as well, and doing well, of course. February 1868, Mrs. Bowdoin called and reported Charity Ann as well, and they love her dearly."

The Court: You better read, also, the adoption which appears upon page 187, B. 3, Surrender of children.

Mr. Edsall: Will you allow me at this time to get on the minutes my objection to this that has been read?

The Court: Yes.

Mr. Edsall: That it is incompetent, irrelevant, and immaterial, and also that it shows, on the face of it that the society had no legal care of the child at the time, or power to adopt her. That she was placed with James W. and H. Louisa Bowdoin, before she was committed to the care of the society by John Hoffman, Mayor, and before that time the society had no legal control of her.

The Court: I will overrule that objection and grant you an exception.

Mr. Edsall: Exception.

Exception allowed—sealed accordingly.

Mr. Vail: I am reading from B. 3 "Surrender of Children."

The Court: Marked in evidence as P No. 6.

Mr. Vail: Page 187 of this book. "This may certify that being unable to provide for my children William P. Johnson and Charity Ann Johnson, I, Hannah O. Johnson, do hereby commit and surrender them to the care and management of the American Female Guardian Society with the powers subject to the provisions contained in the act incorporating said society. Dated New York, January 17, 1866. Signed Hannah O. Johnson, witnesses, R. P. Penfield, N. A. Raymond. I consent to and approve the above surrender. Dated

New York, February 27, 1866. John T. Hoffman, Mayor."

Mr. Vail: I offer those two books in evidence.

The Court: They have been offered in evidence, and marked in evidence as I understand it.

Mr. Vail: Any further questions from this witness?

The Court: Any cross-examination of the witness?

Mr. Edsall: No, sir.

Mr. Vail: That completes our case.

Mr. Edsall: I now move to strike out all the testimony of Mrs. Biggs, relative to this paper which has been offered in evidence, on the ground that it now appears that it was evidence, oral evidence, to alter or vary a written agreement.

The Court: She has given no testimony today.

Mr. Edsall: Your Honor, this was taken last week, with all our rights reserved on the ground she had to go to Chicago, at once, and were not prepared to go on at the time. It seems to me that on that plea, when the evidence was allowed to be taken out of order, merely on that excuse, that our rights should be reserved.

The Court: You cross-examined.

Mr. Edsall: Exactly, but the paper was not in evidence at the time and now that the paper is in evidence I move to strike out her testimony on the ground that it now appears it was testimony offered to alter or vary a written agreement.

The Court: Has the other paper been submitted in evidence?

Mr. Vail: Yes, both.

The Court: As to the paper which was submitted in evidence, you took your exception. As to the evidence which is now offered, I will allow your exception. I will allow the record to show that you have taken an exception. But I overrule it.

Mr. Edsall: You overrule my motion?

The Court: I overrule your motion.

Mr. Edsall: You will allow me an exception to that.

The Court: I thought you understood me to indicate that.

Mr. Edsall: I would like also to ask that at this time while we are on this point that the record be corrected to show my objection at that time. I objected on the ground that her evidence was that of an interested party of the transactions and conversations with the deceased. At the time you said you would allow me such an exception, but the ground of my objection is not noted at that time on the record.

The Court: I do not remember anything about that.

(Exhibits minutes to the Court.)

Mr. Edsall: I make the motion to correct the record.

The Court: I see, he is trying to impeach the stenographer, I think everything that occurred at the last hearing in this matter appears in the record. And, as I remember it, the exception taken at that

time by counsel for the heirs and next of kin was properly noted by the stenographer. An exception was taken and the Court overruled the exception and it so appears on the record. You want to have that corrected?

Mr. Edsall: It appears, your Honor, that there was an omission of the ground of my objection. I objected; that is not noted. It next appears: "I will allow you an exception."

The Court: You now state that at that time you set forth the grounds upon which your objection was made?

Mr. Edsall: Yes, sir.

The Court: And those grounds and reasons do not appear in the record?

Mr. Edsall: Yes.

The Court: I do not remember that you gave any reasons. I do not think there is anything to correct. If you wish, I will direct the stenographer, if you think I ought to do it, to look at his notes and see whether he has omitted to set forth your reasons if you made any on that occasion. If you gave any on that occasion. I cannot allow any corrections such as the attorney asks for because I do not think there is anything to correct.

Mr. Edsall: Then I now move to strike all the testimony of Mrs. Biggs from the record on the ground that it is very evidently evidence of an interested witness, of conversations and transactions with a deceased party.

The Court: The Court will overrule your request.

Mr. Edsall: Excetpion.

The Court: And grant you an exception.

Exception allowed, sealed accordingly.

Judge.

Mr. Vail: I think I omitted one statute.

The Court: I thought you had.

Mr. Vail: Laws of 1860, Chapter 510.

GEORGE N. WHITTLESEY, re-called:

Direct-examination by Mr. Vail:

Q. You have there—A. Yes, I have in my hands printed volume Laws of New York for the year 1860, on page 1026 occurs Chapter 510, "An Act creating in the City and County of New York the Department of Public Charities and Correction, and abolishing of alms house department therein. Passed, April 17, 1860.

Q. Particularly sections sixty and sixty-eight, are they not? A. No, you have the wrong record. Particularly sections three.

Mr. Vail: Of course, we offer the whole statute, but the particular sections referred to—A. Sections three, five and twenty-four.

Mr. Vail: It is only two or three sections, but of course, I have to offer the whole statute.

The Court: You got the whole statute, but mark specially those which refer to this matter.

Mr. Vail: That completes our case.

The Court: Is there any testimony on the part of the opponents?

Mr. Edsall: Well, your Honor, I introduce in evidence this paper identified by Mrs. Biggs, as being signed by her, two weeks ago.

The Court: Well, that has been marked then in evidence.

Mr. Edsall: It was merely marked for identification at the time, your Honor.

Mr. Vail: I have seen it, I have a copy of it.

The Court: At that time it was marked for identification, there was no cross-examination, and there necessarily couldn't be.

Mr. Vail: No, I object to the paper on two grounds: First, it appears by its date, that it was executed before Mrs. Biggs became of age; and, consequently, it could not bind her in any way. On the second ground, that it purports to release her interest in the estate. Now, an inheritance cannot be released in that way. On these two grounds I object to the admission of the paper. (Statement repeated by stenographer).

Mr. Edsall: It appears from this book that Mrs. Biggs became of age—I offer that paper in evidence first, as evidence of the relationship which did exist between Mrs. Bowdoin and Mrs. Biggs, and as evidence of the interpretation of that document on the part of Mrs. Biggs. It pur-

ports to show that Mrs. Biggs, herself, considered that that relationship was at an end at that time. And that she is perfectly competent as a witness, even though she was under age.

The Court; I will allow the paper to be marked in evidence in the case. I think Mrs. Biggs testified as to the relationship which existed between her and the Bowdoins.

Mr. Edsall: Up until that time, your Honor, for the term mentioned in the adoption papers, if you wish to call them that.

The Court: Yes. And I think that if this document contains anything that will contradict her it is proper to introduce it, if it will explain the relationship that she thought existed between her and the Bowdoins it is proper to place it in evidence, for it may be quite material in considering her testimony and in connection with what she said previously, and what she did previously, and papers that she signed previously, and for that reason I will allow it to go in evidence.

Mr. Vail: Subject to objection.

The Court: Subject to objection, which I will overrule; and you take an exception.

Mr. Vail: Yes, I take an exception.

Exception allowed—sealed accordingly.

Judge.

The Court: Is that all you want to put in?

Mr. Edsall: I would like to put the executor on the stand to prove the production of that paper from the safe deposit vault.

The Court: You may do so; do it quickly, I have to hold another session of Court this afternoon.

Paper D No. 1 for identification admitted in evidence and marked Ehibit D-No. 1.

BENJ. C. MEAD, Re-called:

Direct-examination by Mr. Edsall:

Q. Mr. Mead, you have already testified yourself, as Executor of this estate, this paper; do you recognize this paper, D Number one, a release? A. Yes, sir.

Q. Where did you procure that paper? A. From the Rahway National Bank, Mrs. Bowdoin's Safe Deposit Box.

The Court: I do not remember whether Mrs. Biggs recognized that as her signature at the last hearing.

Mr. Edsall: It is in the record that she identified that as her signature.

The Court: All right; step down.

Mr. Edsall: I would like to ask one more question.

The Court: All right; sit down.

Q. Did Mrs. Bowdoin ever refer to these papers by which Charity Ann Johnson was indentured to her, to you? A. Yes.

Q. Will you tell us the substance of that con-

versation? A. Well, at one time Mrs. Bowdoin had made a will in which she stated that she named me as her executor.

(Question and answer repeated by the stenographer.)

A. And she referred to these papers as being in the bank, and that they would obviate any trouble or difficulty that might arise between myself and Mrs. Biggs. Between myself, as executor, and Mrs. Biggs.

Q. Did she say what those papers were?

Mr. Vail: No, they speak for themselves.

A. No, she didn't mention them specifically, but I had seen them.

Q. Did she ever refer to her relationship with Mrs. Biggs? A. Yes.

Q. Will you report any conversation you may have had in regard to that?

Mr. Vail: I object to that, if the Court please. If this adoption was legal, nothing that a parent would say after that would change the effect of the adoption. And the papers must speak for themselves. We must stand or fall by those papers.

Mr. Edsall: Your Honor, this evidence is introduced merely in rebuttal to Mrs. Biggs' testimony of two weeks ago, to the effect that she intended these papers to the effect that this paper "Makes you my heir."

The Court: Yes, I will allow the question to stand, and overrule the objection.

Mr. Vail: I ask an exception.

The Court: Grant an exception.

(Question repeated by the stenographer.)

A. I had many conversations with Mrs. Bowdoin; she always stated that her relations with Mrs. Biggs—

Mr. Vail: I think that is too indefinite; he said she had many and she always said certain things. I think he ought to be specific.

The Court: I will allow the answer to stand, so far as it has proceeded.

A. Mrs. Bowdoin stated her relations with Mrs Biggs were not that of an adopted daughter; she never referred to her as "my daughter."

The Court: That is unnecessary; you are asked what she said.

Q. What did she say to you these papers were? Did she say they were adoption papers?

Mr. Vail: No, no, do not put the words in his mouth.

A. No, she said, when she showed me those papers at the bank—

The Court: What papers do you refer to? A. Papers which have been shown to me this morning.

The Court: This is Exhibit D No. 1? A. Yes.

Q. I refer to the indenture? A. Mrs. Bowdoin stated that was a paper which merely bound Mrs. Biggs—then as a girl, to her, and Mr. Bowdoin, and referred to her as "a bound girl."

(Answer repeated by the stenographer.)

The Court: Is that all?

Q. Did she ever say anything as to her—

Mr. Vail: No, ask him what she said.

The Court: You must not lead.

Q. Did you ever have a conversation with her in regard to Mrs. Bigg's right of inheritance from her?

Mr. Vail: I object.

The Court: I will allow the question.

A. Yes.

Q. What was the substance of that conversation?

Mr. Vail: When?

The Court: When?

A. I couldn't mention the date.

The Court: Approximately? Ten years ago?

A. Ten years prior to her decease.

The Court: Ten years prior to her decease.

Q. What was said? A. She again called my attention at that time to the fact that Mrs. Biggs was merely a bound girl.

Mr. Vail: If this testimony is competent he ought to give her conversation.

The Court: You say "to the effect," give the exact language which she used.

A. That is a great many years ago. I don't know whether I can in detail.

The Court: As near as you can.

A. In substance, she told me Mrs. Biggs was a bound girl, and had no right to inherit any of her property.

Mr. Edsall: That is all.

CROSS-EXAMINATION by Mr. Vail:

Q. You say this conversation was ten years prior to her death? A. Yes, sir; quite that.

Q. And died in 1913? A. Yes, sir.

Q. Is that so? A. Yes.

Q. Where was this conversation? A. At her house.

Q. How did she come to speak of it? A. I don't recall the instance which led up to it.

Q. The only thing you do recollect is just the conversation which you have related? A. Yes.

Q. And that is all. What impressed it on your memory so you can recollect that, and nothing else? A. Because Mrs. Bowdoin's peculiar insistance upon the fact at the time.

(Answer repeated by the stenographer.)

Q. You cannot say what is the occasion of the conversation. A. No, I cannot.

Q. Do not know what led up to it; only thing you know is this conversation? A. I know Mrs. Bowdoin was quite excited at the time.

Q. You cannot recollect what led up to it. And the only thing you can recollect was that she said Mrs. Biggs had been nothing but a bound girl to her? A. (No answer from the witness.)

Mr. Vail: That is all.

By the Court: Was Mrs. Bowdoin related to you? A. No, sir.

Q. What was the difference if you know, in your ages? A. Between my age and Mrs. Bowdoin's?

Q. Yes. A. Mrs. Bowdoin, at the time of her—at the time of her decease was about eighty-five, and I was forty-eight.

Q. She was nearly twice as old as you? A. Yes, sir.

Q. And did you board with her? A. No, sir.

Q. How did she come to make you a confidant of her feelings concerning Mrs. Biggs? A. I was her confidant in a general way.

(Answer repeated by the stenographer.)

A. I was her confidant in a general way.

Q. Are you a counselor-at-law? A. No, sir.

Q. Oh, you are not? A. I know about her business.

Q. You advised with her, is that it? A. Yes, sir.

Q. Did you live near her? A. Quite near her, yes.

Q. Did she consult you frequently? A. Very.

Q. Did you manage her affairs? A. No, I didn't manage her affairs in any way. She would ask my advice and that was all.

Q. Did she have any sons or daughters of her own? A. No.

Q. Any near relatives live with her? A. No.

Q. Did she live all alone? A. Yes.

Q. Have servants there in her home? A. Occasionally she had a servant.

Q. Occasionally? A. Yes, sir.

Q. How long had you been, prior to that time, her advisor, prior to ten years before her death? A. Prior to ten years? About nine years.

Q. Before her death for about nineteen years? A. Yes, sir.

Q. You were a friend and advisor of the deceased? A. Yes, sir.

The Court: That is all.

Mr. Edsall: Your Honor, I would like to introduce all of this record of the home in evidence here, at least those portions in regard—which will indicate the relationship between Mrs. Bowdoin and Charity Ann Johnson, now Mrs. Biggs, at the time this release was executed.

The Court: You have no objection to the whole record going in?

Mr. Vail: Certainly not.

Mr. Edsall: Page six of this book entitled History, Marked No. 7, March 18th, 1882. I have other witnesses that will testify.

The Court: Going to put them on today?

Mr. Edsall: I will put on one more witness, if your Honor will hear me.

The Court: You seem to be trying this case in a jumpy sort of a way.

Mr. Edsall: This has been put in before. I have discovered something more in the record and it seems to me it should go into the record. "December 14, 1868. Letter from Mrs. Johnson inquiring about Charity and Willie, August 1870, ditto. Another letter from Mrs. Johnson February 9, 1870. August 19th, 1872, letter of inquiry sent." That is quite a long record, your Honor.

The Court: Proceed with it.

Mr. Edsall: Do you want it all in here. I offer it only in part. "August 23d, 1872 letter from Mrs. Bowdoin received today, speaks of Charity Ann as a good girl, well and happy, and their darling child. She has good health and is going to school. Attends church on Sabbath, as well as day school and they could not part with her. July 27th, 1873, Mrs. Bush and Mrs. Ambler today visited the home of Charity Ann, or, as she is now called, Hattie Bowdoin; has delightful residence; every appearance of wealth Mr. and Mrs. Bowdoin felt very sensitive about reporting to the Home. Will not again reply to a blank

such as was sent last year, but are willing to report themselves to Mrs. Austin Kelly.'' On the side there is an entry simply ''of age,'' under date of July 27th, 1873 ''and June first,'' ''of age'' is noted on the side of the book. Charity Ann Johnson June first, 1876, letter of inquiry sent. October third, 1876, Mrs. B called and reported her little daughter very favorably. Her views and plans for the future of the child are entirely satisfactory. Henceforth, there is not to be any written correspondence relative to Charity, but verbal personal reports may be expected, from time to time when necessary.'' ''Of age'' is again noted on the side. December 20th 1877, Mrs. Bowdoin reports her well and as usual. January 7th, 1878. Charity's own mother, now Mrs. J. E. A. Allen, Joliet, Well Co. of Illinois, writes inquiring after her children October 30, 1879, Mrs. Bowdoin called and reports Hattie very favorably. She has moral character, self-willed and persevering, and has great curiosities. Is fine looking, has catarrh, and cough. Is dearly loved but has been at times, a great trial, November 29th 1879, Mrs. Bowdoin called with Charity; both were through the house; daughter was much interested, never dreaming she was once an inmate, March 18th, 1883. Charity is well and brightly educated girl. Of age. July 19th, 1884. Mrs. Bowdoin brings sad account of Hattie's self-will,

ingratitude and untruthfulness. There must be some change. May 6th, 1887 Mrs. Bowdoin called Charity is teaching school at Newark. Doing well at that, but has the same faults. January 4, 1889 Mrs. B. called and wanted to know about C.'s mother and brother. Wrote her sending what information we had." The rest is in 1914 as to Mrs. Biggs.

MRS. SARAH E. MORRIS, produced as a witness, on behalf of the heirs and next-of-kin, being duly sworn on her oath, according to law saith:

Direct-examination by Mr. Edsall:

Q. Did you ever hear Mrs. Bowdoin refer to Mrs. Biggs—strike that out. Mrs. Morris, you saw a good deal of Mrs. Bowdoin, did you not? A. Yes, I did.

Q. You visited her quite frequently? A. Quite frequently.

Q. How often? A. About ten or twelve times.

Q. When? A. When?

Q. Yes? A. Why, I hadn't seen her in about three years; not quite three years.

Q. Did she speak of Mrs. Biggs at any time? A. She did.

Q. And these visits, how did she refer to her? A. As her bound girl.

Q. On how many occasions? A. On every occasion that she mentioned it.

Q. Did you ever hear her speak of her as her daughter? A. I didn't.

The Court: Do not lead the witness.

Mr. Vail: I object to him leading the witness.

Q. Did you ever see any letters which Mrs. Bowdoin wrote to Mrs. Biggs? A. No, I never saw any.

Q. Did Mrs. Bowdoin ever write to you about Mrs. Biggs? A. No; she never wrote anything to me about it.

Q. Did she ever tell you anything about her—

Mr. Vail: I object to the question.

The Court: You are leading your witness.

Mr. Edsall: That is all, your Honor, I merely wished to rebut the testimony which was offered before.

CROSS-EXAMINATION by Mr. Vail:

Q. When did you have this conversation with Mrs. Bowdoin? A. When I was down at her house.

Q. I know, but when was that? A. It is three years ago.

Q. It is three years ago? A. In August last; I saw her three years ago in August.

Q. That is when she lived on Maple Avenue? A. Sixty-eight West Milton Avenue.

Q. That was about eighteen months before she died, wasn't it? A. No, not eighteen months before she died. It was three years ago; I didn't see her before she died.

Q. She has been dead about a year, hasn't she? A. She has been dead a year in September.

Q. She has been dead a year anyhow? A. Yes, sir.

Q. If you saw her three years ago, then it was about eighteen months before she died? A. Yes.

Q. And she devised that house to you, where she lived? A. What is that?

Q. The house in Milton Avenue was devised to you? A. It was left to my daughter.

Q. It was left to your daughter? A. Yes.

Q And those were the occasions when she talked about Mrs. Biggs? A. Yes.

By the Court: Q. What is your daughter's name? A. Lucy.

Q. Susie what? A. Lucy Morris.

The Court: That is all.

Mr. Edsall: That is all, your Honor.

The Court: The matter goes over for two weeks; in the meantime I will try and dispose of this phase of the case.

Mr. Vail: I simply desire to put Mrs. Biggs on the stand, but I do not; I am through.

Mr. Edsall: May I put Mrs. Biggs on the stand for one question?

The Court: You may ask her the question where she stands.

MRS. HATTIE BIGGS, re-called:

Direct-examination by Mr. Edsall:

Q. Mrs. Biggs, did you ever, since the time you were eighteen years of age, receive any letter or any other documentary evidence to show that

since that time Mrs. Bowdoin has looked upon you as her daughter? A. Mr. Vail has such a letter in his possession.

Q. What was the date of that letter? Since you were twenty-one? A. Within ten years I think. She was always very nice to me.

Q. I have no doubt she was, that was her agreement. A. Always called me "her own." And always said—last time I saw her was just before this lady saw her and she said "you know my mind is feeble and I can't understand. But," she said, "I am going to make a will."

Mr. Edsall: I move this be stricken out as not responsive.

The Court: You are going beyond the scope of the question. That is all you want to ask her.

Mr. Edsall: If she has any such letter I think it should be produced and I call upon the other side to produce it.

The Court: I will allow her to produce such a letter if it is in her possession, but she said it is ten years old; it is ten years ago. She said herself "Your old mother."

Q. How did Mrs. Bowdoin address you in writing that letter? A. She always called me "Dear Hattie."

Q. Never used the word "daughter"? A. Yes, always called me "her own."

Q. Did she call you that in this letter? A. She signed herself, "Your own mama."

Q. I now call upon counsel to produce it.

The Court: You cross-examine her upon it. She may not have that letter, you know. If you have such a letter the Court would like to have it.

Exhibit A (P-6)

Mr. Vail: If I have such a letter I will let you have it. Do I understand that the testimony is now closed?

Exhibit A (P-6)

AMERICAN FEMALE GUARDIAN SOCIETY AND HOME FOR THE FRIENDLESS

936 Woody Crest Avenue

NEW YORK

(Copy)

This may certify, that, being unable to provide for my children

William P. Johnston,
& Charity Ann Johnston,
I, Hannah O. Johnston

do hereby commit and surrender them to the care and management of The American Female Guardian Society, with the powers and subject to the provisions contained in the Act incorporating said society.

Dated, New York, January 17th, 1866.

HANNAH O. JONSON.

Witness,
R. P. Penfield,
M. A. Raymond.

I consent to and approve the above surrender.
Dated, New York, Feb'y 27, 1866.

JOHN T. HOFFMAN,
Mayor.

Exhibit B (P-5)

I certify that the above is a correct copy from the files "Surrender of Children," held by the American Female Guardian Society and Home for the Friendless.

MRS. CHARLES HILTON BROWN,
Cor. Sec'y,
per
Margaret T. Young,
Asst. Cor. Secy.

Exhibit B (P-5)

The following sections of this Act are the only ones which relate in any way to the incorporation of the Society of the surrender and adoption of children. Therefore the record is not encumbered by copying the sections of the Act which have no possible reference to the case before the Court.

LAWS OF NEW YORK—1849

CHAPTER 244

AN ACT

To Incorporate the American Female Guardian Society, Passed April 6th, 1849.

The People of the State of New York, represented in Senate and Assembly, do enact as follows

Exhibit B (P-5)

1. From and after the passage of this act the Association heretofore known as the "American Female Moral Reform and Guardian Society" may take and shall be known by the name of the "American Female Guardian Society," and shall continue to enjoy all the rights, and shall be subject to all the obligations of said Association as fully as though the name thereof had not been changed.

6. In all cases where a child shall have been surrendered by its natural or other legal guardians to the care and management of the Society by any instrument or declaration in writing, it shall be lawful for the said Board of Managers at their discretion to place such child, by adoption, or at service in some suitable employment, and with some proper person or persons, conformable to the laws of this State in regard to the binding out of indigent children, provided that in all such cases the terms of the indenture shall be approved by the Governor of the Almshouse, or by the Surrogate of the City and County, which approval shall be signified on such indenture by the signature of such Governor or Surrogate; but in every such case the requisite provisions shall be inserted in the indenture or contract of binding to secure the child so bound such treatment, education or instruction as shall be suitable and useful to its situation and circumstances in life.

8. In case of the death or legal incapacity of a father, or of his imprisonment for crime, or of his abandoning and neglecting to provide for his family, the mother shall be deemed the legal guardian of her children, for the purpose of

making such surrender as aforesaid. And if in any such case the mother be also dead, or legally incapable of acting, or imprisoned for crime, or shall have abandoned or neglected to provide for her child or children, the Mayor, or a Governor of the Almshouse, or Surrogate of New York shall be, by virtue of his office, the legal guardian for the like purpose; and so, in all cases where it cannot by diligent inquiry be ascertained that there is within the State any parent or other person legally authorized to act in the premises, the said Mayor, Almshouse Governor, or Surrogate, shall be ex-officio such guardians for the same purpose; and such guardianship shall extend as well to children already in the House of the said Society as to those who may hereafter be offered for admission or received therein; and in either case, whether such surrender be made by the mother, or by the Mayor, Almshouse Governor, or Surrogate of said city, and whether before or after admission into said Home, it shall be deemed a legal surrender for the purposes and within the true intent and meaning of the sixth section of this Act; but no surrender by a mother, as provided by this section shall be valid without consent of the Mayor of the city, or Surrogate of the City and County of New York, or a Governor of the Almshouse.

Exhibit C (P-5)

An Act to create in the City and County of New York the department of Public

Exhiibt C (P-5)

Charities and Correction, and to abolish the Alms House department therein.

Passed, April 17, 1860; three-fifths being present.

3. The said four commissioners shall, together constitute a board of control over the department hereby created. Three of them shall form a quorum. The board shall appoint one of the commissioners to be president thereof for five years. Each of the commissioners shall receive an annual salary of three thousand dollars. From and after the twentieth day of April, one thousand eight hundred and sixty, the Alms House department of the City and County of New York, and the office of governor of the Alms House shall be abolished and thereupon the books, accounts, vouchers, records and all property of whatsoever nature then or theretofore under management or control of, or in the keeping of the said alms house department, or any governor or subordinate thereof, shall be transferred to the keeping and custody of the board of control of the department of public charities and correction hereby created, and for the use thereafter of said department; but the said property shall forever remain and continue the property of the mayor, alderman and commonalty of the City of New York, subject to the public uses of said board of control as aforesaid, and for the purposes provided by this act.

5. The department hereby created is hereby empowered by its board of commissioners and of control as aforesaid, to appoint and remove, or by rules provide for appointment or removal of

Exhiibt C (P-5)

such subordinate officers as it shall see fit, for the purpose of distributing its said powers of government, management and direction as aforesaid, or as hereinafter provided. The said board may define the respective duties and authority of said subordinates, and fix their respective designations of office, and fix their respective compensation. And until otherwise provided for by said board of commissioners, under the exercise of the power of appointment and removal aforesaid, but no longer. The superintendents, wardens, chaplains, physicians, clerks and other subordinates who may be in office or place, over or within the institutions aforesaid, shall be in office or place, and legally discharge all the duties and fulfill all the powers necessary thereof. And the said commissioners respectively, and subordinate officers of the said department shall generally possess every power and authority now conferred upon, and be subject to every duty imposed upon the former alms house commissioners, or the board of ten governors, or the individual governors of the almshouse, by any law of the state, or by any ordinance, or by and resolution of the mayor, alderman and cammonalty of the City of New York, or board of supervisors of the County of New York, which power, authority and duty may affect or relate to the institutions aforesaid, or their inmates, or their officers, or the late alms house department of the City and County of New York, and is not inconsistent with the provision of this act.

24. Wherever, in any act or ordinance not inconsistent with the provisions of this act, but applicable thereto, the words alms house depart-

ment of the City of New York shall occur, it shall be taken to mean and refer to the department hereby created, and in like manner the words governor or governors of the alms house shall be taken to mean the commissioner or commissioners provided for by this act; and all provisions of law or of ordinances which are inconsistent with this act are hereby repealed.

Exhibit D (P-5)

LAWS OF NEW YORK—1873

CHAP. 830.

AN ACT to legalize the adoption of minor children by adult persons.

13. Nothing herein contained shall prevent proof of the adoption of any child, heretofore made according to any method practiced in this State, from being received in evidence nor such adoption from having the effect of an adoption hereunder; but no child shall hereafter be adopted except under the provisions of this act, nor shall any child that has been adopted be deprived of the rights of adoption, except upon a proceeding for that purpose, with the like sanction and consent as is required for an act of adoption under the eighth section hereof; and any agreement and consent in respect to such adoption, or abrogation thereof hereafter to be made, shall be in writing, signed by such county judge or a judge of the supreme court, and the same, or a

duplicate thereof, shall be filed with the clerk of the county and recorded in the book of miscellaneous records, wherein the same shall be made, and a copy of the same, certified by such clerk, may be used in evidence in all legal proceedings; but nothing in this act contained in regard to such adopted child inheriting from the person adopting shall apply to any devise or trust now made or already created, nor shall this act in any manner change, alter or interfere with such will, devise or said trust or trusts, and as to any such will, devise or trust said adopted child shall not be deemed an heir so as to alter estates, or trusts, or devises in wills already made or trusts already created.

Exhibit E (P-5)

CHAPTER 703

An act to amend Chapter eight hundred and thirty of the Laws of eighteen hundred and seventy-three, entitled "An Act to legalize the adoption of minor children by adult persons."

Passed, June 25, 1887; three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK REPRESENTED IN SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:

Exhibit E (P-5)

Section 1. Section ten of Chapter eight hundred and thirty of the laws of eighteen hundred and seventy-three entitled "An Act to legalize the adoption of minor children by adult persons" is hereby amended so as to read as follows:

Section 10. A child when adopted shall take the name of the person adopting, and the two henceforth shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation (including) the right of inheritance, and the heirs and next-of-kin of the child so adopted shall be the same as if the said child was the legitimate child of the person so adopting, except that as respects the passing and limitation over of real and personal property, under and by deed, conveyances, wills, devises and trusts, dependent upon the person adopting dying without heirs, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting so as to defeat the rights of remainderman, and in case of the death of the person so adopted the person so adopting as above provided, shall, for the purpose of inheritance, sustain the relation of parent to the person so adopted.

Section 2. This act shall take effect immediately.

Exhibit F (D-1)

An Indenture, made the thirtieth day of June in the year of our Lord one thousand eight hundred and sixty-six between The American Female Guardian Society, of the first part, and Mr. James W. & H. Louisa Bowdoin of Rahway, New Jersey, of the second part, whereas, Charity Ann Johnson a female child, who was of the age of two years on the nineteenth day of October last, has been duly surrendered by its natural, or other legal guardians, to the care and management of the said Society; and whereas, Mr. James W. & H. Louisa Bowdoin have applied to the managers of the said Society to put out and place the said child with them by adoption and as an apprentice, until such child shall arrive at the age of eighteen years. Now, this Indenture witnesseth, That the parties of the first part, acting by their Board of Managers, and in pursuance and by authority of an Act of the Legislature of the State of New York, entitled "An Act to incorporate the American Female Guardian Society," passed the 6th day of April, 1849, and with the approbation of the Commissioners of the Alms house of City and County of New York, have put placed and bound out, and by these presents do put, place and bind out, the said

Charity Ann Johnson

as an apprentice, unto the party of the second part, to dwell with and serve them from the day of the date of these presents, until the said apprentice shall attain the full age of eighteen years. During all which time the said apprentice shall serve, on all lawful business, according

Exhibit F (D-1)

to her power, wit, and ability, and shall honestly, orderly, and obediently in all things demean and behave herself towards her said employer and all others. And the party of the second part, for themselves, their executors and administrators, doth covenant and agree, to and with the parties of the first part, and their successors, that the party of the second part, during all the term aforesaid, shall and will provide and allow, unto the said apprentice, competent and sufficient meat, drink, and apparel, washing, lodging mending, and all other things necessary and fit for an apprentice; and shall and will teach and instruct, or cause the said apprentice to be taught and instructed, to read and write, and so much of arithmetic, spelling and grammar, as is needful for persons in the ordinary ranks of life; and shall also give unto the said apprentice, at the expiration of the said term of service, a new Bible and the sum of ($10) Ten dollars in money, or a satisfactory equivalent, and shall cause such apprentice to attend public worship on Sunday, and the Sunday school, (whenever such attendance is not too inconvenient,) during all the term aforesaid, and frequently to read the Holy Scriptures aloud; and shall not allow the said apprentice to be absent from the service of her said Foster Parents without express leave; nor suffer her to haunt ale-houses, taverns, or playhouses; nor to play at cards, dice, or any unlawful game; but will exert their authority to cause and procure the said apprentice to behave herself in all things, as a faithful apprentice ought to do, during the term aforesaid.

Exhibit F (D-1)

Although the present instrument binds the above-named child strictly as an apprentice, it is nevertheless, the true intention of the parties of the first part to place, and of the party of the second part to receive said apprentice as an adopted child, to reside in the family of the party of the second part, and to be maintained, clothed, educated, and treated, as far as practicable, with like care and kindness as if she were in fact the child of the party of the second part.

And it is further agreed, by and between the parties to these presents, that if the said apprentice, or the indenturing Committee, shall, at any time within three months from the date of this Indenture, become dissatisfied with her situation or employment, or if the party of the second part shall, at any time within that period, became dissatisfied with the said apprentice, that then, and in either such case, it shall be the duty of the party of the second part to give notice of such dissatisfaction, either on their part or on the part of the said apprentice, and forthwith to return the said apprentice to the parties of the first part, and thereupon this indenture shall cease and become void to all intents and purposes; and further; that girls over the age of ten years, when thus returned, shall be entitled to two dollars per month, or an equivalent in suitable clothing such wages or clothing to be accounted for to the Indenturing Committee. But after the expiration of three months from the present date, without any such notice of dissatisfaction from the party of the second part, or the said apprentice or said indenturing committal then

Exhibit F (D-1)

this Indenture is to be and continue in full force. And it is further understood that information, verbal or written, respecting the welfare of said apprentice, will be required at least once a year, and that a specimen of her handwriting in letter form or otherwise, must be transmitted from time to time. And it is further provided, that the present Indenture shall not be construed to render the said Society responsible in damages for any cause whatever, but shall only operate as the full exercise of the powers conferred by its charter for the purposes herein expressed.

In Witness whereof, the parties of the first part have caused their common seal to be affixed to one copy of the present Indenture, and the same to be also attested by their Childrens Secretary. And the party of the second part hath, at the same time, set their hand and seal to the other copy thereof

RACHEL P. PENFIELD,
Childrens Secretary.

(L. S.)

City and County of New York, ss:

On the 10th day of February, 1868, before me came Rachel P. Penfield to me known to be the Childrens' Secretary of the American Female Guardian Society, described in the preceding Indenture, and being duly sworn, she did depose and say, that she was such Secretary that she resides in the City of New York, that the seal affixed to the preceding Indenture is the corporate seal of the said Society, and was affixed thereto

by its authority and that she thereupon by like authority subscribed her name as an attesting witness to said Indenture.

H. H. RICE,
Notary Public,
N. Y. City.

(L. S.)
I approve the preceding Indenture.
Chas. B. Nicholson,
Prest.
G. K.

Exhibit G (P-1)

EXECUTION OF SECOND PART OF INDENTURE

In Witness Whereof, the parties of the first part have caused their common seal to be affixed to one copy of the present indenture, and the same to be also attested by their Childrens Secretary. And the party of the second part hath, at the same time, set their hand and seal to the other copy thereof.

JAS. W. BOWDOIN, (L. S.)
H. L. BOWDOIN, (L. S.)

Witness present
E. Y. Rogers.
I approve the preceding Indenture.
Chas. B. Nicholson,
Prest.
G K

Exhibit G (P-1)

INSTRUCTIONS

The accompanying paper should be acknowledged by the person executing it before any officer authorized by the law of the state where it is executed to take the acknowledgement of deeds of real estate, viz:

State of New Jersey, }
County of Union. } ss.

On this twentieth day of June, 1867, at Rahway in said county, before me personally came James W. Bowdoin & Hannah L. Bowdoin to me known to be the same persons described in and who executed the preceding instrument, and acknowledged that they had executed the same.

EDWARD Y. ROGERS,
Master in Chancery of New Jersey.

(Add signature and official description.)

(If executed out of the State of New York, a certificate in the following form must be made by the County Clerk, or Register or Recorder of Deeds, or Clerk of the Court of Common Pleas of the County where the acknowledgement is made, under his seal of office, viz:)

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

I, Henry R. Cannon, Clerk of the Court in and for said county, do certify that Edward Y. Rogers whose name is subscribed to the preceding certificate of acknowledgement, was at the time of taking the same a Master in Chancery in and

for said county, residing therein and duly authorized to take such acknowledgement, and that I am well acquainted with the handwriting of the said Edward Y. Rogers and verily believe that the signature to the said certificate of acknowledgement is genuine.

In testimony whereof, I have hereto subscribed my name and affixed the seal Seal of the said County and of its several Courts this Tenth day of August 1867.

HENRY R. CANNON,
Clerk.

Exhibit H

Know All Men By These Presents, that I, Harriet L. Bowdoin of the Township of Woodbridge, Middlesex County, New Jersey, by these presents do hereby acquit, discharge and forever release James W. Bowdoin and Hannah L. Bowdoin his wife of all duties or obligations towards me by reason of a certain indenture of apprenticeship dated June 30th, 1866, made and entered into between the said James W. & Hannah L. Bowdoin and The American Female Guardian Society by which Indenture I was apprentice to the said James W. & Hannah L. Bowdoin under the name of Charity Ann Johnson, And I hereby further acknowledge the receipt of a Bible and the sum of ten dollars with interest in full from the day I was eighteen years of age. And in consideration of the said James W. Bowdoin & Hannah L. Bowdoin his wife having fulfilled all and

every duty towards me as stipulated in said Indenture, I hereby forever acquit and release them and each of them of and from all demand, duties and obligations whatsoever towards me or on my account.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-third day of July, 1884.

HARRIET L. BOWDOIN, (L. S.)

Signed, sealed and delivered in presence of
G. R. Lindsay,
Levi W. Norton.

Exhibit I

Will of Hannah L. Bowdoin

IN THE NAME OF GOD, AMEN

I, HANNAH L. BOWDOIN, of the City of Rahway, County of Union, and State of New Jersey, being of sound mind, memory, and understanding, do make, publish and declare this writing to be my last Will and Testament in manner following, that is to say:

FIRST: I direct and order that all my just debts and funeral expenses he paid and satisfied as soon after my death as conveniently can be.

SECOND: I give and bequeath unto my Executor hereinafter named, to hold in trust for Howard K. Biggs, of Evanstown, Illinois, six shares of stock of the First National Bank of Jersey

Exhibit I

City New Jersey, and direct my Executor when the said Howard K. Biggs shall have reached the age of twenty-five years, to pay the same over to him, and in case the said Howard K. Biggs shall die before me, or before reaching the age of twenty-five years, then I direct the said legacy shall lapse and said stock shall become and be made a part of my residuary estate.

THIRD: I give and bequeath to Mary V. Coleman, of Trenton, New Jersey, the sum of Two Hundred Dollars in cash.

FOURTH: I give and bequeath to Martin Gundaker, son of Martin B. Gundaker, the sum of Fifty Dollars in cash.

FIFTH: I give and bequeath to the persons hereinafter named the following sums of money:

Susan Williams	$ 25.00
Hattie Biggs	25.00
Anita Biggs	25.00
Howard Biggs	25.00
Foster H. Biggs	25.00
Gussie Randolph	25.00
M. B. Gundaker	50.00
Agnes Bagley	50.00
Rebecca (Bound Girl)	25.00
George E. Morris of Morris Plains, N. J.	50.00
George M. Friese	100.00
Benjamin C. Mead	500.00
George E. Morris, my stock in N. Y. Central Railroad Company, John F. Newcomb, Cashier of National State Bank of Elizabeth, N. J.	250.00

Exhibit I

SIXTH: I give, devise, and bequeath unto Lucy E. Morris, the daughter of George E. Morris, of Morris Plains, New Jersey, my house and lot situated on the southerly side of West Milton Avenue in the City of Rahway, New Jersey, to her and her heirs in fee simple forever.

SEVENTH: I request my Executor, hereinafter named, to give such of my personal effects as may be mentioned in a letter attached to and accompanying this Will, and to be taken as part of the same, to such persons named therein.

EIGHTH: I give and bequeath to the Rector, Wardens and Vestry of St. Paul's Church of Rahway, N. J., the Memorial Altar erected by me in memory of my late husband and now standing in the Chancel of said Church.

NINTH: I nominate, constitute, and appoint Benjamin C. Mead, of Rahway, Union County, New Jersey, Executor and Trustee of my estate, giving him full power to execute good and sufficient deeds for any and all real estate of which I may die seized, when and at such time in his judgment the sale of the same will be for the best interest of my estate.

IN WITNESS WHEREOF I have hereunto set my hand and seal this Sixth day of June, One thousand Nine Hundred and Thirteen.

HANNAH L. BOWDOIN. (Seal)

Signed, Sealed, Published and Declared by the said Hannah L. Bowdoin to be her Last Will and Testament, in the presence of us, who, at her request, in her presence, and in the presence of each other, have subscribed our names as witnesses thereto.

Exhibit K

Mrs. Laura La Forge, 75 Milton Ave., Rahway, N. J.
Charles H. Angelman, 83 Jacques Ave., Rahway, N. J.

Exhibit K

Will of James W. Bowdoin

I hereby give, devise, etc., unto Hannah L. Bowdoin all the property of every description of which I may die possessed; in trust for the following uses and purposes, to wit: to apply the income thereof for the support and education of our adopted daughter, Harriet Lulu Bowdoin, as long as she shall live and in case upon her dying she leaves lawful issue then thereafter to apply the same for the support and education of such issue so long as my said wife shall live. In case said Harriet shall die childless, or if having lawful issue, both she and such issue shall be deceased leaving my said wife surviving, then I direct that after the happening of either such event my said wife shall enjoy said income during her natural life; and upon her death the principal sum thereof I do devise to the children of my brother Henry, their heirs and assigns forever, and in case such lawful issue of said Harriet shall live or any of them until the death of my said wife, then after my said wife's death the whole of said property shall go to such issue their heirs and assigns forever. To sell and convey without bond

and appoints her executor. In case of wife's death appoints Henry, his brother, as trustee.

Dated June 27, 1870.

JAMES W. BOWDOIN.

This will was proved in the Surrogates Office of Union County in Book M, page 531, October 8, 1894.

Exhibit L

Letter of Hannah L. Bowdoin

56 Seminary Ave., Rahway, N. J.
Nov. 3, 1911.

Dear Hattie:

Yours of October 31st is at hand, accept my thanks, next to seeing those we love is a good long letter such as you always write. Glad to hear you are all well and happy.

(Note: Then follows 4 pages of note paper relating to family and business affairs which have no relation to the question in controversy.)

Now Hattie, it is nearing Christmas times and I want to beg of you all not to send to me any presents. You all have loaded me up so many times with so many pretty fancy things which I have appreciated and kept—that my house when I am home is adorned with you nice gifts and I have brought some with me to adorn my rooms. I cannot make Christmas presents now on on cards which are called gifts, as I do not and dare not go to the cities and to send by mail one does not know

what they are getting. Dr. says my eye is better than it was last spring so I am in hope they will last me so long as I live. Miss Van Sickles is good to read the letters that I cannot. I am glad you are all so comfortable and happy. I can see you sitting around the fire and often wish you were near enough for me to look in on you yet I thank the dear Loard we can communicate in this way. Have the children write to me as often as they can, it brightens my life and you are an exceptionally good letter writer. With love to all I am as ever your old Mama.

H. L. BOWDOIN.

Opinion of Orphans' Court

UNION COUNTY ORPHANS' COURT

In the Matter of The Estate of Hannah L. Bowdoin, deceased. } Conclusions

CONNOLLY, J.: This matter comes up on the presentation of an intermediate account of the Executor of Hannah L. Bowdoin, deceased, in which the executor asks for a partial distribution of the estate of the testatrix, amongst the persons entitled thereto. Harriet L. Biggs, who claims to be entitled to participate in the distributive estate, as an adopted daughter of testa-

trix, excepts to the allowance of a gift of Two Thousand Dollars, made to Benjamin C. Mead by the testatrix, on August 27th, 1914. The executor contends that the expectant has no standing before the Court, for the reason that she was not an adopted daughter of the testatrix, and is in no way entitled to participate in her estate.

The following facts, upon which the expectant bases her claim to have been an adopted child of the testratix, have been submitted to the Court. On June 30th, 1866, an indenture, which has been admitted in evidence, was made between "The American Female Guardian Society, of New York City," of the first part, and Mr. James W. and H. Louise Bowdoin, of the City of Rahway, New Jersey, of the second part. The indenture sets forth that Charity Ann Johnson, a female child (now known by her marriage name, as Harriet L. Biggs), of the age of two years on October 19th, 1865, was surrendered to the said society, and that the parties of the second part had applied to the Manager of the Society, to put out and place the said child with them, by adoption, and as an apprentice, until she should arrive at the age of eighteen years. The indenture then sets forth that the said society had "put, placed out, bound out and by these presents do put, place and bind out the said Charity Ann Johnson, as an *apprentice,* unto the party of the second part, to dwell with and serve them from the day of the date of these presents until the said appretice shall attain the age of eighteen years. During all of which time the said apprentice shall serve on all lawful business according to her power, wit and ability, and shall honestly, orderly and obedient-

ly, in all things, demean and behave herself toward her said employer and all others, and the party of the second part, for themselves, their executors and administrators, doth covenant and agree, to and with the parties of the first part, and their successors, that the party of the sec- 10
necessary and fit for an apprentice; and shall and will provide and allow, unto the said apprentice, competent and sufficient meat, drink and apparel, washing, lodging, mending and all other things necesary and fit for an apprentice; and shall and will teach and instruct, or cause the said apprentice to be taught and instructed, to read and write, and so much of arithmetic, spelling and grammar, as is needful for persons in the ordinary walks of life; and shall also give unto the said appren- 20
tice, at the expiration of the said term of service, a new bible, and the sum of ten dollars in money, or a satisfactory equivalent, and shall cause such apprentice to attend public worship on Sunday, and the Sunday School (whenever such attendance is not too inconvenient) during all the term aforesaid, and frequently to read the Holy Scriptures aloud; and shall not allow the said apprentice to be absent from the service of her said foster parent without express leave; nor 30
suffer her to haunt ale houses, taverns or play houses; nor to play at cards, dice or any unlawful game; but will exert their authority to cause and procure the said apprentice to behave herself in all things, as a faithful apprentice ought to do during the term aforesaid," and further reads as follows: "Although the present instrument binds the above named child, strictly as an apprentice, it is, nevertheless, the true intention of 40

the parties of the first part, to place, and of the parties of the second part to receive, said apprentice as an adopted child, to reside in the family of the party of the second part, and to be maintained, clothed, educated and treated, as far practicable, with like care and kindness, as if she were in fact the child of the party of the second part." The indenture also provides, that if the apprentice, or either of the parties to its execution, should become dissatisfied in any wise with the contract, or the situation or employment under it, such indenture should cease and become void.

The indenture was executed by the Society on June 30, 1866, and appears to have been acknowledged on February 10, 1868. A duplicate of the indenture, except as to acknowledgments, and the County Clerk's certificate, was executed by the party of the second part, on June 30, 1866, and was acknowledged on June 20, 1867, in Union County, New Jersey, before Edward Y. Rogers, a Master in Cancery, and the County Clerk's certificate, certifying to the official character of the Master, was attached to the acknowledgment.

The question now before the Court is this: Did the indenture work an adoption of the child by the parties of the second part? Adoption of children was unknown to the common law, and no law was in existence, in either New Jersey or New York, changing or altering the common law, at the time when the indenture was executed. This was known to the parties who signed the indenture, and I am of the opinion that the indenture did not provide for anything more than the bind-

ing out of Charity Ann Johnson (the exceptant), to the testatrix and her husband, until she was eighteen years of age. During the period intervening between the date of the indenture and the time when the indentured child reached eighteen years of age, the latter was bound to serve and obey the testatrix and her husband, and they were required to furnish her with food, clothing, education, including religious training, and finally at the termination of the period specified, were required to give her Ten Dollars and a Bible. It is plain that the adoption was of a limited character, and was so understood by all the parties to the contract. It was so understood by Mrs. Biggs, for on July 23, 1884, when she had almost reached her twenty-first birthday, she executed a release to James W. Bowdoin and Hannah L. Bowdoin, his wife, (the parties of the second part to the indenture made in 1866), in which she acknowledged the receipt of a Bible and the sum of ten dollars, and the interest from the day she was eighteen years of age. This release contains the following language; "James W. Bowdoin and Hannah L. Bowdoin, his wife having fulfilled all and every duty towards me, as stipulated in said indenture, (the indenture herein referred to), I hereby forever acquit and release them and each of them, of and from all demands, duties and obligations whatsoever, towards me on any account." This release was executed before the exceptant was twenty-one years of age, but so far as appears, it was never repudiated by her after she reached full age.

A similar contract to that made between the American Female Guardian Society and the Bow-

doins, was before the Court of Chancery in the case of *Petrie vs. Voorhees Executor*, 3 C. E. Gr., 285. The Court said in that case, (p. 287): "The indenture stated that although it binds the child strictly as an apprentice, it was the intention of the parties that she should be received and reside in the family as an adopted child, and be treated with like care and kindness as if she were the child of Voorhees." Notwithstanding the similarity of the language of the contract before the Court, with that contained in the indenture under consideration, it does not appear in the case that any claim was made by the indentured child, that she was an adopted child. Her claim was that she was entitled to have a sufficient amount set aside from the estate or the person to whom she had been indentured, until she was eighteen years of age, and there is nothing in the language of the opinion that would indicate that she was considered in any other light than as a servant, entitled to the performance of the contract under which she was bound, until she should reach eighteen years of age, and the Court sustained the will, in the case cited, on the ground that it contained a proper provision for the support of the complainant, during the period designated in the contract of service.

The will of James W. Bowdoin, dated, June 27th, 1870, which was admitted to probate on October 8th, 1894, is cited to show that Mrs. Biggs was regarded in the Bowdoin household, as an adopted child. It is true that Mr. Bowdoin referred to her in his will, as his adopted daughter, and made provision for her support and education, and in the event of her death, for the sup-

port and education of her issue. The fact that the words "adopted daughter" are used, does not prove anything. The word "adopted" was sometimes used, before the passage of the statutes providing for adoptions, when a limited adoption was intended, and sometimes used with a view of creating the status of parent and child. The indenture under which Charity Ann Johnson, (Mrs. Biggs), came into the household of the Bowdoins shows that the adoption was of a limited character. It has the printed word "adoption" at the top of the first page. But if the indenture did nothing more than create an apprenticeship, and it seems to me that this was its plain object, then the word was used in the sense which I attribute to it, and not in the sense which it now bears under the Statute. The object sought by Mrs. Biggs is to give the statutory meaning to a word which was loosely employed before the enactment of the Statutes of New York and New Jersey, providing for adoptions.

Nor do I think that the fact that Mrs. Bowdoin referred to herself as "your old mama," when writing to Mrs. Biggs, on November 3d, 1911, proves anything. As between persons who were for so many years closely together, and bearing the relation they did toward each other during that time, Mrs Bowdoin's language was simply that of an old woman, who desired to close her letter with a term of endearment.

As I understand the claim of Mrs. Biggs, she bases her adoption on the indenture, and not on any independent agreement. Her case is not governed by the law as laid down in *Van Dyne vs. Vreeland*, 3 Stock. 370, *Van Tyne vs. Van*

Tyne, 15 Alt. 249, and other cases of a similar character.

It is also argued that legislation has been adopted in the State of New York, which had the effect of creating between Mrs. Biggs and the Bowdoins, the relation of parent and child, with all the rights and subject to all the duties of that relation, including the right of inheritance. Chapter 703 of the Laws of New York, passed June 25, 1887, amending Chapter 830 of the Laws of 1873, passed June 25, 1873. It does not appear that any proceedings were ever instituted under these acts, so far as the expectant is concerned. If the acts became operative without any action on the part of the Bowdoins, they could not affect the relation existing between the Bowdoins and the child, Charity Ann Johnson. The Bowdoins were citizens of the State of New Jersey, and no act of the Legislature of New York passed after the execution of the indenture, would affect the relation created by the indenture between the Bowdoins and their indentured servant, without their consent. Statutes passed in another State can have no force in this State, except with the consent of the parties to be affected. The question is not whether the acts of New York shall be construed to conform to the construction imparted to them by the Courts of New York, but whether we shall give those statutes force and effect in the State of New Jersey.

I have reached the conclusion that Mrs. Biggs was never adopted by the Bowdoins, and is not, therefore, entitled to participate in the estate of the deceased, and has no authority to interpose an exception to the account presented by the executor.

Decree of Distribution, Orphans' Court

UNION COUNTY ORPHANS' COURT

In the Matter
of
The estate of Hannah L. Bowdoin, deceased.

An intermediate account of Benjamin C. Mead, Executor under the last Will and Testament of Hannah L. Bowdoin, deceased, having been duly filed, exhibiting the sum of Seventeen thousand one hundred seventy-six and 84/100 ($17,176.84) Dollars, of the said estate in his hands and exceptions having been filed thereto by Harriet L. Biggs, claiming the residuary estate upon the grounds that she was the legally adopted daughter of the said Hannah L. Bowdoin, and the said claim of said Harriet L. Biggs having been contested by the heirs and next of kin of the said Hannah L. Bowdoin, and the proofs and allegations of the parties having been heard and considered by the Court, and the Court having concluded that the said Harriet L. Biggs was never the legally adopted daughter of the said Hannah L. Bowdoin, and is not therefore entitled to participate in the estate of the deceased, and had no authority to interpose an exception to said accounting presented by the executor, and such account having been duly allowed by this Court, and it appearing that the said Harrah L. Bowdoin died on or about the 9th day of September, 1914, intestate as to a portion of her estate; and it appearing that an appli-

cation has been made to this Court for partial distribution of the estate undisposed of by the terms of said Will, and it further appearing that all the parties in interest having appeared and waived their right to notice of an application for a decree of partial distribution, and it further appearing that the persons entitled to participate in the distribution of the residue of said estate, and their respective interests therein, are as follows:

(Then follows the names of the distributees and the amount of their respective shares).

JAMES C. CONNOLLY,
Judge.

Opinion in Prerogative Court

Submitted, May 16, 1916. Decided, July 3, 1916.

NEW JERSEY PREROGATIVE COURT

In the Matter of The estate of Hannah L. Bowdoin, deceased.	Conclusions.

On Appeal from the Orphans Court of Union County.

For the Appellants: Messrs. Vail & McLean;
For the Respondent George E. Morris: Mr. Adolph Ulbrich;

For the Respondents Wm. Hunt and Jacob Mabee: Mr. Wm. C. Webb;
For the Respondent Susan Williams: Mr. Charles F. Edsall.

BACKES, VICE-ORDINARY:

The facts are fully set forth in the opinion of Judge Connolly, filed in the Orphans Court, and I concur in the conclusions arrived at by him.

The indenture by which the appellant was bound to the deceased and her late husband in 1866, by the American Female Guardian Society, was for a term of years only and expired by its own limitation. The form of the indenture is similar to the one found in 18 N. J. Eq., 285. The language relating to adoption simply characterized the sentiment of the relation thereby created. Wallace Estate, 218 Pa. St., 39.

Assuming that the Society had authority under its charter to grant adoption of its wards, and also that the New York Adoption Act of 1873 recognized and confirmed such adoptions, it is plain to be seen that the Society did not execute the power and consequently the indenture was not within the purview of the later legislation. Clearly, the provisions of the Act were intended to embrace adoptions of a lasting nature only, and of such, only those that were made by sanction of law.

Furthermore, when the Adoption Act was passed in 1873, the parties were domiciled in New Jersey and their status as fixed by the contract, viz.: that of master and apprentice, remained unaffected by the statute of New York. And, when the amendment to the Adoption Act was enacted in 1887, adding the right

of inheritance, the relation between the appellant and the deceased had long since been dissolved by expiration of time. Each had fully performed the terms of the indenture, and after the appellant had acknowledged in writing her satisfaction, called a release, she went her way. Ross-v. Ross, 129 Mass., 243, is an instructive opinion by Ch. J. Gray upon the principle that the heritable status of a person is fixed by the law of the domicile.

Other questions raised on the argument and in the brief of respondent's counsel, concerning the disability of the deceased, a married woman, to join with her husband in the indenture; the sufficiency of its execution by the Society; whether the contract was executed in New York or in this state, and others, are all subordinate to the view expressed in the opinion below and here entertained, and therefore have not been examined and are not passed upon.

The decree below will be affirmed, with costs.

Final Decree of Prerogative Court

(Filed, July 18, 1916)

NEW JERSEY PREROGATIVE COURT

In the Matter
of
The estate of Hannah L. Bowdoin, deceased.

This matter duly coming on to be heard before the Prerogative Court, the appellant being rep-

resented by Vail & McLean of counsel, and the respondents by Charles F. Edsall of counsel, and the court having taken time to consider the same, and being of the opinion that the decree of the Orphan's Count herein should be affirmed in all things:

It is now on this 18th day of July, in the year of our Lord One Thousand nine hundred and sixteen, on motion of Charles F. Edsall, counsel for respondents,

ORDERED, ADJUDGED AND DECREED, that the decree of the Orphans' Court herein made on the 3d day of March, 1916, which is appealed from by the appellant, be, and the same is hereby in all things affirmed, with costs of appeal to be paid by the appellant, and that the petition of appeal be dismissed.

And it is further ordered that a counsel fee of ($500) Five hundred dollars be allowed to Vail & McLean, counsel for the appellant herein and that a counsel fee of ($500) Five hundred Dollars be allowed to Charles F. Edsall, counsel for the respondents herein, and that said counsel fees be paid by the executor from the estate of the said Hannah L. Bowdoin, deceased and that the record and proceedings herein be remitted to the Union County Orphans' Court, to be therein proceeded on according to law and the practice of said court.

H. R. WALKER,
Ordinary.

Respectifully Advised
John H. Backes,
V. O.

Petition of Appeal

(Filed, Aug. 15, 1916)

COURT OF ERRORS AND APPEALS

In the Matter
of
The estate of Hannah L. Bowdoin, deceased.

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

The petition of Harriet L. Biggs, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree of the Prerogative Court made by decree. Dated April 18th, 1916, in this respect, to-wit:

That the said decree ORDERED, ADJUDGED AND DECREED that the Decree of the Orphans' Court of Union County, made in said cause on March 3, 1916, was thereby in all things affirmed, and that the Petition of Appeal should be dismissed.

And your petitioner humbly appeals from that part of the decree of the Prerogative Court which decreed as aforesaid, upon the ground that the same was erroneous, in that the Prerogative Court should have decreed that said appellant was the legally adopted child of James W. Bowdoin and Hannah L. Bowdoin; and therefore entitled to the residuary estate of the said Hannah L. Bowdoin.

Your petitioner therefore prays that the said decree of the Prerogative Court, may be in the

particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

Dated, August 15, 1916.

VAIL & McLEAN,
Proctors for and of counsel with Appellant.

Answer to Petition

NEW JERSEY COURT OF ERRORS AND APPEALS

In the Matter
of
The estate of Hannah L. Bowdoin, deceased.

The answer of the respondents George E. Morris, Susan Williams, William Hunt and Jacob Mabee to the petition of appeal of Harriet L. Biggs.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the 18th day of July last past, made and entered in the Prerogative Court, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the

same shall be produced. And respondents are advised and believe, that the said decree is in all ways correct and in accordance with law and agreeable to equity, and pray that the same may be affirmed, with costs to be adjudged to the respondents.

Filed, Sept. 12, 1916.

ADOLPH ULBRICH,
Proctor for George E. Morris.

WILLIAM C. WEBB,
Proctor for William Hunt and
Jacob Mabee.

CHARLES F. EDSALL,
Proctor for Susan Williams,
and of Counsel with respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the matter of Estate of Hannah L. Bowdoin, deceased.	On Appeal from Prerogative Court.

BRIEF OF RESPONDENTS.

Point 1.

Point 1.

The indenture by which appellant was bound to decedent and her husband in the year 1866 by the American Female Guardian Society was for a term of years only and expired by its own limitation.

Point 2.

The agreement under which appellant came to live with Mr. Bowdoin by contemporaneous construction between the parties fixed it as that of master and servant.

Point 3.

The relation between appellant and Mrs. Bowdoin was unaffected by the statutes of New York, as the parties were residents of New Jersey and domiciled here.

Point 4.

The American Female Guardian Society never executed its power to grant adoption of appellant, even assuming it had such power.

Point 5.

New Jersey has exclusive jurisdiction of the regulatioh of the transfer of property within its limits, and it has proviced a procedure to be followed for the adoption of children so as to make them capable of inheriting in New Jersey real and personal property of the adopting parent.

Point 6.

Appellant was never adopted by Mrs. Bowdoin in accordance with the provisions of the statutes of New Jersey, and until she brings herself within the scope of such provisions she cannot claim the benefit of our statutes.

Point 7.

The moment rights of appellant are attempted to be worked out through so-called New York adoption proceedings

it is apparent that parties adopting that method, without further agreement, intend to confer only such rights as it availed to confer, and inasmuch as, when the agreement was executed New York had no statute conferring right of inheritance on adopted children, none was conferred on appellant.

Authorities.

P. L. 1877, page 123.

P. L. 1885, page 38.

P. L. 1897, page 243

P. L. 1893, page 197.

P. L. 1882, page 254.

P. L. 1902, page 259.

Petrie v. Voorhees, Ex'r., 18 N. J. Eq. 285.

Wallace's Estate, 218, Pa. St., 39.

Ross v. Ross, 129 Mass. 243.

Hood v. McGehee, 189 Fed. Rep. 205.

It is respectfully submitted that the decree of the Prerogative Court should be affirmed, with costs.

VREELAND & WILSON,
Proctors for Respondents,
Anna L. Thomas, Sarah Dyer,
Jacob L. Mabee, Reuben V. Hunt
and Abraham L. MaBee.

C. FRANKLIN WILSON,
of Counsel.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

IN THE MATTER OF
ESTATE OF HANNAH L. BOWDOIN,
deceased.

On Appeal from Prerogative Court
BRIEF FOR RESPONDNETS.

Vreeland & Wilson,
Proctors for Respondents,
21 South Street,
Morristown,
N. J.

New Jersey Court of Errors and Appeals

In the Matter of The Estate of HANNAH L. BOWDOIN, Deceased.	On appeal from Prerogative Court.

BRIEF OF RESPONDENTS.

Statement.

As most of the facts set forth by appellant are not facts, in particular those numbered 2, 3, 4, 6, 7, 12, 13, 14, 15 and 16, but are largely the questions which are to be determined by this Court and have heretofore been determined by the Courts below adversely to the appellant, respondents beg leave to set forth a statement of the case.

This case arose upon an intermediate accounting and exceptions filed thereto by appellant claiming the residuary estate upon the grounds that she was the legally adopted daughter of decedent.

Respondents thereupon interposed denying appellant's claim to be the legally adopted daughter of decedent and asserting that appellant had no

interest in decedent's estate and therefore no standing in court.

These questions being fundamental, it was agreed that the matter of objections should be deferred until final accounting and that the question of adoption and right of inheritance should be determined independently as upon an application for a decree of partial distribution.

The matter having been heard and the Court having concluded that appellant "was never adopted by the Bowdoins and is not therefore entitled to participate in the estate of the deceased, and has no authority to interpose an exception to the account presented by the executor" (see Opinion, Connolly, J., page 71), a decree of partial distribution was made dated March 3rd, 1916.

From this decree an appeal was taken to the Prerogative Court and the decree affirmed (see Opinion, Backes, V. O., page 81), whereupon this appeal was taken.

The questions before the Court on this appeal are of appellant's alleged adoption and right of inheritance.

On the hearing it appeared that appellant, now residing in Evanston, Illinois, was placed with the New York Female Guardian Society January 17th, 1866, and by them placed with Mr. and Mrs. Bowdoin domiciled in Rahway, N. J. on February 23, 1866. Thereafter on June 20th, 1867, an indenture dated June 30th, 1866, was signed by decedent and her husband in Rahway, New Jersey; their signatures were witnessed and acknowledgment taken in Rahway, N. J. by Edward Y. Rogers, Master in Chancery, according to his certificate dated June 20, 1867, and certificate of County Clerk of Union County dated August 10th, 1867, annexed. A duplicate indenture was signed on behalf of

the American Female Guardian Society in New York City. It is on these indentures that appellants claim is based (see Exhibits F [D-1] and G [P-1], pages 59-63 of case).

On July 23rd, 1884, claimant executed and delivered to the Bowdoins a release under seal, in which the indenture herein was referred to as "indenture of apprenticeship dated June 30, 1866" and which stated "by which indenture I was apprentice to" and further states that the Bowdoins, "Having fulfilled every duty towards me as stipulated in said Indenture I hereby forever acquit and release them," etc. See Exhibit H, page 65.

The burden is upon claimant to establish her claim as against the rights of the natural relatives of decedent.

Argument.

Adoption is unknown to the common law.

In the absence of Statutory authority it is not within the power of an individual to create the status of parent and child by adoption.

There was no statute giving such authority to decedent resident of and domiciled in New Jersey in 1866, the first adoption statute in New Jersey being passed in 1877.

Therefore this indenture must be interpreted as a contract.

The parties affected were all domiciled in New Jersey when the instrument was signed. It was signed and performed in New Jersey and the estate being in New Jersey only New Jersey law can apply.

But decedent a feme covert was under disability to make a contract, and the contract is otherwise defectively executed and void.

Even if valid it gave no property rights, nor right of inheritance.

The relationship created was in fact an apprenticeship.

Whatever rights appellant had were effectually released.

No question of comity is involved.

But under New York Law in 1866 the same objections apply.

The Special New York Statute in 1849 incorporating a Society could not remove the common law disability from citizens of New Jersey but did not attempt even to change the common law of New York State.

No later statutes of New York could have any effect on decedent continuously resident of and domiciled in New Jersey, or upon her estate.

No right of inheritance was ever given to appellant by decedent either by this indenture or by the Act of 1849.

No right of inheritance was ever given to appellant by the laws of New York, and such law could have no effect whatever on persons continuously domiciled in New Jersey or upon estates here administered.

The opinions of the Courts below are correct and the decree herein should be affirmed.

POINTS.

I.

Adoption is unknown to the common law.

Authorities are scarcely necessary for the familiar and well settled principle that adoption

(as creating a legal status) was unknown to the common law.

Albring vs. Ward, 137 Mich., 352.
Ballard vs. Ward, 89 Pa. St., 358.

The Common law "does not recognize any rights, claims or duties arising out of such a relation *except as arising out of an express or implied contract.*"

Davie, C. J. in re Quai-Shing, 6 B. C., 86-91.

Particularly it does not recognize the right of inheritance.

Bowins vs. English, 138 Mich., 178.

"Heirship except that based on consanguinity, can be created only by a constitutional law by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature."

Albring vs. Ward, 137 Mich., 352; 100 N. W., 609.

II.

And in the absence of statutory authority, it is not within the power of an individual to create the relation of parent and child by adoption.

1 Corp. J., 1317, and cases quoted.

"It was never in the power of an individual by the common law of England or this state

to adopt the child of another as his own until the Act of Assembly May 4, 1855."

Ballard vs. Ward, 89 Pa., 358, 7 W. N. C., 254 (Pa.).
Evans Est., 47 Pa. Super., 196.

The first statute of adoption in New Jersey was passed in 1877 in New York, 1873.

Stout vs. Cook, 75 A., 588 (N. J.).
See Opinion of Connolly, J., page 74, line 34, Case.

III.

It is of importance to distinguish the different senses in which the word adoption has been used.

First: It must be recognized that

"The term adopted child, while in the law it has a strict significance and presumes some form of legal procedure in common parlance and as used by the masses is very frequently applied to a child simply taken into a family and raised."

Crumley vs. Worden, 201 Ill., 105.

And that apprentices were often spoken of as adopted children and so received.

Petri vs. Voorhees, 18 N. J. E., 285.
State Ex Rel. John Wayne vs. Henry Baldwin, 5 N. J. E., 454.
Wehle vs. Weissenbach, 60 N. Y., 387.

Second: There was and long has been recognized a relationship termed an adoption, by force of contract which while not creating the status of parent and child between the parties might effectually bind the adopting parent to any or all of the responsibilities and obligations of fatherhood and confer property rights upon the child so adopted *solely by virtue of the express provisions of the contract,* whether oral or written.

Third: The statutory relations of parent and child where the State by virtue of the express terms of a statute prescribed a method whereby individuals might create the legal status of parent and child between themselves and those not so related to them by nature and defines the relationship so created. But there was no such statute in existence in 1866.

It is also important to bear in mind the distinction so clearly pointed out in Smith vs. Allen, 32 A. D. (N. Y.), 380, aff. 161 N. Y., 478, that

> "the act of adoption is the act of the person taking the child. It does not relate to the act of the corporation from whose custody the child is taken. Adoption still remains the act of the person who takes and receives the child. The statute does not confer upon the charitable institution any power of adoption for that is always the voluntary act of the person who takes the child into relations with himself."

IV.

There was no statute of adoption in existence at the time of this alleged adoption. The New Jersey Act of 1877 was not retroactive and no adoption was made under it, and no status ever attained in New Jersey where all parties were domiciled in and after the year 1866.

It is obvious that appellant cannot claim to take directly under the New Jersey Law governing the distribution of estates; Chapter 47, Laws of 1914, Section 2 amending Sections 168 and 169 of the Act respecting the Orphans' Court (Revision 1898).

The earliest adoption law in this State is found in P. L., 1877, page 123, and the present law will be found in Laws of 1902, Chapter 92, page 259 (Amendments, Laws of 1905, Chapter 149, page 272; Laws 1912, Chap. 281, page 53).

And it is equally obvious that appellant was not adopted under any provisions of the adoption statutes of this State since no such statute was in existence at the time of this alleged adoption.

And it is a well established rule that such statutes are not retroactive.

> "When the legislature intends to give the law of their enactment operation upon the past, they will and must do it with such choice of words as places it beyond the realm of doubt."
>
> Citizens Gas Light Co. vs. Alden, 44 N. J. L., 648.

And it was obviously not the intention of the legislature to provide for former adoptions or to

bring them within the purview of this act as was done by some states in passing the first general statute of the kind by means of saving clauses therein. Nor was any hardship worked by this, for it was always possible for one to add to the rights and privileges with which they had already endowed those living with them, the right of inheritance and the status of children "born in lawful wedlock" by the proceeding provided by the statute; and this was often done or to provide for them by will.

In Pennsylvania under two instruments identical with the one in question, executed by the American Female Guardian Society an adoption under the statute was considered necessary and where such adoption was not made, the instrument was held as an indenture only of apprenticeship.

Wallace's Estate, 218 Pa., 41, quoted fully pages 16-17 of brief.

And it is not within the province of the Court to make new rules for the distribution of estates where existing statutes do not cover a situation.

As has been said (Edwards vs. Yearby, 168 N. C., 633), *"changes required must be referred to the General Assembly, for this question of the devolution of property by descent and distribution is one coming entirely within its province."*

As has been shown in the absence of statutory authority, it is not within the power of an *individual* to create the relation of parent and child by adoption. And even where there is a statute the "adopted child does not stand on the full footing of an actual child even as to his legal right. He has only such rights as the statute clearly gives him."

Morgan vs. Reel, 213 Pa., 81-89.

And as there was no statute in existence in 1866 in New Jersey or in New York giving claimant the status of a legal child of deceased, therefore, no status was ever obtained at the time this indenture was executed, nor thereafter.

V.

There being no statute of adoption in existence at the time, this agreement must be interpreted only as a contract.

Under such agreement the beneficiary takes only what the contract specifically gives, and attains no legal status, but only a contractual relationship, and it is to this contract alone that we may look for the rights which are conferred.

Goodine vs. Kidd, 69 Hun, 585-590; quoting Wharton on Conflict of Laws.

This contract does not give the rights of inheritance, or any property right whatever.

VI.

This indenture must be interpreted by the New Jersey law only.

It appears from the record book of the society, that claimant was placed with Mr. and Mrs. Bowdoin at Rahway, New Jersey, February 23, 1866, without the execution of any papers whatever.

Thereafter, on June 20th, 1867, when the child had been domiciled with the Bowdoins for many months, the indenture herein dated June 30th,

1866, was signed and acknowledged by Mr. James W. and H. Louisa Bowdoin at Rahway, County of Union and State of New Jersey, as appears by the certificate of acknowledgment attached. This paper was executed in New Jersey, being witnessed by Edward Y. Rogers, Master in Chancery who took the acknowledgments, and decedent and appellant were then domiciled in New Jersey as recited in the instrument (see page 59), and according to the record book, see page 30 of the society. There is no evidence to the contrary, and, as has been shown, adoption is the act of the adopting parents.

Smith vs. Allen quoted above, page 7.

Therefore, the adoption, if any, was in New Jersey.

An act of adoption is not comparable to an ordinary act such as the transfer of land which requires no special authority to the individual to perform it.

Here in the absence of statutory authority an act was done in New Jersey and it is claimed that authority was given to the decedent, never resident or domiciled in New York by New York Law, to create in New Jersey a status unknown to the law of either New Jersey or New York at the time.

There is not the slightest authority in any case to hold that a statutory adoption entered into in one state can be made according to the laws of another state.

Therefore this was at most a contract only.

Moreover, as the obligations assumed by Mr. Bowdoin were assumed in New Jersey, as this was an agreement executed in New Jersey by parties then and continuously thereafter domiciled in New Jersey regarding a child then and for the

term of the instrument continuously in New Jersey, as this was a contract which was to be performed in New Jersey, which was performed in New Jersey, affecting property if at all only in New Jersey and now to be interpreted by the Courts of this State, it is obviously a New Jersey contract to be interpreted according to the laws of this State. The laws of New York, therefore, are material only as determining the power of the society thus to place the child and its authority to consent to placing the child just as many New York societies are now placing children in this State by adoption to which they consent. *If this child were to be placed by the society in Rahway to-day, and thereafter adoption proceedings were taken, there can be no doubt that such proceedings would be those of a New Jersey adoption and the society has exactly the same powers now that it had then. It can still place children by adoption or at service. But as will be shown hereafter, only the State of domicile may say that its citizens have power to make an adoption and how it may be made.*

VII.

Even if it were otherwise than a New Jersey contract, still only New Jersey laws in this case would apply.

"As in other cases relating to the person contracts of apprenticeship are to be construed according to the lex loci contractus, but if from the terms of the instrument it appears that it is to be executed in another jurisdiction, then the lex loci contractus becomes immaterial and its validity must be tested by the lex loci solutionis."

3 Cyc., 549, B. i a (1), Petrie vs. Voorhees, 18 N. J. E., 285 (agreement similar to this made with American Female Guardian Society).
Dyer vs. Hunt, 5 N. H., 401.

This applies equally to the agreement before us. But if any doubt could arise, the law of the forum will nevertheless be preferred to the foreign law.

Saul vs. His Creditors, 5 Mart. U. S. (La.), 569; 16 Am. Dec., 212.
Runyon vs. Groshon, 12 N. J. E., 86.

VIII.

Under any theory the instrument is fatally defective, and as to Mrs. Bowdoin, a feme covert, absolutely void.

Mrs. Bowdoin as a feme covert was under an absolute disability to execute such an instrument.

A married woman at common law was under an absolute disability and such disabilities still exist except as changed by the legislature in express terms or by reasonable construction.

Am. & Eng. Encyc. of Law, Second Ed., Vol. 15, page 790.
21 Cyc., 1306, B., 2.

At this time, both in New York and New Jersey, she was under disability to contract.

Lewis vs. Perkins, 36 N. J. L., 133.
Nash. vs. Mitchell, 71 N. Y., 199.

Even by statute the disability is only lightened within the statutory limits and she is still otherwise under the protection of her common law disability.

Hopper vs. Demarest, 21 N. J. L. 525.
Lewis vs. Perkins, Supra Nash. vs. Mitchell.
Tracy vs. Keith, 11 Allen (Mass.), 214.

And it was not until laws of 1895, that all disability as to contracts was removed in New Jersey and before this claimant had given her release to the Bowdoins, had married and gone her way.

And as no one was permitted to make an adoption till 1877 in New Jersey, and as it was not within the power of anyone aside from statute to create the relation of parent and child by adoption, therefor Mrs. Bowdoin a feme covert was at the time under a double disability to make either a contract of adoption or a statutory adoption in New Jersey, or in New York, and the agreement was and is void.

Thompson vs. Minnich, 227 Ill., 430.
McCully's Est., 8 W. N. C., 14-16 (Pa.)
In Re Carroll, 219 Pa., 440.

Moreover, the claimant was never legally within the control of the society when placed with Mr. and Mrs. Bowdoin, as according to the record book the surrender had not been approved at that time and the child was not legally committed to their care by the Mayor as provided by the Act of 1894, incorporating the society, and therefore when claimant left the State of New York and was without the jurisdiction, no subsequent act of approval could cure or validate any act of the society in regard to such illegal placing.

It should also be observed:

That the instrument contains no separate acknowledgment by Mrs. Bowdoin, and is therefore void.

Sarazin vs. Union R. R., 153 Mo., 479.

Also that proof of the authenticity of the acknowledgment by the American Female Guardian Society and therefore the authority of Rachel P. Penfield and the genuineness of her signature is lacking, and that the approval of the Commissioners of the Alms House, or the Surrogate of the City and County of New York, as required by the statute, does not appear and the signature, Jas. B. Nicholson, is not authenticated nor his authority shown, and the 30 year presumption of regularity will not cure defects apparent on the face of an instrument as the lack of proper acknowledgment.

Although the objections already set forth effectually dispose of any right appellant may have to this estate, and in itself the fact that there was a mere contractual relationship, is conclusive against her. It is clear that

IX.

The instrument in fact created an apprenticeship only.

This is proved (1) by the terms of the instrument itself (2) by the decisions of various states (3) by appellant's own interpretation (4) by decedent's interpretation and (5) by the fact that it is presumed that the Bowdoins intended to do by this instrument what they legally could do, to wit: create an apprenticeship.

(1) *It will be seen that the terms of the instrument itself are those of apprenticeship.*

The terms of the instrument are clear and unequivocal. The words of grant are exclusive "put placed and bound out, and by these presents do put, place and bind out, the said Charity Ann Johnson, as an *apprentice* unto the party of the second part to dwell with and serve them from the day of the date of these presents until said apprentice shall attain the age of eighteen years" (page 59). And further,

"Although the present instrument binds the above named child, *strictly as an apprentice* it is nevertheless the true intention of the parties of the first part to place and of the party of the second part to receive said *apprentice* as an adopted child to reside in the family of the party of the second part and to be maintained, clothed, educated and treated as far as practical with like kindness as if she were in fact the child of the party of the second part." The words of the indenture "to receive said apprentice as an adopted child" only indicating giving this clause the fullest meaning susceptible consistent with the before clearly expressed intention of the parties how the apprentice was to be received and treated.

Wallace's Est., 218 Pa. 41 (1907).

This case quoting an identical instrument says:

"Thus far it is an indenture of apprenticeship in the ordinary form. The clause of the agreement upon which the appellant's claim is based is as follows: 'Although the present instrument binds the above named child strictly as an apprentice, it is, nevertheless, the true intention of the parties of the first part to

place, and of the party of the second part to receive, said apprentice as an adopted child, to reside in the family of the party of the second part, and to be maintained, clothed, educated and treated as far as practicable, with like care and kindness as if he were in fact the child of the said party of the second part!"

"If the fullest meaning of which this clause is susceptible consistent with the before clearly expressed intention of the parties be given it, it refers only to the treatment of the apprentice during the term of apprenticeship. He is to be received as an adopted child would be received, to reside in the master's family and to be maintained and treated with like care and kindness as if he were in fact the child of the party of the second part. The relation established was to end when the apprentice became of age. There is not the slightest suggestion of an intention to confer upon him any right of inheritance."

The Courts below have correctly found "the indenture did nothing more than create an apprenticeship and it seems to me that this was its plain object" (page 77, line 20). Opinion Connolly, J.

"The language relating to adoption simply characterizes the sentiment of the relation thereby created." Opinion Backes V. O., page 81, case.

Again the terms are clear "Mr. James W. and H. Louise Bowdoin have applied to the managers of said Society to put out and place the said child with them by adoption and as an apprentice *until such child shall arrive at the age of eighteen years*" page 59, line 20.

(Not as appellant has quoted in his brief, "by adoption, [comma] and as an apprentice until such child shall arrive at the age of eighteen years").

"It is plain that the adoption was of a limited character and was so understood by all parties to the contract." Opinion Connolly J., page 75 Case.

"The indenture by which the appellant was bound to the deceased and her late husband in 1866 by the American Female Guardian Society was for a term of years only and expired by its own limitation." Opinion Backes V. O., page 81 case.

"Assuming that the Society has authority to grant adoption it is plain to be seen that the Society did not execute the power." Opinion Backes Vice Ordinary, page 81 case.

By the widest possible interpretation of the plain terms of this instrument it could be considered as a contract of adoption for a term only, as the Court below well says, Connolly, J., page 77:

"The word adopted was sometimes used before the passage of the statutes providing for adoptions when a limited adoption was intended and sometimes used with the view of creating the status of parent and child."

"This indenture under which Charity Ann Johnson (Mrs. Biggs) came into the household of the Bowdoins, shows the adoption was of limited character. It has the printed word 'adoption' at the top of the first page, but if the indenture did nothing more than create an apprenticeship, and it seems to me that this was its plain object, then the word was used in the sense that I attribute to it and not the sense that it now bears under the statute. The object sought by Mrs. Biggs is to give the statutory meaning to a word which was loosely employed before the enactment of the Statutes

of New York and New Jersey providing for adoptions."

See also

Crumley vs. Worden, 201 Ill., 105;
Riley vs. McKinney, 149 N. W., ~~quoted Supra~~, 603. quoted p 20 and 22 Brief

Nowhere in the instrument is there any intimation that the term of the relationship is to be continued thereafter "and shall also give unto said apprentice, at the expiration of said term of service" page 60, line 30. And the testimony of disinterested witnesses, to wit: of the executor Benjamin C. Mead, pages 40-41, line 30, and Mrs. Sarah Morris, page 46, line 40, supported by the documentary construction which claimant herself at one time, when her interests were not warped by the desire for gain, put upon the instrument (See Release Ex. D-1). "Indenture of Apprenticeship" prove conclusively that the instrument was an apprenticeship only and was so considered by decedent, and that whatever the relationship was, it ceased at the end of the term.

Evans Est., 47 Pa. Super, 196;
Wallaces Estate Supra.
Petrie vs. Vorhees, 3 C. E. Gr., 285; 18 N. J. E., 285.

And as said in the opinion by Backes, V. O., pages 81-82, case:

"Furthermore, when the adoption act was passed in 1873, the parties were domiciled in New Jersey, and their status as fixed by the contract, viz. that of master and apprentice remained unaffected by the statute of New

York. And when the amendment of the adoption act was enacted in 1887, adding the right of inheritance, *the relation between the appellant and the deceased had long since been dissolved by expiration of time.* Each had fully performed the terms of the indenture and after the appellant had acknowledged in writing her satisfaction, called a release, she went her way."

The above ruling and determination by the Courts below is in full accord with common sense and the true intention of the parties, and is fully supported by authority 18 N. J. Eq., 285, Wallaces Est., 218 Pa. St., 39 and should be sustained by this court.

The title of the instrument can not avail appellant.

"Stress is laid by appellant upon the fact that the contract in question was denominated in its caption 'Articles of Adoption.' We see no relief for appellant along this line."

Riley vs. McKinney, 149 N. W., 603.

In this period of statutory adoption we are unused to the term adoption as importing any limited or informal relationship but at the time this instrument was executed it was not uncommon. Evans Est., 47 Pa. Super 196 Mayne vs. Baldwin, 5 N. J. E., 454.

And in North Carolina the distinction is made to-day Adoption may be for minority without inheritance or for life with inheritance.

And confusion can only arise when we try to escape the plain terms of the instrument and endeavor to expand it to meet circumstances there-

after arising which could not have been within the contemplation of the parties at the time.

The intention of the parties was in no way disappointed. They accomplished all the parties had in mind or desired. The subsequently occuring facts cannot affect the intention of the parties or change the transaction then entered into by them nor can it justify the implication of an agreement to do what the parties had no intention of doing.

(2) And this instrument has been interpreted strictly as an apprenticeship both in Pennsylvania and New Jersey.

Wallaces Est., 218 Pa., 41.
Petrie vs. Vorhees, 18 N. J. E., 285.

These cases the one a recent decision from the highest court of Pennsylvania on a similar state of facts, interpreting this same instrument, and the other, the contemporaneous expression of New Jersey law as to the relationship created, are of far greater authority than any other cases. Although appellant attempts to evade the force of Petrie vs. Vorhees, it is clear that the Court construed the instrument strictly as an apprenticeship. The apprenticeship thus existing in New Jersey was never changed but terminated according to the terms of the indenture.

(3) By the release signed by appellant at the expiration of her apprenticeship, she refers to the relation as an apprenticeship and to the indenture herein as an "indenture of apprenticeship" (Ex. H. P. 65 case).

This is conclusive upon appellant as her own testimony of the relationship herein and her every action is consistent only with apprenticeship.

(4) The testimony shows clearly that decedent only looked upon appellant as a "bound girl" Evans

Est., 47 Pa. Super 196 (Case, pages 39, 40-41, at line 30, 42 at line 10 Test. Benj. C. Mead, page 46, line 30, Test. Sarah E. Morris).

Appellant says, Mrs. Bowdoin also recognized the adoption by frequent visits and reports to the Society (Brief page 2). Instead the Bowdoins reported to the Society about this apprentice according to the terms of the instrument.

> "And it is further understood that information respecting the welfare of said apprentice will be required at least once a year." Page 62, line 2-7.

Such act only affirms that this relation was an apprenticeship only, and is absolutely inconsistent with the theory of relationship of parent and child.

Our charitable societies to-day although requiring reports where children are placed out, do not require such reports in cases of adoption.

(5) This indenture was an agreement of apprenticeship only, as New Jersey had construed it. The rule of construction must here be applied that decedent by this contract intended to create what legally she could create to wit: an apprenticeship and the court will not hold that decedent created a status then unknown to the law.

If an adoption had been intended, it would have been easily possible to express such intention so that no question could have arisen.

The language of Riley vs. McKinney, 149 N. W., 604 is appropriate to this case.

> "The grantor in this case is a charitable society doubtless organized under the provisions of the statute. It carries on a great and humane work. Its great object is not to secure

estates for its wards, but to secure for them kindly homes and affectionate care during the period of their minority. If it could surrender a child only to such adopting parties as would adopt it as their own natural child the extent of its work would be greatly circumscribed. The number of persons who would confer so great a privilege upon a child thus offered, would presumably be much less than the number of those who would assume the lessor undertaking. The reason, therefore, for the form of this particular contract stands forth very plainly, and we ought not to shut our eyes to it in an attempt to bring it within these sections of the statute above quoted."

And it undoubtedly was the purpose of the New York Female Guardian Society to provide in this one instrument for the highest degree of care and affection which it was possible to confer upon an apprentice.

X.

The terms of this written agreement cannot be enlarged by testimony.

The general rule is too well settled for comment and the latest pronouncement's of the New York Court of Appeals show that the rule applies to an instrument almost identical with this.

Brantingham vs. Huff, 174 N. Y., 60.

And in Michigan a similar rule is applied.

Bowins vs. English, 138 Mich., 178,
Albring vs. Ward, 137 Mich., 353.

Or where a similar question as to the terms of the adoption arose as in

Middleworthy vs. Ordway, 191 N. Y., 404.

Therefore, the testimony of claimant "this paper makes you an heir" is not only inadmissible, but unbelievable in view of the fact that such right even to adopted children was unknown in New York at the time. Moreover, as a mere conclusion, it could have no legal effect whatever on anyone. It did not and could not add a new agreement to the instrument. Not only because of Mrs. Bowdoin's disability to make such an agreement, not only because there could be no possible consideration for such new agreement, but because it does not even purport to make any new agreement. And testimony as to the will or letter is likewise irrelevant and incompetent to change in any way the terms of this agreement.

No testimony as to appellant's reception and treatment by decedent or her husband is relevant or competent to change this from a contract to a statutory adoption. The plain terms of the instrument provide for the manner of her treatment and no act of kindness by decedent could alter them. Apprentices were often so received and treated.

Wehle vs. Weissenbach, 60 N. Y., 387.

Mr. Bowdoin's will cannot avail to create an adoption by himself, much less can it create an adoption by Mrs. Bowdoin.

Dorsett vs. Vough, 98 Atl., 248 (N. J. Err. & Appeals);
Phillips Est., 17 Pa. Super., 103;
Smith vs. Allen, supra.

Still it is to be noted that this will was executed in 1870 during the term while Mr. Bowdoin was still bound by the agreement to receive this child as an apprentice and to treat her as an adopted child, a time when apprentices were often referred to as adopted children. Nor can the use of the expression "your old mama" in a carefully preserved letter serve to indicate any change in the contract either as to the nature or term of the relationship.

Are the relatives of Mrs. Bowdoin to be deprived of their rights to this estate because of her kindness to this appellant apprentice, or because of Mr. Bowdoin's generosity, though she was not bound by the terms of this agreement and the agreement did not give appellant any right to inheritance.

XI.

Of all cases interpreting this or similar instruments there is only one instance in which the right of inheritance has been given and that based on a saving clause in the provisions of a later statute and amendments thereto, and that one New York case, besides being the decision of a single Judge, at Trial Term, has been overruled as to the term of agreements of this character by Brantingham vs. Huff, 174 N. Y., 60.

For, in the case of Simmons vs. Burrell, relied upon by appellant, testimony was adduced to show that the relationship continued after the term of 18 years provided in the indenture and this case was quoted in Brantingham vs. Huff in which the

Court of Appeals ruled that such evidence was improper and inadmissible and that the instrument itself was conclusive as to the fact that the relationship should continue only until the child was 18 years of age.

Against the decision of this one Judge at Trial Term as to the construction of this contract there is to be offset the decision of the Chancellor in Petrie vs. Vorhees of the Auditor and Judge in the Orphans Court in Pennsylvania and of the five Appellate Court Judges who heard the appeal in the Supreme Court of Pennsylvania, in the Wallace's Estate case, and of the two Judges below in this case.

And the construction given to a like instrument in the Courts of New Jersey and Pennsylvania in the cases cited, and in this case in the Courts below, is much more in accordance with common sense and the rules of law as to the construction of instruments and states correctly the true intention of the parties.

And, also, it should be remembered that even in this one New York case, a case where it was clearly evident that both parties had lived together to the time of death and so lived in the State of New York, and the death was in the State of New York, and the estate in the State of New York and the death after the New York Statute of 1873 and 1887, the decision is based upon the saving clause in the New York Statute "An Act to legalize adoptions" 1873 and the act of 1887 operative on New York citizens, and this act and saving clause is not controlling on the Courts of New Jersey and its citizens, particularly when decedent was never resident of or domiciled in New York and the estate is not within the jurisdiction of New York Courts.

XII.

If appellant had any rights under this indenture they were effectually released.

The release given by appellant when she was just under 21 years of age is conclusive as her own testimony at the time, as to the fact that she was, she so terms herself "apprentice" and that this indenture was, in the words of the release, "an indenture of apprenticeship" only; and is effectual as a release, for although a release by an infant is not binding but is voidable, it is not void but only voidable. Horine vs. Horine, 11 Mo., 649, and the mere fact of infancy is not sufficient to avoid. Walker vs. Ferrin, 4 Vt., 523. It is to be treated as an executed contract of an infant, voidable only in the sense that while prima facie valid and binding, it may be avoided and hence no ratification is necessary, but repudiation must be made to avoid its effect.

Viditz vs. Hagan, 2 Ch., 569; 68 L. J. Ch., 553—80 L. T. Rep. N. S., 794; 47 Wkly. Rep., 571;
Minock vs. Shortridge, 21 Mich., 304;
Wise vs. Loeb, 15 Pa. Super. Ct., 601;

and that repudiation must be within a reasonable time after reaching majority.

Leacox vs. Griffith, 76 Iowa, 89;
Dillon vs. Burnham, 43 Kan., 77.

But in this case it does not appear that the release was ever repudiated.

XIII.

Appellant's theory is untenable for no adoption was made in New York, and the Act of 1849 was not a statute of adoption.

Although it is apparent that both appellant and decedent were resident in New Jersey at and before the execution of this instrument and that there was no general adoption statute in existence in either New York or New Jersey at that time enabling decedent to make an adoption, appellant contends that this adoption was made in New York. This merely confuses the issues, but in nowise strengthens appellant's case.

On the authority of Smith vs. Allen, 32 A. D., 374, quoted on page 7 , that "adoption is the act of the adopting parents and no act of the Society can avail to create an adoption" by decedent, we see that New York itself repudiates the theory that this adoption was made by the society or in New York. Whose act was the act of adoption, if any? The act of the adopting parents! Where was that act done? Rahway, New Jersey, acknowledged June 20, 1867.

The contention that the private act of 1849 incorporating a society, is an adoption statute giving powers to citizens of every state to create a status unknown to the common law, especially where that power if given is only given by implication hardly merits the detailed arguments here opposed to it which are:

(1) The general principle that a statute does not change the common law beyond what is expressed or follows by unmistakable implication. Chic. & E. Ry. vs. Luddington, 175 Ind., 35.

Here there was neither expression nor implication but only a mention of a simple contractual relationship long well known.

(2) A statute will not be construed to have any extra territorial effect if subject to any other rational construction.

36 Cyc., page 1112, cases quoted.

(3) The statute itself is a special statute incorporating a society and contains nothing as to adoption but the naked word "adoption" used once. No method for effecting an adoption is mentioned, no process for safeguarding the entrance into such a relationship, no manner in which the fiat of the state, the essential of statutory adoption shall be given or that it be given at all. No manner in which an individual may apply to the state for its necessary approval. No definition of the rights or duties of the respective parties nor any definition of the relationship itself.

It is clear that the New York Statute contemplated at most nothing more than the simple contract form of adoption long well known and that only since 1877 in New Jersey or 1887 in New York has any question arisen due solely to later enactments which the law of 1849 never contemplated.

The terms of the alleged law itself gives power to no one, but the society, and aside from an enabling statute, it is not within the power of anyone to create the status of parent and child by adoption. Therefore in this case, the laws of New York are material only as determining the power of the society thus to place the child and its authority to consent to placing the child just as many New York Societies are now placing children in this State by adoption to which they consent.

(4) The decision and later statutes of New York relied upon by appellant recognized that at most the American Female Guardian Society could enter into contracts of adoption and that an adoption entered into by them would not create the legal relation and status of parent and child, so in 1873 New York passed an Act entitled an "Act to legalize adoptions," which contained a saving clause providing that "Nothing herein contained shall prevent proof of the adoption of any child heretofore made, according to any method practiced in this State, from being received in evidence, nor such adoption from having the effect of an adoption hereunder." This was a saving clause and not declaratory. In Re Thorne, 155 N. Y., 143).

If such methods were complete adoptions creating the status of parent and child, what was there to legalize. At foot of page 407 Simmons vs. Burrell, 8 Misc., the Judge in that case said "In my mind no doubt remains that the intention of the legislature was to legalize these former adoptions and place them on a level with the adoptions that should thereafter occur and not subject the parties to a new adoption under that statute in order to confer upon them the rights which it granted." But this act could have no effect on decedent not a citizen or resident or domiciled in New York but always domiciled in New Jersey.

The only right granted by this statute which was not granted by contracts of adoption was that the parties should thenceforth sustain toward each other the legal relation of parent and child (so that such children could thereafter take under the designation "child" in a will) and as the adoption was legalized in this respect only, it is apparent that such relation did not exist before.

(5) In any event in the absence of a declaration to that effect in the words of the statute itself, the act of 1849 even if an adoption statute could not create the status of parent and child for as before said "an adopted child does not stand on the full footing of an actual child even as to his legal right he has only such right as the statute clearly gives him."

Morgan vs. Reel, 213 Pa., 81-89.

The Act of 1849 gave no rights whatever and could not therefor create a status then unknown to law.

Moreover an adopted child in the State of New York had no right of inheritance until the Act of 1887. And as is said in Ross vs. Ross, 129 Mass., page 243 quoting 2 Austin on Jurisprudence 3rd Edition, pages 706-709-712-974 "according to one of the most learned and thoughtful writers on jurisprudence of our time, it is the rights, duties and capacities arising from the event which creates a particular status, that constitutes the status itself and affords the best definition of it."

Inasmuch as no right of inheritance was given before 1887, to adopted children, unless in specific terms of a contract, the legal status of parent and child was not created until the direct statutory declaration to that effect in 1873, but an adopted child stood in the position of an illegitimate child, since both were denied the right of inheritance from those who might stand in the relation of parents to them.

But in the case at bar even had the Society had the right to make an agreement of adoption, it is *clear that it did not do so and that the instrument herein if considered as an adoption at all was for a limited term only, and gave no right of inheritance.*

See opinion by Backes V. O., page 81, line 20.

XIV.

In any event, the New York Act of 1873 and the amendment of 1887 could have no effect upon decedent, continuously resident and domiciled in New Jersey, or upon her estate.

Neither of the statutes could have any effect whatever on decedent, she being and having been always domiciled in New Jersey and never having come under the jurisdiction of the New York Statutes. Nor on claimant for the domicile of an apprentice immediately became that of the Master. The opinions of Backes V. O., page 81 and Connolly J. page 78 in this are correct.

Waldaborough vs. Friendship, 87 Me., 211.
Washburn vs. White, 140 Mass., 568.

"The personal status of each individual is governed by the law of actual domicile."

Petrie vs. Vorhees, 18 E., 285.

The case of Simmons vs. Burrell is not authority for the case at bar, the parties in that case living in New York and subject to New York Statutes. While in this case the parties lived at all times in New Jersey and not subject to New York Statutes, and there being no similar statute and saving clause in any adoption act of New Jersey.

Moreover the law of 1887 conferring the right of inheritance upon adopted children has been held by the New York decisions to be read as the law of

distribution of the State of New York, and that "no right of inheritance before the death of an intestate arises from any relations existing between him and another."

Dodin vs. Dodin, 16 A. D. (N. Y.), 45.

Therefore these laws do not affect individuals until the death of a party, resident of, or leaving an estate in the State of New York, and apply to the State of New York only, directing to what particular individual the State shall distribute the property which by intestacy comes into its hands. Matter of Moore, 90 Hun, 166.

Therefore, they can effect only persons or estates within the jurisdiction of that State and who are to take by their laws.

XV.

As adoption was unknown in New Jersey, even if there had been a statute of adoption in New York, it could have had no effect on decedent, continuously resident of, citizen of, and domiciled in New Jersey. For, as said in Wharton on Conflict of Laws, 3d Ed., at page 564, under the head of Adoption,

"Each state however, has its special legislation as to civil status, and domicil therefore must determine what particular legislation is to apply." And further

"So far as concerns the change of status, the act must be one which the domiciliary law of both parties approves" and note same page says,

"The true view is that the act should be authorized by the personal law of both parties."

"One State cannot impose such a status as this on the domiciled subject of another state." And again says:

"Both the adopter and the adopted must be personally subject to the laws of the State by whom the adoption is enacted."

Some confusion of ideas may be avoided, if we will place ourselves back in 1866-1867. It is of that date this paper is to be construed, and as of that date, the effect of it is to be determined. And no statute of adoption then existing in New Jersey, the state of which decedent was a citizen, resident and domiciled, the paper was absolutely invalid on her part as an act of adoption under Statutes, as there was no statute applicable to her a resident of New Jersey.

Therefore the cases on Comity quoted by Counsel for appellant have no bearing on the case at bar. They are all cases where the child and the adopting parents were residents in the state where the adoption was made and thereafter moved to another state and there was in both States a statute of adoption.

The special questions arising in this case did not at all arise in these cases quoted.

XVI.

In any event, New Jersey is free to decide who shall take this estate, and the principle of comity and the constitutional provisions (U. S. Constitution, Article IV, Section I) quoted by appellant, have no application to this case whatever.

Hood vs. M'Gehee, 189 Fed., 205 Aff., 199 Fed., 989 (An adoption case) Decided that the question

of descent or devolution of property was a local one and that each state was free to say who should take estates coming into possession of such state upon the death of an individual. See also Matter of Moore, 90 Hun. (N. Y.), 166.

NO CASE HAS EVER RECOGNIZED FOREIGN ADOPTIONS. NOR RIGHT OF INHERITANCE THEREUNDPER, EXCEPT WHERE THE ADOPTION WAS MADE UNDER A GENERAL STATUTE AND WHERE BOTH THE ADOPTED PARENTS AND CHILD WERE RESIDENTS WITHIN THE STATE WHERE THE ADOPTION WAS MADE AT THE TIME OF THE ADOPTION, AND ALL THE CASES QUOTED BY APPELLANT ARE OF THIS NATURE, BUT THE CASE AT BAR IS NOT SUCH A CASE.

Appellant cites Ross vs. Ross in behalf of claimant on page 23 Appellant's brief.

By this very quotation appellant's case falls. They quote, "An adopted child with the consent of its father and the sanction of a judicial decree."

In the case at bar, there was no sanction of a judicial decree.

Continuing: In another State where the *parties* were domiciled at the time."

In the case at bar, the parties were not domiciled in New York at the time.

> "Under a statute by which a child so adopted has the rights of inheritance as legitimate offspring in the estate of the adopting father."

In the case at bar not only was there no adoption under such a statute, but there was no such statute in existence at the time of this alleged adoption.

"Is entitled after the adopting father and adopted child have removed their domicile into this commonwealth," showing that the adopted father's domicile in the Ross case was in the State by whose laws the adoption was made, but that is not so in this case.

Continuing "To inherit here the real estate of such father as against the collateral heirs although his wife has given no formal consent to the adoption," as is required under the statutes of adoption of this commonwealth." So there was an adoption statue as well in Massachusetts under which the adoption might have been made at the time it was made, but in this case, there was no statute of adoption in New Jersey at the time of this alleged adoption.

The rule in the Ross vs. Ross case is in no wise met in this case.

It would be to say the least a novel application of the principle of comity to hold that New York (when all the parties involved are without its jurisdiction and are domiciled elsewhere) can pass laws governing the distribution of estates in New Jersey.

The case of Rosekrans vs. Rosekrans, 163 App. Div., page 730, quoted by appellant has no application to the case at bar and is dependant entirely upon a different state of facts. It is not denied that if this child has been adopted in New Jersey under the adoption laws of this State that the laws of inheritance in effect at the time of the death of decedent would govern the distribution of decedent's estate and that is all that the Rosekrans case holds.

New Jersey is always free to decide what her laws of distribution are and to whom they apply.

XVII.

In construing contracts in derrogation of common law and in efforts to change the natural course of descent, ignoring the merit on account of blood, all questions should be determined in favor of the natural objects of one's bounty.

Ex Parte Clark, 87 Cal., 638-641.
In re Carroll, 219 Pa., 440.
Sarazin vs. Union R. Co., 153 Mo., 479.

The just and most modern rule seems to be that while a liberal construction should be given for the benefit of the infant so far as providing a home and home influences are concerned, as to rights of inheritance a strict construction should be enforced so that such relationship shall not be used by the object of one's bounty to usurp the place of blood relations and oust them from their natural rights as such.

XVIII.

No right of inheritance has ever been given under like or similar circumstances or upon similar theories and should be denied in this case.

This is a claim against the rights of blood relatives, brothers and sisters and their children, of the intestate, under the statutes respecting distribution in the State of New Jersey.

It is a claim to inherit and to take distribution of intestate's estate, by virtue of an alleged paper executed in New Jersey with a New York Society in 1867 by a married woman living in New Jersey

at the time and ever since, such married woman then being under a disability to make adoptions, or even contracts of this nature at a time when there was no recognition under the common law of adoption and when New Jersey was subject to the common law, and before New Jersey had any statute respecting adoptions, and this claim is sought to be established by virtue of some statutes passed in the State of New York many years after the execution of the alleged paper and when all parties were beyond the jurisdiction of the State of New York and domiciled in and under the jurisdiction of the State of New Jersey, which has already interpreted a similar instrument as an apprenticeship only.

It is an attempt to have this Court decide that an instrument which clearly was an indenture of apprenticeship until the child was eighteen years of age coupled with an agreement to receive and treat such apprentice with like care and kindness *as far as practicable* as if she were their child, did something far from its plain declarations, its plain intent and purpose, and the plain intent and purpose of the parties.

By what process of reasoning or principle of law can it be held that when Mrs. Bowdoin was domiciled elsewhere, New York could by the laws of 1873 and 1887 grant to claimant against Mrs. Bowdoin and her estate any rights.

Will the Courts of New Jersey when Mrs. Bowdoin was a resident of the State of New Jersey, a feme covert under disability to make any contract of, or statutory, adoption disregard the plain terms of the indenture in this case and the release of the claimant and the simple principles of the law, and look with favor upon the effort of this apprenticed child now a resident of Illinois to take, by New York laws passed when all the parties claimed

to be bound thereby lived in New Jersey, from needy relatives of decedent property which by every principle of nature, law and justice should be theirs.

It is therefore respectfully submitted

1. That Charity Ann Johnson by the indenture Exhibit F. was not legally adopted but became at most only an apprentice.

2. That not having been legally adopted thereby, no act of the parties nor statutes passed thereafter ever changed her status.

3. That the New York Statutes of 1873 and 1887 could have no effect whatever on these parties not domiciled in New York but domiciled in New Jersey.

4. That the right to inherit is controlled by the law in force in New Jersey at the time of Mrs. Bowdoins decease and claimant cannot bring herself within the provisions of this law.

5. That Hannah L. Bowdoin having died intestate as to her residuary estate, it should be distributed to her blood relatives according to the decree of distribution herein, and that for all of these reasons.

The decree of the Prerogative Court herein should be affirmed.

ADOLPH ULBRICH,
WILLIAM C. WEBB,
CHARLES F. EDSALL,
Proctors for Respondents.

CHARLES F. EDSALL,
of Counsel.

New Jersey Court of Errors and Appeals

In the Matter of The Estate of Hannah L. Bowdoin.	On Appeal from Prerogative Court.

BRIEF OF APPELLANT

Statement of Facts

1. Charity Ann Johnson, a child under two years of age, was surrendered by her mother, (her father being dead), to the care of the American Female Guardian Society of New York, January 17, 1866. (See Exhibit A.)

2. This surrender was made under authority of chapter 244 of the Laws of New York of 1849, as amended by chapter 510 of the Laws of 1860. The particular sections of the Act of 1849 relating to surrender and adoption are 6 and 8. Exhibit B. The Act of 1849 was amended by the Act of 1860 by abolishing the office of Governor of the Almshouse and appointing a Board of Commissioners who were given power to select a president (Sec. 3). This board had the same power as the Board of Almshouse Commissioners abolished by the Act, (Sec. 5 and Sec. 24). Exhibit C.

3. Under authority of these statutes Charity Ann Johnson was legally adopted by James W. Bowdoin and Hannah Louisa Bowdoin on June 30, 1866.

4. James W. Bowdoin died in 1894 and by his will he recognized the child as his legally adopted daughter. Exhibit K.

5. The paper of adoption left with the society remained in their possession until produced in the hearing in the Orphans' Court (Exhibit F). The one given to the Bowdoins was retained by them and after Mrs. Bowdoin's death was found by her executor among her papers and was produced by him at the hearing (Exhibit G). It is identical with Exhibit F except the execution.

6. The child was brought from New York to Rahway by Mrs. Bowdoin who said that she was Charity Ann Johnson and was ever afterwards recognized as the adopted child of the Bowdoins. (See testimony of Miss Coleman, p. 12 and testimony of Mrs. Biggs relative to the visit to the society, wherein Mrs. Bowdoin said, referring to the letters of adoption which she had, speaking to Mrs. Biggs who was then known as Hattie L. Bowdoin, "This makes you an heir" (p. 5, l. 26, p. 10).

7. Mrs. Bowdoin also recognized the adoption by frequent visits and reports to the society. (See record book, a copy of the entries being read into the record, pp. 30, 44 & 45.)

(New York Statutes.)

8. Statute of 1849, Chapter 244, particularly Sections 6 and 8. Exhibit B.

9. Statute of 1860, Chapter 510, particularly Sections 3, 5 and 24. Exhibit C.

10. Statute of 1873, Chapter 830, particularly Section 13. Exhibit D.

11. Statute of 1887, Chapter 703. This Act gives the right of inheritance. Exhibit E.

12. Hannah L. Bowdoin at the time of her death was a resident of the County of Union and her will was duly admitted to probate by the surrogate of this county. Exhibit 1. The will made no disposition of the residuary estate. Her husband James W. Bowdoin, died in 1894. They had no children of their own but adopted the child named Charity Ann Johnson, who afterwards married Foster H. Biggs, and who now claims the residuary estate by force of adoption.

13. It appears from the records of the American Female Guardian Society and Home for the Friendless (incorporated originally under the name of The American Female Guardian Society) that Charity Ann Johnson, a child under two years of age, was duly surrendered to the care and management of the society by her mother, Hannah O. Johnson, on January 17, 1866 (case, p. 31). The surrender is evidenced by the formal instrument contained in the "Surrender Book" of said society duly signed by the mother, with two subscribing witnesses, and with the consent of John T. Hoffman, then the Mayor of the City of New York, endorsed thereon. Exhibit A. The Surrender Book shows that the child's father was killed in the Civil War of 1864, that is, prior to the surrender of the child by its mother. It further appears that the child was adopted by James W. Bowdoin and H. Louisa Bowdoin, his wife, of Rahway, New Jersey, by an indenture dated June 30th, 1866, made by and between the American Female Guardian Society, as party of the first part and said James

W. and H. Louisa Bowdoin, as parties of the second part. This indenture was executed in two parts. The copy executed by the Bowdoins was delivered to the society and remained in its possession among its records until produced at hearing as Exhibit F. The counter part, executed by the society and delivered to the Bowdoins, was found by Mrs. Bowdoin's executor among her papers, after her death, and was produced by him at the hearing, Exhibit G.

14. While the society was a New York corporation and the child was legally surrendered to it in New York, the Bowdoins resided at that time and continuously thereafter until their death in Rahway, New Jersey, where the child lived with them, after the adoption and until her marriage. She now resides with her husband in Illinois.

15. From the time of the adoption the child was always considered as their daughter by the Bowdoins and was known by their name (Miss Coleman, p. 14 and Mrs. Biggs, pp. 3-4). Mr. Bowdoin's will was proved in the office of the Surrogate of Union County, Book M, page 531. His will makes provision for "My adopted daughter." Exhibit K.

16. She was baptised and given the family name (Case, pp. 3-4).

POINTS

I

The above facts being established, under authority of the New York statutes and the cases cited in the attached brief, the right of inheritance to the residuary estate by Harriet L. Biggs, who was Charity Ann Johnson, is clearly established.

Charity Ann Johnson was legally adopted by James W. Bowdoin and his wife, Hannah L. Bowdoin, in strict compliance with the law of New York, where the child had acquired a domicil by reason of the surrender by its mother to the society.

The American Female Guardian Society was incorporated by Chapter 244 of the Laws of 1849 of the State of New York, entitled, "An Act to Incorporate the American Female Guardian Society," passed April 6th, 1849. Exhibit B. Section 6 of the Act reads as follows:

> "Sec. 6. In all cases where a child shall have been surrendered by its natural or other legal guardians to the care and management of the society by any instrument or declaration in writing, it shall be lawful for the said Board of Managers at their discretion to place such child, by adoption, or at service in some suitable employment, and with some proper person or persons, conformable to the laws of this state in regard to the binding out of indigent children, provided that in all such cases the terms of the indenture shall be approved by the Gov-

> ernor of the Almshouse, or by the surrogate of the city and county, which approval shall be signified in such indenture by the signature of such governor or surrogate; but in every such case the requisite provisions shall be inserted in the indenture or contract of binding to secure the child so bound such treatment, education, or instrument as shall be suitable and useful to its situation and circumstances in life."

In Section 8 it is provided that in case of the death of a father the mother shall be deemed the legal guardian of her children for the purpose of making a surrender as provided in Section 6 and that a surrender for the purposes and within the true intent and meaning of the 6th section, but that no surrender by the mother as provided in this section shall be valid without the consent of the mayor of the city or surrogate of the City or County of New York, or a Governor of the Almshouse. This was amended by Act of 1860. The only sections bearing on the question before the Court are 3-5-24. The act merely changes the board of control.

The surrender of the child by the mother, as surviving parent, with the consent of the mayor, conformed precisely to the requirements of Section 8 of the Act of 1849. There can be no question as to the regularity and legality of the surrender, and the society accordingly had the right to place the child by adoption or at service under Section 6 of the Act of Incorporation. The indenture also strictly follows the requirements of Section 6 as Amended by Act of 1860. The section does not prescribe the precise form, but does contemplate an indenture and provides for the approval of its terms by one of the officers named in

the section, quoted above, as amended. This approval was given and is endorsed upon the indenture.

The indenture has a two fold aspect, being both an indenture of adoption and an indenture to service as an apprentice with provisions and covenant suitable to each. It recites the surrender of the child by the mother; that the Bowdoins have applied to the managers of the society "to put out and place said child with them *by adoption, and as an apprentice until such child shall arrive at the age of eighteen years,*" and stating that the society is acting by its board of managers and pursuant to the Act of April 6, 1849, and with the approval of the Commissioners of the Almshouse of the City and County of New York, proceeds, in the words of grant to

> "put place and bind out the said Charity Ann Johnson as an apprentice, unto the party of the second part"

(that is, Mr. and Mrs. Bowdoin)

> "to dwell with and serve them from the day of the date of these presents until the said apprentice shall attain the full age of eighteen years."

Then follows a covenant by Mr. and Mrs. Bowdoin to provide for the child food, clothing, lodging, etc. and instruction and to give her at the end of the term of service a new bible and ten dollars in money with further provisions for attending public worship, etc. The instrument continues:

> "*Although the present instrument binds the above named child, strictly as an apprentice, it is nevertheless, the true intention of the parties of the first part to place,*

> *and of the party of the second part to receive, said apprentice as an adopted child, to reside in the family of the party of the second part, and to be maintained, clothed, educated, and treated, as far as practicable, with like care and kindness as if she were in fact the child of the party of the second part.''*

Then follows a provision for the cancellation of the indenture and return of the child to the society within three months from the date of the indenture in case the child or the foster parents or the society is dissatisfied with the situation and gives notice, but after the expiration of such three months without any notice of dissatisfaction the indenture is to be and continue in force. It is further provided that the indenture shall not be considered to render the society responsible in damages for any cause whatever

> ''but shall only operate as the full exercise of the powers conferred by its charter for the purposes herein expressed.''

The indenture is endorsed ''Adoption'' and was the only form of indenture used by the society at that time and for many years afterwards. The execution and delivery of the instrument constituted an adoption in the full exercise of the powers conferred by the charter for that purpose and the adoption became irrevocable after the lapse of three months. The child accordingly immediately acquired whatever rights could be acquired, at that time by an adopted child.

II

There was no general statute relating to adoption in New York until the enactment of Chapter 830 of the Laws of 1873.

The Court of Appeals of the State of New York has said that the adoption of children was a form of domestic relation unknown to the common law of England and existed in this country only by virtue of statute, and refers to the Act incorporating the American Female Guardian Society as an early instance of such a statute.

Matter of Thorne, 155 N. Y., 141.

The first general law, Chapter 830 of the Laws of 1873, Exhibit D, is entitled "An Act to legalize the adoption of minor children by adult persons." This Act did not give the right of inheritance.

Section 13 of this law provides:

> "Nothing herein contained shall prevent proof of the adoption of any child, *heretofore made according to any method practictd in this state,* from bein greceived in evidence, nor such adoption from having the effect of an adoption hereunder; but no child shall hereafter be adopted except under the provisions of this act, nor shall any child that has been adopted be deprived of the rights of adoption, except upon a proceeding for that purpose, with the like sanction and consent as is required for an act of adoption under the eighth section hereof; and any agreement and consent in respect to such adoption, or abrogation thereof hereafter to be made, shall be in writing signed by such county judge or a

judge of the Supreme Court, and the same, or a duplicate, thereof, shall be filed with the clerk of the county and recorded in the book of miscellaneous records, wherein the same shall be made, and a copy of the same, certified by such clerk may be used in evidence in all legal proceedings; but nothing in this act contained in regard to such adopted child inheriting from the persons adopting shall apply to any devise or trust now made or already created, nor shall this act in any manner change, alter or interfere with such will, devise, or said trust or trusts, and as to any such will, devise or trust said adopted child shall not be deemed an heir so as to alter estates, or trusts or devises in wills already made or trusts already created."

It will be seen from the foregoing quotation that an adoption made prior to the passage of the Act "according to any method practiced in this state" was given the effect of a legal adoption under the Act of 1873.

III

Subsequently by Chapter 703 of the Laws of 1887 the Act of 1873 was amended so as to confer the right of inheritance on children adopted before that act was passed.

The effect of the amendment of 1887 upon adoptions made before its enactment under the law of 1873, was to add to the rights conferred by the Act of 1873 upon adopted children, the right of inheritance, or rather the capacity to inherit.

Dodin v. Dodin, 16 App. Div., 42, at page 46, affirmed in 162 N. Y., 635, also reported in 44 N. Y. Supp., 800.

The amendment of 1887 also conferred the right of inheritance, in the case of adoptions made *before* the enactment of the Act of 1873 from the American Female Guardian Society under the authority of its charter (the Act of 1849).

Simmons v. Burrell, 28 N. Y. Supp., 625, at pages 631-634.

In the *Simmons* case the adoption was made in 1861, from the American Female Guardian Society. This is the same society that granted adoption for Charity Ann Johnson. In the opinion, the Court quotes at length from the language of the indenture of adoption used in that case, *which was of precisely the same form, combining provision for both adoption and apprenticeship,* as the indenture by which the Bowdoins adopted Charity Ann Johnson.

After reciting the clause in the indenture relating to apprenticeship, the Court said:

> "It also contained this significant provision; 'Although the present instrument binds the above named child strictly as an apprentice, it is, nevertheless, the true intention of the parties of the first part to place, and of the party of the second part to receive, said apprentice as an adopted child, to reside in the family of the party of the second part, and to be maintained, clothed, educated, and treated, as far as practicable, with like care and kindness as if she were in fact the child of the party of the second part.' So the real purpose of the

> instrument was to adopt the child. Thus the child was lifted from the apprentice at service to the dignity of a member of the family, and while her servitude continued, she was to have the care, solicitude and protection of a child in the family, and after the servitude was ended at the age of eighteen she was still a child by adoption and entitled to all the privileges of a child."

The opinion in *Simmons v. Burrell* was approved by the General Term of the Supreme Court in *Carroll vs. Collins,* 40 N. Y. App. Div., 54, and a careful examination of the New York decisions fails to show that this case has ever been overruled, or criticised in any way.

That children adopted from the American Female Guardian Society prior to the Act of 1873 received the benefit of the provisions of the Acts of 1873 and 1887 is distinctly recognized by the New York Court of Appeals in *Matter of Thorne*, 155 N. Y., 140 (*supra*). In that case the petitioner sought to intervene upon the probate of a will of one Joseph Thorne, deceased, on the ground that she was his lawfully adopted child and interested in the distribution of his estate. In 1863 Joseph Thorne and his wife had attempted to adopt her when she was about two years old, her father having died, with the consent of the mother and the Superintendent of the Outdoor Poor acting in behalf of the Commissioners of Public Charities and Correction of the City of New York by written indenture duly executed; the child became a member of the household pursuant to the agreement and the foster parents maintained that relation toward her up to the time of their death in 1897. It was claimed that this form of adoption was legalized by Sec-

tion 13 of the Act of 1873 and that the child was entitled to the benefits of that Act and of the Act of 1887. The Court of Appeals refuses to sustain this contention, because the adoption was a *mere private arrangement,* not authorized by any special or general statute, and held that the only permissible construction of the Act of 1873 (Section 13 above quoted) was that that clause referred, not to all private agreements, *but to those forms of adoption theretofore existing by virtue of special statutory enactments, contained in the charters of charitable societies that received destitute and homeless children and whose officers were permitted to execute agreements of adoption on their behalf with suitable persons willing to assume the obligations of parents, the Court remarking:*

> *"This is illustrated by the Act to incorporate the American Female Guardian Society, a well known charitable institution in the City of New York, (Ch. 244 Laws of 1849),"*

and the opinion refers particularly to Section 6 of that Act. This is the same society that granted the adoption in case at bar.

There can be no question, therefore, that if Mrs. Bowdoin had died a resident of New York, her adopted child, Mrs. Biggs, would have taken as heir and next of kin, all property of which Mrs. Bowdoin died intestate. Is the situation different because Mrs. Bowdoin was a resident of New Jersey? The original adoption having occurred in New York pursuant to an act of the legislature, certainly the declarations of the legislature and the decisions of the Courts construing the law are competent to show what the immediate effect of the adoption was. So far as the general act of 1873

affects adoptions previously made under the Act of 1849, it is obviously declaratory; it declared that such adoptions were valid and had the same effect as an adoption under the Act of 1873; which the Act declares in the words

> "and the two thenceforth shall sustain toward each other the legal relation of parent and child."

The creation of this legal relation the Courts have held to be an operative provision of the statute, and the relations continued from the date of the adoption, irrespective of the status of the child in respect to his inheritable capacity, which was distinct from and independent of the act of adoption and was subject to legislative control. Subsequent legislation modifying the law of descent could not change the fundamental relation created by the adoption.

Dodin v. Dodin, *(supra)*.

It is manifest, therefore, from the foregoing authorities that if Mr. and Mrs. Bowdoin had been residents of the State of New York, the adopted child would have had all the rights, as Mrs. Bowdoin's heir at law, as her own child.

IV

Adoption legal in the state where the indenture is made is binding in all other states.

The United States Constitution, Article 4, Section 1, provides that full faith and credit shall be given by every state to the laws and judicial proceedings of other states and it has been held that a

decree of adoption rendered in a state whose laws make an adopted child the heir of its adoptive parents, entitles the child to inherit property in another state. Rule that children adopted in foreign states cannot taken by descent in Alabama is in violation of the United States Constitution.

Hood v. McGhee, 199 F., 989.

Charity Ann Johnson at the time of her adoption, by reason of her surrender to the American Female Guardian Society, had her legal domicil in the State of New York, and the legal relation of parent and child thus created in 1866, continued irrespective of changes of residence, just as the legal status of persons lawfully married continues. And her right to inherit property must be governed by the laws and decisions of that state and is not affected or controlled by laws of a foreign state to which she was subsequently removed. Adoption good in one state is good in all.

Ross v. Ross, 129 Mass., 243.
Melvin v. Martin, 18 R. I., 650, 30 Atl., 467.
Kugan v. Geraghty, 101 Ill., 26.
Van Matre v. Sankey, 148 Ill., 536; 36 N. E., 628.

Although Mr. and Mrs. Bowdoin were residents of New Jersey, the adopted child was legally in charge of the American Female Guardian Society of New York, New York was its legal domicil and it was adopted strictly in accordance with the laws of New York in 1866.

Adoption is not a contract and the laws relating to contracts and interpretation of contracts do not apply. Adoption must stand or fall by the statute. *Simmons v. Burrell* is not overruled by *Branting-*

ham vs. Hoff, 174 N. Y., 58, as contended by respondents in Court below. In the latter case by expressed terms the adoption was for sixteen years and one month and an attempt was made to show by parol evidence that before the execution of the instrument, the adopting father made a verbal agreement that he would, upon his death, make the child his heir and give her his property, and the Court said this was not an absolute adoption and the case conflicts in no way with *Simmons vs. Burrell.*

V

The Act of 1887 is not retroactive and does not affect adoptions theretofore made, but relates solely to right of inheritance.

The undoubted rule is that a retroactive effect will not be given to a statute when the words in it can be construed as designed to make it prospective only, and the New York Court of Appeals in *Dodin v. Dodin, (supra),* decided that the New York Statute of 1887 was not retroactive. In that case the claim was made by an adopted child to the residuary estate of which her adopting parent died intestate. The child was adopted in 1886 under the Act of 1873 and the adopting parent died in 1891. The controversy was over the residuary estate. The Court said:

> "The only question requiring consideration is whether Josephine (adopted child) had the right of inheritance as heir of her adopting parent. The right was denied to an adopted child by the Act of 1873 and as the law was at the time of her adoption, she had no capacity arising from that relation

to inherit. The right, or rather capacity, of inheritance was granted by the Act of 1887 to adopted children coming within its provisions. It is urged on the part of the appellant that this cannot be made applicable to the relation of Josephine in that respect without giving to them a retroactive effect. If that is so, it is clear that she can take no aid from the Act of 1887.

"An amendatory statute has no retroactive effect unless such appears to have been the legislative intent. No such purpose appears in the amendatory provisions of the Act of 1887. They therefore can have prospective application only. If the adopting parent had died before such amendments to the tenth section of the Act of 1873 were made, it is clear that within that rule they cannot be applicable to the relation of Josephine as an adopted child. But that relation was created pursuant to such prior act and existed when the amendments to it by the later act were adopted. They did not make her any more the adopted child of Dodin than she became and was on her adoption the year before, but merely gave her as such adopted child the capacity to inherit. This was a mere right dependent upon future conditions which should permit it, essential to which were the death of Dodin without devising his estate and her survival of him, and further that the law of descent should not be so altered before his death as to deny the right of inheritance to the children of a decedent who should die intestate. As was well said by Mr. Justice Beekman in his opinion at Special Term, 'The

> amendment of 1887 was in effect, a modification of the statute, a meaning which includes adopted as well as children of the blood of the deceased. * * * The effect and operation of the act in question then is prospective, not retroactive. It simply adds adopted children to the list of those who shall be capable of inheriting, if at the time the descent is cast they are within the description.' ''

The Court further said:,

> ''The view here taken is that the provisions of the Act of 1887, conferring upon adopted children the capacity as such to inherit, was, in its application to those adopted under the Act of 1873, by adopting parents living at the time of such amendatory act, took effect, perspective and therefore the right of inheritance in Josephine resulting from such capacity became operative on the decease of her adopting parent.''

This decision, with equal force, would apply to children adopted under the Act of 1849 which was the law under which Charity Ann Johnson was adopted by Mr. and Mrs. Bowdoin, and in *Rosekrans vs. Rosekrans,* 148 N. Y. S., 954, and cases there cited, it was held that the right of an adopted child to inherit from a foster parent is determined by the law in force at the time of the foster parent's death and is in no manner dependent upon the law in force at the time of the adoption. So if the articles of adoption were legally executed, Mrs. Biggs would now even in New Jersey have the right to inherit that part of Mrs. Bowdoin's estate of which she died intestate.

VI

Articles of indenture were properly executed.

It is also claimed that because Mr. and Mrs. Bowdoin signed the articles of adoption in New Jersey, the New Jersey Law relating to the execution of instruments, must control. It might as well be claimed that if Mr. and Mrs. Bowdoin had wanted to sell a piece of land in New York they would have to execute the deed according to the laws of New Jersey and not according to the laws of New York where the property was located.

But the point has no bearing in this case because the New York law does not direct in any way the manner of the execution of the letters of adoption by the adopting parents. It sems to have been merely a rule of the society and the indenture would have been binding if there had been no formal execution by the adopting parents beyond the mere signing of their names.

In 1866 the infant, Charity Ann Johnson, was in the legal custody of the New York Society and was delivered by its officers to Mr. and Mrs. Bowdoin upon the execution of adoption papers in accordance with the laws of New York. The child was delivered to its foster parents in New York and not in New Jersey and consequently as the papers were executed as required by the laws of New York, they were legal, and there is no force in the argument that the articles of adoption were void because Mrs. Bowdoin, as a feme covert, was under legal disability in New Jersey to execute them. Numerous cases were cited by the respondent in relation to the disability of a feme covert

to make contracts and all the cases cited relate to contracts. But the articles of adoption now before the Court were in no sense a contract and were in no way controlled by laws relating to contracts either in New York or New Jersey. Adoption is a creation of a statute and is governed solely by the terms of a statute. The articles of adoption in the case at bar were executed in accordance with the New York Law of 1849, as amended by Act of 1860, under which the American Female Guardian Society was acting in 1866 when the articles were signed.

Brantingham vs. Huff, Middleworthy vs. Ordway, Smith vs. Allen and *Doppmann vs. Doppmann,* cited by the respondents in the Court below, were all questions of contract. In *Brantingham vs. Huff* an attempt was made to enlarge the terms of the articles of adoption by parol evidence, and the Court said the testimony given by the mother of the plaintiff tending to enlarge and vary the contract, was improperly received. In *Smith vs. Allen* the Court held that the adoption was not proved because the only evidence was an entry in book kept by a church Charity Foundation as follows: "Sarah Frances was adopted by Captain and Mrs. Allen," and this case refers to *Matter of Thorne,* above cited, where the Court held that adoption could only be made by special statutory authority and reference to the adoptions made by the American Female Guardian Society as legal.

VII

The paper writing purporting to be a release signed by Harriet L. Bowdoin, July 23, 1884, is no bar to her inheritance.

This writing could not be binding upon Mrs. Biggs in any event because when signed she was

only nineteen years old. The adoption papers were of a two-fold nature—apprenticeship and adoption—irrevocable after three months. The paper merely acknowledges the receipt of ten dollars and a bible and on its face merely purports to release liability. This is in no way a surrender of the right of inheritance.

The Vice Ordinary said that the indenture was for a term of years only, apparently disregarding the decisions of the New York Courts upon similar indentures, and in support of his opinion cites *Petrie vs. Voorhees,* 18 N. J. E., 285. That case is no authority for the respondents. The Court said no claim was made that the complainant was an adopted child with right of inheritance. The question could not have been raised for two reasons. First; the only question before the Court was on the construction of a will, and second; when that case was decided (1867) an adopted child did not have the right of inheritance or the capacity to inherit either in New York or New Jersey. But the Court also said:

> "An indenture of apprenticeship, with covenants valid in the state where executed, will be enforced in the Courts of this state if not *contra bonos mores,* or against the policy of our law. The personal status of each individual is governed by the law of actual domicil."

So the case is really authority for appellant. Charity Ann Johnson's actual domicil in 1866 was in New York and her personal status would be fixed by the laws of that state at the time the indenture was signed.

The Vice Ordinary also says,

> "that assuming that the society had authority under its charter to grant adoption of its wards, it is plain to be seen that it did not execute the power!"

But in *Simmons vs. Burrell, (supra),* the New York Supreme Court declared that an indenture in all respects similar to the one now before the Court, gave to a child all the rights of adoption, including the right of inheritance, under the statute of 1887, and the Court distinctly held that the indenture was one of adoption and not a contract of apprenticeship. The Vice Ordinary further says:

> "When the adoption Act of 1873 was passed, the parties were domiciled in New Jersey and their status as fixed by the contract, namely; that of master and apprentice, remained unaffected by the statute of New York, and when the amendment to the adoption act was enacted in ~~1807~~ 1887 adding the right of inheritance, the relation between the appellant and the deceased had long since been dissolved by expiration of time. Each had fully performed the terms of the indenture, and after the appellant had acknowledged in writing her satisfaction, called a release, she went her way."

And cites *Ross vs. Ross,* 129 Mass., 243.

But the indenture was in no sense a contract as cases above cited show, and if the domicil of the infant was fixed at the time of indenture, the rights then acquired could not be changed by any subsequent changing of domicil. In *Ross vs. Ross* the Court held:

> "A child adopted with the consent of its father and the sanction of a judicial decree, in another state, where the parties were domiciled at the time, under a statute by which a child so adopted has the same rights of inheritance as legitimate offspring in the estate of the adopting father, is entitled, after the adopting father and the adopted child have removed their domicil into this commonwealth, to inherit here the real estate of such father as against the collateral heirs; although his wife has given no formal consent to the adoption, as is required under the statutes of adoption of this commonwealth."

So this case is really authority for the appellant, that rights acquired at the time of adoption would be recognized in another state, although the statutes of the state of the new domicil had not been followed. If the indenture of adoption was legal in 1866, Charity Ann Johnson, so far as legal rights or obligations were concerned, became just as much the child of Mr. and Mrs. Bowdoin as though she had been their own.

VIII

Adoption is not contract.

Adoption is strictly statutory and is unknown to the Common Law. It is unnecessary to cite cases upon a point so well established. It is not claimed by the appellant that any contract was made on behalf of the infant—now Mrs. Biggs—as will bring it within *Van Tyne vs. Van Tyne,* 15 Atl., 249, and *Van Dyne vs. Vreeland,* 3 Stock,. 370. But the ap-

pellant bases her right of inheritance solely upon the legality of the adoption papers executed by the American Female Guardian Society of New York and Mr. and Mrs. Bowdoin, in 1866.

It is therefore respectfully submitted

1. That Charity Ann Johnson was legally adopted in 1866 by Mr. and Mrs. Bowdoin in conformity with the statute under which the American Female Guardian Society was incorporated.

2. That having been legally adopted no act of the parties could change that relationship.

3. That by the New York Statue of 1873 adoption by any method theretofore practiced was ratified.

4. That the Act of 1887 gave the right of inheritance to children theretofore adopted under the authority of any statutes.

Dodin vs. Dodin.
Simmons vs. Burrell.
Carroll vs. Collins, and
Matter of Thorne, *(supra)*.

5. The right to inherit is controlled by the law in force at the time of the death of the foster parent and not the law in force at the time of adoption.

Rosekrans vs. Rosekrans, *(supra)*.

6. That Hannah L. Bowdoin having died intestate as to her residuary estate, it is inherited by Harriet L. Biggs as her heir at law under the article of adoption—and that for all of these reasons the decree of the Prerogative Court should be reversed.

VAIL & McLEAN,
Proctors of Appellant.