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PETITION.

GLOUCESTER COUNTY ORPHANS' COURT.

In the Matter of the Estate of Edward B. Allen, deceased. On application for sale of lands to pay debts.	PETITION.

10

To the Orphans' Court of the County of Gloucester:

The petition of Agnes T. Allen respectfully shows that on the tenth day of March, 1916, she was duly appointed by the surrogate of the county of Gloucester, administratrix of the estate of Edward B. Allen, deceased, and your petitioner further shows

20

that she has discovered and believes that the personal estate of the aforesaid intestate is insufficient to pay his debts and that she hereby exhibits under a true account of the personal estate and debts of the said intestate so far as she can discover the same, which account is hereunto annexed.

30

And your petitioner further shows that the said Edward B. Allen died seized of a certain tract of land and premises situate in the township of Monroe, Gloucester County, New Jersey, bounded and described as follows:

Beginning at a point in the Sykes road or street, corner to John V. Sharp's other land, thence (1) by his line south seventy-four and a half degrees West two chains and eighty-six links to a corner, thence (2) South fifteen and a half degrees East, one chain and eight links to a corner, thence (3) North seventy-four and a half degrees East, two chains and eighty-six links to the centre of said Sykes Road or street, thence (4) along the centre thereof North fifteen and a half degrees West one chain and eight links to the place of beginning. Containing thirteen thousand four hundred and fifty-five square feet of land, more or less. Being the same land and premises which Henry K. Bugbee, guardian of John V. Sharp, a lunatic, by deed dated March 26, 1897, and recorded in the Gloucester County Clerk's office in Book 174 of Deeds, page 392, granted and conveyed unto Edward B. Allen, in his lifetime. That said lands consist of a dwelling house and lot, which are valued as nearly as your petitioner can ascertain at the sum of $1500.

Your petitioner therefore requests the aid of the Court in the premises and prays that an order may be made in manner and form as required by law, requiring all persons interested in such lands, tenements, hereditaments and real estate whereof the said Edward B. Allen, deceased, died seized as aforesaid, to show cause why the said lands should not be sold as will be sufficient to pay the residue of the debts of said intestate.

Dated April 27, 1916.

AGNES T. ALLEN.

STATE OF NEW JERSEY,
COUNTY OF CAMDEN, } *ss.*

AGNES T. ALLEN, of full age, being duly sworn according to law, deposes and says that she is the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of her knowledge and belief.

AGNES T. ALLEN.

10

Sworn and subscribed to this 27th day of Apr., A. D. 1916.

CHESTER N. STEELMAN,
Commissioner of Deeds of New Jersey.

ACCOUNT.

GLOUCESTER COUNTY ORPHANS' COURT. 20

In the Matter of the Estate of Edward B. Allen, deceased. On application for sale of land to pay debts.	ACCOUNT.

30

Account of Assets.

Amount of Inventory and Appraisement	$60.75

Account of Debts.

William P. Buck, undertaker,	$120.50

Louis Kammar, butcher,	4.43
L. W. Harper, daily papers,	6.75
D. Earling Tweed, groceries,	9.76
Surrogate, granted letters, etc.	24.43
Premium on Adm. Bond	5.00
Amount of Debts	$170.87
Deficiency	$170.87

Dated April 27, 1916.

10 AGNES T. ALLEN,
Administratrix.

STATE OF NEW JERSEY,
COUNTY OF CAMDEN, } *ss.*

AGNES T. ALLEN, of full age, being duly sworn, deposes and says that she is the administratrix of the
20 estate of Edward B. Allen, deceased, and that the above account is a true account of the personal estate and debts of said estate, to the best of her knowledge and belief.

AGNES T. ALLEN.

Sworn and subscribed to before me this 27th day of April, 1916.

CHESTER N. STEELMAN,
Commissioner of Deeds of New Jersey.

30

RULE TO SHOW CAUSE.

GLOUCESTER COUNTY ORPHANS' COURT.

In the Matter of the Estate of Edward B. Allen, deceased. On an application for sale of land to pay debts.	RULE TO SHOW CAUSE

10

Agnes T. Allen, administratrix of the estate of Edward B. Allen, deceased, having exhibited under oath a true account of the personal estate and debts of said deceased, whereby it appears that the personal estate of the said deceased is insufficient to pay the debts, and requested the aid of the Court in the premises:

It is on this twenty-eighth day of April in the year of our Lord, one thousand nine hundred and sixteen, 20 Ordered, that all persons interested in the lands, tenements, hereditaments and real estate of the said deceased, appear before this court, at the Court House, in the city of Woodbury, on the thirtieth day of June in the year of our Lord, one thousand nine hundred and sixteen, at ten o'clock A. M., to show cause why so much of said lands, tenements, hereditaments and real estate of the said deceased should not be sold as will be sufficient to pay the debts, or the residue thereof, as the case may require. 30

And it is further ordered, that this order be published, according to law, in the Constitution.

A. H. SWACKHAMER,
Judge.

OSCAR B. REDROW, Proctor,
428 Market St.,
Camden, N. J.

INSURANCE POLICY.

THE PRUDENTIAL
INSURANCE COMPANY
OF AMERICA.

Home Office: Number
Newark, N. J. 2050032
Special Industrial Policy. Age, 37.

In Consideration Of the Application for this Policy, and of the payment of the weekly premium of Thirty-eight cents, on or before every Monday during the continuance of this contract, promises to pay at its Home Office, in the City of Newark, New Jersey, unto the executors, administrators or assigns of Edward B. Allen, the person herein designed as the insured, unless payment shall be made under the provisions of article second hereinafter contained, the sum of Five hundred Dollars, within twenty-four hours after acceptance at its said office of satisfactory proof of death of the insured, such promise however, being made, and

This Policy Issued And Accepted Subject To The Following Conditions and Agreements:

First. The application for this Policy is hereby made a part of this contract, and if the representations in said Application are not true, or if the premiums shall not be paid to the Company or its authorized agent according to the terms hereof, this Policy shall be void, and all premiums paid hereon shall be forfeited to the Company, except as hereinafter provided.

Second. The Company may pay the sum of money insured hereby, to any relative by blood, or connection by marriage of the insured, or to any other person appearing to the Company to be equitably entitled to the same by reason of having incurred ex-

pense in any way on behalf of the insured for his or her burial, or for any other purpose, and the production by the Company of a Receipt signed by any or either of said persons, or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto, and that all claims under this Policy have been fully satisfied.

Third. The insured may engage in any occupation, but if he shall be in military or naval service in time of actual war or other hostilities, he shall so notify the Company, and pay the extra premium charged therefor.

Fourth. If within three years from the date hereof, the insured shall die by suicide, whether sane or insane, or in consequence of his or her own criminal action, the liability of the Company shall not exceed the amount of the premiums paid on this Policy.

Fifth. If the insured shall die within three months from the date hereof, no amount will be payable under this Policy. If the insured shall die after three months and within six months from the date hereof, the Company shall be liable for only one-fourth of the amount of the Policy. If the insured shall die after six months and within one year from the date hereof, the Company shall be liable for only one-half of the amount of this Policy. But if the insured shall die after one year from the date hereof, the whole amount shall be payable. In case the age of the insured shall have been understated by mistake, the sum insured will be reduced to the amount the premium would pay for at the true age. If the insured dies from Consumption within one year from the date hereof, the liability of the Company shall be limited to one-half of the amount that would be payable un-

der this section in consequence of death from any other cause.

Sixth. No suit or action at law or in equity shall be maintainable to enforce the performance of this contract until after the filing of the above mentioned proof of death, including the surrender of this Policy and the Premium Receipt Book belonging therewith at the Home office of the Company, nor unless such suit or action shall be commenced within one year next after the death of the insured and should any such suit or action be commenced after the expiration of said period of one year, the lapse of time shall be deemed conclusive evidence against the validity of such claim, any statute of limitations to the contrary notwithstanding.

Seventh. If this Policy shall be assigned, the assignment must be in writing, and the Company shall not be required to notice such assignment until the original or a duplicate thereof is filed in the said Home Office.

Eighth. If after the payment of the weekly premium hereon for five or more years this Policy shall become void by reason of default in payment of premiums, the Company agrees to issue a paid-up policy for the sum hereby insured, for a term of as many weeks as the number of times the full legal reserve upon this Policy at the time of forfeiture, contains the premium for said sum insured, at the age of the insurance at the time of lapse, according to the then published rates of the Company for Special Industrial whole life policies; provided this Policy shall be surrendered to the Company and application made in writing for said paid-up policy within sixty days after default in the payment of premiums hereon.

Ninth. If, for any reason, the premium shall not be called for by an authorized agent on or before the day when due, it shall be the duty of the policy-holder to bring or send the same to the Home Office of the Company within four weeks thereafter.

Tenth. No payment of premium will be recognized by the Company as binding unless made to a duly authorized agent, and by such agent entered at the time of payment in the Premium Receipt Book belonging with this Policy. 10

Eleventh. Agents are not authorized to make, alter or discharge contracts, waive forfeitures or receive premiums on Policies in arrears beyond the time allowed by the regulations of the Company, which in no case shall exceed four weeks.

Twelfth. After three years from the date hereof, if all due premiums shall have been paid and full proof of death given to the Company within three months next after the death of the insured, and if the foregoing condition as to occupation shall have 20 been complied with, and in case of understatement of age, the amount reduced as above provided, this Policy shall be incontestable.

In Witness Whereof, the President and Vice President of said Company have signed SEAL these presents and affixed the seal of the Company at the City of Newark, New Jersey, this 26th day of December, 1887.

JOHN F. DRYDEN,
President. 30

LESLIE D. WARD,
Vice President.

Paid Feb. 19, 1916.

CLAIMANT'S CERTIFICATE.

1. Name of deceased. Edward B. Allen, Williamstown, N. J. Occupation of deceased. Box Marker.
2. Residence at time of death. Church St., Williamstown, N. J.
3. Claimant's name. Agnes T. Allen.
4. No. of Policy. 2050032.
5. Post-office Address. Street. City or Town. Williamstown. State. N. J.
6. Relationship of claimant to deceased. Wife.
7. Age of Claimant. 43.
8. Occupation of claimant. Housewife.
9. When did deceased die? Year. 1916. Month. Feb. Day. 10.
10. When was deceased born? Year. 1853. Month. Aug. Day. 18.
11. If deceased was married, is widow or widower alive? Widow alive. Who pays Burial expenses? Wife.

    Who paid premiums? Wife. For how long? Period of years.
12. Did deceased leave any children? If so, state how many and their ages. None by 2 wife, one child 37 years old first wife.
13. Is either or both of the parents of deceased alive? Both dead.
14. Are any brothers or sisters of deceased living? If so, state how many and their ages. One sister about 59.
15. Was deceased insured under policies in this Company other than those specified above? If so, give number of each policy. None.
16. If insured in other companies, give names of companies, dates of policies, amounts payable, and names of claimants. None.

Date 16 day of Feb. 1916. Signature of Claimant
AGNES T. ALLEN.
Witness, W. C. Dixon.
Second witness.

CHECK.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA 10
Industrial Department No. 451737
Newark, N. J. Feb. 19 1916
Pay to the order of Agnes T. Allen.....
Five hundred forty two dollars eighty six cents
In full of all claims under policy No. 2050032
$542.86
To the Union National Bank
Newark, N. J.
(Richard L. Reese) 20
Assistant Cashier
Countersigned
(D. N. Antun,) Auditor.

Endorsements
This check is in full payment of claim under policy or policies mentioned thereon, and the payee accepts it as such by endorsement below. No other receipt required.
Sign here (Agnes T. Allen) 30
Pay to the order of any bank, banker or trust Co. all prior endorsements guaranteed.
First National Bank of Williamstown, N. J.
W. H. Yenney, Cashier.
Paid 2-25-16
Audited Feb. 26, 1916, J. W. J.

OPINION.

GLOUCESTER COUNTY ORPHANS' COURT.

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10 In the Matter of the Estate of Edward B. Allen, deceased. On application for sale of land to pay debts.	On Petition. Opinion.

A. H. Swackhamer, Judge.

20 This is an application by an administratrix to sell lands to pay debts.

Argument was had on the return of the rule to show cause sometime ago, and considerable delay has been occasioned by the Court waiting for one of the proctors in the case to file a brief, while it appears he had no intentions of filing one.

The point is made by proctor for administratrix, that objection to the order for sale cannot be made on 30 the ground that the statement of assets is not correct, but that such objection should be made to the inventory filed by the administratrix. The objection to the order being that the administratrix did not account for $500.00 insurance on the life of the intestate, which she collected prior to her appointment as administratrix.

While the statute does provide that exceptions to an inventory may be filed to compel an administrator to inventory property omitted from the inventory and appraisement, this is not the only way in which objection may be made but exception may also be taken to the statement of assets, contained in the administrator's petition, for sale of lands, and the Court is bound to hear and determine the question as to whether the statement includes all the assets of the estate. 10

In the brief of proctor for the administratrix, it is argued that Sec. 2 of the insurance policy authorized the payment of the insurance by the company to the widow of intestate before she was appointed administratrix, and that payment having been made to her the company is discharged of all liability, and therefore that the heir or creditor of the estate cannot inquire into her title to the insurance, so collected by her.

Numerous cases cited by counsel are authority for 20 the proposition that the insurance company is protected by section 2 of its contract, but it does not follow that protection to the insurance company is protection to the person who collected the insurance if the recipient thereof has no title thereto. I have concluded that the $500.00 insurance paid by the company belongs to the intestate's estate and is a part of his assets. When this is credited there does not appear to be a deficiency of assets and therefore the rule to show cause should be discharged. 30

ORDER DENYING APPLICATION.

GLOUCESTER COUNTY ORPHANS' COURT.

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10 In the Matter of the Estate of Edward B. Allen, deceased. On Application to sell lands to pay debts.

ORDER DENYING APPLICATION.

This matter coming on to be heard and it appearing to the Court that there is sufficient personal property 20 to pay the debts of the decedent:

It is on this seventeenth day of November, 1916, ordered that the application of Agnes T. Allen, administratrix, to sell lands to pay debts be denied.

A. H. SWACKHAMER,
Judge.

30

NOTICE OF APPEAL.

GLOUCESTER COUNTY ORPHANS' COURT.

In the Matter of the Estate of Edward B. Allen, deceased. On Application for an order to sell lands for the payment of debts.	NOTICE OF APPEAL.	10

The administratrix, Agnes T. Allen, hereby appeals from an order made in this court in the above-stated cause, dismissing the rule to show cause why an order should not be made for the sale of real estate, to the prerogative court of this state. 20

The reasons assigned by the administratrix for this appeal are:

1. That there is insufficient personal property with which to pay the debts against said estate.

2. That the insurance money paid by the Prudential Insurance Company to Agnes T. Allen prior to her appointment as administratrix of said estate, under the conditions of the policy, contract of insurance, proof of claim, is not a part of the estate and the administratrix should not be charged therewith. 30

OSCAR B. REDROW,
Solicitor of Administratrix.

PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

To the Honorable Edwin R. Walker, Ordinary of the State of New Jersey:

The petition of Agnes T. Allen, administratrix of the estate of Edward B. Allen, deceased, the appellant, in the matter of the estate of Edward B. Allen, deceased, respectfully shows:

1. That your petitioner finds herself aggrieved by an order made by the Orphans' Court of the County of Gloucester, bearing date November 17, 1916, wherein the application of your petitioner for the sale of real estate for the payment of debts was denied.

2. That said order adjudges that the sum of $500, paid by the Prudential Insurance Company of America to Agnes T. Allen, widow of Edward B. Allen, deceased, prior to the appointment of the said Agnes T. Allen as administratrix aforesaid, should be accounted for by her in the settlement of said estate.

3. That from the evidence and facts of the case an order should be made as requested by your petitioner, and from the law and equities of the case a like order for the sale of lands to pay decedent's debts should have been made.

4. The reasons assigned by the administratrix for this appeal are:

1. That there is insufficient personal property with which to pay the debts against said estate.

2. That the insurance money paid by the Prudential Insurance Company of America to Agnes T. Allen, widow, prior to her appointment as administatrix of said estate, under the conditions of the policy, contract of insurance, proof of claim, is not a part of the estate and the administratrix should not be charged therewith.

3. That the Court exceeded its powers in considering the matter of insurance, when no exceptions to the inventory had been made or filed. 10

4. Your petitioner further shows that no stenographic notes were made of the testimony taken and that in the event of any dispute as to the statement of facts and evidence, that an order of reference may be made for the purpose of taking testimony.

5. Your petitioner, therefore prays, that the said order of the Orphans' Court of the County of Gloucester may be reversed and set aside and for nothing holden and that an order for the sale of said lands may be made for the payment of decedent's debts. 20

6. And that your petitioner may have such other and further relief as may seem just in the premises.

Oscar B. Redrow,
Solicitor of Appellant.
Oscar B. Redrow,
Of Counsel with Appellant. 30

ANSWER.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Appeal of Agnes T. Allen from an Order of the Orphans' Court of the County of Gloucester.	On Petition of Appeal. Answer.

The answer of William M. Allen, respondent, to the petition of appeal of Agnes T. Allen, administratrix of the estate of Edward B. Allen, deceased. This respondent is advised, believes and submits that the order complained of by appellant is just and lawful. And this respondent denies that the aforesaid order, made by the Orphans' Court of the county of Gloucester, bearing date November 17th, 1916, is erroneous, improper or illegal, and alleges that same is legal, proper and correct.

He therefore prays that the said petition of appeal may be dismissed with costs.

David O. Watkins,
Solicitor for and of Counsel with Respondent, William M. Allen.

TESTIMONY.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of Edward B. Allen, deceased.	On Appeal. Hearing.	10

Before his Honor, E. B. Leaming, Vice-Ordinary, at the Chancery Chambers, Camden, New Jersey, on Monday, January 29th, 1917.

Appearances: 20

Oscar B. Redrow, Esq., for appellant.

Hon. David O. Watkins, for William H. Allen, one of the appellees.

The Vice-Ordinary: If counsel on both sides are willing that the facts of this case shall be determined by the proofs taken at this time I will hear them, but I do not want to establish the precedent, because it is 30 not proper practice. Will that be agreeable to both sides?

Mr. Redrow: Yes.

Mr. Watkins: I would like it disposed of.

AGNES T. ALLEN, being duly sworn according to law, on her oath says:

Mr. Watkins: The only matters that are in dispute are these: Whether Mrs. Allen, as administratrix of the estate of Edward B. Allen, should be charged with the money which she received from the Prudential Insurance Company upon the insurance
10 policy in question, which amounts to some $500, and ——

The Vice-Ordinary: I understand that you are now relating certain facts that are not in dispute. Now, there is no use taking testimony to establish those facts if you and Mr. Redrow are in perfect accord touching them.

Mr. Watkins: But we are not in accord how this
20 money should go.

The Vice-Ordinary: Not as a legal conclusion, but you are in accord on the facts as they transpired.

Mr. Watkins: Yes, I will agree on them. That is the only question involved in it, and that the debts amount to something like $140. The question is whether this money should be applied to the payment
30 of those debts.

The Vice-Ordinary: Now, the question is what facts are you willing to agree upon without proofs?

Mr. Watkins: Only this fact: That Mrs. Allen received this money from the Prudential Insurance

Company and did not account for it as administratrix.

The Vice-Ordinary: As a stipulation on the record that is not very full. Let me see if I can stipulate to what will almost obviate the necessity of taking any testimony. If I am wrong correct me as I go along. It will take a whole lot less time if you will stipulate the facts than it will to examine witnesses. It is stipulated by the parties hereto that a policy of insurance known as special industrial policy was issued by the Prudential Insurance Company December 26th, 1897, to Edward B. Allen, for the sum of $500, which policy is marked Exhibit #1; that Edward B. Allen died February 10th, 1916, and on the 19th day of February, 1916, the amount due upon policy, which on that date was $542.86, was paid to Agnes T. Allen by the Prudential Insurance Company, by check marked Exhibit #2, and that the proofs made to the Prudential Insurance Company upon which said check was issued are those contained in Exhibit #3. Is that correct?

Mr. Redrow: Yes.

The Vice-Ordinary: That letters of administration upon the estate of Edward B. Allen were taken out by the said Agnes T. Allen March 10th, 1916, a copy of which letters is Exhibit 4; that if the money paid to Agnes T. Allen lawfully forms a part of the estate of Edward B. Allen the decision of the Orphans' Court of Gloucester County must stand; if the contrary is true, and the money does not properly belong to the estate of Edward B. Allen, then there should have been made by the Orphans' Court an order for the sale of land for the payment of debts. Now, is that all true?

Mr. Redrow: That is right.

The Vice-Ordinary: That covers it all, doesn't it?

Mr. Watkins: Yes.

The Vice-Ordinary: Now, if there is anything else that you want to prove, Mr. Redrow, go ahead. I think, though, that will cover pretty much everything.

Mr. Redrow: It is further stipulated that the inventory and appraisement of the goods of this estate amounted to $60.75, and that the goods for that amount were claimed by the widow as a part of her exemption. That the total amount of the bills presented to the administratrix at the time of the application for an order to sell land to pay debts amounted to $170.87.

The Vice-Ordinary: Well, now, will there be any testimony you want to take? If not, I will hear counsel's argument.

Mr. Redrow: Yes, I would like to put in a little.

By Mr. Redrow:

Q. Mrs. Allen, you are the widow of Edward B. Allen, deceased?
A. Yes, sir.
Q. When did you marry him?
A. In 1895, twenty-one years last August.
Q. 1895?
A. Yes.

The Vice-Ordinary: Let me ask whether the claims against the estate include the funeral charges?

Mr. Redrow: They do. I think it might be well to put in the exact amount of it.

Q. Now, Mrs. Allen, the bills which you set out in your statement for an order to show cause included the funeral bills amounting to $120.50, didn't they?
A. Yes, sir. 10

Mr. Redrow: I might say that the doctor bill came in after the order to show cause was made.

Q. Now, do you know who paid the premiums on this insurance?
A. I did.
Q. I beg pardon?
A. I did.
Q. Did you pay them out of your own money? 20
A. Lots of them.
Q. I beg your pardon?
A. Yes, sir.

The Vice-Ordinary: She says in her application here to the Prudential Company for the moneys that she paid them out of her husband's salary.

Mr. Redrow: Well, I think that that was prepared by the agent. I do not think that is true. 30

The Vice-Ordinary: Well, I thought perhaps she meant to say the same now. I do not know whether she does or not. A wife considers her husband's salary very often as her own. This says here, "Who paid premium?" Her answer is, which is sworn to, —or I don't know whether it is sworn to or not.

Mr. Redrow: I think not.

The Vice-Ordinary: "Wife, from assured's salary." That is the answer here.

Q. I show you Exhibit 3 and ask you if this is your signature (indicating)?

A. Yes, sir.

Q. Agnes T. Allen?

10 A. Yes, sir.

Q. And you signed this proof of claim?

A. Yes, sir.

Q. Did you fill out the writing here?

A. No, sir.

Q. Who did fill it out?

A. Mr. Dixon.

Q. Who is he?

A. The insurance agent.

20 Q. One item says here, "Who paid premium? Wife, from assured's salary." Was that the information you gave him? How did you tell him that you paid it?

A. Well, I don't know as I told him.

Q. Well, how was it paid? How were the premiums paid?

A. Well, I worked in the can-house and sewed and done everything that I could do to pay it, he simply

30 refused to pay it.

Q. That is, Mr. Allen had given up the policy, had he,—let it lapse?

A. Yes, it was lapsed when Mr. Dawson was agent.

Q. And you paid the premiums out of your own money?

A. Yes, sir.

Cross-examination.

By Mr. Watkins:

Q. You are testifying a little different here this morning, Mrs. Allen, from what you did before the Orphans' Court, are you not?

A. Have you got the testimony of the other?

Q. No, but I say, are you not testifying different?

A. I don't think so. 10

Q. Eh?

A. No, I don't think so.

Q. Did you tell Judge Swackhamer in your testimony there that your husband had ever refused to pay the premium on that policy?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Did you testify to that before Judge Swackhamer when we had the hearing there? 20

A. I think so.

Q. You think so?

A. Yes, sir.

Q. Did you testify before Judge Swackhamer when we had the hearing there that that policy had lapsed?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir. 30

Q. But you are not sure whether you did about your husband refusing to pay?

A. Yes, I am sure.

Q. You are sure of that too, are you?

A. Yes, sir.

Q. And you are just as sure of one of those statements as you are of the other, are you?

A. Yes, sir.

Q. Your husband was a workingman, wasn't he?

A. Yes, sir.

Q. Worked every day, didn't he?

A. Yes, sir.

Q. Worked in the Williamstown glass factory, didn't he?

10 A. Yes, sir.

Q. And bought a house there at Williamstown, didn't he?

A. Yes, sir.

Q. The house and lot that he died owning?

A. Yes.

Q. Worked steady, didn't he?

A. Well, the last two years he ——

Q. Well, prior to that time?

A. Yes, sir.

20 Q. What did he do with his wages?

A. Well,—what did he do with it?

Q. Yes.

A. $1.25 a day or $1.50 doesn't go very far; we both worked hard and worked together.

Q. What did he do with what he did earn?

A. Well, he helped to support us, of course.

Q. You used it right in the family same as you used your earnings?

A. Yes, sir.

30 Q. Now, you didn't pay on any policy in 1910, did you?

A. No, sir.

Q. Eh?

A. No, sir.

Q. You didn't pay any premiums in 1910?

A. 1910?

Q. Yes.
A. I started to pay it in 1895.
Q. Did you pay any in 1910?
A. Let me see. 1910. Surely.
Q. Weren't you stricken with appendicitis in 1910?
A. In 1910?
Q. Yes.
A. Yes.
Q. Were you in the hospital?
A. Yes. 10
Q. Operated on?
A. Yes.
Q. And how long were you there?
A. Ten days.
Q. And you didn't do any work in 1910, did you?
A. Yes, sir.
Q. How soon after leaving the hospital?
A. Well, I came home on Thursday, and I had a girl for four weeks. 20
Q. Yes.
A. And after that I went along just the same.
Q. Well, where did you go to work in 1910?
A. I sewed and crocheted.
Q. Home?
A. Yes, sir.
Q. And your husband was working too?
A. Yes, sir.
Q. He continued to work up until the time of his death, didn't he? 30
A. Two years.
Q. And you used the money that you earned and the money that your husband earned as a sort of a common fund?
A. That is right, certainly.

By the Vice-Ordinary:

Q. What did you do? What kind of work?

A. I worked in the can-house and sewed and crocheted.

By Mr. Watkins:

Q. Didn't the insurance agent read this paper to you before you signed it?

10 A. No, sir.

Q. This Exhibit 3?

A. No, sir.

Q. Didn't he ask you the questions there?

A. Yes.

Q. Eh?

A. Yes.

Q. Didn't he ask you the various questions that —

A. Mr. Watkins, I was just so near crazy I don't know.

20 Q. Didn't he ask you the questions?

A. I don't know.

Q. Didn't he ask you how old you were?

A. Yes, sir.

Q. And when you were born?

A. Yes, sir.

Q. And your occupation?

A. Yes.

Q. Do you remember him asking you all those things?

30 A. Yes.

Q. And did he ask you who paid the burial expenses?

A. No, sir.

Q. Why do you say that he asked you down to here (indicating) and then didn't ask you the rest?

A. Well, now, I don't think he did.

Q. Oh, you don't think he did?
A. No.
Q. And didn't he ask you who paid the premiums on the policy?
A. Well, he knowed I always paid them.
Q. He knew that but didn't he ask you?
A. Yes.
Q. He asked you?
A. Yes.
Q. And then after these questions had been asked you you signed your name? 10
A. Yes.

By the Vice-Ordinary:

Q. Did he ask you where you got the money to pay them?
A. No, sir.
Q. Didn't ask you with whose money you paid them?
A. No, sir. 20
Q. Didn't you tell him that you paid them out of money that you and your husband earned?
A. No, sir.
Q. What did you tell him?
A. He didn't ask me.

By Mr. Watkins:

Q. Have you paid the funeral expenses?
A. No, sir.
Q. Didn't he ask you who was going to pay the funeral expenses? 30
A. No, sir.

The Vice-Ordinary: Won't there be enough fund to pay the funeral expenses unless this money goes in?

Mr. Watkins: No. You see, the debts are one hundred and some dollars and the personal estate only amounts to $67. Of course, she is entitled to her exemption of $200, so that there would not be enough.

Q. Well, it was after you had signed your name to this paper 3 that you were paid the money?

A. Yes, sir, certainly.

Q. By the insurance company?

10 A. Yes, sir.

By the Vice-Ordinary:

Q. What money did you make? You said you did crocheting and sewing. Did you go out to sew or sew at home?

A. I sewed at home.

Q. What other work did you do?

A. Everything that I could get to do.

20 Q. That don't explain anything.

A. In sewing, crocheting.

Q. Did you go out to work at all?

A. No, sir.

Q. I thought you spoke of working somewhere.

A. In a canning factory.

Q. What work did you do in the canning factory?

A. Skinned tomatoes.

Q. Skinned tomatoes?

A. Yes.

30 Q. For how long a time did you do that?

A. Well, it lasted about six weeks, six to eight weeks.

Q. For one year, or more than one year?

A. Yes, I worked every year but—I don't know whether it is two or three years, since we have been married.

By Mr. Redrow:

Q. Every year except two or three?
A. Yes, sir.

By the Vice-Ordinary:

Q. Mr. Watkins asked you if the money was kept in a common fund. Do you know what he meant by that? 10
A. No, sir.
Q. What he meant was this, I suppose: I think he meant to inquire whether it was not true that you and your husband would simply take all of your earnings, more or less, each of you doing all you could, and pay all the expenses that there were to pay out of what you both earned. Can you give me an idea how that was done? Is that what was done or is it not?
A. Yes, sir. 20
Q. Eh?
A. Yes, sir.
Q. I am afraid you do not understand just what I want to know.
A. Well, I don't exactly.
Q. I want to be sure.
A. I don't exactly.
Q. Well, tell me how the family bills were paid. What became of the money that he earned? Would he turn it all over to you? 30
A. No, sir, he didn't he kept ——
Q. How were the family bills paid?
A. He kept it and paid the bills, outside bills.
Q. Eh?
A. He kept it and paid the bills.

Q. Well, what did you do with your money?

A. Well, I got what clothes I could and kept the insurance up and helped him when I could.

Q. Well, then, you paid the bills with anything else that you had, did you?

A. Yes, sir.

Q. But you always paid the insurance?

A. Yes, sir.

Q. Out of the money that you earned?

10 A. Yes, sir.

Q. Well, what about the period when you were sick? Who paid the insurance during that period?

A. Well, he paid it then.

Q. He paid it out of his earnings?

A. Yes; but that was the only time that I ever was down in the whole twenty years.

Q. That was the only time what?

A. That I ever was bad sick in our whole married life, that I couldn't really go.

20 Q. Well, didn't he ever pay any of the premiums excepting during that one time you were sick?

A. Once in a while if I would get short I would ask him and he would give me a dollar, and there was times when mine wasn't due that I would ask him and I would give it back to him.

The Vice-Ordinary: I really doubt whether this is material, but since it is introduced let us get at the truth if we can.

30

By Mr. Watkins:

Q. At times Edward Allen, the son, or William Allen, the son, paid some of the premiums, didn't he?—when you were sick?

A. No, sir.

Q. Never did?
A. No, sir.
Q. Your husband, you say, was making $1.25 a day?
A. Yes, sir.

By Mr. Redrow:

Q. I show you a bill of Dr. Fooder and Dr. L. W. Halsey. Was this bill received after the petition was filed? 10
A. Yes, sir.
Q. And the amount of this bill is $91?
A. Yes, sir.
Q. Do you know whether the estate owes that or not? This bill has not been paid?
A. No, sir, it is owing yet.

20

William C. Dixon, a witness produced in behalf of the appellant, being duly sworn according to law, on his oath says:

By Mr. Redrow:

Q. Mr. Dixon, you are an agent of the Prudential Insurance Company?
A. Yes, sir.
Q. You knew Mr. Allen —— 30
A. Yes, sir.
Q. In his lifetime?
A. Yes.
Q. You know Mrs. Allen?
A. Yes, sir.
Q. Do you recall having some conversation with

Mr. Allen and Mrs. Allen concerning the payment of this policy of insurance which is in question here, as to who the money should be paid to?

Mr. Watkins: Now, just a moment. I object to that. The policy must speak for itself.

Mr. Redrow: The policy does speak for itself, but I want to show that Mr. Allen a year or two before his death had this agent come around to his
10 house and he insisted at that time that this money at his death should be paid to his wife.

The Vice-Ordinary: I do not believe, Mr. Redrow, that would be competent. After the Prudential Insurance Company has issued a sealed policy it cannot be that any of its collecting agents could be authorized to modify it.

BOTH SIDES REST.

20

CONCLUSIONS.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of Edward B. Allen, deceased.	On appeal from decree of Orphans' Court denying the prayer of a petition for the sale of land for payment of debts.

30

CONCLUSIONS.

Oscar B. Redrow, Esq., for appellant, Agnes T. Allen, administratrix c. t. a.

Hon. D. O. Watkins, for respondent, William M. Allen.

LEAMING, Vice-Ordinary:

I entertain the view that the decree of the Orphans' Court must be affirmed for the reasons stated by Judge Swackhamer in the opinion filed by him in that court.

The Orphans' Court has no power to order sale of real estate to pay debts unless and until "on full examination the said court shall find that the personal estate of the said testator or intestate is not sufficient to pay his debts." Orphans Court Act, Sec. 83. I find no authority or reason operative to deny to the Orphans' Court the power to make that statutory examination at the time the order to show cause is heard.

I also think it clear that the clause commonly known as the facility of payment clause, and embodied in the second clause of the "Conditions and Agreements" annexed to the policy, can only be regarded as a clause for the protection of the company and to enable it to discharge its obligation by payment to any one of the class designated without requiring administration, and that the only effect of the clause is to protect the insurer in case it has paid in accordance with the clause; and that payment thereunder is not operative to bestow upon the person so paid any rights in the money as against an administrator who would, but for such payment, be entitled to receive the money; in such case the money must be deemed to be received in trust for the administrator. This view is in harmony with the view expressed in Brooks vs. Metropolitan Life Ins. Co., 70 N. J. Law, 36, at page 39, and also with the cases reviewed in the Prudential Ins. Co. vs. Godfrey, 75 N. J. Eq. 484; same case on appeal, 77 N. J. Eq. 267.

I will advise a decree affirming the decree of the Orphans' Court.

Submitted and determined: March 1, 1917.

DECREE.

NEW JERSEY PREROGATIVE COURT.

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10 In the Matter of the Estate of Edward B. Allen, deceased.	On appeal from decree of Orphans' Court denying the prayer of a petition for the sale of land for payment of debts. DECREE.

This appeal coming on to be heard in the presence of Oscar B. Redrow, of counsel for appellant, and David O. Watkins, of counsel for respondent, and 20 upon proofs taken in open court, and the Court having read, heard and considered the pleadings and proofs in the cause, and the arguments of counsel, and it appearing to the Court that the appellant is not entitled to the relief sought and prayed for by her in her appeal:

It is, on this fifth day of March, 1917, by Edwin Robert Walker, Ordinary of the Prerogative Court of New Jersey, ordered, adjudged and decreed that the appellant's petition of appeal is hereby dismissed 30 and the decree of the Gloucester County Orphans' Court herein be affirmed, with costs.

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING, *V. C.*

NOTICE OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of Edward B. Allen, deceased.	On appeal from decree of Orphans' Court denying the prayer of a petition for the sale of land for payment of debts. NOTICE OF APPEAL.

10

The petitioner, Agnes T. Allen, administratrix of the estate of Edward B. Allen, deceased, hereby appeals from so much of the final decree made in the Prerogative Court in the above cause as declares: That the decree of the Gloucester County Orphans' Court be in all things affirmed, and in that it denied an order to sell lands to pay decedent's debts.

20

To the Court of Errors and Appeals in the last resort in all cases.

Dated, Camden, New Jersey, June 12, 1917.

OSCAR B. REDROW,
Solicitor for and of Counsel with Petitioner.

30

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

OSCAR B. REDROW,
Counsel for Petitioner.

PETITION OF APPEAL.

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

The petition of Agnes T. Allen, administratrix of the estate of Edward B. Allen, deceased, appellant, shows that your petitioner finds herself aggrieved
10 by a decree made by the Ordinary in the Prerogative Court, in the matter of the estate of Edward B. Allen, deceased, on application for an order for the sale of lands to pay debts, in that said decree adjudged that the decree of the Gloucester County Orphans' Court be in all things affirmed, and in that it denied an order to sell lands to pay decedent's debts.

And your petitioner further appeals from that part of said decree of said ordinary which decrees that the sum of $542.86 received by Agnes T. Allen from
20 the Prudential Life Insurance Company, as the widow of Edward B. Allen, deceased, according to the terms of the contract, and before her appointment as administratrix, should be accounted for by her as administratrix of the estate of Edward B. Allen, deceased, for the same is erroneous, and no such decree should have been made, for that from the facts of the case, the ordinary should have made a decree in accordance with the petition of appellant; and from the law and equities of the case in that
30 such contract had been performed in accordance with the terms thereof, the ordinary should have made a decree for the sale of said real estate for the payment of decedent's debts.

Your petitioner therefore prays that the said decree of the ordinary may be reversed, set aside and for nothing holden.

And that your petitioner may have such other relief in the premises as to this Honorable Court shall seem meet.

OSCAR B. REDROW,
Solicitor for and of Counsel with Appellant.

ANSWER.

10

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between AGNES T. ALLEN, Administratrix of the Estate of Edward B. Allen, deceased, *Appellant,* and WILLIAM M. ALLEN, *Respondent.*	ON APPEAL. ANSWER.

20

The answer of the above-named respondent to the petition of appeal of the above-named appellant:

30

The respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was made and entered in the New Jersey Prerogative Court, in the cause for that purpose mentioned in said petition, as

is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity and justice, and he prays that the matter may be affirmed, with costs to be adjudged to this respondent.

DAVID O. WATKINS,
Solicitor for and of Counsel
10 *with Respondent.*

20

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between AGNES T. ALLEN, ADMINISTRATRIX OF THE ESTATE OF EDWARD B. ALLEN, DECEASED, *Petitioner-Appellant,* and WILLIAM M. ALLEN, *Respondent.*	ON APPEAL FROM PREROGATIVE COURT.

BRIEF OF APPELLANT.

This is an application by the administratrix of the estate of Edward B. Allen, deceased, for an order to sell real estate to pay debts, the personal property from the inventory amounts to sixty dollars and seventy-five cents, which sum was claimed under exemption. The debts presented against the estate amount to one hundred and seventy dollars and eighty-seven cents, which includes an item of one hundred and twenty dollars and fifty cents for funeral expenses.

The widow, Agnes T. Allen, is administratrix and one son, William M. Allen, is sole heir.

On the return of a rule to show cause the son objects to an order being made for the sale of land on

the ground that Agnes T. Allen prior to her appointment as administratrix received from the Prudential Life Insurance Company five hundred and forty-two dollars. The son claiming that this money should be paid to the estate. No papers have been filed nor have any exceptions been made to the inventory filed by the administratrix.

The facts concerning this insurance are that Edward B. Allen about the year 1887, entered into a contract with the Prudential Life Insurance Company, as evidenced by the policy (Case, page 6) whereby the insured agreed to pay a certain weekly stipend and at his death the insurance company agreed to pay to his executors and administrators, or the persons mentioned in paragraph second of the policy of insurance, the sum of five hundred dollars.

From the evidence in this case it appears that the decedent and his wife were married about the year 1896, that neither had any property at that time. That shortly after they were married they purchased the home or premises in question and through their united efforts the home was paid for through the building and loan association. The decedent worked at the glass house and received from one dollar and twenty-five cents to one dollar and fifty cents a day. The wife worked at sewing and at the canning factory. The policy was permitted to lapse by the insured, who had said he would not pay the premiums, and was reinstated by the wife after their marriage, The premiums on this insurance were paid by the wife, Agnes T. Allen, from the money she made dressmaking and at the canning factory, excepting one or two weeks which were paid by Mrs. Thompson, a sister of Mrs. Allen. Mr. Dixon, the agent of the company, testified that decedent had said that he could not keep up the payments on the policy, and

that all the premiums were paid by Mrs. Allen, with one or two exceptions, during the time he has been making the collections for the last five and one-half years.

The policy of insurance is what is known as an "Industrial Policy."

Decedent died February 10, 1916. Proof of claim was made by the widow on February 16, 1916, and check for the full amount paid to Mrs. Allen on February 19, 1916. Mrs. Allen was appointed administratrix on March 10, 1916, three weeks after she had received the money from the insurance company.

By stipulation of counsel (Case, page 21, line 23), if this Court determines that the insurance money received by the widow under the terms of the policy belongs to her, then an order should be made for the sale of lands to pay debts.

The part of the insurance policy in question reads as follows:

> "Second. The company may pay the sum of money insured hereby, to any relative by blood, or connection by marriage of the insured, or to any other person appearing to the company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured for his or her burial, or for any other purpose, and the production by the company of a receipt signed by any or either of said persons, or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied."

ARGUMENT.

POINT 1.

The policy of insurance was a contract entered into between the decedent and the insurance company. The decedent or someone for him complied with decedent's part of the contract by making the weekly payments, and the insurance company upon payment of the amount of said policy to the widow of insured on February 19, 1916, consummated and *completed* the contract between the insurance company and the insured. That the consummation and completion of this contract entered into between the insured and insurance company, according to the terms of the policy or contract, puts an end to all further consideration of the money paid thereon to a person named in the policy, or between the estate and any other person who could have been paid.

In a contract between an insurance company and insured the terms of condition operate as an appointment, by the parties, of the several persons named therein, anyone of whom is authorized to receive payment of the sum agreed to be paid on the death of the insured.

> *Metropolitan Life Ins. Co. vs. Schaffer,* 21 Vr. 72;
>
> *Canavan vs. John Hancock Ins. Co.,* 81 N. Y. Sup. 304.

Where the contract of insurance entered into between the insurance company and insured, authorized the payment to one of several persons, the company may make payment of the policy to any one of the persons so appointed as it may elect and such

payment is complete performance of the contract between the insured and company.

Brooks vs. Ins. Co., 70 N. J. L. 36.

In the case of *Godfrey vs. Prudential Ins. Co.*, 75 N. J. Eq. 484, where a similar clause was in dispute, Chancellor Walker said, "My judgment is, that the complainant (insurance company) had a right to pay any one of the persons named in the facility of payment clause in the policy under consideration, up to the time that suit was brought by the administrator of insured, and that such payment would have been complete defense to the administrator's action. Affirmed 77 N. J. Eq. 267.

The opinion of Vice-Ordinary Leaming in this case in which he says "the facility of payment clause is for the purpose of payment of the obligation by the insurance company without requiring administration," is not a proper construction of the contract and is not in accord with the cases cited in his opinion.

Under a provision to the effect that payment to legal representatives or beneficiaries named, or relative, shall be conclusive, the company has an option as to the person to whom payment shall be made within such provision.

25 *Cyc.* 902.

POINT II.

The money was paid to the person entitled.

The clause concerning payments says (Case, page 6, line 32):

> "*The company may pay the sum of money insured hereby, to any relative by blood, or con-*

> *nection by marriage of the insured,* or to any other person appearing to the company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured for his or her burial *or for any other purpose.*"

This clearly means that the insurance company could have paid the widow, or any other relative by by blood, or connection by marriage, without such person having incurred any expense whatsoever. The punctuation and the wording will admit of no other construction.

The punctuation as set out in the policy makes it read:

> "The company may pay the sum of money insured hereby, to any relative by blood, or connection by marriage of the insured, and the production of receipt, etc.
>
> "The company may pay the sum of money insured hereby, to any other person appearing, etc., and the production of."

In order to obtain any other construction, it is necessary to strike out the word "to" and insert a comma after persons, making this clause "or any other persons, appearing." But the contract does not so read.

The widow incurred expense by having made payments on account of dues payable to the insurance company, this evidence is not disputed. Her own money went to pay the premiums (Case, pages 23, 26, 27, 28, 29). If it was necessary for the widow to have incurred expense, it was not necessary that such expense be for burial purposes but *for any other purpose.*

It nowhere appears in this policy that it was necessary for Mrs. Allen to pay the funeral bill in order to collect the insurance. The proof of loss is not binding statement on the part of Mrs. Allen. It was prepared or filled in by Mr. Dixon, an agent of the insurance company (Case, 28-29). He testified that he filled it out and had Mrs. Allen sign it. The testimony shows that Mrs. Allen was not informed of its contents. "Who pays burial expense? Wife." (Case, 29.) Whether the wife was to pay such expense out of her own funds, out of the insurance or out of the estate does not appear. That she could pay such expense out of any such funds cannot be questioned. Justice Hendrickson in the case of *Brooks vs. Ins. Co.,* Ibid., says, "The failure of such person (to whom payment was made) to furnish the proofs of death, does not invalidate such payment, for the reason that this was a requirement for the benefit of the insurer which can be waived.

Mays Ins. 464; Bliss Life Ins. 266."

This clause goes even further "and the production by the company of a receipt signed by any or either of said persons, or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied."

There is in evidence the check of the insurance company to Agnes T. Allen, the widow, a connection by marriage to the insured, with a receipt on the back of the check showing the receipt of money by Agnes T. Allen, widow. According to the terms of the policy, according to this contract, "*that such payment shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto,*" the terms thereof have been complied with and the

contract is at an end. It must be borne in mind that this policy of insurance was a contract entered into by the decedent and insurance company and when this contract has been performed according to its terms, and the widow in this case has received the money, there can be no action between the parties who could have received the money or the insurance company. The insured agreed when he took out the policy of insurance that payment to his widow would be complete performance of the contract on the part of the insurance company.

The company being satisfied that a death had occurred made payment to a person entitled under the contract. Such payment is conclusive.

Brooks vs. Ins. Co., Ibid.

POINT III.

The husband has an insurable interest in the life of his wife, and the wife in the life of the husband. The natural affection in cases of this kind is considered more powerful—as operating more efficaciously—to protect the life of the insured than any other consideration.

Warnock vs. Davis, 104 U. S. 775;
Brett vs. Warnick, 75 Pac. 1061;
Wilton vs. New York Life Ins. Co., 78 S. W. 403.

POINT IV.

The fact in this case that the person who received the money subsequently became the administratrix of insured's estate should have no bearing on the case.

According to the Godfrey Case, 75 N. J. Eq. 484, Aff. 77 N. J. Eq. 267, a suit could not be maintained by the estate against a person named in the facility of payment clause after the insurance company had paid such person. The appellant stands in the same position as though she were not administratrix of her husband's estate as far as this insurance is concerned.

POINT V.

An heir cannot complain as to the performance of a contract, entered into by decedent, according to its terms.

The estate is a representative of the decedent and as such representative it cannot complain as to a contract entered into in decedent's lifetime by him. And if such contract has been performed the estate cannot after performance maintain a suit or complain about its performance in accordance with its terms.

The one in question was paid to a person entitled under the contract. The estate has no interest therein.

Ins. Co. vs. Schaffer, 21 Vr. 72;
Brooks vs. Metropolitan Ins. Co., 70 N. J. L. 36;
25 *Cyc.* 902.

I submit therefore from the record and testimony in this case that an order should be made to sell lands for the payment of debts and that the decree of the Prerogative Court be reversed.

OSCAR B. REDROW,
Proctor for Agnes T. Allen, Administratrix of the Estate of Edward B. Allen, deceased, Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between AGNES T. ALLEN, Administratrix of the Estate of EDWARD B. ALLEN, deceased, *Petitioner-Appellant,* and WILLIAM M. ALLEN, *Respondent.*	ON APPEAL FROM PREROGATIVE COURT.

BRIEF OF RESPONDENT.

Agnes T. Allen, administratrix of, etc., Edward B. Allen, deceased, applied to the Gloucester County Orphans' Court for an order to sell the lands, tenements, hereditaments and real estate of the decedent, Edward B. Allen, to pay debts, as she claimed the personal was not sufficient and that there was a deficiency amounting to $170.87. Objection was made upon the return of the rule to show cause by the respondent herein, upon the ground that the administratrix had collected the sum of $542.86 from the Prudential Insurance Company, which she had not accounted for in her statement of assets, nor in the inventory and appraisement of the estate.

The respondent herein is the son and sole heir of Edward B. Allen, the deceased.

The administratrix admits that she received the $582.46 from the Prudential Insurance Company of America under the policy set forth on page 6, etc., of the state of the case, but claims that she received it as Agnes T. Allen, the widow of Edward B. Allen, and before her appointment as administratrix, and that under the terms of the policy, she is entitled to retain the $582.46 without accounting therefor to the estate.

It is conceded that if the $582.46 is a part of the estate of Edward B. Allen, dec'd, then there is no deficiency of assets and there is sufficient to pay all the debts, including the widow's exemption of $200.00, and still leave a credit balance.

It will be noticed that in the statement of debts is the claim of the undertaker for $120.50.

The policy, on page 6 of the state of the case, reads as follows:

> "In consideration of the application for this policy, and of the payment of the weekly premium of 38¢, on or before every Monday during the continuance of this contract, promises to pay at its Home Office, in the City of Newark, New Jersey, unto the executors, administrators or assigns, of Edward B. Allen, the person herein designated as the insured, unless payment shall be made under the provisions of Article Second hereinafter contained, the sum of $500.00, etc."

The Article Second referred to states:

> "The company may pay the sum of money insured hereby, to any relative by blood, or connection by marriage of the insured, or to any other person appearing to the company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the

insured for his or her burial, or for any other purpose, and the production by the company of a receipt signed by either or any of said persons or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such sum shall be paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied."

ARGUMENT.

Point 1.

The first section of the policy, or the part stating the consideration and to whom the promise to pay is made is the executors, administrators or assigns of Edward B. Allen, dec'd.

The second article is intended for the protection of the insurance company. It is commonly known as the facility of payment clause and, as the Honorable Vice-Chancellor states in his conclusions, it is intended as a clause for the protection of the company, so that if it pays under this section to any of the parties enumerated therein, such payment relieves the company from any claim or demand made upon it by any one else and all the cases referred to in the brief of appellant maintain this view.

The company has the option as to the person or persons to whom payment shall be made, providing they are within the provisions of Article Second, but that does not mean that the administratrix has no claim upon the person receiving the money, but on the other hand, as between the person receiving and the administratrix, it is contended that such re-

cipient must account to the administratrix for the proceeds of the policy. The promise to pay, upon the part of the insurance company, is made to the executors, administrators or assigns, but if the company should pay the money under Article Second, the company is relieved from liability.

It will be noticed that before the insurance company paid the proceeds to Agnes T. Allen, she was required, as appears on page 10 of the state of the case, to state her relationship and that she paid the burial expenses, when, as a fact, as appears by her statement of debts, upon which she asks the order to sell the real estate, she includes the burial expenses (see page 23) and there is not enough money in the assets of the estate to pay the funeral expenses unless this $582.46 of insurance is included as an asset.

The cases of

Metropolitan Life Ins. Co. vs. Schaffer, 21 Vroom, 72;

Brooks vs. Metropolitan Life Ins. Co., 70 N. J. Law, 36,

and also the cases reviewed in the

Prudential Insurance Co. vs. Godfrey, 75 N. J. Equity, 484,

and on appeal, 77 N. J. Equity, 267, as well as all of the cases cited by appellant, are all in harmony with the views expressed herein.

Point 2.

It may be contended that because no objection was made to the inventory and appraisement at the time of filing or before the order to show cause was granted in the Orphans' Court of Gloucester County, that it was too late to question the statement of assets upon the return of the rule, but the appointment of Agnes T. Allen as such administratrix was made on March 10, 1916, and the inventory and appraisement was not filed until after then and the petition for the order for sale of lands was made April 27th, 1916. The time for filing objections to the inventory and appraisement had not gone by before the rule to show cause was made upon the application to sell lands to pay debts, but it is contended that even if it had expired, that upon the return of the rule to show cause, any person interested in the lands, tenements, hereditaments and real estate of the deceased, had the right to show cause why they, or any part of them, should not be sold to pay debts by presenting to the Court the information that there were other assets unaccounted for, which, when accounted for, would be more than sufficient to pay the debts and the property should not be sold but held for the heir.

Point 3.

Check for the $542.86, insurance under the policy in question, was dated February 19, 1916, as appears on page 11 of the case, and deposited by the said Agnes T. Allen in the First National Bank of Williamstown and paid on February 25th, 1916, and she was appointed administratrix on March 10th, 1916,

or but thirteen days after receiving the money upon the check.

It is respectfully submitted that the only question in controversy is whether this $542.86, which Agnes T. Allen received on February 25th, 1916, from the Prudential Insurance Company should be included in the assets of the estate of Edward B. Allen, deceased, and the contention of the respondent is that it should, and if so included, the assets of the estate exceed the debts, and the Orphans' Court is without authority to order the sale of lands for the payment of the debts, and the decree of the Prerogative Court should be affirmed.

DAVID O. WATKINS,
Proctor for Respondent.